

***Ex senatu eiecti sunt:***  
**Expulsion from the Senate**  
**of the Roman Republic, c.319–50 BC**

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## **Declaration**

I, Lee Christopher MOORE, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

## Thesis abstract

One of the major duties performed by the censors of the Roman Republic was that of the *lectio senatus*, the enrolment of the Senate. As part of this process they were able to expel from that body anyone whom they deemed unequal to the honour of continued membership. Those expelled were termed '*praeteriti*'. While various aspects of this important and at-times controversial process have attracted scholarly attention, a detailed survey has never been attempted.

The work is divided into two major parts. Part I comprises four chapters relating to various aspects of the *lectio*. Chapter 1 sees a close analysis of the term '*praeteritus*', shedding fresh light on senatorial demographics and turnover – primarily a demonstration of the correctness of the (minority) view that as early as the third century the quaestorship conveyed automatic membership of the Senate to those who held it. It was not a Sullan innovation. In Ch.2 we calculate that during the period under investigation, c.350 members were expelled. When factoring for life expectancy, this translates to a significant mean lifetime risk of expulsion: c.10%. Also, that mean risk was front-loaded, with praetorians and consulars significantly less likely to be expelled than subpraetorian members. In Ch.3 and 4 we discuss the mechanics of the *lectio* and review legislative and personal responses to expulsion, including the observations that censors were sensible to a number of societal constraints, among them the opinions of outside actors; also, that expulsion was not necessarily an insuperable setback. Part II comprises a single chapter, a catalogue of all known named *praeteriti*. An Appendix presents all source testimonia that allude to each *praeteritus*' expulsion.

The chronological range is bookended by the promulgation of the *plebiscitum Ovinium* (which gave censors the responsibility of performing the *lectio*) and the final censorship of the functioning Republic.

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# Abbreviations used in this work

## I. Journals

<i>AAnthung</i>	= <i>Acta Antiqua Academiae Scientiarum Hungaricae</i>
<i>AC</i>	= <i>L'antiquite Classique</i>
<i>AClass</i>	= <i>Acta Classica</i>
<i>AHB</i>	= <i>Ancient History Bulletin</i>
<i>AHR</i>	= <i>American Historical Review</i>
<i>AIRF</i>	= <i>Acta Instituti Romani Finlandiae</i>
<i>AJA</i>	= <i>American Journal of Archaeology</i>
<i>AJAH</i>	= <i>American Journal of Ancient History</i>
<i>AJPh</i>	= <i>American Journal of Philology</i>
<i>Am J Leg Hist</i>	= <i>American Journal of Legal History</i>
<i>AncW</i>	= <i>Ancient World</i>
<i>Annales ESC</i>	= <i>Annales: Économies, Sociétés, Civilisations</i>
<i>ANRW</i>	= <i>Aufstieg und Niedergang der Römischen Welt</i>
<i>ANSMN</i>	= <i>American Numismatic Society Museum Notes</i>
<i>BCH</i>	= <i>Bulletin de Correspondance Hellénique</i>
<i>BICS</i>	= <i>Bulletin of the Institute of Classical Studies</i>
<i>BMCR</i>	= <i>Bryn Mawr Classical Review</i>
<i>BSL</i>	= <i>Bollettino di Studi Latini</i>
<i>C&amp;M</i>	= <i>Classica et Mediaevalia</i>
<i>CJ</i>	= <i>Classical Journal</i>
<i>CP</i>	= <i>Classical Philology</i>
<i>CQ</i>	= <i>Classical Quarterly</i>

<i>CR</i>	= <i>Classical Review</i>
<i>CW</i>	= <i>Classical World</i>
<i>DHA</i>	= <i>Dialogues d'Histoire Ancienne</i>
<i>DUJ</i>	= <i>Durham University Journal</i>
<i>EA</i>	= <i>Epigraphica Anatolica</i>
<i>G&amp;R</i>	= <i>Greece and Rome</i>
<i>GRBS</i>	= <i>Greek, Roman, and Byzantine Studies</i>
<i>HSPH</i>	= <i>Harvard Studies in Classical Philology</i>
<i>IJCT</i>	= <i>International Journal of the Classical Tradition</i>
<i>JRS</i>	= <i>Journal of Roman Studies</i>
<i>LCM</i>	= <i>Liverpool Classical Monthly</i>
<i>MAAR</i>	= <i>Memoirs of the American Academy in Rome</i>
<i>MEFRA</i>	= <i>Mélanges de l'École Française de Rome, Antiquité</i>
<i>MH</i>	= <i>Museum Helveticum</i>
<i>NC</i>	= <i>Numismatic Chronicle</i>
<i>OpRom</i>	= <i>Opuscula Romana</i>
<i>PACA</i>	= <i>Proceedings of the African Classical Association</i>
<i>PAPhS</i>	= <i>Proceedings of the American Philosophical Society</i>
<i>PCA</i>	= <i>Proceedings of the Classical Association</i>
<i>PCPhS</i>	= <i>Proceedings of the Cambridge Philological Society</i>
<i>PP</i>	= <i>La Parola del Passato</i>
<i>PSQ</i>	= <i>Political Science Quarterly</i>
<i>REA</i>	= <i>Revue des Études Anciennes</i>
<i>REL</i>	= <i>Revue des Études Latines</i>
<i>RhM</i>	= <i>Rheinisches Museum für Philologie</i>
<i>RN</i>	= <i>Revue Numismatique</i>



<i>SHT</i>	= <i>Studia Humaniora Tartuensia</i>
<i>SNR</i>	= <i>Revue Suisse de Numismatique</i>
<i>SPh</i>	= <i>Studies in Philology</i>
<i>TAPhA</i>	= <i>Transactions of the American Philological Association</i>
<i>TAPS</i>	= <i>Transactions of the American Philosophical Society</i>
<i>TRG</i>	= <i>Tijdschrift voor Rechtsgeschiedenis</i>
<i>WS</i>	= <i>Wiener Studien</i>
<i>ZPE</i>	= <i>Zeitschrift für Papyrologie und Epigraphik</i>

## II. Journal articles and books

<i>CIL</i>	= <i>Corpus Inscriptionum Latinarum</i> , multiple volumes. Berlin: Berlin-Brandenburgische Akademie der Wissenschaften, 1863-present)
Cram	=Cram, R.V., 'The Roman censors', <i>Harvard Studies in Classical Philology</i> 51 (1940), 71-110
<i>CRR</i>	=Lintott, A.W., <i>The Constitution of the Roman Republic</i> (Oxford: Oxford University Press, 1999)
EI-Beheiri	=EI-Beheiri, N., 'Die Römische zensur – ein entwicklungsgeschichtlicher abriß', <i>Acta Antiqua Academiae Scientiarum Hungaricae</i> 44 (2004), 47-98
Grueber	=Grueber, H.A., <i>Coins of the Roman Republic in the British Museum</i> , 2 volumes (London: British Museum, 1910)
<i>IG</i>	= <i>Inscriptiones Graecae</i> , multiple volumes. (Berlin: Berlin-Brandenburgische Akademie der Wissenschaften, 1860-present)
<i>ILS</i>	=Dessau, H. (ed.), <i>Inscriptiones Latinae Selectae</i> , 3 volumes (Berlin: Weidmann, 1892-1916)
<i>KP</i>	=Ziegler, K. & Sontheimer, W. (edd.), <i>Der Kleine Pauly: Lexicon der Antike</i> , 5 volumes (Munich: Druckmüller, 1964-1975)
<i>LGRR</i>	=Gruen, E.S., <i>The Last Generation of the Roman Republic</i> (Berkeley: University of California Press, 1974)
<i>MRR</i>	=Broughton, T.R.S., <i>The Magistrates of the Roman Republic</i> , 3 volumes (Atlanta: American Philological Association, Scholars Press, 1951-1986)

- NM* =Wiseman, T.P., *New Men in the Roman Senate: 139 BC-AD 14*. (Oxford: Oxford University Press, 1971)
- PIR*<sup>2</sup> =Groag, E., Stein, A., & Petersen, L. (edd.), *Prosopographia Imperii Romani* 2nd edition, multiple volumes (Berlin: Berlin-Brandenburgische Akademie der Wissenschaften, 1933-present)
- ORF*<sup>1</sup> =Meyer, H., *Oratorum Romanorum Fragmenta ab Appi inde Caeco usque ad Q. Aurelium Symmachum* (Paris: Bourgeois-Maze, 1837)
- ORF*<sup>2</sup> =Meyer, H., *Oratorum Romanorum Fragmenta ab Appi inde Caeco et M. Porcio Catone usque ad Q. Aurelium Symmachum* (Turin: Orelli, 1842)
- ORF*<sup>3</sup> =Malcovati, H., *Oratorum Romanorum Fragmenta* 3rd edition (Turin: Societa per Azioni G.B. Paravia, 1967)
- ORF*<sup>4</sup> =Malcovati, H., *Oratorum Romanorum Fragmenta* 4th edition (Turin: Societa per Azioni G.B. Paravia, 1976)
- RE* =Von Pauly, A.F., Wissowa, G., Kroll, W., Mittelhaus, K., Ziegler, K., & Gärtner, H. (edd.), *Paulys Realencyclopädie der Classischen Altertumswissenschaft*, multiple volumes (Stuttgart: Metzler, 1894-1980)
- Rotondi =Rotondi, G., *Leges Publicae Populi Romani: Elenco Cronologico con una Introduzione sull'attività Legislativa dei Comizi Romani* (Milan: Società Editrice Libreria, 1912)
- RP*<sup>2</sup> =Scullard, H.H., *Roman Politics, 220-150 BC* 2nd edition (Oxford: Clarendon Press, 1973)
- RPCC* =Gruen, E.S., *Roman Politics and the Criminal Courts, 149-78 BC* (Cambridge, MA: Harvard University Press, 1968)
- RRC* =Crawford, M.H., *Roman Republican Coinage* (Cambridge: Cambridge University Press, 1974)
- Schmähling =Schmähling, E., *Die Sittenaufsicht der Censoren: Ein Beitrag zur Sittengeschichte der Römischen Republik* (Stuttgart: W. Kohlhammer, 1938)
- Suolahti =Suolahti, J., *The Roman Censors: A Study in Social Structure* (Helsinki: Annales Academiae Scientiarum Fennicae, Suomalainen Tiedeakatemia, 1963)
- Sydenham =Sydenham, E.A., *The Coinage of the Roman Republic* (London: Spink & Son, 1952)
- TLRR* =Alexander, M.C., *Trials in the Late Roman Republic, 149 BC to 50 BC*. Phoenix Supplement 26 (Toronto: University of Toronto Press, 1990)
- Willems =Willems, P., *Le Sénat de la République Romaine, Tome I: Sa Composition et ses Attributions* (Paris: Durand & Pedone-Lacriél, 1878)

## Introduction

Passed-over senators in former times were not in disgrace [*Praeteriti senatores quondam in opprobrio non errant*], because, just as the kings used to choose for themselves, and to choose as replacements, those whom they would have in public council, so after the kings were expelled the consuls also, and the military tribunes with consular power, used to choose for themselves all their closest friends from the patricians and then from the plebeians; until the Ovinian plebiscite intervened, by which it was laid down that the censors should be bound by oath to enrol in the Senate all the best men from every order. Thus it came about that those who were passed over and removed from their seats were considered dishonoured. [... *donec Ovinia tribunicia intervenit, qua sanctum est, ut censores ex omni ordine optimum quemque iurati <MS: curiatim> in senatum legerent. Quo factum est, ut qui praeteriti essent et loco moti, haberentur ignominiosi*].<sup>1</sup>

Hence we learn from the definition of *praeteriti senatores* (“omitted senators”; derived from the verb ‘*praeterire*’: ‘to pass over/by’, ‘ignore’, ‘exclude’) given in the lexicon of Festus, that the duty of performing the *lectio senatus* (enrolment of the Senate) by way of revising the *album senatorium* (senatorial list, or roll), belonged first to the kings, then to consuls and consular tribunes, and then, upon the promulgation of the *plebiscitum Ovinium* (the so-called ‘*lex Ovinia de senatus lectione*’), was entrusted to censors. Before the existence of the Ovinian plebiscite, appointments of new members to the Senate – and the retention of existing members – were made in a partisan manner, reflecting little more than the good personal connections which existed between those performing the enrolment and beneficiaries of the procedure. As a result the corollary – loss of senatorial position, or failure to be appointed to such if qualified and entitled to be – carried no social stigma as it indicated nothing more than the existence of some personal animosity or political

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<sup>1</sup> Festus, *Verb. Signif. s.v. ‘Praeteriti Senatores’*. Used here is the (slightly modified) translation of T.J.Cornell, ‘The *lex Ovinia* and the emancipation of the Senate’, *AIRF* 23 (2003), 69-89. On the benefit of amending ‘*curiatim*’ to ‘*iurati*’: Rotondi, 233; T.J.Cornell, *The Beginnings of Rome: Italy and Rome from the Bronze Age to the Punic Wars, c.1000-264 BC* (London, 1995), 445n.23. *CRR* 68 offers the possible amendment of ‘*curiatim*’ to ‘*curiati*’ or ‘*iurati*’.

disagreement between the chooser and the *praeteritus*, with no necessary intimation of questionable character or lack of moral worth necessarily attached to the latter party.<sup>2</sup> This attitude changed upon the promulgation of Ovinus' plebiscite. Although Festus does not mention the matter, we know from other sources that the office of censor was created, in 443, for the purpose of conducting the *census populi* – the regular (for military, electoral, and taxation purposes) enumeration of the *populus Romanus* and the arrangement of them into their respective social tiers and voting-tribes. In this latter aspect of their duties one of the powers possessed by the censors was removing those whom they considered of unfit character from their respective voting-tribes and into the *aerarii*, a grouping liable to high taxation and who did not enjoy certain rights and privileges. As this power was arbitrary and functioned solely from the censors' personal opinion of what constituted right and wrong behaviour (*mos*), their judgements rapidly took the aspect of moral assessments and they came to be seen as *praefecti morum* and *castigatores*, with 'moral guidance and discipline' (*regimen morum disciplinaeque Romanae*) and 'management of

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<sup>2</sup> The reality of enrolment before the *plebiscitum Ovinium* was probably not as partisan as Festus avers; as a result, there was likely a great deal more continuity within the Senate than intimated. Presumably incoming consuls and consular tribunes never made too many amendments to the establishment as to do so would be self-defeating. The best (and most recent) discussion of the date, context, and impact of Ovinus' plebiscite, is by T.J.Cornell, *AIRF*23 (2003), 69-89 (cf Cornell, *Beginnings*, 247-248, 369). His interpretations finds favour in M.H.Crawford, [Review of C.Bruun (ed.), *The Roman Middle Republic: Politics, Religion, and Historiography, c.400-133 BC*. Acta Instituti Romani Finlandiae 23 (Rome, 2000)], *CR* n.s.51 (2001), 332, in J.W. Rich, [Review of C.Bruun (ed.), o.c.], *Phoenix* 58 (2004), 370, and at *CRR* 68. It is given as "too extreme" by G.Forsythe, [Review of T.J.Cornell, *Beginnings*], *BMCR* 97.3.26 (1997), with a similar sentiment displayed by J.-C.Richard, 'Patricians and plebeians: the origin of a social dichotomy' in K.Raaflaub (ed.), *Social Struggles in Archaic Rome: New Perspectives on the Conflict of the Orders* 2nd edition (Malden, 2005), 121-122. Cornell's view is here supported.

morals' (*cura morum*) among their duties.<sup>3</sup> By the time the *plebiscitum Ovinium* transferred the remit of regulating senatorial admission and composition to these officers, at some point between 338 and 319, they had already accrued a strong and historical reputation as the guardians of Roman virtue and evaluators of character.<sup>4</sup> That such a responsibility was passed to the censors is therefore hardly surprising, even less so when we consider the probable historical context of Ovinus' legislation. That the transferral of responsibility of selecting the membership of the Senate was effected through a *plebiscitum* rather than a *lex*, coupled with the wording of the legislation – which enjoined the censors, already

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<sup>3</sup> On the early censors and early *cura morum*: Cic., *Rep.* II.35.60; D.H., XI.63.1-3; Livy, IV.8.1-7, 24.1-9; *Per.* 4; V.M., II.9.1; Plut., *Cam.* 2.2; Pomponius *ap.* Justinian, *Digesta* I.2.2.17; Zon., VII.19. The earliest known examples of censorial *cura morum* belong to 434 and 403. For the powers and duties of censors (albeit mentioned away from the above contexts): Cic., *Leg.* III.3.7; D.H., XX.13.2-3; Plut., *Cat. Mai.* 16.1-2; *Aem. Paullus* 38.7.

<sup>4</sup> Festus does not give the date of the *pl. Ovinium* and no other source records the law. The majority of modern works give its date either as 318 or shortly prior to 312; a small handful place it in the range 291/275. However T.J.Cornell, *AIRF* 23 (2003), 69-89 demonstrates that it belongs to 338/318. Indeed Livy, IX.30.1-2 and D.S., XX.36.5 show that the censors of 318-317, L.Papirius Crassus and C.Maenius, conducted a *lectio senatus*. Still, Cornell's range may be attenuated further, albeit slightly. Crassus and Maenius appear to have been elected as substitutes for a pair who entered office in 319 but whose term was foreshortened by the death of one of them (thus compelling the abdication of the other), seemingly before they could complete their major duties (Cram, 82; *MRR* I.154; A.Degrassi, *Fasti Capitolini* (Turin, 1954), 187; Suolahti, 212-216, 630-636). Chronologically it is unlikely that whereas Crassus and Maenius operated in accordance with the *pl. Ovinium*, their close predecessors (*cen.* 319-319/318) did not. Consequently we might satisfactorily consider 319 the latest possible date for the law. Cornell's dating, but not his entire argument, is not without adumbration, most notably by L.Lange, *De Plebiscitis Ovinio et Atinio Disputatio* (Leipzig, 1878), 3 [= *Kleine Schriften aus dem Gebiete der Classischen Alterthumswissenschaft, Zweiter Band* (Göttingen, 1887), 394]; L.Lange, *Römische Alterthümer, Band 2: Der Staatsalterthümer, Zweiter Theil* 3rd edition (Berling, 1879), 13-14, 355-356; G.De Sanctis, *Storia dei Romani, Vol.II: La Conquista del Primato in Italia* 2nd edition (Florence, 1960), 221n.122. See also T.J.Cornell, 'The conquest of Italy' in F.W.Walbank *et al.* (edd.), *Cambridge Ancient History, Vol.VII, Pt.2: The Rise of Rome to 220 BC* (Cambridge, 1989), 393; T.J.Cornell, *Beginnings*, 248, 344, 369, 468.

arbiters of moral fibre, to choose the Senate according to merit rather than association – strongly suggests that the rationale behind it was disquiet about the fairness of the traditional method, probably because plebeians of worthier character were losing out to less commendable patricians of otherwise equal magisterial rank or social class. If so, the law can be seen as a relatively late clash in the ‘Struggle of the Orders’ that dominated Roman politics during the fifth, fourth, and early third centuries.<sup>5</sup> An immediate result of Ovinius’ innovation was to unite the process of revision of the *album senatorium* with the concept of censorial *cura morum*, and to connect the previously guiltless status of *praeteritus* with deviance from correct and customary behaviour.

This work is the first of its kind. Whereas others have hitherto surveyed various diverse aspects of the phenomenon of expulsion from the Senate of the Roman Republic by the censors, none have been holistic or extensive interrogations of the issue. Furthermore they have tended to tackle the topic of expulsion from the perspective of the expellers, giving cursory (at best) treatment to the experiences of those who were actually impacted by the process – the *praeteriti*. But neglect of the *praeteriti* is not confined to moderns; we see it occur in the ancient sources also. Perhaps this is natural; the censors were, by definition, at the pinnacle of their political careers and were among the most prominent and eminent personalities that the Roman state would ever produce. The *praeteriti*, in contrast, tended to be comparatively obscure, socially as well as politically. Not the sort to draw the attention of the historiographers. Those who are named in the extant sources are usually done so only if they were (or became) particularly noteworthy, if their expulsion involved some especial drama or humour, or if it afforded a good moral *exemplum*. As a result much of our data on specific acts of censure have been transmitted by way of interesting

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<sup>5</sup> T.J.Cornell, *AIRF* 23 (2003), 69-89; R.Develin, ‘The integration of the plebeians into the political order after 366 BC’ in K.Raflaub (ed.), *o.c.*, 304-305.

anecdotes, usually with a censor at the focus. In this context many of the censured come across not as distinct characters but rather as little more than ciphers against whom censors acted. Yet the *praeteriti*, when measured against the censors, are – in my opinion – by far the more interesting grouping, consisting as they do of those on the political back foot and coping with an adverse change in personal circumstances in a system characterised by status and the extreme competition for it. Because of this, and because of their superficial treatment in previous works, I offer no apology for making the expelled, rather than their expellers, the focus of this thesis.

The tendency of the sources to concentrate on dramatic or unusual cases of censure at the expense of the unexceptional means that the data we do have in our possession is unrepresentative of the norm. How, then, are we able to draw any conclusions from a dataset of such a distorted nature, incomplete and containing a large component of biased or atypical material? In many regards we cannot. We cannot, for example, make any conclusions about the frequency of retaliatory violence against censors by the censured, although we can be assured that such violence occurred on several occasions throughout the Republican period. Conversely, how many of the expelled quietly submitted to the censors' judgement and used their forced retirement as an opportunity to disengage from active politics and retreat from the city? Such undramatic responses find no place in the extant sources although presumably they occurred frequently, certainly more frequently than violent responses. Likewise changes in behaviour over time and social differences in response to the censors are impossible to detect with our information as incomplete and unrepresentative as it is. But when they occur such source difficulties, suitably identified, are not always insuperable; progress may still be made and valuable conclusions may still be drawn.<sup>6</sup> We can still expose previously

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<sup>6</sup> Even source information which is ostensibly uncontroversial can be questioned as potentially problematic. One example suffices. When attempting to gauge the absolute frequency of expulsion (and from this calculate

unseen or overlooked historical features, which it is hoped will add significantly to our understanding of the working, dynamics, and demographics of the Republican Senate and of the wider socio-political milieu.

This work is divided into two major parts. Part I consists of four chapters relating to various aspects of the *lectio senatus* as it was conducted by the censors of the Republic. In broad terms, the first chapter consists of a close analysis and (re)definition of the term '*praeteritus*'; the second is a survey of all surviving numerical data for the phenomenon of expulsion; the the third an investigation of the strictures and mechanics of the *lectio senatus* itself; and the fourth is a review of legislative and personal responses to expulsion. Part II comprises a single chapter, a register of all those (of known identity and/or magisterial rank) known to have been expelled. An Appendix presents all source testimonia, in the original language and translation, alluding to each subject's censure. The chronological range of the work is bookended by the promulgation of the *plebiscitum Ovinium* on one side (*i.e.*, c.319), and the final censorship of the functioning Republic on the other (*i.e.*, 50).

All dates are BC unless otherwise indicated. Numbers in parentheses following the names of individuals denote their entry in *Paulys Realencyclopädie der Classischen*

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the cumulative risk that might have been felt by an average member of the Senate), the numerical data we start with comes primarily from only one extant source – Livy. Although we might surmise that Livy's information primarily derived ultimately from the written official and personal records of the censors themselves, very likely through the intermediary historiographers Piso Frugi (*cens.*120-119) and Valerius Antias (the fragments of the former betraying a strong interest in the history of the censorship, the latter often cited by Livy for his numerical data), we have no way of independently checking the validity of his data other than to observe that they are broadly consistent and do not lead to outlandish repercussions when pursued to their fullest extent. Even the single expulsion figure not found in Livy – rather, in Plutarch – might be from either Livy or from the wider 'Livian tradition', so is of little utility as an independent check.



*Altertumswissenschaft* (*RE*, or 'Pauly-Wissowa'). All translations are those presented in the editions used; most commonly (although not exclusively), those of the Loeb Classical Library of Harvard University Press, Cambridge, MA. Where, on the rare occasion, translations contain either literary or lexical archaisms or terminological inexactitudes, I have taken the liberty of amending appropriately.

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I would like to take this opportunity to express thanks to my supervisors, Dr. Valentina Arena and Dr. Benet Salway, who have throughout provided valuable advice, encouragement, and guidance. Naturally, they bear no responsibility for any faults that may remain in this work.

Finally, to my wife, Suzanne, who has lived in competition with the Senate of the Republic for far longer than anyone should, to my son, Samuel, who had yet to be born when this work was started, and to Daniel, who is yet to be born: this work is dedicated to you.

## **PART I – *LECTIO SENATUS***

## Chapter 1

### Demographics (I): The definition of ‘*praeteritus*’ and qualification for the Senate

At the outset we should underline that the Senate of the Roman Republic technically consisted of two types of member: those who were termed *senatores*, and those who were subsumed within the traditional formula “*quibusque in senatu sententiam dicere liceret*”. The latter group comprised all who, since the preceding *lectio senatus*, had for the first time held a magistracy giving them the right to speak and vote in the Senate – the so-called *ius sententiae dicendae* – but had yet to be admitted to the *ordo senatorius* by the censors. *Senatores* on the other hand were those erstwhile *quibusque in senatu sententiam dicere liceret* whom a pair of censors, during a *lectio senatus*, had admitted to the senatorial order. We may characterise them as ‘full senators’, or ‘senators proper’. Those who were *quibusque in senatu sententiam dicere liceret*, who were members of the Senate though not yet members of the senatorial order, we may characterise as ‘acting-senators’, awaiting the censors to advance them to ‘full senator’ status.<sup>7</sup> An acting-senator

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<sup>7</sup> Livy, XXII.32.3, XXXVI.3.2-3 (citing consular edicts of 215 and 191); Festus, *Verb. Signif. s.v. ‘Senatores’*; Varro, fr.220 (Bücheler) *ap. Gell.*, III.18.5-7; Gell., III.18.1. Livy gives the formula as in the main text: “*senatores quibusque in senatu sententiam dicere liceret*”; Festus and Varro/Gellius have the variant “... *licet*”. The *lex Valeria-Aurelia*, of AD 20 (the so-called ‘*tabula Hebana*’), has “... *licebit*” in lines 10 and 28, and reference in this law’s text to a *lex Valeria-Cornelia*, of AD 5, suggests that the same formulation was also used in this earlier law. The so-called ‘*lex Latina tabulae Bantinae*’, of the second or early first century, has “*quei senator est erit queive in senatu sententiam deixerit*” in line 23. On these laws, text and commentaries, see their entries in M.H.Crawford (ed.), *Roman Statutes*. Bulletin of the Institute of Classical Studies Supplement 64, 2 volumes (London, 1996). On the membership of the Senate consisting of ‘full’ and ‘acting’ senators, see Willems, I.29-34, 49; T.Mommsen, *Römisches Staatsrecht III* 2nd edition (Leipzig, 1888), 858-859; A.O’Brien Moore, ‘*Senatus*’, *RE* S.VI (1935), 673; E.Gabba, *Republican Rome, the Army and the Allies*, trans. P.J.Cuff

had his place in the Senate through virtue of having held a qualifying magistracy. In contrast the status of *senator* ('full senator') was strictly a social categorisation decided solely by external agents – the censors. It thus follows that 'the senatorial order' (*ordo senatorius*) and 'the Senate' (*senatus*) were not coterminous; one could be a member of the Senate without being a member of the senatorial order, whereas one could not be a member of the senatorial order without also being a member of the Senate. Despite these technical distinctions, both groups enjoyed identical rights, privileges, accoutrements, and public esteem, and it is doubtful whether members could always discern exactly who among their myriad colleagues in the Curia belonged to which grouping; certainly an anecdote from Valerius Maximus centres upon a *senator* mistaking an acting-senator for one of his own group.<sup>8</sup>

The existence of these two types of member, the acting-senators and the *senatores*, is of signal importance in the following chapter, where we look toward providing closer definition of the word '*praeteritus*' than that given by Festus and in doing so take a novel approach toward answering the question of senatorial turnover.

But before moving on, it befits us to also underline that not all members of the *ordo senatorius* had served in the capacity of 'acting-senators'. The process of adlection (*adlectio*) meant that some otherwise-deserving men could be admitted straight into the *ordo senatorius* (and the Senate) despite not having held a magistracy that qualified them for the *ius sententiae dicendae*. The process was most commonly employed when the

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(Berkeley, 1976), 147-148 (= *Esercito e Società Nella Tarda Repubblica Romana* (Florence, 1973), 419-421); M.Bonnefond-Coudry, *Le Sénat de la République Romaine de la Guerre d'Hannibal à Auguste* (Rome, 1989), 662; R.Vishnia, '*Lex Atinia de tribunis plebis in senatum legendis*', *MH* 46 (1989), 163-176; J.-L.Ferrary, '*Lex Cornelia de sicariis et veneficiis*', *Athenaeum* n.s.79 (1991), 427-428; F.X.Ryan, 'The origin of the phrase *ius sententiae dicendae*', *Hermes* 121 (1993), 206-210; F.X.Ryan, *Rank and Participation in the Republican Senate* (Stuttgart, 1998), 52-87; *CRR* 69.

<sup>8</sup> V.M., II.2.1a. We shall revisit this passage shortly.

available recruitment pool of ex-magistrates was insufficient to fill all the vacancies within the Senate. When performed it was usually done by the censors, but we find dictators adlecting also.<sup>9</sup>

## II.

Livy reports that as part of the *lectio* of 209, censors P. Sempronius Tuditanus and M. Cornelius Cethegus expelled 8 men from the Senate; *i.e.*, they created 8 *praeteriti*: “*inde alius lectus senatus octo praeteritis*”.<sup>10</sup> The term ‘*praeteritus*’ is usually accepted, either directly or through implication, to mean ‘a senator whom the censors have expelled from the Senate’, and this understanding doubtless stems from Festus’ use of the heading ‘*Praeteriti Senatores*’ to introduce his discussion of the creation of the censorial *lectio senatus* according to the stipulations of the Ovinian plebiscite. But a detail immediately following Livy’s enumeration of the *praeteriti* of 209 shows that the word had a second meaning, distinct from, though closely allied to, the definition implied by Festus. As such, it has implications; not obvious at first, but far-reaching when pursued. Livy adds:

*Inter quos M. [sic – L.] Caecilius Metellus erat.*<sup>11</sup>

Metellus was *praeteritus*. Moreover, as Livy names *only* Metellus from among the censors’ *praeteriti*, it is clear that he was the most notable of that *lectio*. Metellus’ career prior to his

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<sup>9</sup> Cf Festus, *Verb. Signif. s.v. ‘Allecti’ (sic)*: “[Members] are said to be *allecti* among the Romans if they are taken into the Senate from the *ordo equester*, because of a shortage” (*allecti dicebantur apud Romanos, qui propter inopiam ex equestri ordine in senatorum sunt numero adsumpti*).

<sup>10</sup> Livy, XXVII.11.12.

<sup>11</sup> Livy, XXVII.11.12. See Metellus’ entry in Ch.5 for the question of his *praenomen*.

censure in 209 is well-known.<sup>12</sup> Described by Livy as a “*nobilis iuuenis*” at the time, Metellus fought at Cannae (probably as a junior cavalry officer), and, after the defeat, advocated abandoning Italy to Carthage. Two years later (in 214), Metellus, now quaestor, was punished by censors M. Atilius Regulus and P. Furius Philus for his previous suggestion: dismissed from the *ordo equester*, he was also removed from his voting-tribe and transferred *ad aerarios*.<sup>13</sup> Notwithstanding his double-punishment, Metellus was elected plebeian tribune for 213 and it was during his tribuneship that he initiated a legal action (ultimately unsuccessful) against Regulus and Philus, still in office.

Accepting that Metellus’ history has not been seriously distorted or misunderstood by Livy or his source(s), it is clear that in 209, when Metellus was made *praeteritus*, while he belonged to neither the equestrian order nor the senatorial, he did enjoy membership of the Senate. He was an acting-senator when expelled. The term ‘*praeteritus*’, therefore, was not confined to *senatores* expelled from the Senate by the censors, but it must have applied to acting-senators refused admission by them to the senatorial order – refused ‘full’ senator status. So refused, thus also removed altogether from the Senate.<sup>14</sup> Two types of person were subsumed beneath a single umbrella-term,

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<sup>12</sup> Livy, XXII.53.1-13; XXIV.18.1-9, 43.2-3; V.M., II.9.8; V.6.7.

<sup>13</sup> That Metellus, a quaestor, was not also expelled from the Senate in 214 strongly indicates that he was not then a member of it. If, as we shall see it seems likely, the quaestorship qualified its holders for membership, it must have qualified only those who had exited the office, not those in the office. Upon exiting the office he became a member, and thus also became liable for being made a non-member (expulsion) – which he duly was in the first following *lectio*.

<sup>14</sup> R.Vishnia, *o.c.*, 165n.15, 175; CRR 71 go toward making the same observation but are incorrect when they say that the verb ‘*praeterire*’ was used when describing members of the Senate who were prevented from entering the senatorial order and that ‘*movere*’ (and ‘*eicere senatu*’) was used to denote members of the order who were ejected from it. Such subtlety is not supported by Festus, *Verb. Signif. s.v. ‘Praeteriti Senatores’*; Cic. *Domo Sua* 32.84; Livy, XL.51.1. E.Cavaignac, ‘Le Sénat de 220: étude démographique’, *REL* 10 (1932), 466, also perceives that the term ‘*praeteritus*’ encompassed those disbarred from the senatorial order as well as

and there would have been some *praeteriti* who had never been *senatores*. The generally-accepted definition of the term '*praeteritus*', derived from Festus' '*praeteriti senatores*', is thus in need of some small augmentation. This should come as no surprise when one observes that the lexicographer, in writing his entry on the *praeteriti*, expends more ink on outlining the early history and evolution of the *lectio* than on those impacted upon by the process. Considering this, some inadequacy in Festus' definition is not unexpected.

Metellus, an acting-senator refused admission to the senatorial order and thus expelled from the Senate, was one of 8 *praeteriti* created during the *lectio* of 209. It follows that in that same *lectio* the vast majority of his coevals – those who like him had served their first qualifying magistracy in the interval since the previous *lectio* (held in 214) and who had survived the interim – *must have been admitted to the senatorial order by the censors*. If even only a moderate proportion of newly-qualified office-holders were, like him, prevented by them from entering the senatorial order, then we would expect the number expelled during the *lectio senatus* of 209 – and, it follows, in all other *lectiones* – to have far exceeded a mere 8. In fact, the evidence of other *lectiones* reveals that Tuditanus and Cethegus were relatively severe, and that even 8 expulsions pushed the upper limit of what was considered normal for the era. As we will see in the next chapter, for the 10 *lectiones* performed between 209 and 164 (inclusive), the total number of *praeteriti* created was 51, equating to a mean of 5.1 per *lectio*. The harshest was that of 174, in which 9 were expelled. The mildest was that of 199, in which no-one was expelled. That is, in 199 all acting-senators succeeded in being admitted into the senatorial order and all sitting *senatores* were retained in place. Even if every individual in this population of 51 was an

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those expelled from it, as does E.Badian, '*Tribuni plebis and res publica*' in J.Linderski (ed.), *Imperium Sine Fine: T. Robert S. Broughton and the Roman Republic. Historia Einzelschrift 105* (Stuttgart, 1996), 191-193, 202-213. Willems, I.243-244 is correct when he states that '*praeterire (in senatu recitando)*', '*movere*', '*ei cere senatu*', '*ἐχγράφειν*', '*διαγράφειν*', and '*ἀπαλείφειν*' were used interchangeably to denote both forms of expulsion.

acting-senator blocked admission to the senatorial order, we would still have to conclude that the overwhelming majority of acting-senators must have consistently succeeded in avoiding such a fate. The censors admitted most of them, and refused relatively few. The definition of the term '*praeteritus*', coupled with the consistently small number of *praeteriti* created during each *lectio*, will support no other conclusion.

### III.

While Metellus was neither *equus* nor *senator* when expelled in 209, he was both quaestorian (*q.* 214) and tribunician (*tr.pl.* 213). Here a slight difficulty arises: which of these offices qualified Metellus for membership of the Senate? As we shall see shortly, evidence from outside the example of Metellus suggests that the quaestorship qualified its holders for permanent automatic membership from as early as 220; demographic considerations further suggest that this was likely true for decades before even this date and very probably as far back as the time of the passage of the *lex Ovinia*.<sup>15</sup> Whether or not Metellus' plebeian tribuneship qualified him also (independent of his quaestorship) is a trickier question to tackle. Although plebeian tribunes were annually-elected political officers, at their inception they were not considered magistrates in the technical and legal sense. Despite this initial distinction, the common view is that at some point in second century the office began to be treated as a magistracy and began to give its holders automatic permanent membership of the Senate. The first point is valid, being directly attested to by the evidence. The second is erroneous, as again we shall see shortly.<sup>16</sup>

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<sup>15</sup> 'Permanent' membership in this regard being unless removed or expelled.

<sup>16</sup> E.Gabba, *Esercito*, 542, considers the case of Metellus unclear. Thus dismissing it, he argues that while unenrolled tribunicians and quaestorians enjoyed the *ius sententiae dicendae* well before the Sullan reformation, they likely did not possess it before the passing of the *lex Villia annalis* in 180. Unlikely: *something*



On quaestorians and the Senate, there is a textbook orthodoxy: that before Sulla, as dictator, enlarged the establishment of the Senate from 300 to 600 (or 450), and increased the number of annual quaestors to 20, only a selection of quaestorians were permitted to become members, and that only thereafter did all of them automatically gain this benefit.<sup>17</sup> Before we turn our attention to the weakness of the foundation upon which this orthodoxy is built, we can point toward countervailing evidence which undermines it; which either directly attests to, or could be interpreted as showing, the presence of unenrolled quaestorians in the Senate before Sulla's reforms. And, it follows, the automatic right of all quaestorians to acting-senator status.

Valerius Maximus mentions an episode which, despite being used as evidence that quaestorians did not enjoy automatic permanent membership at the time it occurred (149),<sup>18</sup> in fact it shows the opposite:

Q. Fabius Maximus... told P. Crassus on the road... what had passed secretly in the Senate about declaring the Third Punic War. He remembered that Crassus had been elected quaestor 3 years earlier [in 152] and did not know that the censors had not yet enrolled him in the senatorial order [... *memor eum triennio*

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in 209 qualified Metellus for the Senate. E.Cavaignac, *o.c.*, 466, who supports the idea that quaestorians and tribunicians were acting-senators until enrolled, argues that about one third of tribunician – 100 every generation, as he puts it – would not progress to permanent membership. That is, would become *praeteriti*. Such a dramatic scenario is not supported by the evidence.

<sup>17</sup> Weakness of the orthodoxy have been observed: E.Gabba, 'Note Appianee', *Athenaeum* n.s.33 (1955), 218-230 (=Esercito, 539-553); E.Gabba, *Athenaeum* n.s.34 (1956), 124-138 (=Esercito, 407-425 =Rome, Army, Allies, 142-150); R.Vishnia, *o.c.*, 170-172 (although concluding it valid). Writing on the quaestorship specifically, W.V.Harris, 'The development of the quaestorship, 267-81 BC', *CQ* n.s.26 (1976), 106, is equivocal. Six hundred is traditionally regarded as the nominal establishment of the Senate following its reformation by Sulla, but there is a strong case for a post-Sullan Senate of 450 members or thereabouts: F.Santangelo, 'Sulla and the Senate: a reconsideration', *Cahiers Glotz* 17 (2006), 7-22. The question makes little difference to this work.

<sup>18</sup> E.g. Willems, I.232-234; *NM*98.

*ante quaestorem factum, ignarus nondum a censoribus in ordinem senatorium allectum*].<sup>19</sup>

The previous *lectio* was in 154. The explanation behind Fabius' blunder is clear: Crassus enjoyed the *ius sententiae dicendae*, and Fabius, having recognised Crassus from meetings of the Senate and aware of his magisterial rank, nonetheless made the subtle mistake of misidentifying him, a quaestorian acting-senator, unenrolled by censors into the senatorial order, for an enrolled quaestorian *senator*.<sup>20</sup> The episode unequivocally attests to a quaestorian member of the Senate whose place there was not dependant on anything other than his having held the quaestorship; certainly he was not adlected. If one quaestorian became an acting-senator, without the intervention of any outside party, then it must have been the right for all quaestorians to have automatically become acting-senators.

Other episodes attest to quaestorian members before Sulla. Admittedly none of them unequivocally show that the quaestorians involved were not selected via adlection – *i.e.*, that they were not, and never had been, acting-senators – but taken together they point toward quaestorians in the pre-Sullan Senate being not uncommon. Livy records that in 168, Cn. Tremellius, a plebeian tribune, interceded against the censors' request for their term to be extended; furthermore, he reports that Tremellius' obstructionism was stimulated by their expulsion of him from the Senate the year before.<sup>21</sup> Assuming that the request came near the end of the censors' 18-month term of office, when the need for any

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<sup>19</sup> V.M., II.2.1a.

<sup>20</sup> T.Mommsen, *RSt* III<sup>2</sup>.861n.3; E.Gabba, *Esercito*, 542; R.Vishnia, *o.c.*, 171. Upon reporting the incident, Valerius comments that enrolment by the censors was “the only way by which even those who had already held the office [of quaestor] were given access to the Curia” (*quo uno modo etiam iis qui iam honores gesserant aditus in curiam dabatur*). In light of other evidence, which we will come to, this gloss should be rejected.

<sup>21</sup> Livy, XLV.15.8-9.

prorogation would be most pressing, and assuming that the censors' *lectio* was performed soon upon their entry into office (as censors tended to do, as we will see in Chapter 3), it follows that Tremellius' installation as tribune must have come some months after his expulsion. He was not tribune when expelled. Instead he must have been quaestorian.<sup>22</sup> Expelled during the *lectio* of 131, C. Atinius Labeo Macerio, as tribune, attempted to avenge himself by throwing one of the censors from the Tarpeian Rock.<sup>23</sup> The sources do not make it altogether clear whether Labeo was a tribune when expelled or whether he became tribune shortly after his expulsion, but the former interpretation is far likelier. Regardless of which reconstruction one prefers, in order to be vulnerable to expulsion from the Senate he must have held some magistracy that gave him membership of it. While other possibilities remain, that office was most likely a quaestorship.<sup>24</sup> It has been argued that Q. Minucius Rufus (*leg.* 211; *aed.pl.* 201; *pr.* 200; *cos.* 197) and C. Fulvius Flaccus (*leg.* 211, 209) – both attested in the Senate in 210, although only known to have ever been *legati* at the time – were present there as quaestorians. As evinced from the chronology of his subsequent *cursus honorum*, the case for Rufus being quaestorian in 210 is appealing; more so than for Flaccus, of whom little is otherwise known.<sup>25</sup>

Casualty details from Cannae, reported at Livy XXII.48.16-17, include among the distinguished dead an incumbent consul, a proconsul, two quaestors, and 29 military

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<sup>22</sup> Willems, I.385; E.Gabba, *Esercito*, 542; R.Vishnia, *o.c.*, 170.

<sup>23</sup> Cic., *Domo Sua* 47.123; Livy, *Per.* 59; Pliny, *HN* VII.44.142-146 (=T.10A-C in Appendix).

<sup>24</sup> E.Gabba, *Esercito*, 542; R.Vishnia, *o.c.*, 171.

<sup>25</sup> R.Vishnia, *o.c.*, 171-172, citing Livy, XXVI.33.4-6. Either or both were probably admitted in 216, as part of the extraordinary dictatorial *lectio senatus* of M.Fabius Buteo. Ti.Gracchus, quaestor in 137, is attested in the Senate while he served as tribune in 133 (Plut., *Ti.Gracchus* 14.1-4). However, as we will see, serving tribunes seem to have enjoyed temporary membership of the Senate so his presence there in 133 was not necessarily the result of his quaestorship. Similarly, C.Gracchus, quaestor in 126, is attested in the Senate while tribune (122-121) – *contra* E.Gabba, *Esercito*, 543, who has him there as a result of his quaestorship.

tribunes (including men of consular, praetorian, and aedilician rank). Also, “80 *senatores* or men who had held a magistracy which would have given them the right to be appointed to the Senate” (*octoginta... aut senatores aut qui eos magistratus gessissent unde in senatum legi deberent*). That is – if we ignore Livy’s easy and common terminological slip (writing “*senatus*” when “*ordo senatorius*” would have been correct) – a total of 33 serving magistrates and military tribunes plus 80 *senatores* and men who since the previous *lectio*, held in 220, had joined the Senate as acting-senators.<sup>26</sup> The latter cannot have been the product of adlection; *adlectio* did not create acting-senators. The epitomator of *Per.* 22 reports 90 “*senatores*” killed, in addition to 30 others of consular, praetorian, or aedilician rank. Despite the slight variance in numbers, taken with what is related in Livy’s main text the notices betray the existence of a sizable cohort of dead acting-senators ranking below aedilician. Eutropius in contrast reports 20 consulars and praetorians, 30 “*senatores*”, and 300 *nobiles* captured or killed at the battle.<sup>27</sup> While differing from the Livian figures, Eutropius’ notice demonstrates the existence of a large cohort within the Senate who ranked as neither consulars nor praetorians – and only a few of the 30 remaining “*senatores*” mentioned by him could have been aedilician. Most must have been subaedilician. Similar conclusions can be drawn from other casualty figures from the pre-Sullan age. Eutropius and Orosius report that in that decade which saw the Social War and the Civil Wars of Sulla and the Marians (*i.e.*, 91-82), 24 consulars, 6 (or 7) praetorians, 60 aedilicians, and nearly 200 other “*senatores*” were killed in battle.<sup>28</sup> As with the Cannae figures, the data betrays the existence of a very large cohort of members of subaedilician grade which must have included a great many quaestorians. Lastly, casualty figures of

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<sup>26</sup> The error, which is subtle, was an extremely common one of the ancient sources, and even moderns often wrongly use the terms ‘Senate’ and ‘senatorial order’ interchangeably. Likewise the term ‘*senator*’ was (and is) commonly – and wrongly – applied to men of acting-senator status.

<sup>27</sup> Eutrop., III.10.

<sup>28</sup> Eutrop., V.9; Oros., V.22.4.

another sort: expulsion data. In the *lectio* of 204, 7 non-curule members were expelled. In the *lectiones* of 194, 189, and 184, the non-curule *praeteriti* numbered 3, 4, and 5, respectively. The *lectio* of 164 saw 3 non-curule members expelled. While some of these 22 expelled men of non-curule rank might have been plebeian aediles, not all can have been. Some, rather most, must have been quaestorians.

The conjunction of three simple facts undermines the orthodoxy that before Sulla, only a selection of quaestorians were permitted to become members of the Senate, and that only upon his reform of that body did they all automatically gain the privilege of a seat. Prime is the directly-observed, or very strongly intimated, presence in the Senate, throughout the near century and a half before Sulla's time, of quaestorian acting-senators who must have gained the permanent membership through some automatic process rather than via selection. If some quaestorians enjoyed this right to become acting-senators automatically, then all must have. This automatic acting-senator status of quaestorians, when considered with the fact that the term '*praeteritus*' covered not only expelled *senatores* but also expelled acting-senators, and consistently low rates of expulsion (directly attested from 209 to 164, inclusive, and implied outside this range), forces us to conclude that throughout the period under investigation the censors must have consistently admitted the vast majority of quaestorian acting-senators into the senatorial order, and barred relatively few from making this transition. The evidence will allow no conclusion other than the rejection of the orthodoxy.

The orthodoxy itself is based upon two pieces of evidence: a brief note in Tacitus, and the wording of a law, surviving in fragmentary form in bronze.<sup>29</sup> We shall deal with the latter first. The surviving (eighth) table of this law is headed "*de XX q[uaestoribus]*". This heading, along with the assumption that it was a law of Sulla, gives it the name by which it

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<sup>29</sup> *CIL* I<sup>2</sup>.587 (Rome), reprinted with translation in E.H.Warmington, *Remains of Old Latin, Vol.IV: Archaic Inscriptions* (Cambridge MA, 1940), 302-311; Tacit., *Ann.* XI.22.

is commonly known, the *lex Cornelia de XX quaestoribus*. However the text of this table deals entirely with the allocation of *apparitores* to consuls and quaestors. Nothing in it mentions or alludes to the place or otherwise of quaestors in the Senate; nor indeed is there any indication of the law's author or to the date of its promulgation. There is nothing to suggest that this law had anything to do with Sulla's raising of the annual number of quaestors to 20 or of any putative change in the relationship between the *quaestura* and the Senate. There is nothing even to connect it to Sulla, or the immediate period of his dictatorship. Now Tacitus certainly *does* mention the law that raised the annual number of quaestors to 20. Making a brief digression on the history of the quaestorship, he remarks that "later still, by a law of Sulla, 20 were appointed with a view to supplementing the Senate" (*post lege Sullae viginti creati supplendo senatui*). That is, Sulla increased the annual number of quaestors in order to bring about an increase the size of the Senate. While it is clear how adherents to the orthodoxy might interpret this as evidence of their view, it is clearer still that it does not actually describe what they say it describes. Another, and considering the evidence we have just considered, more likely interpretation, is that Tacitus is here relating not the invention by Sulla of a novel mode of senatorial recruitment, but rather the amplification of a pre-existing process. That Sulla took a pre-existing practice – that of automatic quaestorian qualification for the Senate – and expanded upon it as a means to enlarge the nominal establishment of the Senate, from 300 to its new target. Sulla's innovation was one of scale, not of procedure; it was evolutionary, not revolutionary.<sup>30</sup>

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<sup>30</sup> On the Sullan Senate, see also n.89.

#### IV.

Any discussion on senatorial demographics must allow for the fact that throughout the Republican period, the joint processes of exile and interdiction from fire and water (*exilium; aquae et ignis interdictio*) and the practice of noxial extradition continually eroded the Senate of its membership; the former appreciably so.<sup>31</sup> Whereas the mechanics of noxial extradition need not divert us, the mechanics of exile and interdiction requires our brief attention, connected as it is to a singular and curious employment of the term '*praeteritus*' by Cicero in one of his speeches *post redditum*, the *De Domo Sua*.

During the Republican period *exilium* was the means through which a Roman citizen could legally evade criminal penalty by removing himself from Roman territory and taking up residence within some foreign community. *Interdictio* may be characterised as an administrative measure, through which the state legislated against the fugitive's return into Roman jurisdiction. Performed on a case-by-case basis, each interdiction was dependent upon the passage of a specific tribunician plebiscite which named the individual fugitive

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<sup>31</sup> Between the Second Punic War and the dictatorship of Sulla, at least 26 members are known to have gone into exile; from 80 to 44, there were at least 30 cases: G.P.Kelly, *A History of Exile in the Roman Republic* (Cambridge, 2006), 163-219. From 320 to 136, at least 9 are known to have undergone noxial extradition, and while not all are definitely known to have been members, some were: T.R.S.Broughton, 'Mistreatment of foreign legates and the fetial priests: three Roman cases', *Phoenix* 41 (1987), 50-62; T.C.Brennan, 'C.Aurelius Cotta, *praetor iterum* (CIL I<sup>2</sup>.610)', *Athenaeum* n.s.67 (1989), 486-487. The numbers are certainly gross underestimates. Another process of punishment, *relegatio*, seems not to have carried loss of senatorial status; probably a function of the temporary nature of the punishment. Only one case of magisterial *relegatio* is known for the period c.319-81: M.Fulvius (*tr.mil.* 181-180), removed "beyond Carthago Nova" in 180 for having illegally disbanded a legion. He was expelled in 174 for the same offence (V.A., fr.50 (Peter) *ap.* Livy, XLI.27.2; Livy, XL.30.4, 41.8-10; V.M., II.7.5; V.P., I.10.6; Frontin., *Strat.* IV.1.32). On *relegatio* during the Republic: G.Kleinfeller, '*Relegatio*', *RE.IA*<sub>1</sub> (1914), 564-565; G.P.Kelly, *o.c.*, 65-67. Cf Aelius Gallus *ap.* Festus, *Verb. Signif. s.v. 'Relegatio'*.

targeted and the terms of the sanction, such as the minimum distance the fugitive was required to keep between himself and Rome (or from Roman territory in general). An *exul* did not lose his status as a *civis Romanus* until and unless he voluntarily set it aside in order to take up the franchise of his new homeland. Still it appears to have been standard practice for an *interdictio* relating to an *exul* of senatorial status to include a clause prohibiting subsequent censors from allowing him to remain in the Senate – or, more strictly, prohibiting subsequent censors from adlecting him back into the Senate in order to fill the vacancy created by his departure. Through these means senatorial *exules* were stripped of their membership irrespective of whether or not they chose to lay down their Roman citizenship.<sup>32</sup> The issue brings us to the case of Ap. Claudius Pulcher (*pr.* 89; *cos.* 79). In 87, upon the capture of Rome by the forces of Marius, Appius, who as an adherent of Sulla's had been left by him as propraetorian commander of an army in southern Italy, was summoned by a plebeian tribune to stand trial in Rome on some unspecified charges. When Appius refused to obey the summons, the tribune passed a bill abrogating Appius' *imperium* and Appius departed from Roman jurisdiction and into exile, probably following a plebiscite of interdiction. Appius appears to have escaped to Sulla (then campaigning in the east), and it seems that he was among those *exules* whom Sulla restored to grace in

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<sup>32</sup> G.P.Kelly, *o.c.*, 25-47. At Cic., *Domo Sua* 31.82 the orator gleefully points out that when P.Clodius Pulcher interdicted him in 58, the tribune's *scriba* neglected to append to the bill the standard clause prohibiting subsequent censors from allowing (*i.e.*, adlecting) Cicero back into the senatorial seat which his interdiction created. The oversight is confirmed at 32.84, where Cicero reports a remark by L.Cotta (*cens.*64): that if he, Cotta, had been censor during Cicero's exile, he would have read out the orator's name at the *recitatio*, thus reconfirming his senatorial status despite his absence. The most recent in-depth analysis of Cicero's exile and interdiction is that of Kelly, 110-125.



82.<sup>33</sup> In the *lectio* of 86, conducted during the interval between his removal from command and exile and his restoration, Appius, according to Cicero (our only source on the matter), “was *praeteritus* in the *recitatio* of the [list of the] Senate by censor L. Philippus, who was his own nephew” (*L. Philippus censor avunculum suum praeteriit in recitando senatu*).<sup>34</sup> Despite the wording of the notice, was Appius really *praeteritus* in the sense that he was an ‘acting’ or ‘full’ senator expelled by the censors for some perceived moral deficiency? It seems not. It appears instead that Cicero, for rhetorical effect, expanded the accepted definition of the term.

The orator does not relate why Appius “was *praeteritus*”, but his political outlook, which may be broadly characterised as anti-Cinno-Marian and pro-Sullan, has been cited as cause for his expulsion in 86.<sup>35</sup> This cannot be so. Appius was an *exul* in 86 and as such would have been the subject of an *interdictio* legislating against his re-entry into Roman territory; moreover as a senatorial *exul*, his interdiction would have prohibited each subsequent censorial college from including him as a member the Senate. In fact in 86 Appius would have been doubly-ineligible for inclusion to the Senate. Asconius tells us that the *lex Cassia de abactis damnatis* of 104 stipulated “that a man whom the People had condemned, or whose *imperium* it had abrogated, should not be a member of the Senate” (*ut quem populus damnasset cuive imperium abrogasset in senatu ne esset*).<sup>36</sup> Thus with the abrogation of his propraetorian *imperium* by the People an historical fact, and with the

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<sup>33</sup> Livy, *Per.* 79; V.P., II.20.4; Plut., *Sulla* 34.1; App., I.8.65-66; Dio, XXXI.102.12; F.Münzer, ‘Ap.Claudius Pulcher(296)’, *RE*.III<sub>2</sub> (1899), 2849; R.Bauman, ‘The abrogation of *imperium*: some cases and a principle’, *RhM* 111 (1968), 47-48; G.P.Kelly, *o.c.*, 184-185.

<sup>34</sup> Cic., *Domo Sua* 32.84.

<sup>35</sup> Cram, 100; Suolahti, 457; El-Beheiri, 96; R.J.Evans, ‘The Augustan ‘purge’ of the Senate and the census of 86 BC’, *AClass* 40 (1997), 77-86. F.Münzer, ‘Ap.Claudius Pulcher(296)’, *RE*.III<sub>2</sub>.2848-2849, offers no explanation.

<sup>36</sup> Ascon., *Corn.* 78.9-13 (Clark). The *lex Cassia* was the first law which carried expulsion as a punishment.

directive of the *lex Cassia* clear, the censors in 86 could do nothing but follow its direction and omit Appius' name from the new *album senatorium* it was their duty to prepare.<sup>37</sup> It follows that Appius' treatment at the hands of the censors in 86 cannot be attributed to censorial ill-opinion of his personal *mores* but was rather an automatic and unavoidable consequence of two independent pieces of legislation compelling them to omit his name from the *album*; of the plebiscite of interdiction against him and of the *lex Cassia de abactis damnatis*. We note Philippus' later comment that, despite the tumultuous times, the actions against his uncle were valid and that he, as censor, had no option but to adhere to omit his relative's name from the senatorial roll, irrespective of his reluctance to do so.<sup>38</sup>

But Cicero calls Appius *praeteritus*. Does this mean that he actually was so and that others like him, omitted because of their status as *exules* or because they fell foul of a law such as the *lex Cassia*, were also counted as *praeteriti* – that the definition of the term as we have been using it is too narrow? If so, the word cannot be used as a measure of censorial ill-opinion, as subsumed within its definition would be those whose names the censors were legally compelled to omit from the Senate as well as those whom they positively chose to omit for moral delinquency. But this is not the way we see the word employed by our sources, who repeatedly and consistently present the number of *praeteriti* created as a sole and direct function of the censors' own personal severity or moderation of action. This portrait falls apart completely if the *praeteriti* included within their number those whom the censors had absolutely no choice but to expel. We can thus offer that

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<sup>37</sup> Recognised also by Willems, I.394-395; R.Bauman, *o.c.*, 48; A.E.Astin, 'Regimen morum', *JRS* 78 (1988), 28n.5. W.J.Tatum, *The Patrician Tribune: Publius Clodius Pulcher* (Chapel Hill, 1999), 33, gives that Appius had been "outlawed", which may be a reference to his interdiction. The nature of Appius' treatment during the *lectio* of 86 is misunderstood by R.J.Evans, *AClass* 40 (1997), 77-86, and his conclusions – primarily that the censors in 86 "very likely" purged the Senate of over one-fifth of its membership – must be read with this in mind.

<sup>38</sup> Cic., *Domo Sua* 32.84.

Cicero's employment of the term "*praeteritus*" to describe the condition of Appius at the hands of his censor nephew did not conform its correct technical usage but was a rhetorical flourish, used to heighten the impact and pathos of an episode he could only touch on briefly.

The joint processes of exile and interdiction affected senatorial demographics in that throughout the Republican period they continually eroded the Senate of its membership; those who underwent the processes (*exules*) were not classed as *praeteriti*. With these facts recapitulated we can proceed to a wider demographic survey, one which allows us to apply the phenomenon of expulsion by the censors in a wholly novel way – to calculate the mean rate of recruitment to the Senate and mean senatorial turnover.

## V.

Contrary to the orthodox view, throughout the second century and as early as 220 the quaestorship qualified its holders for automatic membership of the Senate, as acting-senator. Also, quaestorian acting-senators not permitted by the censors to transit to 'full' senator status were counted as *praeteriti*. This is safely concluded; now to demographics.

For a body of fixed size to maintain its nominal establishment at a constant level, recruitment into it must match losses from it, and for a body to be able to consistently accommodate at least 10 new members per year means that it must consistently undergo an annual loss of at least 10 existing members. So too the Senate. The number of quaestors annually elected rose throughout the Republican period.<sup>39</sup> Numbering four until 267, in that year they were augmented by the addition of another pair. The college was increased from 6 to 8 at some unknown point during the Second Punic War. By the time

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<sup>39</sup> For obvious reasons, the following discussion concerns itself only with the period running from the promulgation of the *pl. Ovinium* to the dictatorship (and senatorial reorganisation) of Sulla, *i.e.* c.319-81).

Sulla came to power as dictator, the number of quaestors elected annually might still have been 8, but had almost certainly been raised to 10. If so, done in 197.<sup>40</sup> The higher value is accepted here. Accepting that during all periods iteration of the quaestorship was rare (no examples are known), it follows that in the period up to 268, 20 different individuals were elected to the office of quaestor every 5 years (the nominal and usual interval between successive *lectiones senatus*); between 267 and the Second Punic War, this quinquennial value was 30 individuals; from the Second Punic War until 198, 40 were elected quinquennially; from 197 to the dictatorship of Sulla, 50 were. This final, and highest, figure in particular is instructive. Coupled with the fact of consistently low rates of creation of *praeteriti* observed throughout much of the period from which it comes, the value shows that the Senate of this era must have consistently been able to accommodate the input of 10 recruits per year at the minimum (and, as we will see, probably considerably more). Furthermore, unless senatorial demographics – primarily, elite mean life-expectancy – underwent a drastic and permanent (and undetected) change at some point, at all times prior to this epoch the Senate must have been able to accommodate the same minimum input: if the Senate in 170 (for example) could satisfactorily accommodate at least 10 recruits per year, then the Senate of 220 or 250 or 300 must have been able to do the same. Indeed this must have been the case throughout the entire period between the promulgation of the *lex Ovinia* and the dictatorship of Sulla.

The issue takes us to another, briefly touched upon above, senatorial demographics and the recruitment needs of the pre-Sullan Senate. Previous researchers have offered evaluations. Willems estimates an average intake of 9-10 new members per annum, or 45-50 per quinquennium in order for the Senate to maintain its nominal establishment of 300.<sup>41</sup> Wiseman, Vishnia, and Ryan agree.<sup>42</sup> Hopkins & Burton, applying

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<sup>40</sup> W.V.Harris, *o.c.*, 92-106.

<sup>41</sup> Willems, I.161-166,

life-expectancy data to derive their value, calculate a mean intake of slightly fewer than 12 recruits per annum, or nearly 60 per quinquennium.<sup>43</sup> Scheidel, also using life-expectancy data but employing a different and more robust dataset, offers just over 10 recruits per annum on average, or ~51-53 per quinquennium.<sup>44</sup> For each estimate, the conclusion is drawn, either implicitly or explicitly, that these recruits for the Senate were selected by the censors from the ranks of the ex-office-holders (be they aedilician, quaestorian, or tribunician). This is wrong. One did not normally enter the Senate via censorial selection; rather one normally entered automatically, as an acting-senator, the result of having served in an appropriate office. These entries occurred annually. True, the censors did decide who among the acting-senators could progress to the senatorial order (and in refusing progression, eject the barred man from the Senate), but apart from instances where they chose to adlect someone, they had no control over who could initially enter the Senate; that process was automatic. Primarily, they decided who could or could not continue in their membership rather than entry to membership. Be that as it may, even if the highest of these recruitment values is the correct one (12 per annum average), then it is evident that during the period from 197 to the dictatorship of Sulla, when 10 quaestors were elected annually, quaestorians must have made up the overwhelming bulk of the intake of the Senate; very few recruits – no more than 2 per year, on average – can have entered through alternative routes. The scenario leaves scant room for recruits entering via

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<sup>42</sup> *NM* 96-97 (although rounding to 50); R.Vishnia, *o.c.*, 169, 173; Ryan, *Rank*, 156 (also preferring 50). Cf K.Loewenstein, *The Governance of Rome* (The Hague, 1973), 150n.8.

<sup>43</sup> K.Hopkins & G.Burton, 'Political succession in the late Republic (249-50 BC)' in K.Hopkins (ed.), *Death and Renewal*. Sociological Studies in Roman History 2 (Cambridge, 1983), 47, 67, 70n.50. Their life-expectancy data are followed by R.J.A.Talbert, *The Senate of Imperial Rome* (Princeton, 1984), 150.

<sup>44</sup> W.Scheidel, 'Emperors, aristocrats, and the Grim Reaper: towards a demographic profile of the Roman elite', *CQ* n.s.49 (1999), 259 (modified from his calculations for the Imperial Senate, but the data is transferable to the Republic).

adlection, for those becoming acting-senators through tenure of an aedileship (rather than having a quaestorship as their first magistracy, the more usual course).<sup>45</sup> But in fact there are serious objections against using life-expectancy data as the sole means of determining the recruitment needs of Senate, no matter how robust and reliable the initial dataset might be. In doing so one creates a theoretical paradigm in which the only means of exit from that body is through *natural* death and the only form of entry is through replacing one who has died a natural death. While natural death was definitely a significant component of overall loss from the Senate (and hence recruitment and turnover), we have already seen that there were other ways in which losses could be accrued, such as through exile and interdiction, noxial extradition, and, after 104, criminal conviction.<sup>46</sup> A more significant criticism of these values is that they do not factor for non-natural deaths. Even in peacetime a sizable proportion of members would have died such a death, be it through accident, murder, or suicide; substantially more still during times of war, when deaths on campaign would have become relatively numerous. Therefore the values for senatorial turnover derived by Willems, Hopkins & Burton, and Scheidel are to be understood as underestimates; in that while broadly concordant, non-death losses from the Senate, and losses caused by non-natural deaths, were not considered in their formation.<sup>47</sup> Non-death losses are unquantifiable. The surviving sources attest to an average of about one such

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<sup>45</sup> Most aediles (there were 4 elected annually, or 20 per quinquennium) would have been members through prior occupation of a quaestorship, but not all. For some the aedileship, which was superior to the quaestorship, would have been their first magistracy and its occupation would have been the means through which they qualified for membership. Likewise before 180, some individuals would have forgone both the quaestorship and aedileship, entering the Senate via the praetorship.

<sup>46</sup> Another potential route out, retirement due to age, was not permitted until the Imperial period: K. Cokayne, *Experiencing Old Age in Ancient Rome* (London, 2003), 91-112.

<sup>47</sup> Willems' estimated range cannot be right anyway, if only for the fact that it mainly falls below the annual number of acting-senators created via the quaestorship.

loss per quinquennium between the Second Punic War and the dictatorship of Sulla; undoubtedly there were many more, the records of them being lost to us.<sup>48</sup> Losses through war, accidents, murder, and suicide are also impossible to quantify satisfactorily, although taken as a whole they were probably of a magnitude comparable to or greater than losses through exile and interdiction, noxial extradition, and criminal conviction.<sup>49</sup>

Recognising these alternative forms of loss allows us to add to the replacement estimates made by Willems, Hopkins & Burton, and Scheidel, even if we do not know precisely how much the extra component might be. But while the extra permits more room for recruits entering the Senate via routes other than the quaestorship, it is probably not enough to allow for the automatic recruitment of all tribunicians, particularly in the context of the period between 197 and Sulla's dictatorship, where 10 new quaestorians per year would still have satisfied much of the Senate's recruitment needs.

## VI.

Enquiry into the definition of the term '*praeteritus*', considered alongside elite life-expectancy data, the consistently low frequency at which *praeteriti* were created – apparent from an unbroken half-century run of expulsion data, taken from 209 to 164,

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<sup>48</sup> See n.31 (on exile and interdiction and noxial extradition).

<sup>49</sup> From 200 to 164 (inclusive), the sources attest to the deaths in action of 7 military tribunes, 3 *praefecti*, a quaestor (L.Postumius Tympanus, 194), praetor (L.Baebius Dives, 189), propraetor (C.Atinius, 186), consul (Q.Petilius Spurius, 176), and 2 *legati* (one of consular rank – Q.Minucius Thermus (*cos.*193)). No doubt there were many more, especially from among the lower, younger, ranks of the Senate. On war losses, see especially N.S.Rosenstein, *Rome at War: Farms, Families, and Death in the Middle Republic (Studies in the History of Greece and Rome)* (Chapel Hill, 2005), 107-140. While suicide was far more common during the first century than in it had been before, second and third century examples are known, including the famous case of some *equites* who committed suicide after being cashiered by the censors for perfidy (see Ch.IV, §.5.I).

inclusive – and the observed and/or strongly indicated presence within the Senate of quaestorian acting-senators from as early as 220, leads us to the conclusion that from that date at the latest, the quaestorship must have qualified its holders for automatic membership, as acting-senators; furthermore, we can infer that automatic membership was almost certainly a feature of the quaestorship as early as the passing of the *lex Ovinia*, possibly earlier.

The same three lines of evidence – the definition of '*praeteritus*', senatorial demographics, and low observed expulsion rates from 209 to 164 – also draws us to a contrasting conclusion: that if the office of plebeian tribune ever conferred on its holders automatic permanent acting-senator status, it cannot have done so before 164, and cannot have done so as long as the Senate numbered 300 members.

Ten tribunes were elected annually, or 50 per quinquennium. Again using the year 170 for the purpose of example, if we were, *arguendo*, to allow the contention that the tribuneship – in addition to the quaestorship – at this time carried with it automatic permanent membership of the Senate, then we would have to accept a minimum mean senatorial recruitment rate of ~16-18 per annum, or ~80-90 per quinquennium; an unrealistically high figure, seeing that for the Senate to regularly accommodate such a comparatively massive influx and yet still remain at its nominal establishment of 300 members, it would have to regularly experience losses of corresponding scale (mainly through mortality).<sup>50</sup> That both offices might have conveyed permanent automatic membership – and that the censors must have deselected (*i.e.*, expelled) most quaestorians and tribunicians in order to keep the size of the Senate within its traditional limit – is unworkable as a possible solution, as shown by the consistently low creation rate of *praeteriti* directly attested during the period 209-164. Before 164 both offices cannot

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<sup>50</sup> The estimate assumes, not unreasonably, that in every college of tribunes in this period, ~2-4 of their number would have had prior tenure of a quaestorship and thus would have been members already.



have given automatic permanent membership. But one office could, and, as we have seen, did; that office was the quaestorship.

Even though expulsion data is largely unavailable after 164, the underlying recruitment requirements of the Senate would have been the same after this date as they were before it (input need being a product of loss, itself primarily a function of mean life-expectancy), so the above conclusion applies just as well to a post-164 Senate of 300 members as it does to a pre-164 Senate. Admittedly our single definite expulsion figure from within this post-164 context is very high – 32 expelled during the *lectio* of 115, according to Livy *Per.* 62 – is a datum which, it could be argued, might betray tribunicians, now permitted to be acting-senators, being refused progression *en masse* to the *ordo senatorius* by censors purging the Senate back down to its traditional capacity of 300.<sup>51</sup> Yet as will be argued in the next chapter, the *lectio* of 115 was truly extraordinary in its severity and that severity seems to have been born from atypical circumstances. It was not something that might be expected regularly in this period, such as it would be if tribunicians automatically became acting-senators, with other censors necessarily responding as their colleagues in 115 did. So the conclusion stands: tribunicians cannot have expected automatic permanent membership of the Senate for as long as its membership numbered 300; the body had neither the capacity nor the need for such a high regular input of recruits.<sup>52</sup>

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<sup>51</sup> As Willems, I.225-234 concluded, giving 120/115 as the date when tribunicians were granted automatic permanent membership (although strictly, any point between the *lectiones* of 164 and 115 would serve – or between the *lectiones* of 131 and 115 if the tendentious datum of only 3 expulsions in the former is true (on which, see n.87)).

<sup>52</sup> Beyond the demographic impossibility of it, that the tribuneship before 164 did not convey automatic permanent membership is corroborated by an anecdote concerning an act of censorial disapprobation. Livy, XLIV.16.8 relates that on 13 December 168, the censors displayed their disapproval of P.Rutilius – who as tribune had clashed with them and brought them both to trial, and who only days before had ended his term in

A survey of possible countervailing evidence is in order. Zonaras, epitomising Dio, outlines the history of the evolving relationship between the tribunes and the Senate: first the tribunes sat outside the Curia, watching the proceedings therein and vetoing from there those propositions with which they disagreed; second, they were permitted inside the Curia; third, ex-tribunes started to become members of the Senate; finally, the stage was reached where members sought to serve as tribunes.<sup>53</sup> No dates are offered for any of the steps, although Valerius Maximus confirms the first two (again, undated), and Dionysius

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office – through the double-punishment of cashiering him from the equestrian order and transferring him out of his voting-tribe and into the *aerarii*. On the prior clashes between Rutilius and the censors, see n.342. That the censors are not also reported removing this most troublesome of adversaries from the Senate, a sanction they surely would have employed if it were at all open to them, is in itself good evidence that Rutilius cannot have been a member of that body at the time he was censured; that in 168 the tribuneship did not convey automatic permanent membership to those who had held it.

<sup>53</sup> Zon., VII.15. On the thorny and much-discussed issue of tribunes as magistrates and members of the Senate, which primarily revolves around the date and promulgator of the *plebiscitum Atinium*, but also incorporates discussions of the appropriate sections of Zonaras and of the *leges Sempronia* (or *Acilia*) *de repetundarum*, *Sempronia ne quis iudicio circumveniat*, *Cornelia de sicariis et veneficiis*, and *Latina tabulae Bantinae*, see Mommsen, *RSt III*<sup>2</sup>.858, 862; Willems, I.225-234, 389; L.Lange, *De Plebiscitis Ovinio et Atinio*, *passim*; E.Klebs, 'Atinius', *RE II*<sub>2</sub> (1896), 2105-2106; E.Klebs, 'C.Atinius Labeo Macerio(10)', *RE II*<sub>2</sub> (1896), 2106; F.F.Abbott, *A History and Description of Roman Political Institutions* (Boston, 1901), 222; M.Ziegler, *Fasti Tribunorum Plebis*, 133-70 (Ulm, 1903), 5; Rotondi, 330-331; E.Cavaignac, *o.c.*, 458-468; G.Niccolini, *Fasti dei Tribuni della Plebe* (Milan, 1934), 129; Schmähling, 101; G.Tibiletti, 'Le lege *de iudiciis repetundarum* fino alla guerra sociale', *Athenaeum* n.s.31 (1953), 68; E.Gabba, *Athenaeum* n.s.33 (1955), 218-230; *MRR* I.500-501; Suolahti, 409; A.E.Astin, *Scipio Aemilianus* (Oxford, 1967), 237-238, 354-355, 366; A.E.Astin, 'The Atinii' in J.Bibauw (ed.) *Hommages à Marcel Renard II: Histoire, Histoire des Religions, Épigraphe*. Collection Latomus 102 (Brussels, 1969), 34-39; *NM*97-98; G.V.Sumner, *The Orators in Cicero's Brutus: Prosopography and Chronology*. Phoenix Supplement 11 (Toronto, 1973), 58; R.Develin, 'The Atinian plebiscite, tribunes, and the Senate', *CQ* n.s.28 (1978), 141-144; E.Badian *ap.* J.Linderski, *o.c.*, 191-193, 202-213; *CRR* 122; R.Vishnia, *o.c.*, 163-176; El-Beheiri, 91.

relates what appears to be the innovation of the second stage, dating it to 456.<sup>54</sup> With the exception of several questionable examples from the fifth and fourth centuries, and disregarding the case of L. Metellus (*q.* 214; *tr.pl.* 213), the first attestation we possess of a fourth stage event, of a senator holding a tribuneship, belongs to 189.<sup>55</sup> If we interpret Zonaras' scheme strictly, this would evidently place the innovation of the intervening third stage, of ex-tribunes starting to become members of the Senate, somewhere between 456 and 189. We have just seen that this cannot be the case; such a development cannot have occurred prior to 164 and we cannot apply a strict interpretation to Zonaras' scheme in this regard. Moreover Zonaras himself demonstrates that this four-point scheme is deficient. Just before presenting it, he mentions that at some point (again undated) tribunes gained the power to convoke meetings of the Senate. The development of this right is absent from his four-point scheme.<sup>56</sup> Presumably this right also allowed tribunes to attend and contribute to any sessions they convened, otherwise there would have been little point in calling such meetings. We may also presume that it held only for their year in office and did not extend beyond their exit from it. This arrangement would not equate to permanent official membership, although it might be classified as akin to temporary associate

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<sup>54</sup> D.H., X.31.1-4; V.M., II.2.7. Livy, III.9.11 relates senators in the Curia addressing tribunes in 462, although as the account does not detail where the tribunes were situated the scenario does not disagree with Zonaras' stage one. Livy, IV.48.13-15 has tribunes looking upon (and exercising their veto at) a meeting of the Senate in 416, apparently, although not certainly, inside the Curia. If inside the Curia, the account accords with Dionysius' dating of the second stage.

<sup>55</sup> Q. Terentius Culleo: senatorial legate in 195, plebeian tribune in 189. If we disregard the cases of Q. Petillius Spurinus (*q.* by 188; *tr.pl.* 187), Ti. Gracchus (*q.* 137; *tr.pl.* 133), and C. Gracchus (*q.* 126; *tr.pl.* 122) the next example of following Culleo is that of M. Fulvius Flaccus (*cos.* 125; *tr.pl.* 122). The questionable fifth and fourth century examples are those of Sp. Cassius Vicellinus (*cos.* II 493; *tr.pl.* 486?), A. Aternius Varus Fontinalis (*cos.* 454; *tr.pl.* 448?), Sp. Tarpeius Montanus Capitolinus (*cos.* 454; *tr.pl.* 448?), L. Minucius Esquilinus Augurinus (*cos.* 458; *tr.pl.* 439?), and C. Poetilius Libo Visolus (*cos.* 360; *tr.pl.* 358?).

<sup>56</sup> Zon., VII.15.

membership. This interpretation is supported by the evidence of the Augustan jurist C. Ateius Capito, who, citing the authority of the polymath Varro and the jurist Q. Aelius Tubero (born 74), writes of a time in which tribunes were permitted to convene the Senate even though they were not “*senatores*” (his term; inexact, but a common slip). The development of this power betrays an extra stage, of unknown position, in the evolutionary scheme that Zonaras later presents.<sup>57</sup> In light of this deficiency in number, a further possible confusion, an apparent transposition of the latter stages of the scheme, may not be surprising. If so, Zonaras’ scheme is of no use in telling us when ex-tribunes gained the right to membership of the Senate.<sup>58</sup>

Capito’s passage runs “for the plebeian tribunes... had the right of convening the Senate before the *plebiscitum Atinium*, although they were not *senatores*” (*nam et tribunis... plebis senatus habendi ius erat, quamquam senatores non essent ante Atinium plebiscitum*).<sup>59</sup> Various interpretations of this notice have been offered, although the common view – the one that flows from the most natural reading of the passage and accords best with the evidence – has already been partially alluded to in our rationalisation of Zonaras: that at one point plebeian tribunes, although not considered members of the

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<sup>57</sup> Livy, XXII.61.5-8, XXVII.5.14-16 has tribunes convoking and speaking at meetings of the Senate in 216 and 210.

<sup>58</sup> Of course this is all assuming that Zonaras’ terminology is strictly correct. On the other hand he could have misunderstood his source (or Dio, whom he epitomises, his), and the mention of “ex-tribunes” could be erroneous. Perhaps a source (correctly) relating something along the lines of “those *who were tribunes* became members of the Senate” (*i.e.*, serving tribunes) was misinterpreted as meaning ex-tribunes. If so, Zonaras’ third stage, along with the opinion of Capito/Varro/Tubero, and Zonaras’ ‘extra’ stage all reconcile with one another. This would place the third stage – that serving tribunes became counted as members of the Senate – somewhere between 456 and 189. Such a correction of Zonaras’ third stage would mean that there is no substantial evidence for ex-tribunes automatically becoming members of the Senate at any point during the Republican period.

<sup>59</sup> C. Ateius Capito, *Coniectanea* fr.2 (Strzelecki) *ap.* Gell., XIV.8.1-2.

Senate, could nonetheless convoke and contribute to meeting of that body; following the promulgation of the Atinian plebiscite, tribunes enjoyed membership – but only while they were in office, thereafter it lapsed.<sup>60</sup> No date for the plebiscite is offered, and while usually placed somewhere in the second century it could in fact be put anywhere before Capito's mention of it.

Nor do the legal texts of the pre-Sullan era show much. While they illustrate that by 123, possibly earlier (depending on the date of *lex Latina tabulae Bantinae*), the plebeian tribuneship had come to be categorised as a magistracy, nowhere do they indicate if or when the office entitled those who had held it to automatic permanent membership of the Senate. Indeed the phrasology employed illustrates a consistent presupposition on the part of the legislators of the age that while those who held or had held such posts *might* hold a seat in the Senate, not all necessarily did.<sup>61</sup>

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<sup>60</sup> Not as “*senatores*” though; here Capito slipped in his terminology, in common with many writers ancient and modern. Alternative explanations, not followed here, are that the *pl. Atinium* (or *lex Atinia*; often subtitled ‘*de tribunis plebis in senatum legendis*’) allowed for senators to serve as tribunes (a development attested to by Zonaras), that it stipulated that only individuals who were already members could be tribune, that it legislated for holders of the tribuneship to automatically become permanent members (acting-senators) upon exit from office (also attested to by Zonaras), or that it compelled the censors to make tribunes and ex-tribunes *senatores* at the first available opportunity.

<sup>61</sup> Line 2 of the *lex Sempronia* (or *Acilia*) *de repetundarum* of 123 shows that the tribuneship was a magistracy, and that some tribunicians could feasibly be *senatores* – although clearly not all necessarily were:

That person who shall have been dictator, consul, praetor, *magister equitum*, censor, aedile, plebeian tribune, quaestor, *tresvir capitalis*, *tresvir agris dandis adsignandis*, military tribune in one of the first four legions, or whoever shall be the son of any one of these, provided that his father be a senator.

*Ab eo quei dic. cos. pr. mag. eq. cens. aid. tr. pl. q. IIIvir cap. IIIvir a.d.a. tr. mil. l. primus aliqua earum fuerit queive filius eorum quouis pater senator siet.*

Lines 16-17, similar to above but nuanced – acknowledging that junior magistrates would far more likely be only “*in senatu*” rather than “*senatores*”:

May be or may have been plebeian tribune, quaestor, *tresvir capitalis*, military tribune in one of the first four legions, *tresvir agris dandis adsignandis*, or who may be or may have been in the

In sum there is no compelling reason to accept that during the Republic, the plebeian tribuneship entitled all who had held it to permanent automatic membership of the Senate. Any evidence that might be taken as suggesting that it did either does not sufficiently support the contention or is better interpreted otherwise. Instead we should understand that serving tribunes enjoyed temporary membership during their year of office, but that this automatically lapsed once they exited the post. Nonetheless some tribunes

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Senate... or who may be the father, brother, or son of any of those magistrates, or of a man who may be or may have been in the Senate.

*Quei hac ceivitate -- dum ne quem eorum legat quei tr. pl. q. Illvir cap. tr. mil. l. IIII primus aliqua earum triumvir a.d.a. siet fueritve queive in senatu siet fueritve... [queive eorum quouis mag(istratum)] queive eius quei in senatu siet fueritve pater frater filiusve siet.*

Lines 8-9, although heavily reconstructed, also listing the tribuneship as a magistracy:

A trial shall not take place concerning these men, while they shall hold a magistracy or *imperium* [*mag(istratum) aut imperium*]. [Whoever shall be] dictator, consul, praetor, *magister equitum*, [censor, aedile, plebeian tribune, quaestor, *tresvir capitalis*, *tresvir agris dandis adsignandis*, militarytribune in one of the first four legions, while he shall hold a magistracy or *imperium*, a trial is not to take place ---].

Lines 14-18 of the second or early first century *lex Latina tabulae Bantinae* has “[whatever consul, praetor, aedile, quaestor, *tresvir capitalis*, *tresvir agris dandis adsignandis*] is now in office” and “[... whatever] dictator, consul, praetor, *magister equitum*, censor, aedile, plebeian tribune, quaestor, *tresvir capitalis*, *tresvir agris dandis adsignandis*, *iudex*... chosen hereafter” and terms the offices listed as magistracies. Lines 19-20 relate that “whoever shall not have sworn according to this statute, is not to stand for or hold or have any magistracy or *imperium*, nor [is he hereafter to speak his opinion] in the Senate [nor] is anyone to allow (him) nor as a censor enrol him in the Senate [... *neive in senatu [posthac sententiam deicito ne]ive quis sinito neive eum censor in senatum legito*]”. As with the wording of the *lex de repetundarum*, the phraseology employed acknowledges that some tribunes might be “*in senatu*”, but it does not demonstrate the tribuneship necessarily gave those who had held it automatic permanent membership. Similarly, the *lex Sempronia ne quis iudicio circumveniat* of 123, and the *lex Cornelia de sicariis et veneficiis* of 82/81 (the latter incorporating the former) have:

<The praetor or *iudex quaestionis*...> is to investigate concerning the *caput* of the person who <has or shall have been> military tribune in one of the first four legions <...>, quaestor, tribune of the plebs <...>, or has or shall have spoken his opinion in the Senate [<... *fuit fuerit*> *inve senatu sententiam dixit dixerit*].

On these laws, text and commentaries, see their entries in M.H.Crawford, o.c. See also the references in n.53.

would have enjoyed membership of the Senate through virtue of prior tenure of some qualifying magistracy. Also ex-tribunes who had held no prior office might later become members via adlection.

Indeed it seems that tribunician adlection was a common phenomenon, in that depending on epoch and circumstance, many or most tribunicians who were not already members of the Senate might have expected to be adlected following their term of office. Livy reports that shortly after the Battle of Cannae, in order to make good the massive losses which it had suffered during the battle, the Senate took the singular decision to appoint one of their number *dictator legendo senatui causa*, without colleague or a subordinate master of horse. M. Fabius Buteo, the senior surviving *ensorious vir*, was selected.<sup>62</sup> Livy expands upon the method Buteo employed in conducting his enrolment:

[Buteo] said he would not eject from the Senate any of those whom C. Flaminius and L. Aemilius as censors had chosen into the Senate, but would order their names merely to be copied and recited [... *nam neque senatu quemquam moturum ex iis quos C. Flaminius L. Aemilius censores in senatum legissent; transcribi tantum recitarique eos iussurum*], that judgement and decision in regard to the reputation and character of a senator might not rest with one man. And in place of the deceased he would make his choice in such a way that order should obviously have been preferred to order, not man to man.

After reciting the old Senate, he chose in place of the deceased first those who since the censorship of L. Aemilius and C. Flaminius had held a curule office and had not yet been chosen into the Senate [*sic* – senatorial order], in each case in the order of his election. Then he chose those who had been [plebeian] aediles, plebeian tribunes, or quaestors [*Recitato vetere senatu, inde primos in demortuorum locum legit qui post L. Aemilium C. Flaminium censores curulem magistratum cepissent necdum in senatum lecti essent, ut quisque eorum primus creatus erat; tum legit, qui aediles, tribuni plebis, quaestoresve fuerant*]; then, from the number of those who had not held a magistracy, the men who had spoils of the enemy affixed to their houses or had received the *corona civica*.

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<sup>62</sup> Livy, XXIII.22.10-11.

Using this technique, Buteo recruited 177 individuals into the senatorial order.<sup>63</sup> Away from the issue of its extraordinary historical context and the extraordinary nature of the magistracy given to Buteo, two main aspects of the dictator's *lectio* were highly irregular: his refusal to relate *cura morum* to the process, and the adlection straight into the senatorial order of so many who had yet to hold any kind of qualifying office. These deviations from normal process, based on pragmatism, in turn resulted in the creation of an extraordinarily large number of *senatores*. It is commonly assumed that Buteo's inclusion of all quaestorians and tribunicians was also highly irregular. The first assumption is based not only on an unmerited adherence to the orthodoxy concerning the nature of the *quaestura* during the pre-Sullan era, but also on an understandable unawareness of the implications that any close scrutiny of the term '*praeteritus*' would uncover. In fact, Buteo's acceptance into the senatorial order of all quaestorians is perfectly consonant with the evidence presented in this work. Indeed these quaestorians would have been members already, as acting-senators, with Buteo merely progressing them to the status of *senatores*. Their transition would not have contributed toward replenishing the Senate, but rather the senatorial order. The second assumption, regarding tribunicians, appears justified: the evidence strongly indicates that during this epoch the office did not convey permanent automatic membership, and Buteo's tribunicians were not acting-senators progressed to *senatores*.

Demographic considerations, based primarily (although not solely) on elite life-expectancy estimates, indicates that under more typical circumstances following the intake of quaestorian recruits (6 per annum; 30 per quinquennium) there would, on average, still have been a minimum of 30 places within the Senate to fill every 5 years. This would be enough to potentially accommodate somewhat over half of the tribunicians of a

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<sup>63</sup> Livy, XXIII.23.3-7. *Per.* 23 has "the Senate was supplemented by 197 men from the *ordo equester*" (*senatus ex equestri ordine hominibus centum nonaginta septem suppletus est*).



quinquennium, even if we assume, unrealistically, that none of them were already members of the Senate when they took up office (and some would have been, via prior tenure of a qualifying magistracy). Adlection of tribunicians must have been very common, and in this regard Buteo probably did little more than would have been typical during the period. Even if Cannae had never occurred, it is probable that most of the tribunicians who were not already members of the Senate would have been adlected. Prior to 267, the prospect of adlection for tribunicians would have been even better. After factoring for quaestorian input (4 per annum; 20 per quinquennium) there would, on average, have been at least 40 vacancies in the Senate still to fill every 5 years – enough to potentially accommodate all but a few tribunicians. During those later epochs in which 8 or 10 quaestorians were created annually (40 or 50 per quinquennium), the majority of the Senate's recruitment needs would have been met by them, although the adlection of at least 10 or 20 men per quinquennium would, on average, still have been required. Lesser potential for tribunician adlection, but still appreciable. And these estimates only take into account vacancies resulting from natural death. Vacancies in the Senate would also have resulted from non-death losses – exile, *etc.* – and from non-natural deaths – accidents, suicides, homicides, and war. Indeed during times of prolonged and/or heightened war, adlection probably become very common as the recruitment pool must often have been insufficient to make good gaps within the Senate.

## Chapter 2

### Demographics (II): Frequency and risk of being expelled

Despite the relative simplicity of the operation only three moderns have attempted to ascertain the frequency of expulsion. Even then, their respective methodologies have been incomplete or incorrectly applied. This chapter compensates, and in doing so, remedies. Before progressing, a brief overview and assessment of this previous scholarship is in order.

Nicolet estimates that during the second century, an average of 12 members were expelled during each quinquennial *lectio senatus*, equating to a mean expulsion rate of 2-3 members (0.67-1.0%) per annum, or 200-300 members for the century.<sup>64</sup> Nicolet's estimate of the numbers expelled per *lectio* bears little relation to the numbers preserved in the sources, and thus the values derived from his estimate exaggerate the frequency of expulsion by a factor of two or three. Notwithstanding he concludes that the phenomenon of expulsion would have had only a slight effect on the Senate, consisting as it did of 300 members. As we will see, this conclusion is rash.

A critique of Nicolet's analysis is mounted by Hopkins & Burton, the pair highlighting two important interlinked factors neglected by him.<sup>65</sup> They observe that merely the threat of expulsion would have had a psychological impact on members far in excess of the actual frequency of the phenomenon; that the mere threat of expulsion would have

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<sup>64</sup> C.Nicolet, *Storia Della Societa Italiana, Pt.1, Vol.II: La Tarda Repubblica e il Principato* (Milan, 1983), 51 [='Les classes dirigeantes Romaines sous le République: ordre sénatorial et ordre équestre', *Annales ESC* 32 (1977), 731].

<sup>65</sup> K.Hopkins & G.Burton, *o.c.*, 75n.55.

had a modifying effect on members' psychology and behaviour: "senators were expelled every five years in clumps. No one knew how many would go or who. Did senators really feel that their chances of expulsion were negligible?" Also, in drawing on demographic data they conclude that being expelled *at some point* one's political career was a significant risk for the average member, as he could expect exposure to multiple *lectiones* throughout his life. Risk was cumulative. Illustrative though their argument is, it is not without problems. Calculating mean expulsion rate from only three *lectiones* – those of 204 (seven expelled), 194 (three), and 174 (nine) – they neglect to include the overwhelming majority of the numerical evidence that is available. This means that their derived expulsion rate of 1.20 per annum, while broadly accurate, is not as robust as it could be. Resultantly their caveat, "we have no idea if these figures were typical", is, it will be argued, overly-cautious. Despite this their methodology is sound and a modified version of it will be adopted in this chapter.

As part of an excellent study into the definition, form, and application of censorial *regimen morum disciplinaeque Romanae*, Astin addresses the prevalence of the *nota censoria* on the Senate and the *equites*. In doing so he enumerates and tabulates most known expulsion data.<sup>66</sup> But while Astin goes so far as to demonstrate that between the *lectiones* of 209 and 164, an average of 5.10 expulsions per *lectio* were performed (equating to ~1.7% of a 300-member Senate being dismissed per quinquennium), he does not fully engage with the implications of these findings. Thus while acknowledging that, if taken one *lectio* at a time, expulsion was a low-level phenomenon and "certainly not on such a scale as to effect a major change in the composition of the Senate", appreciating that raw figures and proportions are "not necessarily a reliable measure of how expulsions were actually perceived" and that "the real effect of such a procedure, and the manner in which it was perceived, especially by the senators themselves, cannot be judged merely

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<sup>66</sup> A.E.Astin, *JRS* 78 (1988), 14-34.

by numbers or by numerical proportions”, Astin nonetheless dismisses the crucial point raised by Hopkins & Burton about the importance of considering the cumulative nature of risk (“an interesting but questionable comment”).

In light of the omissions and errors in previous scholarship, a more thorough approach is called for.

## II.

Of the 58 censorial colleges attested in office from that of 319 to that of 50, at least four – inaugurated 231, 210, 65, and 64 – did not complete their respective *lectiones*. Another, inaugurated 253, probably did not complete its enrolment. Thus no more than 53 colleges during performed a *lectio*.<sup>67</sup> Of this number we know for sure the expulsion figures for 13 colleges (24.5%). From the *Periochae* of Livy we know that the *lectiones* of 252, 115, and 70 were notorious for their extraordinary severity. The first saw the expulsion of 16

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<sup>67</sup> Cram, 71-110; A.Degrassi, *o.c.*, 188-191; Suolahti, *passim*; *MRR sub anno*. It can only be assumed that a college which performed the *lustratio* (the ‘closing of the *lustrum*’), the ceremonial purification of the state which also traditionally marked the culmination and closing of the censors’ term, also performed its *lectio*. Those inaugurated 283, 272, 253, 236, 109, and 92 did not celebrate their *lustrationes*. Did any of these curtailed colleges fail to perform their respective *lectiones*? Those of 272 and 109 contracted for public works, a task usually performed alongside or after the *lectio*, thus it seems that they performed their *lectiones*. The college of 92 chose the *princeps senatus* before they abdicated. As filling the *principatus* formed part of the wider *lectio*, the performance of the one suggests the other. The colleges of 283, 253, and 236 are not recorded doing anything, yet assumptions may be made from the interval between them and subsequent colleges. Those of 283 were not replaced for 3 years; those of 236 for 2 years. As the state was in no pressing need for successors, this indicates that both colleges completed their respective *lectiones*, at least. In contrast the college of 253 was followed by another the year after. The speed with which it was replaced could indicate that they did not perform their *lectio*. A college’s *lectio* was valid even if they did not ultimately perform their *lustratio* (see Ch.3, §.IV).

members; the second, 32; the third (described also as “*asper*”), 64.<sup>68</sup> All were very much special cases. The severity of in 252 was a response to the serious mutiny that erupted among the cavalry in Sicily that year. Four hundred *equites* were dismounted in the corresponding *recognitio equitum*.<sup>69</sup> The severity shown in 115 is harder to contextualise, but two hypotheses have been posited: that it was the result of ‘factional’ politics – a mopping-up of surviving *Gracchani* – or that it was a consequence of the widespread corruption that was suspected to have occurred during Rome’s dealings with Jugurtha, in 117/116.<sup>70</sup> These hypotheses are not mutually-exclusive, nor do they exclude the possibility of others. The severity of the *lectio* of 70, the first following Sulla’s dictatorship and expansion of the Senate, may be interpreted as a consequence of that reform, as will be argued later in this chapter. At the other end of the scale the *lectio* of 199 saw no-one expelled.<sup>71</sup> The numbers expelled during other *lectiones* are comparatively consistent, though fluctuant. During the *lectio* of 209, eight were expelled.<sup>72</sup> Seven members, none of

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<sup>68</sup> Livy, *Per.* 18, 62, 98.

<sup>69</sup> V.M., II.9.7; Frontin., *Strat.* IV.1.22.

<sup>70</sup> A.E.Astin, *JRS* 78 (1988), 31; M.Bonnefond-Coudry, ‘Le *princeps senatus*: vie et mort d’une institution Républicaine’, *MEFRA* 105 (1993), 113-114; R.J.Evans, *AClass* 40 (1997), 80.

<sup>71</sup> Livy, XXXII.7.3. At IX.30.2 Livy reports the creation of *praeteriti* during the *lectio* of 312, but he does not enumerate them. The notice is not necessarily contradicted by D.S., XX.36.5, which gives that the censors removed not one of the unworthy. The phrase could be interpreted as meaning that they expelled no one (thus contradicting Livy), but it can also be read as meaning there were expulsions, but that no-one unworthy of punishment was expelled, or that those who were expelled did not deserve their censure. Notwithstanding the strangeness of the notices, the reports of D.S., XX.36.5; Livy IX.29.7-30.2, 46.10-11; *Per.* 9, that the consuls of 311 (C.Junius Bubulcus Brutus and Q.Aemilius Barbula) refused to accept the *lectio* as valid and effectively overturned the censors’ decisions, is almost certainly erroneous: the censors of 304 are recorded expelling – and being honoured for expelling – certain undesirables enrolled in 312 (Livy, IX.46.12-15; V.M., II.2.9b; Plut., *Pomp.* 13.7; Ampel., 18.6; [Victor], *Vir. Ill.* 32.1-3), so the prior enrolment must have stood. Cf Suet., *Claud.* 24.1 which intimates that the *lectio* of 312 remained valid.

<sup>72</sup> Livy, XXVII.11.12.

whom had attained curule office, were expelled in 204.<sup>73</sup> In a *lectio* described by Livy as impacting upon “few” (*perpaucis*) and without severity being shown to any order, the censors in 194 expelled three men, none curule.<sup>74</sup> The censors in 189 expelled four, none curule, as Livy and Plutarch agree.<sup>75</sup> Livy qualifies his enumeration, “*quattuor soli*”; he further remarks that censorial leniency was enjoyed by the equestrian order as well as by the Senate.<sup>76</sup> In contrast the censors of 184-183, L. Valerius Flaccus and that personification of old-fashioned Roman *severitas* and *acerbitas*, Cato the Elder, managed the duties of *cura morum* in a way which was, in Livy’s view, sad and harsh on all the orders: “*in censibus quoque accipiendis tristis et aspera in omnes ordines censura fuit*”.<sup>77</sup> Cornelius Nepos’ opinion broadly concurs with that of Livy: Cato and Flaccus’ exercise of the *censura* was one of “*severitas*”.<sup>78</sup> Livy records that their *lectio* saw the expulsion of seven members, but that only one of their *praeteriti* was distinguished by *nobilitas* and *honores* – L. Quinctius Flamininus (*cos.* 190).<sup>79</sup> The *lectio* of 179 saw three expelled.<sup>80</sup> Livy does not here make a judgement on the censors’ severity or lenience. In contrast, “*diligens et severa*” is his appraisal of the *lectio* of 174.<sup>81</sup> Velleius Paterculus agrees: “*aspera... censura*”.<sup>82</sup> In all, nine were expelled. At the associated *recognitio equitum*, the horses of many were confiscated: “*multis equi adempti*”.<sup>83</sup> The censors who conducted the *lectio* of

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<sup>73</sup> Livy, XXIX.37.1.

<sup>74</sup> Livy, XXXIV.44.4-5.

<sup>75</sup> Livy, XXXVIII.28.2; Plut., *T.Flamin.* 18.1.

<sup>76</sup> Livy, XXXVIII.28.3.

<sup>77</sup> Livy, XXXIX.44.1, cf XXXIX.44.9 “*acerbitas*”.

<sup>78</sup> Nepos, *Cat. Mai.* 2.3.

<sup>79</sup> Livy, XXXIX.42.5.

<sup>80</sup> Livy, XL.51.1.

<sup>81</sup> Livy, XLI.27.13.

<sup>82</sup> V.P., I.10.6.

<sup>83</sup> Livy, XLI.27.2, 13.

169 expelled seven.<sup>84</sup> In reviewing the equestrian order, Livy avers they were stern and harsh and that many were dismounted: “*in equitibus recensendis tristis admodum eorum atque aspera censura fuit; multis equos ademerunt*”. Livy also judges that the censors’ severity transcended the orders, and that “*plures quam ab superioribus et senatu moti sunt et equos vendere iussi*”.<sup>85</sup> The statement has implications, which we will return to shortly. While the main text of Livy is lost after 167, Plutarch records that the censors who conducted the *lectio* of 164 expelled three members, none curule; he further opines that their enrolment of the Senate, like their equestrian muster, was conducted with moderation: “ἐξέβαλε δὲ τρεῖς συγκλητικούς οὐ τῶν ἐπιφανῶν, καὶ περὶ τὴν τῶν ἰππέων ἐξέτασιν ὁμοίως ἐμετρέασεν αὐτός τε καὶ Μάρκιος Φίλιππος ὁ συνάρχων αὐτοῦ”.<sup>86</sup>

It is probable that another expulsion figure lies within an extremely lacunose section of Festus’ lexicon, although the reconstruction is uncertain. Because of this it will not be factored into the calculations made in this chapter.<sup>87</sup>

Adjectival qualifications are supplied alongside the expulsion figures of seven *lectiones* (194, 189, 184/183, 174, 169, 164, and 70). The correlation between figures and

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<sup>84</sup> Livy, XLIII.15.6.

<sup>85</sup> Livy, XLIII.16.1; XLIV.16.8, XLV.15.8.

<sup>86</sup> Plut., *Aem. Paullus* 38.9. On Plutarch’s expression as meaning non-curule ejectees, note the agreement between *T. Flamin.* 18.1 and Livy, XXXVIII.28.2-3.

<sup>87</sup> Varro *ap. Festus, Verb. Signif. s.v. ‘Religionis’*. The tail-end of this entry contains the word “*tres*” in relation to the censorship of Q. Pompeius and Metellus Macedonicus (131-130). This is plausibly reconstructed to mean that they expelled 3 members (G. Curtius, *et al.*, *Leipziger Studien zur Classischen Philologie, Fünfter Band* (Leipzig, 1882), 99; W.M. Lindsay, *Sexti Pompei Festi de Verborum Significatu quae supersunt cum Pauli Epitome* (Leipzig, 1913), 358-362; T. Köves-Zulauf, ‘Plinius d.Ä. und die Römische religion’, *ANRW* II.16.1 (1978), 235-236; A.E. Astin, *JRS* 78 (1988), 28; F.X. Ryan, ‘Das haupt des Appius’, *SHT* 5 (2005), A.2.4-5): “<.....Q. Pompei et Q. C>*aecili Metelli* <Macedonici censura lectus >*senatus ad sum*<num senatores amoti sunt> *tres, et eo lu*<mine qui aliorum offunderent> *claritatem*”. The reconstruction, however, is uncertain, and “*tres*” might relate to something else.

words is consistent; the expulsion of three or four members equating to a 'mild' *lectio*, and the expulsion of seven and nine being considered 'severe' or 'strict'. The correlation, which carries across Nepos, Livy, Velleius Paterculus, and Plutarch, demonstrates that the expulsion of five or six members conformed to the norm.<sup>88</sup> One might also take into account that no commentator modifies his comparative qualifications with a temporal clause such as "severe for the time", or "then thought mild". Livy seems to have been careful to contrast past conditions and practices with those of his own time, so his silence especially in this regard may be instructive.<sup>89</sup> It indicates that the adjectival qualifications used may have been as valid in the late Republic as they were during the times described. Pertinent also is an observation from a blunder. As we have seen, Livy reports that seven men were expelled during the *lectio* of 169. Later he remarks that in this, more men were removed than by any former college of censors.<sup>90</sup> The comment is demonstrably wrong. The *lectiones* of 204 and 184/183 were of equal severity; those of 252, 209, and 174 were even harsher. Livy's slip in his commentary on the *lectio* of 169 suggests that, at least as late as the middle of the second century, the dismissal of seven men could feasibly (even if erroneously) be regarded as pushing the upper limit of normal practice.

While the *Periochae* very often report censorial activity in the form of population *census* figures, only thrice do they enumerate members expelled during *lectiones* – those of 252, 115, and 70, in which 16, 32, and 64 were expelled, respectively. The epitomator who prepared the *Periochae* was not interested in summarising the run-of-the-mill occurrences he found in his source, but rather in producing an 'edited highlights' version of Livy's history. That he considered only the expulsions figures for 252, 115, and 70 as

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<sup>88</sup> As already noted, the *Periochae* describe the *lectio* of 70, which saw the expulsion of 64, as "*asper*". But this *lectio*, as those of 252 and 115, was extraordinary in magnitude. As such they should be considered outliers and excluded from attempts to discern normal practice.

<sup>89</sup> R.B. Steele, 'The historical attitude of Livy', *AJPh* 25 (1904), 31-38.

<sup>90</sup> Livy, XLV.15.8.



worthy of inclusion indicates that he considered them – and *only* them – as of atypical magnitude. From this it may be posited that no other *lectio* saw the expulsion of more than 16 members. Thus while we know the expulsions figures for only 25% of *lectiones*, we can be almost certain that the remainder hides no massive expulsions, as the *Periochae* list the only three that occurred. Indeed if mass ejections like those of 252, 115, and 70 were anything more than extraordinary occurrences, then we would be required to explain why *lectiones* such as those of 184/183 (seven expelled) and 174 (nine) are described by Nepos, Livy, and Velleius Paterculus as severe. If such mass ejections were anything approaching common, then *lectiones* seeing the loss of nine or seven would have been moderate in comparison, necessitating their description as such by those commenting on them. In fact the *Periochae* show us that *lectiones* such as those of 184/183 and 174, while they might have been severe, were not so severe relative to the typical standard. Yet they were not extraordinarily severe. Further support for this view comes from the epitomator's treatment of the *lectiones* of 174 and 184/183. We know from the main text of Livy that the *lectio* of 174 saw nine expulsions, making it the fourth severest known. But the only reference to the censorship of 174-173 made in the *Periochae* is the report of the population *census* figure; the expulsions are not mentioned, a fact which suggests that the epitomator did not consider the number remarkable.<sup>91</sup> We also know that the enrolment of 184/183 saw seven expelled. Again the epitomator thought this unremarkable. The censors' decision to expel L. Flamininus, and its dramatic sequel, were, in contrast, incorporated as events worthy of note.<sup>92</sup> In sum, the evidence of the *Periochae* is of value. Livy's epitomator summarised what he considered striking or important omitted that which was not. That the *Periochae* are also silent regarding *lectiones* that saw the dismissal of no-one may indicate that such occurrences were not unusual.

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<sup>91</sup> Livy, *Per.* 41.

<sup>92</sup> Livy, *Per.* 39.

### III.

For the purpose of further analysis, the advantage of splitting the foregoing raw dataset into two epochs, into pre-Sullan *lectiones senatus* (319-86) and post-Sullan (70-50), is patent. In doing so, the following is achieved:

	319-50	319-86	70-50
<b>No. colleges</b>	58	52	6
<b>Max. no. completed <i>lectiones</i></b>	53 (excl. 253, 231, 210, 65, & 64)	49 (excl. 253, 231, & 210)	4 (excl. 65 & 64)
<b>No. completed <i>lectiones</i> for which expulsion figures are securely attested</b>	13 (24.5%)	12 (24.5%)	1 (25%)

#### **The number of expulsions during the pre-Sullan epoch (319-86)**

From 319 until the dictatorship of Sulla (inclusive), 52 colleges of censors were inaugurated. At least two, but probably three, did not carry out their respective *lectiones* (those of 253, 231, and 210). The expulsion figures preserved for the *lectiones* of 209-164 (inclusive) give 51 members expelled over 10 consecutive *lectiones* of fluctuant though not abnormal severity, each separated by the nominal censorial quinquennium. This equates to an overall mean expulsion rate for the period of 5.10 members per *lectio*, or 1.02 members per annum. This rate is about one half to one third of that estimated by Nicolet (2.0-3.0/y), about three quarters of that calculated by Hopkins & Burton (1.20/y), and accords with that calculated by Astin. Hopkins & Burton do not engage in any examination of whether or not their figure is representative for the Republican period as a whole (“we have no idea if these figures were typical”), nor does Astin broach the question of representativity. However it is my contention that the mean expulsion rate here calculated, derived as it is from half a century’s worth of consecutive and complete data (noting also

the concordant phraseology of the sources and the selective silences of the *Periochae*), is broadly representative of the period as a whole. This being accepted, the total number of expulsions during the period can be estimated:

$$(5.10 \times 47) + 16 + 32 = 287.7$$

Thus during this epoch, ~290 members were expelled. Slight modifications to this calculation may be posited but do not significantly alter the outcome, and the figure may be considered robust.<sup>93</sup>

### **The number of expulsions during the post-Sullan epoch (70-50)**

Six colleges of censors were inaugurated between the dictatorships of Sulla and Caesar; four (inaugurated 70, 61, 55, and 50) performed their respective *lectiones*, while two (inaugurated 65 and 64) did not. The *lectio* of 70 is the only one for which an expulsion figure survives: 64, the severest ever. Despite the notoriety of this event, it appears that *lectiones* of this epoch did not see an inordinately large number of expulsions. Several pieces of evidence support this view.

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<sup>93</sup> As mentioned, it is possible that a handful of the 47 'normal' colleges (all excluding those of 252 and 115), particularly those which terminated prematurely, may not have completed their respective *lectiones*. If so the final sum would fall accordingly. Also, if the usual reconstructions surrounding Festus/Varro's "*tres*" are accepted, 3 members were expelled during the *lectio* of 131. Incorporating this value would reduce our calculated mean expulsion rate to 4.91 per *lectio* (54 over 11 *lectiones*), translating to ~280 expelled over the whole period. Finally, *lectiones* outside the sample period 209-164 did not always adhere to a strict quinquennial pattern. No matter: the mean interval between *lectiones* during the period 319-86 was 4 years and 9 months, and such a slight variance from strict quinquenniality affects the calculation very little. On frequency: A.E.Astin, 'The censorship of the Roman Republic: frequency and regularity', *Historia* 31 (1982), 174-187.

With regard to the *lectio* of 61, Dio alludes to censorial non-severity, if only obliquely. He reports that the censors enrolled into the senatorial order everyone who had attained a qualifying office since the previous *lectio* (that of 70), even though it meant taking it above its nominal establishment.<sup>94</sup> Admittedly the description leaves open the possibility that the censors could have created *praeteriti* through expelling incumbent members of the *ordo senatorius*, but if they did it does not appear likely, considering the censors' moderate and accommodating attitude, that they targeted many this way. No *praeteriti* of these censors are known.

Little is known of the *lectio* of 55-54 (it carried over both years) beyond the fact of its performance and that because it was carried out according to the stipulations of the *lex Clodia de censoria notione* of 58 (the only *lectio* to be so), took several months conduct. No definite *praeteriti* are known, but L. Scribonius Libo (*cos.* 34) might have been expelled.<sup>95</sup> That the *lectio* took so long to complete cannot be taken as evidence that many expulsions (or even trials) took place, only that the *lex Clodia* resulted in a more time-consuming assessment of morals.

Dio offers two accounts of the *lectio* of 50. One appears slightly confused at first but relates that one of the censors, Ap. Claudius Pulcher, a *Pompeianus*, while successful in removing many acting-senators (including some *nobiles*), was nonetheless blocked by his colleague, the Caesarian Piso Caesoninus, from expelling anyone who was a member of the *ordo senatorius*.<sup>96</sup> C. Ateius Capito (*tr.pl.* 55) and C. Sallustius Crispus (*tr.pl.* 52), the future historian, are known to have been expelled.<sup>97</sup> C. Scribonius Curio (*tr.pl.suff.* 50) was

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<sup>94</sup> Dio, XXXVII.46.4.

<sup>95</sup> Cic., *Att.* 89.8<sup>SB</sup>; V.M., VI.2.8. On the *lex Clodia*, see Ch.4, §.III.

<sup>96</sup> Dio, XL.63.2-5. On Pulcher's censorial zeal in other aspects of *cura morum*: Cic., *Divinat.* I.16.29; *Att.* 123.5<sup>SB</sup>; Caelius Rufus *ap.* Cic., *Fam.* 97.4, 98.1-3<sup>SB</sup>.

<sup>97</sup> Cic., *Divinat.* I.16.29; [Cic.], *In Sall.* 16-17; Dio, XL.63.4; XLII,52.2; [Acro], *Hor. Ser.* I.2.49.

saved from expulsion by the intervention of Piso.<sup>98</sup> With regard to the *recognitio equitum* as well as the *lectio senatus*, Dio further relates that these censors “had not the hardihood to come to an open break with many, nor had they... any desire to incur censure for failing to expel men who were unfit to retain their rank”.<sup>99</sup> The historian thus describes censors caught upon the horns of dilemma: unwilling to incur the enmity of men whom they should properly have expelled from the Senate and equestrian order while at the same time also unwilling to attract criticism for not pursuing miscreants as energetically as they should have. The impression made by Dio in relation to this *lectio* is not one of severity.

Pertinent also is the fact that neither the works nor the letters of Cicero, nor the letters to him of any of his correspondents (including many members of the Senate) allude to anything extraordinary in the conduct of contemporary *lectiones*. An argument from silence, granted, but the alternative position is less tenable: that while relatively great numbers were being ejected from the Senate, this was going unremarked upon by Cicero and his correspondents.

In sum, while the available evidence does not allow us to estimate the timbre of the *lectio* of 55-54, it does permit us to conclude that the *lectiones* of 61 and 50 were unlikely to have been severe.

In contrast the extraordinary severity shown in 70 can be explained as a singular combination of two factors, one a problem unique to the times and the other handled differently by later censors. The first was the desire, felt by many as well as by the censors, to purge the Senate of many of the undesirables who had originally gained their

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<sup>98</sup> Dio, XL.64.1-3.

<sup>99</sup> Dio, XL.57.1-3: “Υπό γάρ τοῦ πολλοῦς ἐν τε τῇ ἰππιάδι καὶ ἐν τῷ βουλευτικῷ φλαύρουσ ἀνδρας εἶναι, ἕως μὲν μηδένα μήτε κατηγορηθέντα μήθ' ἀλόντα διαγράψαι σφίσιν ἐξῆν, οὐδεμίαν τῶν οὐκ ἀπαλειφομένων αἰτίαν εἶχον. Απολαβόντες δὲ τὴν ἀρχαίαν ἰσχύν, ὑφ' ἧς αὐτοῖς καὶ καθ' αὐτοῦσ τὸν ἐκάστου βόν ἐξετάζουσι τοῦτο ποιεῖν ἐδόδοτο, οὔτε πολλοῖ προσκρούειν ὑπέμενον, οὔτ' αὖ ἐν μίψει πινί, ἄς μὴ διαγράφοντες τοῦσ οὐκ ἐπιτηδεύουσ, γίνεσθαι ἴθελον...”

membership, through election or adlection, during the Sullan regime.<sup>100</sup> The second stemmed from the Sulla's expansion of senatorial recruitment, insofar that by increasing the number of quaestors elected annually from 10 to 20, he increased the rate at which new members were created. As a result, by 70 the size of the Senate had probably expanded far in excess of its new nominal establishment of 450 or 600 members. The censors were thus faced with the choice of either retaining the excess membership or expelling as many as appropriate to reduce the Senate to its intended size. They chose the latter. Doubtless in order to meet their objective the censors first expelled as many undesirables – including Sullan undesirables – as possible, but inevitably after getting rid of the more obvious targets they were forced to eject members who were less deserving of expulsion. Ultimately, 64 members went. The next attempt at performing a *lectio* was in 64. The presence of undesirable *Sullani* within the Senate would have been less of a problem in this year than prior to their cull in 70, but naturally the rate of creation of acting-senators

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<sup>100</sup> The sources variously describe Sulla's undesirables as commoners as well as equestrians, with the infamous satellite L. Fufidius (*pr.*81) providing the archetype of the undeserving Sullan *adlectus* (Sall., *BC* 37.6; *Hist.* 1.48.22; D.H., V.77.5; Livy, *Per.* 89; Plut., *Sert.* 12; *Sulla* 31.3; App., 1.11.100). For more measured views on the Sullan Senate and his *adlecti* (including Fufidius): E.G.Hardy, 'The number of the Sullan Senate', *JRS* 6 (1916), 59-62; H.Hill, 'Sulla's military oligarchy', *PCA* 28 (1931), 63-65; H.Hill, 'Sulla's new senators in 81 BC', *CQ* 26 (1932), 170-177; J.R.Hawthorn, 'The Senate after Sulla', *G&R* n.s.9 (1962), 53-60; C.Nicolet, *L'Ordre Équestre à l'Époque Républicaine (312-43 av.J.-C.)*, Tome I: *Définitions Juridiques et Structures Sociales* (Paris, 1966), 573-591; E.Gabba, *Rome, Army, Allies*, 59-67; *Ibid.*, 142-150 [= 'Il ceto equestre e il Senato di Silla', *Athenaeum* n.s.34 (1956), 124-138 = *Esercito*, 407-425]; A.Keaveney, 'Who were the *Sullani*?', *Klio* 66 (1984), 114-150; R.Develin, 'Sulla and the Senate', *AHB* 1 (1987) 130-133; T.Hantos, *Res Publica Constituta: Die Verfassung des Dictators Sulla*. Hermes Einzelschrift 50 (Stuttgart, 1988), 45-61; C.F.Konrad, 'Cotta off Mellaria and the identities of Fufidius', *CP* 84 (1989), 119-129; P.O.Spann, 'C., L. or M. Cotta and the "unspeakable" Fufidius: a note on Sulla's *res publica restituta*', *CJ* 82 (1986), 306-309; F.Santangelo, *o.c.*. Of the known *praeteriti* of 70, only Lentulus Sura and Antonius Hybrida were known *Sullani* (although not necessarily *adlecti*).

would have been the same between 70 and 64 as it was between 81 and 70, so in this regard the censors in 64 faced a similar problem to that presented to their predecessors in 70: a Senate expanded beyond its nominal establishment. Several or all of the college of tribunes, so as to forestall the possibility of a second consecutive mass expulsion – and to militate against the significant possibility of their own ejection – worked to block the censors from performing their review. At length they even drove them to abdicate, *lectio* unperformed.<sup>101</sup> The issue of senatorial expansion was thus deferred for several years, until the next censors came to power. Entering office in 61, they avoided the eccentricities of 70 and 65 by opting to retain the majority of the excess. This pattern of recruitment into the Senate outstripping loss from it, which had its genesis in the Sullan reformation, seems to have continued throughout the 50s and into the early Augustan period.<sup>102</sup>

Therefore despite the extraordinarily severe *lectio* of 70, there is nothing to suggest that the other three *lectiones* of the post-Sullan era were in any way abnormal.

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<sup>101</sup> On 64: Dio, XXXVII.9.4. The view of E.G.Hardy, *JRS* 6 (1916), 75-77; A.E.Astin, *Historia* 34 (1985), 177 is that the censors of 64 were compelled to resign because they, like their predecessors in 65, quarrelled (see Dio, XXXVII.9.3). Their conclusions are based on a misapplication of the phrase which Dio uses to connect his account of the censorship of 65 to that of 64: “for the same reason”. This relates to the reason why the censors of 64 performed none of their duties – *i.e.*, abdication – not the reason they abdicated (which Dio clearly says was due to the tribunes). Willems, I.421; Suolahti, 474; M.Dondin, ‘Pour une identification du censeur de 64’, *REL* 57 (1979), 133-138; W.J.Tatum, ‘The *lex Clodia de censoria notione*’, *CP* 85 (1990), 34-43; El-Beheiri, 97; W.J.Tatum, *Patrician Tribune*, 133-135, recognise this. See also Ch.3, §.B.IV.

<sup>102</sup> On the early 50s, in particular from the context of the *lex Clodia de censoria notione* of 58, see W.J.Tatum, *CP* 85 (1990), 34-43; W.J.Tatum, *Patrician Tribune*, 133-135. See also Ch.4, §.3.IV. In 45 Caesar, as dictator, increased the establishment to 900 (Dio, XLIII.47.1-6. *Cf Sen., Controv.* VII.3.9; Tacit., *Ann.* XI.25; Pomponius *ap. Justinian, Digesta* I.2.2.32; Macrob., II.3.11-12; VII.3.8). Even so by 29 the Senate contained over 1,000 members. In that year Octavian and Agrippa conducted a *lectio* in which they trimmed the Senate to its Caesarian value by expelling 190 members (Cremutius Cordus, *De Rebus Augusti* fr.4 (Peter) *ap. Suet., Aug.* 35.1-2; Dio, LII.42.1-3).

The number expelled is impossible to quantify, but perhaps no more than a couple of dozen members were expelled. Consequently we might estimate that ~90 members were expelled during the post-Sullan epoch. This estimate, added to that for the pre-Sullan era, equates to ~380 members expelled between the promulgation of the *lex Ovinia* and the final censorship of the functioning Republic.

#### IV.

Only Astin touches upon on the magisterial ranks of the expelled. In doing so, he concludes that the censors expelled in a disproportionate fashion, expelling relatively fewer individuals of senior rank (praetorian or above) than of junior (subpraetorian) rank. The reason for this is obvious. In a socio-political system where personal honour and esteem (*existimatio*) were central to one's standing, and where perceived or actual insults were commonly met with direct or indirect physical or political retaliation, the expulsion process could be hazardous to those doing the expelling. The ejection of a senior member would for a censor have been a risky exercise, with strong potential of making an enemy of a powerful and influential person. The potential too that he, or an ally, might later occupy the *censura* and decide to reciprocate. Subpraetorian *praeteriti*, with their ambition denied, could also make effective enemies to those who expelled them, as the sources well attest.<sup>103</sup> The hypothesis is logical, but two other factors, not addressed by Astin, should not be passed over. Youth and/or the relative obscurity of junior members might have worked to militate against their exposure to censorial notice and criticism, even if this effect was ultimately overwhelmed by other factors. Such individuals would generally have had less time and fewer opportunities in which to commit 'immoral' acts in office or in personal

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<sup>103</sup> A.E.Astin, *JRS* 78 (1988), 29. On *inimicitia* and its effect on the dynamics of Roman politics: D.F.Epstein, *Personal Enmity in Roman Politics, 218-43 BC* (London, 1987), *passim*.



life, or to attain an appreciable number of enemies from within the upper orders – the socio-political strata from which came the censors and those who had their attention. Few of the august and aloof censors would have been familiar with the intricacies of the behaviour of any but the most conspicuous or notorious of the junior members, and there might have been some security afforded by being indistinct in a crowd. As with social distance, the *dignitas* of censorial office might have afforded junior members some protection. The persecution of comparative non-entities at the expense of more high-profile or blatant miscreants would, we must assume, have been regarded as contrary to the spirit of the *censura* and a dereliction of one's duty toward the state. At length, such behaviour would have been damaging to the office and its holders. Bearing these possibilities in mind, we can now turn to statistically testing the hypothesis that the censors expelled disproportionately; that junior members were more likely to be expelled than senior colleagues.

## V.

We know how many members the censors expelled during the interval 209-164 (inclusive): 51, over 10 consecutive *lectiones* of variable though not abnormal severity. These data, purely quantitative, indicate nothing regarding the magisterial ranks of the expelled. Indication of such comes largely from the fact that of these *lectiones*, at least four (204, 194, 189, and 164), while seeing the expulsion of 17 members in total, are known to have seen no *praeteriti* of curule rank. Factoring also for the *lectio* of 199, in which no-one was expelled, means that during this period, for which we have an extended run of consecutive data, *at least half* of all *lectiones* saw no *praeteriti* of curule rank. Additionally, while the *lectio* of 184/183 saw seven expelled, only one *praeteritus* was of curule rank (L. Flamininus, a consular). Thus in the 24 years before the *lectio* of 184/183, not a single

member of curule rank was expelled; in the 29 years before 179, only one was expelled. Such data cannot be dismissed as atypical; the sample, consecutive and lengthy, may with a good degree of confidence be considered representative of the whole. Accepting this we are also compelled to accept that the pattern persists, and that about half of all Republican *lectiones* saw no-one of curule rank expelled. This in itself is a good start, but more is known or can be extracted from the data.

During the period 319-50, 29 named individuals are known to have faced the prospect of expulsion (see table below). Twenty-four were expelled and four avoided it, while the fate of one other (L. Libo) is unknown. In the following analyses, those known to have evaded expulsion will be treated on a par with those who were ultimately *praeteriti*; so too Libo. Such treatment is valid, there being no discernable demographic or status difference between those who were *praeteriti* and those who were near-*praeteriti*; certainly rank does not appear to have positively or negatively affected one's chances of evading censure once one's behaviour had attracted the censors' interest. Thus are known by name and rank, or rank or name alone, 51 individuals who, sometime during the period 319-50, either suffered or narrowly-avoided expulsion. A summary is presented in the table below:

**Known named *praeteriti* and near-*praeteriti* and *praeteriti ignoti* of known status**

<b>Lectio</b>	<b>Named <i>praeteriti</i> &amp; unnamed <i>praeteriti</i> of known status</b>	<b>Near-<i>praeteriti</i></b>	<b>Unknown</b>
<b>307</b>	L.An(to)nius ( <i>sen.</i> )		
<b>275</b>	P.Cornelius Rufinus ( <i>dict.</i> 289/285)		
<b>209</b>	L.Caecilius Metellus ( <i>tr.pl.</i> 213)		
<b>204</b>	7 <i>ignoti, non-curule</i>		
<b>194</b>	3 <i>ignoti, non-curule</i>		
<b>189</b>	4 <i>ignoti, non-curule</i>		
<b>184/183</b>	(P.?) Manilius ( <i>sen.</i> ) L.Quinctius Flaminius ( <i>cos.</i> 192) 5 <i>ignoti, non-curule</i>		
<b>174</b>	L.Cornelius Scipio ( <i>pr.</i> 174) M.Cornelius Scipio Maluginensis ( <i>pr.</i> 176) M.Fulvius (Flaccus/Nobilior) ( <i>tr.mil.</i> 181-180)		
<b>169</b>	Cn.Tremellius ( <i>tr.pl.</i> 168)		
<b>164</b>	3 <i>ignoti, non-curule</i>		
<b>131</b>	C.Atinus Labeo Macerio ( <i>sen.</i> )		
<b>125</b>		C.Sempronius Gracchus ( <i>q.</i> 126)	
<b>115</b>	C.Licinius Geta ( <i>cos.</i> 116) Cassius Sabaco ( <i>sen.</i> )		
<b>102</b>		L.Appuleius Saturninus ( <i>tr.pl.</i> 103) C.Servilius Glaucia ( <i>sen.</i> )	
<b>97</b>	M.Duronius ( <i>tr.pl.</i> 103/97)		
<b>70</b>	C.Antonius Hybrida ( <i>q.</i> by 70) M.Aquillius (Florus?) ( <i>sen.</i> ) P.Cornelius Lentulus Sura ( <i>cos.</i> 71) Q.Curius ( <i>q.</i> 71) Cn.Egnatius ( <i>sen.</i> ) Ti. (Albius?) Gutta ( <i>sen.</i> ) P.Popillius ( <i>sen.</i> ) M.Valerius Messalla Niger ( <i>q.</i> c.73)		
<b>55-54</b>			L.Scribonius Libo ( <i>sen.</i> )
<b>50</b>	C.Ateius Capito ( <i>tr.pl.</i> 55) C.Sallustius Crispus ( <i>tr.pl.</i> 52)	C.Scribonius Curio ( <i>tr.pl.suff.</i> 50)	
<b>Unknown</b>	M.Lucilius ( <i>tr.pl.</i> date unknown)		
<b>Subtotal 319-86</b>	<b>35</b>	<b>3</b>	<b>---</b>
<b>Subtotal 70-50</b>	<b>10</b>	<b>1</b>	<b>1</b>
<b>Subtotal Unknown</b>	<b>1</b>	<b>---</b>	<b>---</b>
<b>Total</b>	<b>46 (24 named)</b>	<b>4 (4 named)</b>	<b>1 (1 named)</b>

Of our population of 51, the senatorial rank-at-expulsion of six (An(to)nius, Sabaco, Aquillius, Egnatius, Gutta, and Popillius) are neither known nor can be reliably estimated.

Excluding these from further analysis leaves us with 45 of known rank-at-expulsion. Of these, 6 (13.3%) were of senior senatorial rank (praetorian and above), the remainder (86.7%) being junior. A breakdown of the demographics, divided into pre-Sullan and post-Sullan epochs, is presented:

***Praeteriti* and near-*praeteriti*, according to status and epoch**

	<b>Pre-Sullan (319-86)</b>	<b>Post-Sullan (70-50)</b>	<b>Unknown epoch</b>	<b>Subtotal</b>
<b>Known senior</b>	5 (13.9%)	1 (12.5%)	0	6 (13.3%)
<b>Known junior</b>	31 (86.1%)	7 (87.5%)	1	39 (86.7%)
<b>Subtotal</b>	36	8	1	<b>Popn. total=45</b>

As it is, this dataset requires three modifications before we can apply any statistical analysis to it, and draw any meaningful conclusions from it.

As also observed by Astin, the expulsion by the censors of a man of consular rank or above was a dramatic *exemplum* to be seized upon by historiographers and commentators on Roman morality and behaviour.<sup>104</sup> Indeed, as a look at the testimonia in the Appendix will demonstrate, the expulsions of such men were often among the most sensational and enduring *exempla* of Roman literature, long-remembered and often repeated; as such, and as Astin remarks, it is “hard to believe that even one or two additional cases remain unattested”.<sup>105</sup> The comprehensiveness of our knowledge about this small but prominent subpopulation creates a bias in our overall figures, and to retain this subpopulation in any further statistical analysis would – far from adding value – merely transfer that bias to the results of the analysis: a disproportionate number of senior

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<sup>104</sup> A.E.Astin, *JRS* 78 (1988), 29.

<sup>105</sup> *Ibid.*

*praeteriti* would be represented. For this reason, this subpopulation (Rufinus, Flamininus, Geta, and Sura) is excluded from following analysis.

The second modification is to shift the beginning of the pre-Sullan epoch from 319 to 179. The modification necessitates some data loss (Metellus and Manilius dismissed), but there are two major and compelling demographic reasons for this modification. First, the impact of the promulgation of the *lex Villia annalis* in 180 has massive repercussions for all who wish to conduct demographic analyses on the officers of state and Senate members of the middle and late Republic. Livy's description of the law is frustratingly curt, and even now the *lex* is not completely understood but we know enough to say that the law required candidates for the praetorship to be a minimum of 39 or 40 years of age, and consular candidates to be at least 42 or 43 years old.<sup>106</sup> In contrast Develin shows that in the 38 years prior to the passing of the *lex Villia* (*i.e.*, for 218-180), the mean age of praetors, at election or in office, was somewhere in the mid-30s; further, that during the two decade prior (199-180), the mean age of consuls was ~39 years (n=41; range 30-50 y).<sup>107</sup> While Develin does not attempt to assess the ages of praetors subsequent to 180, in showing that the mean age of consuls during 179-86 was probably at least 45 years (n=74; range 43-55 y), he provides data from which rough praetorian ages might be inferred.<sup>108</sup> In view of the fact that these values are derived overwhelmingly from *minimum possible* ages, and not actual known ages, they are certainly underestimates. As such it is likely that the average age of consuls during this period was

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<sup>106</sup> Livy, XL.44.1; Rotondi, 278-279; A.E.Astin, *The Lex Annalis Before Sulla*. Collection Latomus 23 (Brussels, 1958), *passim*; E.Badian, 'Caesar's *cursus* and the intervals between offices', *JRS* 49 (1959), 81-89; G.Rogler, 'Die *lex Villia annalis*', *Klio* 40 (1962), 76-123; R.Develin, *Patterns in Office-Holding, 366-49 BC*. Collection Latomus 161 (Brussels, 1979), 81-95; *CRR* 145-146; T.C.Brennan, *The Praetorship in the Roman Republic* (Oxford, 2000), I.169-172.

<sup>107</sup> R.Develin, *Patterns*, 78-80.

<sup>108</sup> *Ibid.*, 90-91, also demonstrating that only ~30% (n=22) of consuls during 179-88 were elected *suo anno*.

~47 years. From this it may be inferred that the average age of praetors was ~42 years.<sup>109</sup> Such interest in the ages of consuls and praetors will become evident shortly. A second advantage to counting only 179-86 as our pre-Sullan epoch is that in contrast to earlier ages, during this period the annual number of praetors elected annually was invariant (at six); resultantly, the rate of creation of praetorians was constant and their number at any point during this interval was relatively stable. This will also assist subsequent analyses.

Lastly, while M. Lucilius' status when expelled is known, his date is not. Uncertainty is overcome by not including him from further analyses.

In excising uncertain or biased data from the original dataset, a modified, 'trimmed' version is obtained:

**As preceding table, but 'trimmed'**

	<b>Pre-Sullan (179-86)</b>	<b>Post-Sullan (70-50)</b>	<b>Subtotal</b>
<b>Known senior (praetorian and above)</b>	2 (6.7%)	0 (0%)	2 (5.4%)
<b>Known junior (subpraetorian)</b>	28 (93.3%)	7 (100%)	35 (94.6%)
<b>Subtotal</b>	30	7	<b>Modified popn. total=37</b>
<b>No. estimated expelled for epoch</b>	~130	~90	~220
<b>Modified subtotal as percentage of no. estimated expelled for epoch</b>	~20.8% <sup>110</sup>	~5.6% <sup>111</sup>	~14.5%

The results are stark. There are only two immediate conclusions.

<sup>109</sup> Considering the prevalence of consular *repulsa*, assuming an average interval of 5 years between holding the praetorship and victory in a consular ballot is not unrealistic. For the frequency of such *repulsa*: T.R.S.Broughton, *Candidates Defeated in Roman Elections: Some Ancient Roman "Also Rans"*. Transactions of the American Philological Association 81.4 (Philadelphia, 1991), 5-20.

<sup>110</sup> Excluding Gracchus, Saturninus, and Glaucia (there is no way of enumerating the near-*praeteriti*).

<sup>111</sup> Excluding Libo and Curio.

Of the 37 individuals within our 'trimmed' population, only 2 (5.4%) were of senior rank (praetorian); the remainder were subpraetorian when expelled. These proportions are substantially identical irrespective of epoch, a function of rarity.

The number of members expelled during the interval 179-50 may be estimated to have been ~220 (there is no way of estimating the prevalence of the nearly-expelled): ~90 in the post-Sullan epoch (as already estimated) and ~130 in the pre-Sullan.<sup>112</sup> Of these, the names and/or magisterial ranks of 32 (~14.5%) are known. When divided into pre- and post-Sullan epochs, these figures become ~20.8% (27 out of ~130) and ~5.6% (5 out of ~90). Considering the sparse and fragmentary nature of the evidence that survives, a ~20.8% sample is rather good and ~5.6%, tolerable. The disparity between proportions is attributable to Livy's contribution to the pre-Sullan dataset.

## VI.

The bare results of this analysis acquire more meaning if they are compared against the status-composition of the whole population-at-risk (the Senate). Before we can do this the status-composition of the population-at-risk has to be determined. To do so, certain demographic assumptions about this epoch have to be accepted. The first two, which we have already seen, are that 6 praetors were elected annually and that their mean age at election was ~42 years. The third, that the mean further expectation of life at 42 years ( $e_{42}$ ) was 16.9-19.3 years.<sup>113</sup> The result: that a population-at-risk enjoying such annual appointments rapidly reaches a state of equilibrium in which at any one time, 101-116 of

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<sup>112</sup>  $(5.10 \times 19) + 32 = 128.9$ .

<sup>113</sup> W.Scheidel, *o.c.*, 256.

its members, on average, are praetorian or above; the remainder, subpraetorian.<sup>114</sup> Here an important point should be underlined: that the size of this 'at-least-praetorian' cohort is independent of the size of the population-at-risk as a whole; it is dependent only on the above three assumptions. Yet our derived value requires modification before we can apply it in our analysis. The 'at-least-praetorian' cohort of our population-at-risk contains not only praetorians, but also consulars (with *censorii* being a subunit of the consulars). As consulars have been excised from our consideration of the composition of the *praeteriti*, they must also be removed from our 'at-least-praetorian' cohort of the population-at-risk. To do this we must ascertain what proportion of this cohort were consulars.

Assuming that two consuls were elected annually (the office exploited few enough *suffecti* during this epoch), that the average consul was elected at the age of ~47 years, and that  $e_{47}$  was 14.7-16.8 years means that, statistically, at any one point the 'at-least-praetorian' cohort contained on average 29-34 consulars.<sup>115</sup> This may be termed the 'consular' subunit of the 'at-least-praetorian' cohort. The size of this subunit is independent of the size of the wider 'at-least-praetorian' cohort, dependant as it is only on the above two demographic assumptions mentioned above. The result: that of the 101-116 individuals within our 'at-least-praetorian' cohort, only 67-87 at any one time were praetorians. We may call these the 'only praetorian' subunit of our 'at-least-praetorian' cohort. We are left with a pre-Sullan population-at-risk which on average contained 29-34 consulars and 67-87 praetorians. The remainder of the population, irrespective of its total size, consisted of individuals of various subpraetorian grades. Assuming that the whole population numbered 300 members – the nominal establishment of the pre-Sullan Senate

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<sup>114</sup> Lower limit:  $6 \times 16.9 = 101.4$ . Upper limit:  $6 \times 19.3 = 115.8$ . *CRR 70* also does the calculation. Although using less robust input data ("a little optimistically"), he comes up with 150 of 'at-least-praetorian' status. He also suggests that the remainder would have comprised ~20 aedilicians and ~130 others.

<sup>115</sup> Lower limit:  $2 \times 14.7 = 29.4$ . Upper limit:  $2 \times 16.8 = 33.6$ . The value of  $e_{47}$  is from W.Scheidel, *o.c.*



– then it follows that the subpraetorian remainder contained 179-204 individuals. The ‘consular’ subunit, in accordance with our treatment of consular *praeteriti*, will not be included in subsequent statistical analyses.

If we assume, for ease of calculation, that the ‘only praetorian’ subunit contained 77 members on average (the mean of 67 and 87) and that an average of 192 individuals were subpraetorian (the mean of 179 and 204), then we are left with a consul-less pre-Sullan population-at-risk consisting of ~27% praetorians and ~73% subpraetorians. This is the proportion we would expect to see if the censors expelled in a random fashion, or without regard to target rank. This can be compared against the data presented in the preceding table, which gives observed values of ~6.7% (n=2) praetorian against ~93.3% (n=28) subpraetorian. Using a simple statistical test ( $\chi^2$  test for independence), the probability of such a discrepancy between observed and expected proportions occurring due to chance alone, rather than a true pattern existing, can be calculated as <1:10,000 ( $P < 0.0001$ ). Statistically, the difference is ‘extremely significant’. Things change little if we dismiss the nearly-expelled and consider only those actually expelled. The observed proportions modify to ~7.4% (n=2) praetorian and ~92.6% (n=25) subpraetorian; the expected proportions remain as before. In this instance the probability of the discrepancy between observed and expected proportions being due to chance alone remains <1:10,000 ( $P < 0.0001$ ); still ‘extremely significant’.

These statistical analyses show that the likelihood of these values transpiring by chance alone is vanishingly small; that the censors applied the punishment of expulsion in a disproportionate manner, with subpraetorian members affected far more often than if the punishment was applied evenly, randomly, or without regard to target rank.

## VII.

At first sight a mean expulsion rate of 5.10 individuals per *lectio* (1.02 per annum) from a pre-Sullan population-at-risk of 300 appears negligible, equating to  $\leq 1.70\%$  being expelled quinquennially ( $\leq 0.34\%$  annually). But these figures do not relate the actual risk of expulsion for an average member: *lectiones* were regular occurrences, and the average member would face several in his lifetime. A more realistic calculation of expulsion risk is derived if we treat expulsion as a cumulative, rather than a one-off, hazard. Thus if we assume that the mean age at which a young politician became vulnerable to expulsion was 27 years, and that the mean further expectation of life at that age ( $e_{27}$ ) was 30 years, then we find that the cumulative mean risk of expulsion was far from insignificant – approximately one in ten:<sup>116</sup>

$$(1.02 \times 30) / 300 = 10.2\%$$

Naturally the issue of risk is more complex than just supplying a figure for lifetime mean. As we have proved statistically, expulsion was status-dependent, disproportionately affecting subpraetorian members. Therefore while the mean lifetime risk of expulsion for our average young politician was  $\sim 10\%$ , this risk would have been front-loaded; far greater while he was subpraetorian, but diminishing sharply upon and beyond the attainment of praetorian status. It also follows that those unlucky enough never to progress out of the subpraetorian 'danger zone' would, on average, face a lifetime mean risk of expulsion of far more than 10%; in contrast those enjoying rapid promotion out of subpraetorian grade would, on average, face a lifetime mean risk of expulsion of far less than 10%.

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<sup>116</sup> K.Hopkins & G.Burton, *o.c.* do the same calculation using figures derived from their smaller dataset and from slightly different demographic data.

## VIII.

While the mathematical lifetime risk of expulsion for an average member of the Senate was relatively slim – albeit significant, ~10% – several factors beyond its mathematical prevalence amplified the utility and effectiveness of expulsion (and the fear of it) as a normative tool. Each potential *praeteritus* would have recognised and doubtless accepted, from his personal experience and from his knowledge of the history of the *censura*, that the majority of men expelled could be reasonably argued to have been ‘proper’ miscreants for whom expulsion was a just and fitting fate (and who might even have themselves seen some form of censorial punishment coming). On the other hand each potential *praeteritus* would also have been cognisant of censorial caprice and idiosyncrasy – that some in the past had been expelled for novel and/or highly eccentric reasons, and that one could neither fully predict nor forestall future changes in the censors’ focus or the peculiarities and foibles of individual censors. Cato the Elder’s expulsion of Manilius comes to mind, and what man could reasonably guard against the possibility of expulsion when even something as innocuous as embracing one’s own wife while in the company of one’s own daughter might attract such punishment? Each would have known, therefore, that he might feasibly, if somewhat unreasonably, be expelled for *anything* – and that while living and having lived as ‘moral’ a life as possible was a good defence against future censure, it was by no means a certain defence. Further still, each would be aware that he could be expelled for anything one had *ever* done – not just for things done since the last censors were in office.<sup>117</sup> Moreover that the censors were not required to formally or informally

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<sup>117</sup> See Ch.3 for reasons for censure. In 142, censor Scipio Aemilianus attempted to disenfranchise an ex-centurion for cowardice alleged to have been committed in 168 (Cic., *De Orat.* II.67.272). This illustrates that there was no limit on how far back censors could go in scrutinising morals. Senatorial examples of the

investigate suspected misbehaviours; that they could punish on the strength of rumour alone and the veracity any report of miscreance could be immaterial; that there existed no mechanism for appeal to a higher authority or third-party; and that while one might regain one's lost seat in the Senate at some later date, this was neither automatic nor guaranteed – expulsion could be perpetual. Nor could the relative severity of future colleges be certainly predicted, so while potential targets might reasonably forecast the creation of, on average, five *praeteriti* for each future *lectio*, no-one ever knew whether the next pair of censors (or some subsequent pair) would be the ones to conduct an extraordinarily severe *lectio*, where an extraordinarily large number of *praeteriti* were created (as happened in 252, 115, and 70). Nor, if expelled, could a *praeteritus* look forward to comfort of the kind afforded by low position and the anonymity of a crowd. Each *praeteritus* was (or, had been) a single unit of a small and somewhat socially-isolated elite, linked by a network of numerous inter-relationships based upon kinship and personal and historical obligations and associations; even junior or relatively new members of the group would have known, and been known by, members of longer or more distinguished standing. Outside this small, close-knit elite, many among the wider populace would also have known them, as all members would have been, by definition, public figures of no mean repute. We must also remember that “an essential purpose of victimisation was to use exemplary humiliation as a deterrent for misconduct and as an incentive toward the maintenance of acceptable standards”,<sup>118</sup> and that pursuant to this in the event of his expulsion the fact and circumstances of his censure would be widely known. Indeed was *intended* to be widely known, such is the nature of exemplary humiliation. Each potential *praeteritus* would also have been aware that if he were censured, there would be no fore-warning (the

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phenomenon are recorded, albeit covering lesser spans: L. Flamininus (expelled in 184 for offences committed in 192) and M. Fulvius (expelled in 174 for an offence of 180). Both had survived *lectiones* in the interim.

<sup>118</sup> A.E. Astin, *JRS* 78 (1988), 30.

outcome of the censors' deliberations becoming known only at the public recital of the revised *album senatorium*); also no means through which his dismissal might be effected discreetly, away from the public gaze. These considerations, coupled with the fact that under typical circumstances so few men lost their seats during a *lectio* that it would have been difficult for even a relatively obscure individual to remain inconspicuous in such a small cohort, lead us to conclude that *praeteriti* could in no way hide their respective punishments from the eyes of their peers or from the wider populace and nor could they be easily downplayed. Naturally, each potential *praeteritus* would have known this also. All of the above factors would have contributed to giving expulsion a psychological weight far beyond its mathematical risk.<sup>119</sup>

Each potential *praeteritus*, aware of generalities in the behaviour of past censors but unable to translate this intelligence to accurately foretell the behaviour of future censors, aware that anything might draw their opprobrium, aware that if expelled his humiliation would be announced in public and without fore-warning and that all of his peers and a large proportion of the wider populace would get to know of it, and aware that no mechanism existed whereby he could appeal or swiftly reverse such a punishment, was therefore an actor within a dynamic which, if it were to occur in a modern institutional or domestic setting, would be categorised as one of psychological abuse. The term is emotive, but apt. Psychological abuse as a mechanism for control is well-known; the unpredictability of and trigger for the infliction of sudden violence or humiliation from the dominant partner keeping the subdominant partner in a state of suspense. In modern scenarios, a common coping mechanism described by victims is 'vigilant prevention': the avoidance of situations that might precipitate unwelcome action.<sup>120</sup> In the context of the relationship between the censors and those whom they might expel, the latter may be

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<sup>119</sup> A.E.Astin, *JRS* 78 (1988), 29-30 makes several similar observations.

<sup>120</sup> K.A.Kelly, *Domestic Violence and the Politics of Privacy* (New York, 2002), 143.

characterised as existing in a state of psychological intimidation and control, being kept in a chronic state of suspense, manipulated and coerced to conform to desired behavioural and moral norms.

## IX.

We may conclude that while all members were vulnerable to being expelled by the censors and that the threat of such censure would be palpable to all, taken as a group, senior members were in fact significantly (~3.5 times) less likely to be expelled than if such punishments were inflicted irrespective of rank. Reasons behind this disproportionality are impossible to adduce using statistical analyses; the numbers reveal the phenomenon but do not explain it. The discrepancy might be explained in part by the 'doctrine of manifest morality', in which it was accepted that senior members were more morally upstanding than their junior colleagues, but perhaps not too much weight should not be assigned to this mechanism alone. Astin's suggestion, albeit made without evidence of the type adduced here, was, as we have seen, that the censors, as a group, were simply more reticent to create *praeteriti* from senior members than they were from juniors, and that this reticence was born from a desire not to unduly antagonise and make enemies of those best placed to retaliate. Furthermore, as a group, senior members tended to be closer to the censors, socially and in terms of kinship, than their junior colleagues were, and one tends not to punish those with whom one enjoys a close social affinity or familial link. In contrast junior members, while shielded somewhat from the censors' attentions by their relative obscurity, tended to be further, socially and biologically, from their potential punishers.

## Chapter 3

### ***Lectio senatus*: procedure and timing**

Having addressed the issues of senatorial membership and demographics we now turn our attention to mechanics; to the procedures used by the censors in conducting their *lectiones senatus* and to the timing of these *lectiones* within the censorship. As aspects of the former inform our understanding of the latter, we shall look at procedure first.

#### **A. The procedure of the *lectio senatus***

##### **1. Choosing the *princeps senatus***

The *lectio senatus* encompassed two procedures, the choosing (appointment or reappointment) of the *princeps senatus* and the choosing (appointment or reappointment) of the rest of the *ordo senatorius*. Six Livian notices attest to this bipartite nature. Five are of a type,<sup>121</sup> but while these make clear that the *lectio* was a bipartite process, we cannot discern whether the general textual sequence reflects the typical ordering of the two events, or, if it does, whether the choosing of the wider *ordo senatorius* was at all

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<sup>121</sup> Livy, XXIX.37.1; XXXVIII.28.1-2; XL.51.1; XLI.27.1; XLIII.15.6. While mentioning the censors' regulation of the Senate, XXIV.18.2-9; XXXII.7.3; XXXIX.42.5-44.1 do not refer to (re)appointments to the *principatus* so provide neither positive nor negative evidence for *lectiones* being biphasic. XXXIV.44.4, while presenting the censors' appointment of the *princeps* and enrolment of the Senate together, does not explicitly place the processes beneath the umbrella term of '*lectio senatus*'. Nor Plut., *T. Flamin.* 18.1-5; *Cat. Mai.* 17.1-7; *Aem. Paullus* 38.8.

dependent on the prior choosing of the *princeps senatus*. The sixth passage allows us to make these discernments. Livy reports that in 209, the wider enrolment of the Senate was delayed by a dispute between the censors over who was to be appointed to the vacant *principatus*: “*senatus lectionem contentio inter censores de principe legendo tenuit*”. Upon the resolution of the dispute the remainder of the *lectio* progressed, including the creation of eight *praeteriti*.<sup>122</sup> The account demonstrates not only the bipartite nature of the *lectio*, but also illustrates that the sequence of events seen in the five first examples is not just a stylistic stereotype but a true reflection of the order and relationship of the two components. That the choosing of the *princeps senatus* is consistently reported before the choosing of the rest of the Senate precisely because that was the first thing the censors did when conducting a *lectio senatus*, and that the wider choosing of the Senate could not be performed until the *princeps senatus* was satisfactorily (re)appointed.<sup>123</sup>

Whether one or both censors chose the *princeps* is a matter of debate. Until recently the consensus was that one censor, chosen by lot, performed the task. This view was based primarily upon Livy’s report on the cause of the censors’ dispute in 209. One censor, M. Cornelius Cethegus, wished to introduce T. Manlius Torquatus to the *principatus*, while his colleague, P. Sempronius Tuditanus, had his own preference: “the

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<sup>122</sup> Livy, XXVII.11.9, 12.

<sup>123</sup> F.X.Ryan, *Rank*, 232-233 argues that while reappointments to the *principatus* were always made before the Senate was chosen, appointments to a vacant *principatus*, especially if contentious, might sometimes have occurred after the performance of the wider *lectio*. From this he argues that the choosing of the *princeps* and of the Senate were independent and that the *lectio* was not a bipartite process but entailed *only* the choosing of the wider Senate. His argument seems not to counter the testimony of Livy. T.Mommsen, *Römische Forschungen I* (Berlin, 1864), 258, giving only that the *princeps senatus* was “*der erste Mann in der Senatsliste*”, does not address whether or not his choosing was required before the rest of the *lectio* could be performed. Nor does J.Suolahti, ‘*Princeps senatus*’, *Arctos* 7 (1972), 207-218. Suolahti, *passim*, links the choosing of the *princeps* with the choosing of the wider Senate, but never in a way that presents the later as dependent upon the former.



choice belonged to Sempronius... Sempronius claimed that if the gods had given a man the choice by lot, they also gave him an unrestricted right; he would make the choice according to his own judgement, and would choose Q. Fabius Maximus” (*Semproni lectio erat... Sempronius, cui di sortem legendi dedissent, ei ius liberum eosdem dedisse deos; se id suo arbitrio facturum lecturumque Q. Fabium Maximum*).<sup>124</sup> At length Cethegus gave way, and “Sempronius chose consul Q. Fabius Maximus as *princeps senatus*” (*cum diu certatum verbis esset, concedente conlega lectus a Sempronio princeps in senatum Q. Fabius Maximus consul*).<sup>125</sup> Meier, noting the uncharacteristic absence of collegiality in one censor being allotted to choose the *princeps*, argued that Livy’s account was mistaken and that both always cooperated in choosing their *princeps*.<sup>126</sup> Recently Ryan has drawn a similar conclusion, albeit for different reasons. He has argued convincingly that the consensus is based upon a flawed understanding of Livy’s (correct) description of the dispute. Furthermore, that outside the events of 209 the sources consistently depict the (re)appointment of the *princeps* as a joint operation, conducted by both censors.<sup>127</sup> Ryan also demonstrates that it was customary, before 209, for the censors to award the honour of the *principatus* to the senior surviving *ensorius*; thereafter, and following the precedent set by the appointment of Fabius Cunctator, it was customary for them to accord the *principatus* to whomsoever they deemed *princeps Romanae civitatis*.<sup>128</sup>

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<sup>124</sup> Livy, XXVII.11.10-11.

<sup>125</sup> Livy, XXVII.11.12.

<sup>126</sup> C.Meier, ‘Die ersten unter den ersten des Senats: Betrachtungen zur willensbildung im Römischen Senat’ in D.Nörr & D.Simon (edd.), *Gedächtnisschrift für Wolfgang Kunkel* (Frankfurt, 1984), 185-205.

<sup>127</sup> F.X.Ryan, *Rank*, 233-239.

<sup>128</sup> F.X.Ryan, *Rank*, 225-232, 239-246. Cf e.g., Willems, I.111-123; J.Suolahti, *Arctos* 7, 207-218.

## 2. Choosing the rest of the Senate

### I. Confidentiality and publication

Whereas the censors' scrutiny and organisation of the equestrian order (the *recognitio equitum*) and of the general population (the *census populi*) were open procedures, carried out in public, it appears that *lectiones senatus* were different, with the deliberative process carried out, if not *in camera*, then at least in confidence, with the outcome becoming known to all only upon the *recitatio* of revised membership, by the censors or by their *praecones*, from the Rostra.<sup>129</sup> This assumption is based mainly on the fact that no source testifies to a potential *praeteritus* having foreknowledge of his impending expulsion or of taking preemptive action to avert his fate – things we might expect to observe in some form or another if the deliberative process was not confidential. We should also bear in mind surprised and outraged reactions of Titus and Lucius Flamininus upon the expulsion of the latter in 184/183. Both appear to have been genuinely taken aback by the censors' decision. This being said, confidentiality could be broken. The sources are often cognisant of occasions in which one censor refused to ratify the wishes of his colleague to expel, or in which they acted harmoniously in their deliberations. This illustrates that, irrespective of the conditions in which such deliberations were made, information pertaining to them could enter the public domain. Indeed the censors themselves can be suggested as sources of such information. For example Livy was aware that the censors of 199-198, Scipio Africanus and P. Aelius Paetus, expelled no one because between them that is what they

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<sup>129</sup> While Buteo performed the whole of his *lectio* in public, upon the Rostra, it is clear that his was a special case: having decided not to investigate *mores* there was no need for any confidentiality. As well as the *recitatio* of Buteo, the public reading of the membership of the new Senate is attested at Livy, XXIX.37.1 (for 204) and Cic., *Domo Sua* 32.84 (for 86). The declaration of L.Cotta, reported in Cic., *Domo Sua* 32.84, also mentions the censorial *recitatio* (albeit describing one which, as events turned out, never occurred).

agreed to do; that it was censorial harmony (rather than, say, discord and mutual obstruction), that lay behind this extremely mild *lectio* was information that could only have originated from the censors themselves.<sup>130</sup> Whether confidentiality in such events was broken while the deliberative process was ongoing, or sometime thereafter, is a question which cannot be resolved, but it appears that on at least one occasion a censor broke confidentiality while the *lectio* in which he was involved was in progress. Dio reports that during the *lectio* of 50, censor Piso Caesoninus disclosed to his kinsman, L. Paullus, the intention of his colleague to expel C. Scribonius Curio (*tr.pl.suff.* 50). Acting together they persuaded the other censor, Ap. Claudius Pulcher, to abandon his plan. In the dramatic sequel Pulcher let his aborted desire to expel Curio be known before the Senate, and Curio, enraged by the revelation, assaulted the censor there and then.<sup>131</sup> Whether or not Curio had known anything of Pulcher's plan for him before it was disclosed in the Senate can only be speculated.

Two brief notices by Livy, following shortly upon his account of the singular dictatorial *lectio* of M. Fabius Buteo, confirm that the process took a single day to complete, and that its date was recorded (although the actual date is not transmitted by Livy).<sup>132</sup> While we should not expect that all *lectiones* were completed as speedily as Buteo's (after all, he chose not to make *cura morum* an aspect of his enrolment and thus saved himself a lot of effort and time), that the dates of *recitationes* were recorded is indicated also in Livy's report of the events surrounding the *lectio* of 179: "two days after the censors chose the Senate, consul Q. Fulvius set out against the Ligurians" (*biduo, quo senatum legerunt censores, Q. Fulvius consul profectus in Ligures*).<sup>133</sup> The wording

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<sup>130</sup> Livy, XXXII.7.3.

<sup>131</sup> Dio, XL.63.5-64.1.

<sup>132</sup> Livy, XXIII.23.9, 24.1.

<sup>133</sup> Livy, XL.53.1.

illustrates that the dates of both events were recorded in Livy's ultimate source. Note should also be made of another notice, in which Livy relates the exact date of the *recognitio equitum* of 169 – 13 December.<sup>134</sup> Notwithstanding the positive evidence of the dated *recitationes* of 216 and 179, that the dates of equestrian enrolments were recorded indicates that the dates of senatorial enrolments were accorded like treatment.

## II. *Notatio*: *nota* and *subscriptio* – the mark and the reason for the mark

The traditional means through which the censors signified their opprobrium toward those they scrutinised (there is no indication that it was made compulsory by law) was through the process of *notatio*. By the first century this involved them first placing a mark (*nota*) against the name of their intended target as it appeared in the *album senatorium* and inserting a written statement (*subscriptio*) beneath detailing the specific reason(s) why he had attracted their dissatisfaction. Asconius for example reproduces, possibly verbatim, the *subscriptio* which Gellius Publicola and Lentulus Clodianus appended to the name of C. Antonius Hybrida (*cos.* 63) during the *lectio* of 70: “That he had plundered allies, rejected the judgement of a court, [and] that on account of his vast debts he had made over estates and held no property in his own name”.<sup>135</sup> It seems that the explanatory part of the process, the *subscriptio*, did not become a fixture until relatively late in the history of the censorship. In 184 we find T. Flamininus demanding from Cato why his brother, Lucius, had been expelled. The episode implies that during this epoch at least, the censors were under no obligation to automatically provide reasons for expulsion, but that these could be provided if specifically requested. Livy's commentary on the episode suggests that *subscriptiones* only became a feature of the process of *notatio* perhaps around turn of

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<sup>134</sup> Livy, XLIV.16.8.

<sup>135</sup> Ascon., *In Toga Cand.* 84.20-25 (Clark). See T.14B in Appendix.

the second century.<sup>136</sup> Still the evidence suggests that even before Cato, many colleges did provide their reasons for expelling, if only to forestall the inevitable demands for clarification that would be made if they did not.<sup>137</sup>

The case of P. Popilius, also expelled by Gellius Publicola and Lentulus Clodianus in 70, illustrates that while censors were required to agree in order for a member to lose his seat, they were not necessarily required to agree on the *reason* for such treatment. Cicero notes:

In the case of P. Popilius [*sic*], who had voted for Oppianicus' condemnation, L. Gellius' *subscriptio* was to the effect that he had taken a bribe to condemn the innocent... Gellius finds Popilius guilty: his verdict is that he took a bribe from Cluentius. Lentulus says he did not. His reason for refusing to admit Popilius into the Senate [*sic* – senatorial order] was that his father was a freedman.<sup>138</sup>

Thus while neither censor agreed with the other's rationale, both nonetheless judged Popilius undeserving of a seat in the Senate.

The sources attest to a wide range of moral deficiencies within the upper orders which the censors could and did reproach and punish, and a complete survey is salutary:<sup>139</sup> licentiousness,<sup>140</sup> intemperance and gluttony,<sup>141</sup> prodigality,<sup>142</sup> celibacy;<sup>143</sup>

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<sup>136</sup> Livy, XXXIX.42.6: "Within the memory of our fathers the custom is said to have arisen that the censors should affix the *nota* to the names of those who are expelled from the Senate" (*patrum memoria institutum fertur ut censores motis senatu adscriberent notas*). Here Livy confuses *nota* (the mark) with *subscriptio* (the explanation for the mark).

<sup>137</sup> Livy, XXIV.18.4 has the censors of 214 stating their reasons for punishing those who, after Cannae, had wished to abandon Italy. That we know the rationales behind the expulsions of L.An(to)nius, P.Cornelius Rufinus, and L.Metellus might be due to the process of *subscriptio*, although other transmission routes are possible.

<sup>138</sup> Cic., *Cluent.* 47.131-132. See T.20 in Appendix.

<sup>139</sup> Similar listings are provided by T.Mommsen, *Römisches Staatsrecht II* 3rd edition (Leipzig, 1887), 377-382; A.H.J.Greenidge, *Infamia: Its Place in Roman Public and Private Law* (Oxford, 1894), 63-74; A.H.J.Greenidge,

deliberate childlessness;<sup>144</sup> adultery;<sup>145</sup> divorcing one's wife without first consulting one's *consilium amicorum*;<sup>146</sup> taking back one's wife after divorcing her for adultery;<sup>147</sup> marrying for convenience, not for begetting children;<sup>148</sup> adopting a child for profit;<sup>149</sup> embracing one's

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*Roman Public Life* (London, 1911), 226-228; A.O'Brien Moore, *o.c.*, 688-690; H.Hill, *The Roman Middle Class in the Republican Period* (Westport, 1952), 35; C.Nicolet, *The World of the Citizen in Republican Rome*, trans. P.S.Falla (London, 1980), 73-85; A.E.Astin, *JRS* 78 (1988), 19-26; E.Baltrusch, *Regimen Morum: Die Reglementierung des Privatlebens der Senatoren und Ritter in der Römischen Republik und Frühen Kaiserzeit* (Munich, 1989), 12-30. In compiling, I have listed all behaviours for which a member might be expelled from the Senate, or an *eques* removed from the equestrian order. My rationale is that censors would have used the same criteria for judging the behaviour of *equites* as they did for Senate members, as the two groups enjoyed great sociological overlap and most members were equestrians also. Also, it is, I feel, improbable that those members of the Senate whom censors dismissed from the *ordo equestris* for misbehaviour would have been permitted to remain in the Senate; that for such individuals, a 'dishonourable discharge' (cashierment, with *ignominia*) from the *equites* would have meant concomitant dismissal from the Senate. In contrast those senatorial *equites* 'honourably discharged' from the equestrian order (*inter alia*, through old age, injury), would be allowed to remain members of the Senate. Certain attested punishable misbehaviours, peculiar to the Imperial period alone, have not been included the catalogue. Other, less particularly 'Imperial' misbehaviours known only to have been punished under the Empire (by emperors operating with *ensoria potestas* or as *censores*), are also included.

<sup>140</sup> Scipio Aemilianus, *Contra Ti.Asellum* ap. Gell., VI.11.9 (fr.19 (ORF<sup>4</sup> 128-129)); Cic., *Senect.* 12.42; Sen., *Controv.* IV.1; Suet., *Ti.* 42.2; Plut., *Cic.* 17.1.

<sup>141</sup> Plut., *Mar.* 5.3-4; Cic. 27.3; Sen., *Epist.* 95.41.

<sup>142</sup> Scipio Aemilianus, *Contra Ti.Asellum* ap. Gell., VI.11.9 (fr.19 (ORF<sup>4</sup> 128-129)); Cic., *De Orat.* II.71.287; Tacit., *Ann.* II.48; Suet., *Ti.* 42.2.

<sup>143</sup> Cic., *Leg.* III.3.7; V.M., II.9.1; Suet., *Claud.* 16.3; Macrob., II.4.25..

<sup>144</sup> Suet., *Claud.* 16.3.

<sup>145</sup> *Ibid.* 16.1.

<sup>146</sup> V.M., II.9.2.

<sup>147</sup> Suet., *Dom.* 8.3.

<sup>148</sup> Suet., *Ti.* 35.2.

<sup>149</sup> Scipio Aemilianus, *Ad Populum de Moribus* ap. Gell., V.19.15-16 (fr.14 (ORF<sup>4</sup> 126)).

wife in the presence of one's daughter;<sup>150</sup> attempted suicide or deliberately injuring oneself (presumably to avoid personal or state duties);<sup>151</sup> falsifying auspices;<sup>152</sup> authoring scurrilous lampoons;<sup>153</sup> contriving a false reconciliation toward another;<sup>154</sup> condemnation before a *iudicium populi*;<sup>155</sup> condemning an innocent before a *iudicium populi*;<sup>156</sup> rejecting the judgement of a *quaestio* (as a defendant);<sup>157</sup> offending against the *lex Scantinia*;<sup>158</sup> *maiestas*;<sup>159</sup> theft;<sup>160</sup> financial impropriety;<sup>161</sup> debt;<sup>162</sup> accepting bribes while a magistrate;<sup>163</sup> accepting bribes while a juror or a juror's associate;<sup>164</sup> bribing a juror;<sup>165</sup> temerity;<sup>166</sup> perjury and perfidy;<sup>167</sup> neglecting one's religious duties, private or public;<sup>168</sup>

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<sup>150</sup> Cato, *In Manilium ap. Plut., Cat. Mai.* 17.1 (*ORF*<sup>1</sup> 132; *ORF*<sup>2</sup> 59; not in *ORF*<sup>3</sup>, *ORF*<sup>4</sup>); Plut., *Cat. Mai.* 17.7.

<sup>151</sup> Suet., *Claud.* 16.3.

<sup>152</sup> Cic., *Divinat.* I.16.29-30.

<sup>153</sup> Suet., *Dom.* 8.3.

<sup>154</sup> Livy, XXIX.37.9-10; *Per.* 29; V.M., II.9.6a.

<sup>155</sup> *Ibid.*

<sup>156</sup> Livy, XXIX.37.14; *Per.* 29.

<sup>157</sup> Ascon., *In Toga Cand.* 84.20-25 (Clark).

<sup>158</sup> Suet., *Dom.* 8.3.

<sup>159</sup> V.M., II.9.3.

<sup>160</sup> Cic., *Cluent.* 42.120.

<sup>161</sup> V.P., II.10.1; Ascon., *In Toga Cand.* 84.20-25 (Clark); Suet., *Aug.* 39, *Ti.* 35.2.

<sup>162</sup> Caelius Rufus *ap. Cic., Fam.* 97.4<sup>SB</sup>; Ascon., *In Toga Cand.* 84.20-25 (Clark).

<sup>163</sup> D.H., XIX.16.5.

<sup>164</sup> Cic., *Cluent.* 42.119-120; 47.131; Suet., *Dom.* 8.1.

<sup>165</sup> Cic., *Cluent.* 48.133.

<sup>166</sup> V.M., II.9.6b.

<sup>167</sup> Cato, *In L. Quinctium Flaminium* fr.69-71 (*ORF*<sup>4</sup> 32-33); V.A., fr.48 (Peter) *ap. Livy*, XXXIX.43.1-5; Cic., *Off.* I.13.40; III.31.111, 32.115; *Senect.* 12.42; *Cluent.* 48.134; Livy, XXII.61.9; XXIV.18.5-6; XXIX.37.10; XXXIX.42.5, 42.7-43.5; *Per.* 29; *Per. Oxyrh.* 39; V.M., II.9.3, 6b, 8; IV.1.10b, 5.1; Quintil., *Inst. Orat.* V.11.13; Sen., *Controv.* IX.2.pr-29; Plut., *T. Flamin.* 18.2-19.2; *Cat. Mai.* 17.1-6; *Mar.* 5.3-4; *Apoph. Scip. Aemilianus* 12; Gell., VI.18.10; [Victor], *Vir. Ill.* 47.4; Zon., IX.2.

promulgating a *lex* curtailing the length of the censorship;<sup>169</sup> usurping the authority of a senior magistrate or officer;<sup>170</sup> disobeying the orders of a senior magistrate or officer;<sup>171</sup> impertinence towards a senior magistrate or officer, including towards the censors;<sup>172</sup> exiting or returning from one's province without permission;<sup>173</sup> abuse of tribunician or magisterial authority;<sup>174</sup> military cowardice;<sup>175</sup> incompetence in command;<sup>176</sup> avoiding military or magisterial service without legitimate exemption;<sup>177</sup> behaving and dressing in a way considered effete;<sup>178</sup> failing to satisfactorily maintain and cultivate one's farmland, orchards, or vineyards;<sup>179</sup> possessing a farmhouse unsuited for agriculture;<sup>180</sup> possessing

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<sup>168</sup> Cato, *In L.Veturium ap. Gell.*, VI.22.1-4 (fr.78 (ORF<sup>4</sup> 35)); Festus, *Verb. Signif. s.v. 'Stata Sacrificia'*.

<sup>169</sup> Livy, IV.24.3-9; IX.34.9.

<sup>170</sup> Livy, XL.41.8-11; XLI.27.2; V.M., II.7.5; V.P., I.10.6; Frontin., *Strat.* IV.1.33.

<sup>171</sup> V.M., II.9.7; Frontin., *Strat.* IV.1.22.

<sup>172</sup> Scipio Aemilianus, *Ad Populum de Moribus ap. Gell.*, IV.20.1-10 (fr.13 (ORF<sup>4</sup> 124-126)); Livy, XLIII.16.3-16; XLIV.16.8; Masurius Sabinus, *Memoriae ap. Gell.*, IV.20.1, 11; Sen., *Controv.* III.pr.4; Plut., *Apoph. Scip. Aemilianus* 11.

<sup>173</sup> Cic., *Orator* 70.233; Plut., *C.Gracch.* 2.4-5.

<sup>174</sup> Cato, *In L.Quinctium Flaminium* fr.69-71 (ORF<sup>4</sup> 32-33); V.A., fr.48 (Peter) *ap. Livy*, XXXIX.43.1-5; Cic., *Off.* I.13.40; III.31.111, 32.115; *Senect.* 12.42; Livy, XXII.61.9; XXIV.18.5-6; XXXIX.42.5, 42.7-43.5; *Per. Oxyrh.* 39; V.M., II.9.3, 9.8; IV.5.1; Ascon., *In Toga Cand.* 84.20-25 (Clark); Sen., *Controv.* IX.2.pr-29; Plut., *T.Flamin.* 18.2-19.2; *Cat. Mai.* 17.1-6; Gell., VI.18.10; Fronto, V.27; [Victor], *Vir. Ill.* 47.4; Zon., IX.2.

<sup>175</sup> Cic., *De Orat.* II.67.272; Livy, XXIV.18.3-4, 7, 43.3; XXVII.11.12-14; V.M., II.9.8.

<sup>176</sup> Livy, XXVII.25.5.

<sup>177</sup> Livy, XXIV.18.7-8; XXVII.11.15; XLI.15.10, 27.2.

<sup>178</sup> Scipio Aemilianus, *Adversus P.Sulpicium Galum ap. Gell.*, VI.12.4-5 (fr.17 (ORF<sup>4</sup> 127)); Plut., *Cat. Mai.* 16.5.

<sup>179</sup> Cato, fr.124 (ORF<sup>4</sup> 50) *ap. Gell.*, IV.12.1-3; Scipio Aemilianus, *Contra Ti.Asellum ap. Gell.*, VI.11.9 (fr.19 (ORF<sup>4</sup> 128-129)); Cic., *De Orat.* II.71.287; Pliny, *HN* XVIII.3.11.

<sup>180</sup> Pliny, *HN* XVIII.7.32.



an estate of conspicuous size;<sup>181</sup> possessing items of conspicuous luxury, opulence, or expense;<sup>182</sup> abrogating a *lex sumptuaria*;<sup>183</sup> providing a false declaration at the *census populi*;<sup>184</sup> being of libertine descent;<sup>185</sup> poverty incommensurate with one's order;<sup>186</sup> performing at a *ludus*, either as a *gladiator*, a *bestiarius*, or on stage.<sup>187</sup> Less well-defined species of misbehaviour are also mentioned; somewhat nebulous but still important to the portrait: anything contrary to the *mos maiorum*; unspecified 'disgrace', 'scandal', or 'profligacy' (*improbitas*; *probrum*; *flagitium*; *nequitia*), 'unsuitability' (*minus idoneus*), and 'corruption' (*corruptela*).<sup>188</sup> Although such a catalogue possesses utility, Greenidge's lengthy caveat against concluding too much from any such listing of punishable misbehaviours, even when all of the available sources have been trawled in its production, is pertinent: "We have... to guard against... the supposition that we have here anything like the true relative proportions of the moral offences [the censors] visited, or anything

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<sup>181</sup> M.Caelius Rufus *ap. Cic., Fam.* 97.4<sup>SB</sup>; V.M., IX.1.4; Pliny, *HN* XVII.1.3-4; XVIII.7.32.

<sup>182</sup> Cic., *Att.* 123.5<sup>SB</sup>; Caelius Rufus *ap. Cic., Fam.* 97.4<sup>SB</sup>; Livy, *Per.* 14; D.H., XX.13.1; Ovid, *Fasti* I.208; Florus, I.13.22; V.M., II.9.4, IX.1.4; Sen., *Vit. Beat.* 21.3; *Epist.* 98.13; Pliny, *HN* XVII.1.3-4, XVIII.6.39, XXXIII.50.142, 54.153, XXXVI.3.7, 24.114; Plut., *Cat. Mai.* 16.5; *Sulla* 1.1; Juv., IX.140-142; Schol. *ad Juv.*, IX.142; Gell., IV.8.1-8, XVII.21.39; Tertull., *Apolog.* 6; Ampel., 18.9; August., *Epist.* 104.2.6; Zon., VIII.6.

<sup>183</sup> V.M., II.9.5.

<sup>184</sup> Scipio Aemilianus, *Contra Ti.Asellum ap. Gell.*, VI.11.9 (fr.19 (ORF<sup>4</sup> 128-129)); Cic., *Sest.* 47.101; V.M., III.8.6, IX.7.2, 15.1.

<sup>185</sup> Cic., *Cluent.* 47.131; Pliny, *HN* XXXIII.8.33; Plut., *Pomp.* 13.7; Dio, XL.63.4.

<sup>186</sup> Sall., *BC* 23.1; Tacit., *Ann.* II.48; Suet., *Claud.* 16.3; Dio, LVII.10.4; LXI.29.1.

<sup>187</sup> Cic., *Rep.* IV.10.10; Livy, VII.2.12; Suet., *Ti.* 35.2; *Dom.* 8.3; Fronto, V.22; Dio, LVI.25.7-8; LX.7.1; LXVII.13.1; Macrobi., II.3.10, 7.2-3.

<sup>188</sup> Scipio Aemilianus, *Ad Populum de Moribus ap. Gell.*, V.19.15 (fr.14 (ORF<sup>4</sup> 126)); *Contra Ti.Asellum ap. Gell.*, VI.11.9 (fr.19 (ORF<sup>4</sup> 128-129)); Cic., *Leg.* III.3.7; Sall., *BC* 23.1; Livy, XXXIX.41.4; D.H., XIX.16.5; Sen., *Controv.* IV.1; [Ascon.], *In Caecil. Divinat.* 189.16-25 (Stangl); Tacit., *Ann.* II.48; Suet., *Aug.* 39; *Ti.* 35.2; *Calig.* 16.2; *Claud.* 16.1; *Vit.* 2.2; Plut., *Cat. Mai.* 16.2, 4; App., I.4.28, II.1.3; Dio, LVI.41.3; Macrobi., II.4.25; Lydus, 11.43.

approaching an exhaustive catalogue of such offences... Our authorities possibly present us with more exceptions than rules. A historian like Livy... loves to chronicle exciting incidents... Raconteurs and scholars like Plutarch and Gellius single out, as we should expect, only the strangest and most amusing instances from the mass before them – perhaps in some cases they were the only ones that had survived”; moreover, “all forget to mention cases, which must inevitably have occurred at every *census*, but which were too ordinary to attract attention... Simple instances have naturally given place to the more exciting stories of Roman knights who were struck from the list for making witty but indiscreet remarks to the presiding magistrates, or of a senator whom Cato degraded for kissing his wife before his unmarried daughter”.<sup>189</sup> With the material unrepresentative and incomplete, clearly it is impossible to analyse the frequencies of known reasons for censure, or to try to detect changing patterns in the data over time. Nonetheless we can take something from Cicero’s statement that of all the species of misconduct, none attracted the censors’ disapproval as commonly as did oath-breaking, and indeed many of the misdemeanours listed above can be categorised as of this type.<sup>190</sup>

The sheer range of punishable misbehaviours, some remarkably trivial even in the sources’ own estimation, indicates that the censors could, in theory, expel for any reason they wished. But in practice certain factors constrained the censors’ freedom to expel at will; an issue which we will address in the next chapter.

### III: Amelioration of censure

The case of *praeteritus* P. Popillius not only demonstrates that the censors were not necessarily required to agree on the rationale behind a particular expulsion – merely the

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<sup>189</sup> A.H.J.Greenidge, *Infamia*, 44-45.

<sup>190</sup> Cic., *Off.* III.31.111.

fact of it – but also that expulsion could be ameliorated. Cicero further records that censor Lentulus Clodianus, who appears to have felt some genuine sympathy for the plight of Popillius, allowed him to retain his *ornamenta senatoria* and exempted him from all *ignomia* which would normally have come with his new status.<sup>191</sup> The case, which is singular, demonstrates that a censor acting alone possessed the ability to ameliorate an expulsion which had been inflicted by both.

#### IV: Validity

The validity of a *lectio senatus*, unlike the validity of the *census populi*, did not depend upon the successful subsequent performance of the *lustratio* (the ‘closing of the *lustrum*’), the ceremonial purification and renewal of the state which also marked the culmination of the censors’ term in office.<sup>192</sup> The reason is easy to deduce. Whereas the performance of the *census populi* and the performance of the *lustratio* had been connected since the time of the first *census*-takers, the kings, and continued under their Republican successors, the consuls (consular tribunes could not conduct the *census populi*), *lectiones* were different. Performed on an *ad hoc* basis in the Regal Period, thereafter until the promulgation of the *plebiscitum Ovinium* they became an annual occurrence, conducted when each fresh set of eponymous magistrates entered office. As *ad hoc*, then annual events, historically *lectiones* would seldom have been performed at the same time as *census populi* and their attendant *lustrationes*, which were performed with far less frequency. When, upon the passage of the *plebiscitum Ovinium*, the responsibility of enrolling the Senate was transferred to the censors, this historical disconnect between *lectiones* and *lustrationes*

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<sup>191</sup> Cic., *Cluent.* 47.132.

<sup>192</sup> Willems, I.247-248; T.Mommsen, *RSt II*<sup>3</sup>.419-420; T.P.Wiseman, ‘The census in the first century BC’, *JRS* 59 (1969), 62-65; J.Linderski, ‘The augural law’, *ANRW II*.16.3 (1986), 2187-2188.

continued, despite the fact that thereafter these procedures would be carried out by the same officers.<sup>193</sup>

### V. *Cognitiones apud censores*

While the censors enjoyed no judicial powers, any citizen could be summoned or brought before them in order to respond to criticisms of their conduct. At the end of each of these hearings – which we might term *cognitiones apud censores* – the censors could then either acquit or condemn and punish defendants accordingly. Condemnation for defendants who were members of the Senate meant expulsion from that body.

Livy writes that in 214, M. Atilius Regulus and P. Furius Philus, as part of their duties towards the general *cura morum*, commanded to appear before them two particularly egregious classes of alleged miscreant. First:

They summoned those who after the Battle of Cannae were said to have abandoned the state. The foremost among them, M. [*sic* – L.] Caecilius Metellus, happened at this time to be quaestor. Inasmuch as he and the rest of those guilty of the same offence, on being ordered to plead their cases, proved unable to clear themselves, the censors gave their verdict that in conversation and formal speeches they had attacked the state, in order to form a conspiracy to desert Italy.

*Eos citaverunt qui post Cannensem pugnam rem publica deseruisse dicebantur. Princeps eorum M. Caecilius Metellus quaestor tum forte erat. Iusso deinde eo ceterisque eiusdem noxae reis causam dicere, cum purgari nequissent, pronuntiarunt verba orationemque eos adversus rem publicam habuisse, quo coniuratio deserendae Italiae causa fieret.*<sup>194</sup>

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<sup>193</sup> Non-performance of the *lustratio* was not uncommon. Subsequent to the passing of the *pl. Ovinium*, *lustrationes* were not performed by the censors inaugurated 283, 272, 253, 236, 231, 214, 210, 109, 92, 65, 64, 61, 55, and 50. Only one *lustratio* was performed between the dictatorships of Sulla and Caesar: in 69, (Aug., *Res Gestae* 1.8; Degrassi, *o.c.*, 187-191; T.P.Wiseman, *JRS* 59 (1969), 63-64). Expulsions certainly occurred in 50, and may have in 55/54.

<sup>194</sup> Livy, XXIV.18.3-4. Cf XXIV.43.3.

Second,

Were summoned those [*equites*] who had been too crafty in interpreting the discharge of an oath – those of the captives who, after setting out and then returning secretly to Hannibal's camp, thought the oath they had sworn, that they would return, had been discharged.<sup>195</sup>

From both groups, those who were *equites* underwent a twofold punishment, cashiered from their order then removed from their respective voting-tribes and transferred *ad aerarios*.<sup>196</sup> After reporting the punishments meted out by the censors to these two sets of delinquents, Livy writes “and the diligence of the censors did not confine itself to regulating the Senate and the equestrian order” (*neque senatu modo aut equestri ordine regendo cura se censorum tenuit*).<sup>197</sup> In stating thus, the historian not only confirms that he has been relating aspects of purely senatorial and equestrian discipline but also foreshadows a later passage in which a third grouping – commoners (*assidui* and *proletarii*) – is placed under censorial scrutiny. Curiously, while Livy mentions cashierment from the *equites* and reduction *ad aerarios* as means of punishment, he does not here allude to expulsion from the Senate as a penalty. From this it might be argued that whatever these censorial hearings were, they were unconnected to the process of enrolling the Senate (in which expulsion was the only outcome for misbehaviour). But the whole and sole theme of this section of Livy (XXIV.18.2-7) is that of *cura morum* as it pertained to the equestrian order and the Senate, so it is hard to envisage how these censorial hearings into *mores* cannot but have had some bearing on the outcome of the enrolment of the latter body; that those

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<sup>195</sup> Livy, XXIV.18.5. Although Livy goes not mention it here, at XXII.58.1-8, 61.1-9 he records that these perfidious captives were *equites*. The episode is also recorded by C.Acilius, *Hist. fr.3* (Peter) *ap. Cic., Off.* III.32.115; Polyb., VI.58.1-13; Nepos, *Libri Exemplorum fr.2* (Peter) *ap. Gell., VI.18.11*; Cic., *Off.* I.13.40; III.32.113 (naming Polybius as source); V.M., II.9.8; App., *Bell. Hann.* 5.28; Gell., VI.18.pr-11; Zon., IX.2.

<sup>196</sup> Livy, XXIV.18.6.

<sup>197</sup> Livy, XXIV.18.7.

members deemed by the censors to have acted immorally not only suffered the loss of their equestrian standing, but must also have lost their places in the Senate.

Further *cognitiones* pertaining to *cura morum* are known to have come before other censors, although again in no instance can an explicit link be demonstrated between hearings and *lectiones senatus* (or *recognitiones equitum*). Before moving on to these cases, another must be addressed; to be either accommodated or dismissed. If Velleius Paterculus is believed, Cn. Caepio and L. Cassius Longinus Ravilla (*censs.* 125-124) summoned before them M. Lepidus Porcina (*cos.* 137) for charging his tenants excessive rent. The consular, found guilty, was ordered to pay a heavy fine.<sup>198</sup> This last fact demonstrates that the episode, if Velleius' description of it is correct, was unconnected to these censors' *lectio* – the process was one for which the only two outcomes were inclusion within or expulsion from the Senate, with no alternative sanctions possible. On the other hand Velleius' account may be nothing more than a distorted version of a tale (undated) related by Valerius Maximus, in which Porcina is prosecuted *ad populum* by Ravilla for building a villa to an improper height, is found guilty and heavily fined.<sup>199</sup> It is not difficult to see how Valerius' version might have mutated into the version presented by Velleius, as both relate to housing excess. If so, the process through which Porcina was heavily fined was not “before the censors” at all but before a *iudicium populum* at which one of the censors was a private prosecutor.

The case of C. Gracchus before the same censors is clearer. According to Plutarch, Gracchus, upon returning from Sardinia (where he had served a little over two years as quaestor), was “denounced before the censors” for having absented himself from his province without obtaining the permission of the Senate or his commander and for

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<sup>198</sup> V.P., II.10.1. Porcina and Ravilla were at the time personal and political opponents, with enmity going back at least as far as Porcina's consulship (Cic., *Brutus* 25.97).

<sup>199</sup> V.M., VIII.1.damn.7.

having while there performed acts of demagoguery. Furthermore, that in speaking before the censors in defence of his actions, he “wrought such a change in the opinions of his audience that he left the court with the reputation of having been most grossly wronged”.<sup>200</sup> Gracchus’ *oratio apud censores*, and another on the same topic given *ad populum in contione*, are recorded by Cicero and Gellius.<sup>201</sup> The case is often considered to have been attached to the censors’ wider enrolment of the Senate, but, as with the hearings of 214, if the processes were linked then the fact is not made explicit in the sources.<sup>202</sup> Plutarch’s explicit reference to Gracchus being “denounced before the censors” and the presence of an audience at the hearing, taken with the evidence of Cicero and Gellius, illustrates that the process was a public affair, that its transactions were recorded, and that it was initiated by a third-party rather than by the censors themselves. Third-party involvement in hearings held before the censors is attested elsewhere. Cato the Elder is

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<sup>200</sup> Plut., *C. Gracch.* 2.1-5, including “Οὐ μὴν ἀλλὰ κατηγορίας αὐτῷ γενομένης ἐπὶ τῶν πιμητῶν, αἰησάμενος λόγον οὕτω μετέστησε τὰς γνώμας τῶν ἀκουσάντων, ὡς ἀπελθεῖν ἡδικῆσθαι τὰ μέγιστα δόξας”. Cf D.S., XXXIV.24. For an overview of the case: E. Badian, ‘The silence of Norbanus: a note on provincial quaestors under the Republic’, *AJPh* 104 (1983), 160-164. R.L. Bates, ‘*Rex in senatu*: a political biography of M. Aemilius Scaurus’, *PAPhS* 130 (1986), 252 suggests that Scaurus (*cos.*115) was *accusator*.

<sup>201</sup> Cic., *Orator* 70.233; Gell., XV.12.1-4.

<sup>202</sup> Primarily on the strength of the statement that C. Gracchus “left the court with the reputation of having been most grossly wronged”, *RPCC* 74-75 and R.J. Rowland, ‘The development of opposition to C. Gracchus’, *Phoenix* 23 (1969), 372, think that he received the *nota censoria* as a result of the hearing. Others think that he did not: E. Badian, *Foreign Clientelae, 264-70 BC* (Oxford, 1958), 179; E.J. Weinrib, [Review of *RPCC*], *Phoenix* 23 (1969), 318; K. Richardson, *Daggers in the Forum: The Revolutionary Lives and Violent Deaths of the Gracchus Brothers* (London, 1976), 125; E. Badian, *AJPh* 104 (1983), 160-164. D. Stockton, *The Gracchi* (Oxford, 1979), 95; R.L. Bates, *o.c.*, 252, noting the hearing, offer no outcome. I find it hard to believe that Plutarch would use such veiled language to describe Gracchus’ putative censure and that such a reverse has passed unreported in other sources. Instead we should understand that it was the *accusations*, rather than the outcome, which elicited the sense of injustice done to Gracchus. For the current discussion the outcome of the process is immaterial; it is the existence of process which is important.

known to have made a speech (undated) before the censors against a certain Lentulus. As the oration was on the correct order of obligations to competing *familiae*, it is not hard to posit that the case may have had some connection to the censors' remit of defending the *mos maiorum*.<sup>203</sup> In a similar vein C. Caesar Strabo Vopiscus (*aed.cur.* 90) is known to have spoken before the censors of 89-88 in a case which touched upon agricultural matters.<sup>204</sup> We know from elsewhere that the censors tended to look unfavourably upon those who did not properly tend their land and considered it a dereliction of duty toward oneself, one's family, and the state; hence again we might be looking at a case that fell within the censors' responsibilities vis-à-vis *cura morum*. However again there is nothing explicit to link the event specifically to the censors' enrolment of the Senate (or their *recognitio equitum*). Finally, attention should be paid to a school exercise of the mid second century AD. The learned Fronto, in setting his student, Marcus Aurelius Caesar, an exercise in rhetoric, outlines a hypothetical scenario from which the young *princeps* is to compose an oration:

A consul of the Roman people... has donned a coat of mail and among the young men at the feast of Minerva has slain a lion in the sight of the Roman people. He is denounced before the censors [*Apud censores expostulat<ur>*].<sup>205</sup>

Although Marcus writes back complaining that such a scenario would have been improbable, this is predicated upon the idea of a consul fighting a lion, not because a mechanism did not exist through which third-parties could accuse moral delinquents before the censors.<sup>206</sup>

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<sup>203</sup> Cato, *In Lentulum apud Censores ap. Gell.*, V.13.2-3 (fr.200 (*ORF*<sup>4</sup> 80-81)); *RP*<sup>2</sup>, 13, 272. Identifying the date and target of this speech is impossible.

<sup>204</sup> Varro, *De Re Rust.* I.7.10; Pliny, XVII.3.32.

<sup>205</sup> Fronto, V.22.

<sup>206</sup> M.Aurelius *ap. Fronto*, V.23.



If, as the events of 214 (at least) suggest, these moral investigations of the censors were or could be linked to their wider regulation of the Senate (and the equestrian order), then a question of chronology arises. If we assume (as will be argued, not unreasonably) that *lectiones senatus* were usually one of the first procedures conducted by incoming censors, performed in the earliest days or weeks in office, and if it could be demonstrated that *cognitiones* could be performed subsequent to the completion of a college's *lectio*, then it would necessarily follow that members remained vulnerable to removal from the Senate for as long as there were censors in office willing to act upon fresh intelligence; that members did not necessarily become safe from expulsion once the main enrolment had been performed.

The *cognitiones* held before Regulus and Philus are easy to date: Livy places them in consular 214 (15 March 214 to 14 March 213, inclusive), and by very early in consular 213, Philus was dead.<sup>207</sup> As we know these censors carried out their enrolment, their senatorial and equestrian reviews and their *cognitiones* may all be placed within the same calendar year. It is feasible that these censors' *cognitiones* came after their wider enrolment of the Senate (and *recognitio equitum*); at the same time it is also possible that the hearings were concomitant with or preceded these reviews, and that the results of the hearings were reflected in the *lectio* and *recognitio*. The censorship of 214 does not, therefore, allow us to discern whether the censors could or could not continue to review – and punish – aristocratic *mores* through the *cognitio* process following their primary enrolment of the Senate (and *recognitio*). Gaius Gracchus' return from Sardinia and hearing before censors Caepio and Ravilla may be confidently dated to 124, probably spring/summer: departing for his province early in 126, he was there for a little over two

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<sup>207</sup> Livy, XXIV.43.1-4.

years before his return.<sup>208</sup> Assuming that Caepio and Ravilla conformed to the usual censorial pattern and conducted their *lectio* very soon upon entering office (*i.e.*, sometime in 125), it follows that their interrogation of Gracchus cannot have happened until the following calendar year. If Gracchus' case was one from which he might have emerged as *praeteritus* – this is, if it bore some connection to the censors' control of admission to and ejection from the Senate – then its example demonstrates that there could at times have been something of a chronological disconnect between *lectiones* and *cognitiones*, and that *cognitiones* may have provided a mechanism through which censors, as long as they remained in office, could amend their initial regulation of the Senate in accordance with any fresh intelligence. Even if, as is possible, Gracchus' hearing before the censors was not of the same type as the *cognitiones* of 214, then still the principle remains that hearings performed prior or concurrent to a *lectio* may have provided a means through which the censors could further and more formally investigate allegations or suspicions of miscreance before passing judgement.<sup>209</sup>

Livy's account of the *cognitiones* of 214 (and Velleius' account of Porcina's hearing in 125/124, if it is not unhistorical) make clear that these processes were instigated by the censors acting alone rather than by third-parties – that it was the censors who summoned suspected miscreants before them to defend their actions, and that it was the censors who acted as prosecutors and adjudicators. In contrast those processes involving C. Gracchus (“denounced before the censors”), Lentulus (attacked by Cato before the

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<sup>208</sup> Plut., *C. Gracch.* 2.5. Cf *MRR* I.508, 511; E. Badian, *Foreign Clientelae*, 179 (though see his caveat at 179n.3); *RPCC* 74-75; E.J. Weinrib, *Phoenix* 23 (1969), 318; R.J. Rowland, *Phoenix* 23 (1969), 372; K. Richardson, *o.c.*, 125; D. Stockton, *o.c.*, 218-219 (note also 95, where “125 or 124” is given, but 124 favoured); E. Badian, *AJPh* 104 (1983), 160-164, 167; R.L. Bates, *o.c.*, 252; L. Perelli, *I Gracchi* (Rome, 1993), 153 (giving “*alla fine del 125 o all'inizio del 124*”).

<sup>209</sup> The cases of Cato's Lentulus and that which involved Caesar Strabo are no help in this question, as the hearings are reported under no particular year of the censors.

censors), and Caesar Strabo's anonymous opponent do not conform to this type, initiated as they were by third-parties and with the censors acting primarily upon the intelligence provided by these parties rather than on first-hand knowledge; these hearings appear to have operated much more like *iudicia populi*. Fronto's exercise must also be remembered.<sup>210</sup> Thus while the issue is uncertain (the exact relationship between these hearings and *lectiones* being uncertain), it remains possible that allegations of misbehaviour could be brought to the attention of censors by third-parties, to be acted upon or not according to the censors' will.

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<sup>210</sup> The phenomenon of third-party involvement might also be found in a report of a senatorial debate, in 208 at Livy, XXVII.25.3-5. The issue under discussion: how they were to proceed in the contentious case of M.Livius Macatus, who, as *praefectus praesidii* of Tarentum, had in 212 lost the city to Carthage:

Some were proposing to brand the prefect by *senatus consultum [aliis senatus consulto notantibus praefectum]*, because by lack of spirit Tarentum had been betrayed to the enemy, and others proposed to vote him rewards, because he had defended the citadel for 5 years ... Those who preferred a middle course claimed that a hearing of his case belonged to the censors [*Mediis ad censores, non ad senatum notionem de eo pertinere dicentibus*].

The sense of the passage is ambiguous in that it might show the *patres* actively referring an issue of morality to the censors in office for their cognisance, or it might provide an example of the Senate washing their hands of having to consider the issue and merely floating the possibility that the censors might – or might not – choose to initiate proceedings against a possible delinquent under their own steam. Depending on which interpretation is preferred, the case may or may not be taken as illustrative of third-party involvement in censorial *cura morum*. But, it appears, not of senatorial *mores*. During the Second Punic War the prefecture of town garrisons seems to have been the charge of early-career *equites*: J.Suolahti, *The Junior Officers of the Roman Army in the Republican Period: A Study in Social Structure* (Helsinki, 1955), 199-295, 321-323, 406; T.Ñaco del Hoyo, 'Gadès et les précédents des attributions politiques des *praefecti praesidii* Républicains', *DHA* 35 (2009), 101-113; T.Ñaco del Hoyo, 'Le *praefectus praesidii* sous la République: quelques cas d'étude', *REA* 111 (2009), 179-195. Depending on interpretation, the example of Macatus might be added to that of C.Gracchus, illustrating that censors could investigate and punish the misbehaviour of individuals throughout their 18-month tenure.

## B. The timing of the *lectio senatus*

We do not know whether or not there existed legislation enjoining the censors to complete their respective *lectiones senatus* within a certain period of inauguration, but considering the importance of revising the senatorial roll, its relative simplicity, the rapidity with which it could be performed, and its 'detached' nature (in that it was not dependent on the satisfactory performance of any other censorial procedure, such as the *census populi* or the *lustratio*), it seems logical to suppose that *lectiones* were typically among the first duties completed by each college. This section tests this assumption.

### II.

From Cicero, Pliny the Elder, and Plutarch we learn that the first duties of the censors after taking up office were to arrange the contracts for the feeding of the sacred geese of the Capitoline and for the polishing with cinnabar of the face of the Capitoline statue of Jupiter Optimus Maximus. Also, that both duties were of great antiquity.<sup>211</sup> Livy, in his narrative of the censorial election of 179, avers that immediately following their victory at the ballot, the new censors proceeded to the Campus Martius and there set up their curule chairs beside the Altar of Mars. He further offers that even in this early epoch, the procession of new censors to the Campus Martius was "ancient tradition" ("*ut traditum antiquitus est*").<sup>212</sup> Directly following from this report, he relates that after the victors of 179 made this journey, the *principes senatorum*, surrounded by a throng of senators and citizens, addressed them

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<sup>211</sup> Cic., *Rosc. Am.* 20.56; Pliny, *HN* X.26.51, XXXIII.36.111-112; Plut., *RQ* 98; L.Bonfante Warren, 'Roman triumphs and Etruscan kings: the changing face of the triumph', *JRS* 60 (1970), 54, 61-62.

<sup>212</sup> Livy, XL.45.8.

with congratulations and advice.<sup>213</sup> The historian goes on: “then, followed by the applause of all, [the censors] were escorted to the Capitoline” (*deinde collaudantibus cunctis deducti sunt in Capitolium*), there the Senate met and lauded the censors and provided them with money for public works.<sup>214</sup> The course of events as described by Livy is well-delineated, and his mention of the censors’ prompt visit to the Capitoline may bear some relation to their peculiar first duties, to the hill’s geese and great statue. Some small difficulty lies in Livy’s clause regarding ancient tradition, as only the censors’ procession to the Campus Martius and settlement beside the Altar of Mars are explicitly linked to it, but their first duties, to the geese and statue, can certainly be considered part of *antiquitus traditum* and hence part of the usual victory rigmarole for new censors. So too their reception by the Senate and the *populus*, and the allocation of works’ funds to them by the former body. Thus we may reconstruct the form and functions of the censors’ first day in office.

### III.

The chronology and order in which the censors’ subsequent duties were performed is somewhat harder to discern, as ancient accounts of the censors’ activities not only contain comparatively few indicators of internal chronology (which may or may not be trustworthy), but they also tend to be extremely formulaic. Such formulaic presentations could either be a product of the writers’ own compositional foibles or a reflection of the fact that

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<sup>213</sup> Livy, XL.45.8-15. Gell., XII.8.8-6, which records the same event, confirms that the gathering was a formal *contio*. Under normal circumstances it seems that the *princeps senatus* took the lead in congratulating newly-elected censors (M.Bonnefond-Coudry, *MEFRA* 105 (1993), 117-118), however when these censors were inaugurated there was no *princeps* (the previous appointment, L.Valerius Flaccus, having died in 180).

<sup>214</sup> Livy, XL.45.15-16. XLIV.16.9 illustrates that the Senate decided each college’s budget, through *senatus consultum*.

successive colleges of censors did indeed tend to perform the duties of the office in the same order. These source problems, however, are not insuperable.<sup>215</sup>

Addressing the issue of chronology only fleetingly, Suolahti suggests that *lectiones senatus* were performed after *census populi*.<sup>216</sup> Overlooking the censors' Capitoline duties, Willems – working primarily from our best source on the matter, the censorship notices of Livy – argues that the *lectio* was the first task addressed by incoming censors, with the *census populi* (of which the *lectio* did not form a part) being tackled subsequently.<sup>217</sup> Mommsen, Leuze, Hardy, Cram, and Astin may be counted among those broadly adhering to this view, if not with the full reconstruction offered by Willems, then with his basic contention that the *lectio* was generally the censors' first duty.<sup>218</sup> Yet a re-examination of the sources, Livy as well as others, presents a more flexible arrangement than either of those offered above; one in which the censors enjoyed much leeway in the timing of their 'post-Capitoline' duties and that consequently, any attempt to construct a universal 'order of duties' for all colleges of censors is doomed to fail.

A summary of Livy's censorship notices, arranged by censorship and year, will illustrate the discussion at the end of this subsection:

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<sup>215</sup> At the outset of their respective tenures as censors, Cato the Elder and his imitator, Scipio Aemilianus, are known to have made *orationes* outlining which things they planned to take an especial interest in scrutinising and punishing as part of their duties toward *regimen morum*. No doubt others did the same. Even if this practice was universal (by no means certain), they provide no clue to the timing of *lectiones* within censorships.

<sup>216</sup> Suolahti, 53.

<sup>217</sup> Willems, I.240, I.247 – appreciating, however, that brief formulaic phrases, such as that found in Q. Metellus' advice to the censors of 179-178 ("you may choose the Senate, review the *equites*, hold the *census*, and close the *lustrum*" (*legatis senatum, equites recenseatis, agatis censum, lustrum condatis*)), cannot on their own be adduced as firm evidence of procedural order (I.240n.5, quoting Livy, XL.46.8).

<sup>218</sup> T. Mommsen, *RSt* II<sup>3</sup>.420; O. Leuze, *Der Geschichte der Römischen Censur* (Halle, 1912), 6; E. G. Hardy, 'Lectio senatus and census under Augustus', *CQ* 13 (1919), 43; Cram, 85; A. E. Astin, 'Livy's report of the *lectio senatus* and the *recognitio equitum* in the censorship of 169-8 BC', *Historia* 37 (1988), 487-490.

**Consular 214.** The day the consuls enter office (15 March) they direct the Senate to pass a *senatus consultum* for the election of censors (XXIV.10.1-2); censors elected (11.6); censors “freed from the charge of contracting for *opera publica* on account of the emptiness of the *aerarium*” (*censores, vacui ab operum locandorum cura propter inopiam aerarii*) turn their attention toward investigating senatorial and equestrian *mores*, quaestor Metellus among their *praeteriti* (18.2-6),<sup>219</sup> also investigate the *iuniores* (18.7-8); funds for the financing of *opera publica* raised through voluntary public donations (18.10-15). Censors attested still in office shortly after 10 December: Metellus, now plebeian tribune, attempts to arraign them on some unspecified charge; Metellus’ action is presented as stemming from his expulsion by them (43.2-3). Following directly on from this, and still writing under consular 214, Livy reports the death of censor P. Furius Philus and the resultant abdication of his colleague (43.4). **209.** Censors elected; *senatus consultum* passed instructing them to oversee lease of *ager Campanus* (XXVII.11.7-8). Dispute as to who should be appointed to the *principatus* necessitates a delay in the performance of the rest of the *lectio* (“*senatus lectionem contentio inter censores de principe legendo tenuit... Inde alius lectus senatus octo praeteritis*”; 11.9-12). *Recognitio equitum* performed (11.13-16). Following this (“*inde*”), censors oversee management of *opera publica* (11.16). **208.** Report of the senatorial debate concerning what was to be done about M. Livius Macatus, prefect of Tarentum; Livy intimates that the censors are still capable of taking cognisance of moral issues (25.5). Enumeration of citizenry reported; *lustratio* performed (36.6-7; *Per.* 27). **204.** Censors’ election not directly noted, but they are attested in office during the summer height of the campaign season (XXIX.37.1); *princeps senatus* chosen, rest of *lectio* performed (37.1); *opera publica* contracts let (37.2), contracts for sale of salt let (37.3-4). Following this, Livy reports that the performance of

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<sup>219</sup> Cf Livy, XXIV.18.10, reiterating the emptiness of the treasury and the censors’ resultant inability to let contracts.

the *lustratio* was delayed because the censors waited until the return from the provinces of their agents, who had been sent to collect data on those citizens serving with the various armies. Livy also reports that upon the return of these agents, the *lustratio* was performed, and then he enumerates the citizenry (37.5-6; *Per.* 29). Immediately upon reporting the closing of the *lustrum* and providing the *census*-count, Livy writes that the censors then received the *census* data from the colonies (“*duodecim deinde coloniarum*”; 37.7) and after this commenced the *recognitio equitum* (“*equitum deinde census agi coeptus est*”; 37.8-10; *Per.* 29). He then reports the famous dispute which arose at the censors’ departure from office (“*exitu censurae*”), an episode which demonstrates that at least one power pertaining to *cura morum* and the *census populi* – the ability to demote *ad aerarios* individuals deemed to have acted amorally – remained the censors’ to employ or amend until the moment they laid down their position (37.11-15; *Per.* 29). Note that everything for these censors, from their *lectio* through to their *lustratio* and their departure from office, is recorded under consular 204. **199.** Censors elected (XXXII.7.2); *lectio* performed (choosing of *princeps senatus* unmentioned), tax-collection contracts let, colonists enrolled, Capuan lands sold (7.3). The *lustratio* and *census* count not recorded, nor under consular 198. **194.** Censors elected, *princeps senatus* chosen, rest of *lectio* performed (XXXIV.44.4); order that at the *Ludi Romani* senators’ seats should be separated from those of the commons (44.5; *Per.* 34); *recognitio equitum* performed, *opera publica* detailed (44.5). **193.** Enumeration reported, *lustratio* performed (XXXV.9.1-2). **189.** Censors elected “around the same days” (*per eos dies*) as L. Aemilius Regillus’ triumph over Antiochus III – toward the end of the consular year, 1st February (XXXVII.58.2-4; a date confirmed by the *Fasti Triumphales*);<sup>220</sup> *princeps senatus* chosen, rest of *lectio* performed (XXXVIII.28.1-2); *recognitio equitum* performed (28.2); *opera publica* contracts let (28.3); *census populi* mentioned (28.4). **188.** *Census populi* continued (36.5-9);

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<sup>220</sup> A.Degrassi, o.c., 103.



enumeration reported, *lustratio* performed (36.10; *Per.* 38).<sup>221</sup> **184.** Censors elected (XXXIX.41.4); *lectio* performed (choosing of *princeps senatus* unmentioned) (42.5-43.5; *Per.* 39); *recognitio equitum* performed (44.1); *census populi* and enactments against *luxuria* mentioned (44.1-4). The censors then (“*deinde*”) let contracts for *opera publica* (44.5-7); contracts for tax-collection let and then, after disagreements, re-let (44.7-9).<sup>222</sup> *Lustratio* and *census* count not recorded, nor under consular 183. **179.** Censors elected (XL.45.6-46.15); apparently on the same day, a budget for *opera publica* is assigned to them by the Senate (46.16); *princeps senatus* chosen, rest of *lectio* performed (51.1); *opera publica* detailed (51.2-8); *census populi* mentioned (51.9); further *opera publica* detailed (52.1-4). **178.** Enumeration reported, *lustratio* performed (*Per.* 41).<sup>223</sup> **174.** Censors elected (XLI.27.1); *princeps senatus* chosen, rest of *lectio* performed (27.1-2); *opera publica* contracts let (XLI.27.5-13); *recognitio equitum* performed (27.13). **173.** Building and maintenance of *opera publica* ongoing (XLII.3.1-11; *Per.* 42); enumeration reported, *lustratio* performed (10.1-3; *Per.* 42); in a recapitulation, the *lectio* and *recognitio equitum* again reported (10.4). **169.** Censors elected (XLIII.14.1); proclaim at a *contio* their general rules for a military levy (14.5-10); following the consular and praetorian *sortitio*, Livy reports censors then (“*deinde*”) chose the *princeps senatus* and performed the rest of *lectio* (15.6; *Per.* 43); *census populi* mentioned (15.7-8, 16.3-5); *recognitio equitum* performed (16.1); contracts let and re-let for tax-collection and *opera publica*, much controversy thereafter until 23 September including conflicts with tribune P. Rutilius (16.2-16); *recognitio equitum* revisited, resulting in expulsion from equestrian order of Rutilius on 13 December (XLIV.16.8);<sup>224</sup> *opera publica* mentioned (16.9-11). **168.** *Census populi* again

<sup>221</sup> Cf Plut., *T.Flamin.* 18.1-2, where the censorship of 189-188 follows the sequence *lectio* and *census populi* followed by appointment of *princeps senatus*.

<sup>222</sup> Plut., *Cat. Mai.* 16.6-19.3 preserves a similar sequence.

<sup>223</sup> Lost in a *lacuna* of the main text of Book XLI.

<sup>224</sup> On the two *recognitioes equitum* of 169, see A.E.Astin, *Historia* 37 (1988), 487-490.

mentioned (XLV.15.1-7); in a recapitulation – or a doublet – *lectio* and *recognitio* again reported (15.8); with many *opera* left unfinished after their 18 months in office, the censors' request that their term be prorogued is rejected (15.9); enumeration reported, *lustratio* performed (*Per.* 45).<sup>225</sup>

If the order in which Livy relates the various *acta* of each censorial college preserves – more or less – the actual sequence in which they were performed, it follows that the *lectio* was usually the first major task carried out by them following their entry into office. On the other hand, textual sequence might not reflect – or might only partially reflect – chronological sequence. If so, Livy's technique was either to address first in the narrative those duties seen by him or his sources as the more important, or to get the more easily dealt-with topics out of the way first (the *lectio*, the *recognitio*) before progressing to those demanding lengthier treatment (letting of contracts, the *census populi*, disagreements and quarrels).<sup>226</sup> Whichever technique Livy employed, it is clear that his usual method was to frame each censorship notice by reporting the censors' election at the beginning and by recording their performance of the *lustratio* and their enumeration of the citizenry at the end.<sup>227</sup> This is quite natural, considering that these events bookended each college's tenure. Despite the uncertainty as to which method Livy used, chronological indicators do sometimes occur within his censorship notices. These, however, are not without their attendant problems.

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<sup>225</sup> Lost in a lacuna of the main text of Book XLV. Plut., *Aem. Paullus* 38.9-39.1 provides a cursory account of the censorship of 164-163. It runs: citizenry enumerated, *princeps senatus* chosen, rest of *lectio* performed.

<sup>226</sup> C.Nicolet, *L'Ordre Equestre* I.50; T.P.Wiseman, 'The definition of *equus Romanus*' in the late Republic and early Empire', *Historia* 19 (1970), 68n.2.

<sup>227</sup> The accounts of 204 (where the election is not noted) and of 199/198 and 184/183 (where the *lustratio* and the enumeration are not recorded) provide the only exceptions.

It can be difficult to discern, in each instance of their use by Livy, whether adverbs of order are to be interpreted in their strict literal sense, as indicating the chronological sequence of events, or more loosely, as devices separating the narrative into discrete subjects. Literal usage may be demonstrated at least once, but other instances are too ambiguous for us to conclude whether or not they are to be understood literally.<sup>228</sup> Livy employs 'inde' twice in his censorship narrative for 209. In the first instance (XXVII.11.12) he uses it to adjoin his description of the censors' choosing of the *princeps senatus* to his report of the rest of their *lectio*, including the creation of eight *praeteriti*. In expanding upon the subject (11.9) he relates that the censors' choosing of the Senate was delayed by and did indeed follow their contentious choosing of the *princeps senatus*. It is thus clear that the adverb is here used to illustrate a true procedural and chronological sequence rather than as a textual device to separate topics. The same conclusion cannot be so confidently reached when considering Livy's second use of 'inde' in relation to this censorship (11.16). Here he employs it between mentioning the *recognitio equitum* and the letting of works' contracts, but as the passage is bald and unexpanded upon we cannot discern whether it is to be interpreted in its strict sequential sense or as a separating device. Similar uncertainty surrounds his single utilisation of 'deinde' in describing the censorial events of 184 (XXXIX.44.5), where the adverb connects one passage on the *census populi* and *cura morum* to another on works contracts. So too Livy's lone use of 'deinde' in relation to the events of 169 (XLIII.15.6): the evidence is of insufficient quality

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<sup>228</sup> Cf the repeated use of 'interim' in [Caesar], *Bell. Afr.*, where the term is not literal but rather signals a shift in narrative. While Livy's use of 'deinde' and 'dein' has been analysed – E.B.Lease, 'Notes on the Schmalz-Krebs Antibarbarus', *AJPh* 28 (1907), 38-40; E.B.Lease, 'Livy's use of *neque* and *neve* with an imperative or subjunctive', *CP* 3 (1908), 305-306 – a comparison between his use of 'deinde' and 'inde' has not (as far as I can tell) been performed. J.Rich, 'Structuring Roman history: the consular year and the Roman historical tradition', *Histos* 5 (2011), 10, is sceptical that words and phrases such as "*per eos dies*", "*sub idem tempus*", and "*inde*" in Livy denote chronological sequence, and gives an example of abuse.

for us to judge whether or not the *lectio* was indeed performed close upon the *sortitio* for consular and praetorian *provinciae*. If it was, then it illustrates that the enrolment was conducted early in the consular year. Livy uses 'deinde' twice in quick succession in his account of the censorial *acta* of 204 (XXIX.37.7; 37.8). If we take textual order as being a strict reflection of true chronological sequence and understand the twice-used adverb 'deinde' literally, it follows that the censors performed the *lustratio* but nonetheless afterwards received *census* data from the colonies and then performed the *recognitio equitum*. For this reason some moderns have taken this account as demonstrating that the *census populi* and the *recognitio equitum* could be completed subsequent to the *lustratio*, which ordinarily signified the closure of the censors' term in office.<sup>229</sup> Others have argued that in this instance at least, 'deinde' and narratological order are not to be interpreted in this way, with Wiseman positing a simple and sensible explanation for the narrative structure: that the censors' dispute, carried on in public at both the *recognitio* and "*exitu censurae*", was extraordinary, and as a result Livy placed these bizarre episodes at the end of his account of the censorship in order to provide a dramatic climax.<sup>230</sup> In addition to this, it is worth noting that the epitomator who prepared *Periochae* 29, in recording the *lustratio* and giving the enumeration of the citizenry *after* reporting the censors' dispute, presents what may be considered a normalised sequence, accordant to the usual (and Livy's usual) ordering of matters censorial. Whether or not this normalisation is to be adduced as evidence that the epitomator was aware that there was something slightly amiss and in need of amendment in Livy's original sequence is a matter of conjecture. In any event, neither of Livy's two usages of 'deinde' in his censorship notice for 204 may be adduced as firm evidence of true chronology.

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<sup>229</sup> A.J.Belot, *Histoire des Chevaliers Romains* (Paris, 1866), I.197; T.Mommsen, *RSt* II<sup>3</sup>.371n.4 (but cf 413n.6); Cram, 90-91.

<sup>230</sup> T.P.Wiseman, *Historia* 19 (1970), 68. Cf H.Hill, *Roman Middle Class*, 33n.7.

Near the beginning of Livy's narrative of the censorship of 214 is a statement that censors M. Atilius Regulus and P. Furius Philus, "freed from the charge of contracting for *opera publica* on account of the emptiness of the *aerarium*" (*censores, vacui ab operum locandorum cura propter inopiam aerarii*) turned their attention toward *cura morum*. Livy then goes on to rehearse at some length the various punishments which the censors inflicted upon miscreant *senatores*, *equites*, and *adsidui* as part of the *lectio senatus*, *recognitio equitum*, and the wider *census populi*.<sup>231</sup> In describing the situation faced by these censors, Livy seems to intimate that under less atypical circumstances, the censors' duties toward *cura morum* were performed subsequent to their letting of contracts for *opera publica*; that Regulus and Philus were compelled to veer from the procedural norm because of a rare quirk of circumstance, the diminution of the *aerarium*. However a second reading may be offered against this interpretation: that under more normal conditions, censorial colleges could exercise discretion as to which of their major duties they would set to work on first; that ordinarily, depending on their preference, the censors might or might not have chosen to commence their tenure by letting works' contracts, but that in this instance the depletion of the treasury took from Regulus and Philus the luxury to choose.

Livy reports that the censors of 209-208 chose as *princeps senatus* "Q. Fabius Maximus consul" (XXVII.11.12), thus their *lectio* was conducted some time in consular 209 (15 March 209 to 14 March 208), their first calendar year in office, when Fabius was consul. Similarly the censors of 194-193, whom Livy states appointed "P. Scipio consul" to the *principatus* (XXXIV.44.4), must have carried out their *lectio* during their first calendar year, consular 194 (15 March 194 to 14 March 193), when Scipio Africanus held the *fascēs*.

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<sup>231</sup> Livy, XXIV.18.3-8. Cf XXIX.43.2-4.

Moving from Livy briefly, Pliny the Elder writes that the censors of 115-114 appointed to the *principatus* M. Aemilius Scaurus while he was incumbent consul – “*M. Scaurus in consulatu*”.<sup>232</sup> Thus their *lectio* also must have been performed during their first calendar year in office (1 January to 31 December 115). These observations on appointments to the *principatus* do not allow us to pin down the censors’ ‘order of duties’ but they do allow us to observe that the censors of 209-208, 194-193, and 115-114 conducted their respective *lectiones* during their first calendar year in office. Returning to the Livian corpus, a further example from it, relating to the choosing of the *princeps senatus* by the censors of 184-183, deserves deeper attention: it suggests that these censors, Cato and L. Valerius Flaccus, did not conduct their *lectio* until their second calendar year in office.

The date of the death of Scipio Africanus is important. Valerius Antias writes that he died in consular 187 (15 March 187 to 14 March 186).<sup>233</sup> Polybius and Rutilius Rufus agree on consular 183 (15 March 183 to 14 March 182).<sup>234</sup> So may have others. Cicero, in recording his death nine years after the joint consulship, and a year before the joint censorship of Cato and Flaccus, dates the event to consular 186/185.<sup>235</sup> Livy, after first reporting Scipio’s death in consular 187 (XXXVIII.53.8-54.1; following Antias),<sup>236</sup> then

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<sup>232</sup> Pliny, *HN* VIII.82.223.

<sup>233</sup> Livy, XXXVIII.53.8-54.1 (part of V.A., fr.45 (Peter) *cf* Livy, XXXIX.52.1).

<sup>234</sup> Polyb. *ap.* Livy, XXXIX.52.1; Rutilius, *Hist.* fr.2 (Peter) *ap.* Livy, XXXIX.52.1. Polyb., XXIII.6.12.1-15.2 is a collection of fragments which, while superficially presenting the deaths of Philopoemen, Hannibal, and Scipio as roughly concurrent, is not to be taken as evidence that Polybius thought they all died in the same year. Philopoemen died in consular 183 (Livy, XXXIX.50.8-11 (neither Trogus/Justin, XXXII.1 nor Plut., *Philop.* 18.1 give the date)); Hannibal’s death is reported to have occurred either in consular 183 (V.A., fr.49 (Peter) *ap.* Livy XXXIX.56.7; Atticus, *Annales* fr.7 (Peter) *ap.* Nepos, *Hann.* 13.1; Livy, XXXIX.50.11-51.12), consular 182 (Polyb. *ap.* Nepos, *Hann.* 13.1), or consular 181 (Sulpicius Blitho, fr.1 (Peter) *ap.* Nepos, *Hann.* 13.1). Clearly Polybius believed that Scipio and Hannibal died in separate consular years, 183 and 182 respectively.

<sup>235</sup> Cic., *Senect.* 6.19.

<sup>236</sup> Part of V.A., fr.45 (Peter) *cf* Livy, XXXIX.52.1.

again in consular 183 (XXXIX.50.10-11; following a “*scriptor Latinus*” (probably Rutilius) and a “*scriptor Graecus*” (probably not Polybius, although agreeing with him)),<sup>237</sup> argues at some length that Scipio must have met his demise not in either of these years but rather between 10 December 185 and the entry into office of Cato and Flaccus, as censors, in consular 184 (XXXIX.52.1-6):

For my part I agree neither with them [Polybius and Rutilius] nor with Valerius [Antias].

Not with them [Polybius and Rutilius], because in the censorship of M. Porcius and L. Valerius I find that the *princeps senatus* chosen was the same L. Valerius who was censor, whereas in the two preceding *lustra* Africanus had held this distinction, and while he lived, unless he had been expelled from the Senate, a disgrace which no one has recorded, another *princeps* would not have been chosen in his stead [*Ego neque his neque Valerio adsentior, his, quod censoribus M. Porcio L. Valerio L. Valerium principem senatus ipsum censorem lectum invenio, cum superioribus duobus lustris Africanus fuisset, quo vivo, nisi ut ille senatu moveretur, quam notam nemo memoriae prodidit, alius princeps in locum eius lectus non esset*].

The refutation of Antias as an authority is plebeian tribune M. Naevius, against whom was directed... the speech of P. Africanus. This Naevius, in the *libri magistratum*, is named as plebeian tribune in the consulship of P. Claudius and L. Porcius, but he entered upon the tribuneship in the consulship of Ap. Claudius and M. Sempronius, on the fourth day before the Ides of December [10 December 185]. From that time it is three months to the Ides of March, when P. Claudius and L. Porcius were inaugurated [15 March 184].

Thus it seems that he lived in the tribuneship of Naevius and that he might have been accused by him, but died before the censorship of L. Valerius and M. Porcius [*Ita vixisse in tribunatu Naevii videtur, diesque ei dici ab eo potuisse, decessisse autem ante L. Valerii et M. Porcii censuram*].<sup>238</sup>

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<sup>237</sup> Whereas Livy's mention of a Latin *scriptor* might be a reference to Rutilius, unless Livy has slipped, Polybius cannot have been the Greek *scriptor*. The anonymous *scriptores* are stated by Livy to have believed that Scipio and Hannibal both died in the same consular year, 183, but as shown in n.234, Polybius placed their deaths in separate consular years.

<sup>238</sup> E.T.Sage's note (384n.4) in the Loeb edition gives “[Livy] believes that Scipio was dead before the censorship of Cato and Flaccus beginning March 15, 184 BC”. While Livy does believe that Scipio predeceased the entry into office of Cato and Flaccus, he does not give the date of their inauguration (he does of the consuls, not the censors). The error is followed by R.Adam, ‘Valérius Antias et la fin de Scipion l’Africain (chez Tite-Live)’, *REL* 59 (1980), 93, 97.

Despite Livy's protestations, death in consular 183 (15 March 183 to 14 March 182) is usually preferred by moderns as it comes from reliable historians who enjoyed very strong links to the Scipiones and who were closer, chronologically, to the event they described.<sup>239</sup>

Scipio was first appointed *princeps senatus* by the censors of 199-198, and was reappointed by the colleges of 194-193 and 189-188.<sup>240</sup> There is no record that the censors of 184-183 accorded Scipio this honour: Livy and Plutarch, our only full sources on these censors' management of the *principatus* (the fragmentary sources apart), state only that censor Flaccus was appointed to the position.<sup>241</sup> Four scenarios have been suggested to explain Scipio's apparent non-appointment: that Cato and Flaccus, traditionally presented by the sources as staunch political *inimici* of Scipio and his associates, chose not to reappoint Scipio in order to publicly snub him; that Scipio refused to be reappointed by his adversaries; that Scipio, still *princeps* through virtue of having been made so by the previous college of censors, died before Cato and Flaccus had the opportunity to reappoint him, and that Flaccus' appointment was to a position only very recently vacated; that Scipio was reappointed but died so shortly thereafter that his name was obscured by the later appointment of Flaccus to the vacancy.<sup>242</sup> The validity of these scenarios may be addressed in turn.

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<sup>239</sup> D.Kienast, *Cato der Zensor: Seine Persönlichkeit und Seine Zeit mit Einem Kritisch Durchgesehenen Neuabdruck der Redefragmente Catos* (Heidelberg, 1954), 148n.61; H.H.Scullard, *Scipio Africanus: Soldier and Politician* (London, 1970), 290n.179; *RP*<sup>2</sup> 151; A.Acimovic, *Scipio Africanus* (New York, 2007), 130. Polybius' link to the Scipiones needs no elaboration; on P.Rutilius Rufus (*cos.*105) and his relationship with his mentor, Scipio Aemilianus: A.E.Astin, *Scipio Aemilianus*, 4, 88-89, 135n.7, 295.

<sup>240</sup> Livy, XXXIV.44.4; XXXVIII.28.2; XXXIX.52.1-2; Plut., *T.Flamin.* 18.2.

<sup>241</sup> Livy, XXXIX.52.1-2; Plut., *Cat. Mai.* 17.1.

<sup>242</sup> O.Leuze, *o.c.*, 28n.2; Suolahti, 351; G.De Sanctis, *Storia dei Romani, Vol.IV: La Fondazione dell'Imperio, Pt.I: Dalla Battaglia di Naraggara alla Battaglia di Pidna* 2nd edition (Florence, 1969), 597n.277; J.Suolahti, *Arctos* 7 (1972), 214; *RP*<sup>2</sup> 152n.1; J.Ruebel, 'Cato and Scipio Africanus', *CW* 71 (1977), 171; M.Bonnefond-



In relation to Scipio and the *principatus*, Livy states that “Africanus had held this distinction, and while he lived, unless he had been expelled from the Senate, a *nota* which no-one has recorded, another *princeps* would not have been chosen in his stead”. Ryan, pursuing the logic of this statement to its fullest extent, adds – rightly – that any putative deselection of Scipio from the *principatus* “would have been every bit as ignominious as the *nota*, since it would have been an unprecedented dishonour, and it was therefore just as certain to be recorded as the *nota* itself”.<sup>243</sup> Such an unprecedented slight on the part of Cato and Flaccus against a high-profile *inimicus* would be well-represented in the extant sources, fragmentary though they are, in the same way that their moves against the consulars L. Flamininus (made *praeteritus*) and Scipio Asiaticus (removed from the equestrian order) are also well-attested. Insofar that no reports of hostility against Africanus exist, it appears that he was not removed from the *principatus* by Cato and Flaccus, despite the frosty relationship that existed between him and them. Similarly, we might suppose that the refusal of an individual – any individual – to be appointed (or reappointed) to such a rare and exalted honour as the *principatus* would not have eluded ancient commentators. Leaving aside the unprecedented nature of such an episode, it is unconscionable that – with such titans as Scipio Africanus and Cato the Elder involved, and the cause of the putative refusal, mutual hostility – this has passed unrecorded. The first and second scenarios may thus be safely rejected on the simplest of historiographic grounds; that the sources report neither is argument enough that neither occurred. The fourth possibility is that Scipio was appointed only to die very shortly thereafter. Livy certainly did not think so, and neither, evidently, did any of the sources he consulted when investigating this issue: none attested to a reappointment of Scipio (even a brief one

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Coudry, *MEFRA* 105 (1993), 104n.6; F.X.Ryan, *Rank*, 179-180, 244-246; F.Mora, ‘La scelta del *princeps senatus*’, *Historia* 52 (2003), 503.

<sup>243</sup> F.X.Ryan, *Rank*, 245.

before death), whereas all agreed that Flaccus was appointed. Cited – if only to criticise their dating – we know that Livy consulted Polybius, Rutilius, and Antias on this point; so too the *libri magistratum*, also referred to in this section (even if only for a supplementary detail). If Scipio was reappointed, then each of Livy's sources blundered enormously in failing to notice Africanus' fourth, albeit fleeting, appointment to the *principatus* – a feat unprecedented at the time and rare thereafter as far as the sources allow us to judge.<sup>244</sup> The fourth scenario may be rejected on the same grounds as the first and second: the silence of the sources where there should be no silence; if Scipio had been reappointed, even if only briefly, Livy would have found some mention of it in his investigation of the issue. Having eliminated the first, second, and fourth of our possible scenarios, we can conclude that Flaccus was the *only* man appointed *princeps senatus* during the censorship of 184-183, and that the *principatus* had been vacant due to the death of Scipio Africanus (which, following the better sources, we can place in consular 183). It follows that the death of the *princeps senatus*, and the appointment of Flaccus to the vacancy created by it, must have occurred in the second calendar year of the censorship of Cato and Flaccus.

It is worth mentioning that as it is presented, Livy's rejection of Polybius and Rutilius' dating of Scipio's death, and his apparently errant transferral of it to before the censorship of Cato and Flaccus, comes at the end of a line of reasoning which originates in a single fundamental assumption: that it was normal procedure for a censorial college to perform its *lectio* almost immediately upon taking up office. From here he reasons that because Scipio was not reappointed to the *principatus* by them soon upon their assumption of the censorship, he must have died before their inauguration. The assumption, which drew Livy to his false conclusion, is illustrative. An alternative solution –

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<sup>244</sup> F.X.Ryan, *Rank*, 223, and at 245-246: "It would be easy enough for Valerius, as the last man named *princeps* in this censorship to dislodge Scipio in the histories". If this were the case, all of Livy's sources, including the 'Scipionic' historians, failed to note the unprecedented honour accorded to Scipio.

that there might be a substantial interval between censors coming into office and the performance of their *lectio* – must have been a concept so alien to Livy that he, puzzled by what his best sources were telling him, failed to even entertain the possibility that Africanus may have died while the censors were still in office but before their regulation of the Senate. This in itself indicates that under typical circumstances, as understood by Livy, the interim between these two events was very brief. Livy’s unfamiliarity with this concept of a relatively late *lectio* – perhaps performed several months, rather than a few days or weeks, after the censors’ inauguration – stimulated a drastic solution on his part: to reject outright the testimony of his most trustworthy sources on Scipio and to rewrite history according to his own perception of censorial chronology.

I have argued that the case of Scipio’s non-reappointment to the *principatus* by Cato and Flaccus indicates that their *lectio* did not occur until after the death of Scipio, in their second calendar year of office, consular 183. But Livy clearly places the *lectio* within the events of consular 184. This, I feel, is no impediment against the contention that it was in reality performed the following year: after all, we have already seen Livy grouping of *all* of Cato and Flaccus’ *acta censoria* (and a great many are reported) under consular 184.<sup>245</sup> Clearly many of their deeds which it would have been historically correct to place among the events of consular 183 Livy, for the sake of narratological cohesion, instead placed outside their true chronological sequence by bringing them forward into their first year of office. Furthermore, Livy terminates his account of Cato and Flaccus’ censorship in consular 184, without giving his reader any indication at all that the censors continued in office the following year.<sup>246</sup> Livy’s account of what was Cato and Flaccus’ second year in office is thus bereft of any indication of their censorship. Even their celebration of the *lustratio* goes unrecorded.

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<sup>245</sup> Livy, XXXIX.42.5-44.9.

<sup>246</sup> Livy, XXXIX.44.9.

#### IV.

The *lectio* of M. Atilius Regulus and P. Furius Philus can be dated to consular 214 with near certainty: they took up office that year, and Philus died either before it was out or very early in the following year. With his colleague dead, Regulus was compelled to abdicate. Assuming that these censors were unaware that their term of office would be prematurely terminated by the demise of one of them, we may take this example as suggestive that it was normal procedure for the censors to enrol the Senate during their first calendar year in office. The evidence of other truncated censorships of the second and first centuries appear to bear out this assumption.<sup>247</sup>

The censorship that commenced in consular 210 did not last long. Livy reports that within the same calendar year the death of one censor, L. Veturius Philo, necessitated the abdication of his colleague, P. Crassus Dives. He also writes that they neither completed a *lectio* nor transacted any public business.<sup>248</sup> He does, however, later note in passing that these censors compelled M. Livius Salinator (*cos. II* 207; *cens.* 204-203) to emerge from his self-imposed retirement from the Senate.<sup>249</sup> It is possible that this act was connected to the wider enrolment of the Senate; if so, we can suggest that perhaps preliminary work on the *lectio* was underway (but incomplete) when Philo died. If this interpretation is correct, it indicates that the censors of 210 began their *lectio* the same calendar year they entered office.

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<sup>247</sup> The censorship of 86-85 was truncated in that the *lustratio* was not performed. However, it is known that the censors performed their *lectio* and conducted a *census populi*, and thus they appear to have fulfilled their main duties. Consequently, this censorship will not be considered here.

<sup>248</sup> Livy, XXVII.6.17-18.

<sup>249</sup> Livy, XXVII.34.6.

M. Scaurus and M. Livius Drusus came into office in 109. Drusus died the same year and Scaurus was compelled to abdicate (albeit not without initially refusing).<sup>250</sup> *Opera* are attested for them, and Scaurus' reappointment to the *principatus* tells that they began their *lectio* even if no other evidence for its performance exists.<sup>251</sup>

The censors inaugurated in 92, Cn. Ahenobarbus and L. Crassus, abdicated before their term was complete because increasingly fractious quarrelling made it impossible for them to operate together in a meaningful manner. They too seem to have performed the first duty of the *lectio senatus*, that of choosing the *princeps senatus* (they appear to have reappointed M. Scaurus). They certainly performed duties pertaining to *regimen morum*: known as they are to have combated luxuries (including each other's) and issuing an edict against the presence of Latin rhetors in the city.<sup>252</sup>

Dio's account of the censorship which began and ended in 65 is brief, but it indicates that the *lectio* might not always have been the first major duty performed by the censors, particularly at times when there may have been more pressing issues for the office to address. In the account he asserts that the censors (whom he does not name), at the outset of their term, fell into an intractable disagreement about whether or not to grant citizen rights to the Transpadane Gauls, and that the hopeless deadlock between them culminated in their joint resignation. Moreover, that the censors "did not even perform any of their other duties" before their departure from office.<sup>253</sup> Plutarch's account agrees that

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<sup>250</sup> Plut., *QR* 50.

<sup>251</sup> Strabo, V.1.11; Amm. Marc., XXVII.3.9; [Victor], *Vir. Ill.* 72.8.

<sup>252</sup> Cic., *De Orat.* II.11.45, 56.227, 230, 59.242; III.24.93-95; *Brutus* 44.162, 164; V.M., IX.1.4; Tacit., *Dial.* 35; Pliny, *HN* XVII.1.1-6; XXXVI.3.7-8, 24.114; Suet., *Rhetor.* 1; *Nero* 2.2; Plut., *Cap. ex Inim. Utilit.* 5; *Praec. Ger. Reipublicae* 14; [Plut.], *Soll. Anim.* 23.7; Gell., XV.11.2-3; Aelian, *Nat. Anim.* VIII.4; Macrob., III.15.3-5; Suolahti, 444-445; F.X.Ryan, *Rank*, 189-190.

<sup>253</sup> Dio, XXXVII.9.3: "Καὶ οἱ πημεταὶ περὶ τῶν ὑπὲρ τὸν Ἡριδανὸν οἰκούντων διενεχθέντες ἴψῳ μὲν γὰρ ἐς τὴν πολιτείαν αὐτοὺς ἀσάγειν ἔδοκει, τῷ δὲ οὐδὲν οὐδὲ τῶν ἄλλων ἔπραξαν, ἀλλὰ καὶ τὴν ἀρχὴν ἀπεῖπον".

nothing was done by these censors (whom he names as M. Crassus and Q. Lutatius Catulus), because of a disagreement between the two that forced their abdication. However Plutarch's version veers from that of Dio on the cause of this disagreement:

... His [Crassus'] censorship passed without any results or achievements whatever. He neither made a *lectio senatus*, nor a *recognitio equitum*, nor a *census populi*, although he had Lutatius Catulus, the gentlest of the Romans, for his colleague [... ἡ δὲ τιμητεία παντάπασιν ἀτελής καὶ ἀπρακτος αὐτῶ διήλθεν – οὔτε γὰρ βουλήν ἐξέτασιν οὔθ' ἰππέων ἐπίσκεψιν οὔτ' ἀποτίμησιν πολιτῶν ἐποίησατο – καίτοι συνάρχοντα Ῥωμαίων ἔχοντι τὸν πρῶτον Λουτάτιον Κάπλον]. But they say that when Crassus embarked upon the dangerous and violent policy of making Egypt tributary to Rome, Catulus opposed him vigorously, whereupon, being at variance, both voluntarily laid down their office.<sup>254</sup>

A strict reading of Dio's passage (less so Plutarch's) presents a somewhat distorted picture, as it implies that the censors of 65 resigned before even the performance of their first official duties, those to the Capitoline geese and to Capitoline Jupiter. On the other hand, although steeped in antiquity, the censors' Capitoline obligations were in truth relatively minor tasks, so perhaps Dio's testimony is better understood if we suppose that he meant that the censors did not perform any of their *major* duties before their conflict brought about the premature termination of their tenure. Despite this minor issue, the accounts of Dio and Plutarch are concordant in that they agree that Crassus and Catulus performed none of their (major) duties before an insoluble disagreement compelled their joint resignation. As to the cause of this disagreement, the accounts are discrepant: Dio writes that the quarrel centred on whether or not to grant citizenship to the Transpadani (the so-called 'Transpadane Question'); Plutarch that it centred on a matter of foreign policy, the annexation of Egypt. Both were certainly vexing issues during the mid-60s; but it is clear that Plutarch (or his source) has misrepresented the impact of the dispute between Crassus and Catulus. Questions of foreign policy did not fall within the ambit of

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<sup>254</sup> Plut., *Crassus* 13.1.

the *censura*, so while the two may well have held opposing opinions on and disagreed vehemently about the annexation of Egypt, any resulting conflict cannot have translated to cause anything like a 'crisis in the censorship' so severe as to necessitate their joint resignation. This being said, the friction caused by the disagreement over Egypt's fate may have exacerbated some underlying fissure in the relationship between the two.<sup>255</sup> It may, therefore, be argued that while both accounts possess problems, there is no reason to reject the wider notion, upon which they agree: that before they abdicated, Crassus and Catulus performed neither their *lectio senatus*, nor their *recognitio equitum*, nor progressed very far with their *census populi*. Furthermore, it seems that the contentious issue of the Transpadane franchise was the first item on the censors' agenda, and that in this instance all other items were deferred as being of secondary importance. This does not, of course, count against the notion that Crassus and Catulus did not intend to conduct their enrolment as soon as circumstances allowed, and there is nothing to suggest that if they had remained in office, they would have deviated from the apparent norm of conducting their *lectio* during their first calendar of their tenure.

Following on directly from his account of the aborted censorship of 65, Dio briefly describes the censorship of 64:

And for the same reason their successors, too, did nothing in the following year, inasmuch as the tribunes hindered them in regard to the *album senatorium*, fearing that they themselves might be expelled from that body.

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<sup>255</sup> F.E.Adcock, *Marcus Crassus, Millionaire* (Cambridge, 1966), 35-36; A.M.Ward, *Marcus Crassus and the Late Roman Republic* (Columbia, 1977), 128n.2. Elsewhere, E.G.Hardy, 'The Transpadane Question and the Alien Act of 65 or 64 BC', *JRS* 6 (1916), 75-77; Cram, 100-101; Suolahti, 471-472; A.E.Astin, 'Censorships in the late Republic', *Historia* 34 (1985), 177, incorrectly present the Egyptian issue as one with which Crassus and Catulus, as censors, may have dealt. Willems, I.420n.12 is noncommittal. *LGRR* 69, 410; El-Beheiri, 97, have only the Transpadane issue.

Καὶ διὰ τοῦτο καὶ οἱ διάδοχοι αὐτῶν ἐν τῷ ὑστέρω ἔτει οὐδὲν ἐποίησαν, ἐμποδισάντων σφᾶς τῶν δημάρχων πρὸς τὸν τῆς βουλιῆς κατάλογον, δέει τοῦ μὴ τῆς γερουσίας αὐτοῦς ἐκπεσεῖν.<sup>256</sup>

Again the censors' first, minor, duties upon the Capitoline are overlooked. Yet the implication is clear: that the *only* major task attempted by the censors of 64, before certain tribunes, fearing expulsion, impeded their office and forced their abdication, was the *lectio*. Such a straightforward reading of Dio's account of the censorship of 64 has had doubt cast upon it. Brunt, citing Cicero's *Pro Flacco* (of 59), argues that the censors (L. Cotta and an *ignotus*) must have commenced their *census populi* because the speech alludes to the registration of property in the province of Asia sometime shortly before or during the governorship of P. Orbilius (*pr.* 65), 64-63.<sup>257</sup> However, he rejects for no valid reason the possibility that it may have been registered during the *census* of 70-69, and does not consider that it might have been registered during the curtailed censorship of Crassus and Catulus, whom we know briefly attempted their own *census* (albeit one that was never completed and validated). But while I feel that there is no compelling reason to follow Brunt in rejecting Dio's notion that the censors of 64 "did nothing" except attempt their *lectio* and failed to perform any of their other major duties, Dio's passage still presents a problem which requires explanation. Brunt observes it too: "it might fairly be argued that if the censors were obstructed by tribunes in 64, they would naturally have deferred the *lectio*

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<sup>256</sup> Dio, XXXVII.9.4. For a wider contextualisation of the tribunes' fear, see Ch.2, §.III.

<sup>257</sup> P.A.Brunt, *Italian Manpower, 225 BC-AD 14* (Oxford, 1971), 700-702 citing Cic., *Flacc.* 72-78. E.Parrish, 'Crassus' new friends and Pompey's return', *Phoenix* 27 (1974), 360n.8 offers that the censors of 64 "may have let tax contracts and accomplished other routine duties left undone by Crassus and Catulus in 65". B.Borghesi, *Oeuvres Complètes, Tome IV* (Paris, 1865), 32-39; M.Dondin, *o.c.*, 126-144 aver that the censors of 64 completed their *lectio*; a conclusion built upon a common misunderstanding of M.Aurelius *ap.* Fronto, V.26 and Fronto, V.27 (=T.24 and 25 in Appendix). Willems, I.421 is unsure.



*senatus* until 63".<sup>258</sup> Brunt's solution to the question of why these censors did not just wait for the obstructive tribunes to depart from office in order to then conduct their *lectio* unhindered is to conjecture that the tribunes mentioned by Dio were not those of 64 but were those of 63; thus hindered in their *second* year, the censors had no option but to abdicate with their *lectio* unperformed.<sup>259</sup> If this reconstruction is accepted then it can be taken as further evidence that *lectiones* could sometimes, albeit not usually, be performed at any point during a pair's term in office. But there are several serious objections to this interpretation. The first is that Dio is clear in allocating the censors not longer than a year in office before their abdication ("in the year"; *ετη*); their tenure, however long, did not extend into a second year. Also, if we were to entertain the hypothesis that they remained in post until their second year, that they reportedly "did nothing" makes the whole issue more, not less, inexplicable. A conflict between censors and tribunes in 64 – with the censors doing nothing before resigning in frustration in the same year – is perfectly understandable; a conflict in 63 following a year of censorial inertia is much harder to posit. Brunt's solution creates a difficulty larger than the original problem. Finally in a speech delivered in 62, Cicero relates that the preceding censors had been those in office for 70-69.<sup>260</sup> Brunt rightly points out the orator's expression was strictly incorrect, as there were in fact two colleges elected in the interval, but "clearly he means that [the censors of 70-69] were the last who had produced a list of citizens that it was reasonable to consider".<sup>261</sup> This is surely correct, but in stating thus Brunt somewhat negates his own preferred reconstruction of the activities of L. Cotta and his anonymous partner.

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<sup>258</sup> P.A.Brunt, *o.c.*, 701.

<sup>259</sup> *Ibid.*

<sup>260</sup> Cic., *Arch.* 5.11.

<sup>261</sup> P.A.Brunt, *o.c.*, 702.

Why then did not the censors of 64 respond to the obstruction which they faced by simply delaying their *lectio* until their second year in office, by which time they could presumably have operated unhindered? The answer, I believe, lies in only a slight amendment of Dio's original testimony; that the tribunes obstructed the censors not only in their *lectio*, but also threatened to extend their hindrance into other quarters of the censors' remit. Of course the censors could still have opted to sit it out and wait for the tribunes' term of office to expire, but until then the censors, inert and prevented from exercising their own office, would have been very public 'lame ducks'. Faced with the prospect a lengthy period of public humiliation, Cotta and his partner did the only thing they could in order to salvage grace and dignity from the situation in which they found themselves: they did not cling on to their neutered office.

From the epistular corpus of Cicero and his correspondents, fairly reasonable outline chronologies may be constructed for the truncated censorships of 61-60, 55-54, and 50-49. In April 50, Ap. Claudius Pulcher was a candidate for censor; Cicero wrote to him that month and mentioned the fact.<sup>262</sup> By 26 June it appears that the censors had been elected; that day Cicero, from Cilicia, wrote again to Pulcher, opening the letter with "*Cicero Appio Pulchro, ut spero, censori*" and closing it with a similar refrain ("*vale, et in censura, si iam es censor, ut spero, de proavo multum cogitato tuo*").<sup>263</sup> The wording suggests that Cicero was aware that the scheduled date for the election has passed, but had yet to receive news of the outcome.<sup>264</sup> The censors – Pulcher one of them – had definitely been elected by 8 August, as on that date M. Caelius Rufus, in composing a letter to the orator, included

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<sup>262</sup> Cic., *Fam.* 73.3, 11<sup>SB</sup>.

<sup>263</sup> *Ibid.*, 74.1, 5<sup>SB</sup>.

<sup>264</sup> In early June Cicero's friend, M.Caelius Rufus, wrote to the orator from Rome and shared some gossip – Caelius Rufus *ap. Cic., Fam.* 94.1-2<sup>SB</sup>. Nothing about Pulcher or the election is contained within.

some amusing gossip relating to Pulcher's strict interpretation of *luxuria* and *cura morum*.<sup>265</sup> Pulcher seems to have continued his campaign against luxury through September and October, at least.<sup>266</sup> No other letter mentions the censorship and no source mentions their abdication, but we can safely assume that Pulcher and his colleague, Piso Caesoninus, abandoned office shortly after Caesar crossed the Rubicon, in January 49.<sup>267</sup> Thus we may estimate that Pulcher and Piso enjoyed no more than nine months in office; possibly as little as five, depending on when exactly they were elected and when they abdicated. Even so it is clear that close upon their election, certain aspects of *cura morum* were being addressed and that this process was the work of months. We know that Pulcher and Piso conducted their *lectio senatus* and *recognitio equitum*.<sup>268</sup> Unfortunately we do not know when these procedures occurred, so we have no way of assessing their place in relation to the rest of their attested deeds. Still it is worth bearing in mind that Pulcher and Piso cannot have known that their term in office would be so dramatically truncated, so it could be argued that their tenure provides evidence that the regulation of the Senate, if not the first duty of the censors, was probably typically performed within the first few months of office.

It is not known when in 55 the censors entered office, but it must have been before 27 April. On that date, Cicero, from Naples, wrote to Atticus in Rome. Among mentioning other matters, the orator asked his friend for some information: "I should be very glad to know whether the tribunes are holding up the *census* by voiding the days...

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<sup>265</sup> Caelius Rufus *ap. Cic., Fam.* 97.4<sup>SB</sup>. At about the same time, Cicero was still unsure of Pulcher's victory at the ballot: Cic., *Fam.* 76.2<sup>SB</sup>. On c.19 Sept., Caelius wrote again to Cicero outlining a serious spat that had arisen between himself and Pulcher: Caelius Rufus *ap. Cic., Fam.* 98.1-3<sup>SB</sup>. The disagreement appears to have been a purely personal matter, unconnected to Pulcher's position or duties as censor.

<sup>266</sup> Cic., *Att.* 123.5<sup>SB</sup>.

<sup>267</sup> Even though their abdication is not noted in the *fasti Capitolini* (A.Degrassi, *o.c.*, 191).

<sup>268</sup> Cic., *Divinat.* I.16.29-30; [Cic.] *In Sall.* 16; Dio, XL.63.2-64.1.

and what they are doing and proposing to do about the censorship generally” (*sane velim scire num censum impediunt tribuni diebus vitandis... totaque de censura quid agant, quid cogitent*).<sup>269</sup> In a letter to Atticus of c.1 July 54, Cicero makes a jaundiced comment, following on from the sentiment voiced above: “I don’t suppose you are interested in the *census*, which has now been given up as a bad job, or the trials under the *lex Clodia*” (*non enim te puto lustrum, quod iam desperatum est, aut de iudiciis quae lege Clodia fiunt quaerere*).<sup>270</sup> As Atticus had last been in Rome on 10 May,<sup>271</sup> the *census populi* must have been abandoned between then and the writing of the letter. From these passages it is impossible to tell whether or not the *census populi* was even commenced before it was abandoned. If it was, it appears to have limped. From Cicero’s mention of trials being conducted under the *lex Clodia de censoria notione*, it is clear that a full 15 months after the first attestation of the censors being in office, their *lectio* had still to be completed. This, though, should be considered atypical, as the *lex Clodia* presented its own procedural difficulties to the censors.<sup>272</sup>

Dio confirms that the censors of 61-60 performed their *lectio* in the first calendar year of their office.<sup>273</sup> An inscribed fragment of the *Acta Diurna* demonstrates that they were in office by 27 August 61, by which point they had already established at least one works’ contract.<sup>274</sup> Cicero writes, that by 1 December, some of the contracts for tax-

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<sup>269</sup> Cic., *Att.* 85.1<sup>SB</sup>. Why the tribunes were behaving thus is not reported nor can any particular rationale be hazarded: D.R.Shackleton Bailey, *Cicero’s Letters to Atticus, Vol.II: 58-54 BC, 46-93 (Books III and IV)* (Cambridge, 1965), 196.

<sup>270</sup> *Ibid.*, 89.8<sup>SB</sup>.

<sup>271</sup> *Ibid.*, 88.1<sup>SB</sup>.

<sup>272</sup> We shall revisit this law in Ch.4.

<sup>273</sup> Dio, XXXVII.46.4.

<sup>274</sup> *CIL* VI.3403. On the fragment (fragment X): B.Borghesi, o.c., IV.11-13; A.Mastino, *II "Giornalismo" nell’antica Roma: gli Acta Urbis* (Urbino, 1978), 72.

collection had been agreed – and disputed; furthermore that the dispute had been ongoing for some not inconsiderable time.<sup>275</sup> He also writes that by 20 January 60, the *census populi* was either running or imminent – Cicero to Atticus: “As to being registered in your absence, I shall see that a notice is published and displayed everywhere. But registration just before the *lustrum* is a real businessman’s style” (*nam ne absens censeare curabo edicendum et proponendum locis omnibus; sub lustrum autem censeari germani negotiatoris est*).<sup>276</sup> The meaning of the second half of this statement is uncertain; is Cicero saying that he will register Atticus shortly, and that the *lustratio* is looming, or is he jokingly advising his friend that if he, Atticus, were a *real* businessman, he would delay his registration until the last possible moment, just prior to the censors’ exit from office? Either way it is clear that the *census populi* was a process which took some time to complete. Indeed, the *census* might still have been current in June; a letter from Cicero to Atticus, dated to about the third of the month, sees reference to another letter of Atticus’ in which he, Atticus, detailed his *census* returns.<sup>277</sup>

## V.

The evidence shows that the censors tended to perform their *lectiones senatus* during the first calendar year of their respective terms in office, indeed that the duty of carrying out the procedure was usually one of the first performed. However, because each college enjoyed a free reign in the scheduling of their duties, the *lectio* could at times be performed in the second calendar year of the censors’ term. A *prima facie* implication of the observation is that deferred performance of the censors’ moral assessment may have

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<sup>275</sup> Cic., *Att.* 17.9<sup>SB</sup>.

<sup>276</sup> *Ibid.*, 18.8<sup>SB</sup>.

<sup>277</sup> *Ibid.*, 21.11<sup>SB</sup>.

imparted psychological pressure on those who might fall to it; that as long as there were censors in office with their *lectio* yet to be performed and expulsions yet to be inflicted, members of the Senate might have been more than normally vigilant not to attract their attention in case of becoming targets. As we shall see in the next chapter, such an assumption would not be correct: in fact, the quasi-judicial process of *cognitio* would have had the effect, throughout each college's term in office, of keeping alive the threat of expulsion.

## Chapter 4

### Responses to expulsion

#### 1. Primary and secondary targets, and the blurred distinction between the two

Before discussing responses to expulsion, it behoves us to first define and distinguish two classes of target of the *nota censoria*. The first class consisted of the *praeteriti* themselves, the direct and named targets of the *nota censoria* who as such had been removed from the Senate. They may be termed the ‘primary targets’ of the censors. The second class, the ‘secondary targets’, may be defined as comprising all whose lives were, to an extent, adversely affected by an act of censure against someone else. They may be taken to have (usually) included the members of his family and household, his *clientelae* and their dependants, and his *amici* and other personal and political associates.

Notwithstanding the utility of such categorisations, we must admit to their unsubtle nature and accept that, in some instances, individuals who may ostensibly have been secondary targets of the *nota* might in fact have been the censors’ ‘real’ targets. The clearest example of the phenomenon comes from a near-miss. Dio strongly implies that during the *lectio* of 50, one of the censors, Ap. Claudius Pulcher, a supporter of Pompey, attempted to stifle Caesar’s political influence by trying to remove from the Senate certain of his supporters.<sup>278</sup> It would have been risky or impossible to attempt to expel Caesar himself. The names of two of Pulcher’s *praeteriti* are known: Sallust and C. Ateius Capito (*tr.pl.* 55). Also that of a would-be *praeteritus*, ultimately saved from expulsion: C.

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<sup>278</sup> Dio, XL.63.1-64.4.

Scribonius Curio (*tr.pl.suff.* 50).<sup>279</sup> Curio is known to have been a Caesarian prior to the *lectio* of 50, whereas Capito and Sallust cannot definitely be demonstrated as such beforehand – for either or both, connection to the dictator may in fact have been a result of expulsion, rather than its cause. Indeed Dio reports that Pulcher’s behaviour had the effect of driving many of his *praeteriti* and would-be *praeteriti* to Caesar’s side. Any compendium of known Caesarians during the early 40s would thus probably include several such men, driven to Caesar’s cause by the Pompeian censor.

Further examples of the phenomenon are harder to adduce, but probable cases can still be suggested. Although our source on the matter, Plutarch, does not say so, it is not hard to conjecture that the expulsion of Cassius Sabaco during the *lectio* of 115, ostensibly for perjury and intemperance, may in actuality have been a veiled attack by the censors, Metellus Diadematus and Cn. Ahenobarbus, upon C. Marius, Sabaco’s close friend. At the time Marius was beginning to align himself against the political interests of the Metelli, his erstwhile patrons; unable or unwilling to manoeuvre against him openly and directly, the censors may have opted to try to damage Marius’ politically by besmirching the reputation of a close ally.<sup>280</sup> Likewise the trial before the censors, in 55, of Pompey’s

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<sup>279</sup> Cic., *Divinat.* I.16.29-30; [Cic.], *In Sall.* 16-17; Dio, XL.63.4-64.4; XLII.52.2; [Acro], *Hor. Ser.* I.2.29 (cf Porphyrio, *Hor. Ser.* I.2.29). Pulcher’s desire was checked by his colleague, Piso Caesoninus, who was Caesar’s father-in-law and refused to ratify many of Pulcher’s candidates for expulsion. Piso’s inability to save Sallust and Capito indicates they were acting-senators.

<sup>280</sup> Plut., *Mar.* 5.3-4; Schmähling, 153n.167; E.Badian, ‘P. Decius P.f. Subulo: an orator of the time of the Gracchi’, *JRS* 46 (1956), 94; T.F.Carney, *A Biography of C.Marius*. PACA Supplement 1 (Assen, 1961), 22; Suolahti, 419; J.Van Ooteghem, *Gaius Marius*. Académie Royal de Belgique Class des Lettres et des Sciences Morales et Politiques (Memoirs) 56.6 (Brussels, 1964), 87; J.Van Ooteghem, *Les Caecilii Metelli de la République*. Académie Royal de Belgique Class des Lettres et des Sciences Morales et Politiques (Memoirs) 59.1 (Brussels, 1967), 95; *RPCC*, 123-124; A.Passerini, *Studi su Caio Mario* (Milan, 1971), 19-20 [=‘Caio Mario come uomo politico’, *Athenaeum* n.s.12 (1934), 15-16]; R.J.Evans, *Gaius Marius: A Political Biography* (Pretoria, 1994), 144 (cf 49, where the story is “suspiciously apocryphal”). Willems, I.392 (listing the expulsion



*adfinis*, L. Scribonius Libo (*cos.* 34), under the *lex Clodia de censoria notione*, had been described as “a sally directed against Pompey” rather than an investigation of the defendant himself.<sup>281</sup> The outcome of the trial is not known. Also the expulsion, in 97, of M. Duronius (*tr.pl.* 103/97) by M. Antonius and L. Fulvius Flaccus has been interpreted as being largely the result of factional politics, of an outcome of political and ideological pressures between a Metellan grouping and their antagonists.<sup>282</sup>

Speculation can go further, into more theoretical territory. Although the sources make no such inference themselves, it is easy to see how the decision of censors Cato and Flaccus to expel L. Flamininus might have been founded upon or influenced by the knowledge that the act would not only have an adverse effect on the *praeteritus*' standing, but would also weaken the political influence of his illustrious brother, Titus. In this reconstruction Cato and Flaccus, unwilling or unable to strike at the stronger and more popular brother directly, attacked him by expelling the less popular brother. The boundary between primary and secondary blurs to such an extent that we are left uncertain about which brother was the censors' true target.<sup>283</sup> In this regard, and even though it takes us away from the phenomenon of senatorial expulsion, another case involving Cato and

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under 108) is silent. The Cassii, the Longini in particular, seem to have been hostile toward the Metelli (*RPCC* 161-162, 173, 174, 195). If Sabaco was a member of or aligned with the Longini, his expulsion may have been a case of killing two birds with one stone – damaging to the Cassii Longini and to Marius.

<sup>281</sup> V.M. VI.2.8; L.R.Taylor, *Party Politics in the Age of Caesar*. Sather Classical Lectures 22 (Berkeley, 1949), 142; *LGRR* 314 (hence the quote). Cf Suolahti, 482: “both [censors]... had no quarrel with Pompey” (though not noticing Libo's trial). Willems, I.422 notes the link between Libo and Pompey, but does not suggest that the trial was partisan.

<sup>282</sup> Cic., *De Orat.* II.64.257, 68.274; *In Verr.* II.1.23.60; V.M., II.9.5; E.S.Gruen, ‘Political prosecutions in the 90s BC’, *Historia* 15 (1966), 40-41; *RPCC* 194. However, D.F.Epstein, *o.c.*, 133, 160n.168 is sceptical.

<sup>283</sup> That Cato used (or was thought to have used) the powers of the censorship in a partisan manner in order to further his own personal and political ends is nothing new: e.g., D.Kienast, *o.c.*, 68-87, 146-151; Suolahti, 355-356; *RP<sup>2</sup>* 153-176; A.E.Astin, *Cato the Censor* (Oxford, 1978), 78-103; El-Beheiri, 82-84.

Flaccus is pertinent. Their removal of Scipio Asiaticus from the equestrian order was, according to Plutarch, heavily criticised at the time as being nothing but an attack upon the memory of Asiaticus' late brother (and Cato's old *inimicus*), Scipio Africanus. Pertinent also is Plutarch's description of the deed: that it distressed (“*ἠνίασε*”) contemporary observers; a sentiment with which the biographer evidently agreed.<sup>284</sup> Although we will address the issue of criticism of the censors later in the chapter, that Cato and Flaccus were suspected of and criticised for having an ulterior motive for acting as they did – despite the fact that Asiaticus' dismissal was an ‘honourable discharge’ and imparted no *ignominia*; he was removed because of ill-health, not because of any impropriety – nonetheless illustrates that criticisms of how the censors exercised their powers and how the duties of *regimen morum* were performed, even if those criticisms were based on an inaccurate interpretation of fact, had entered the political discourse as early as the second decade of the second century.<sup>285</sup> We can justifiably suspect that such criticisms of censorial decisions existed even earlier in Republican history. Although the sources which comment on the event do not say as much, we can speculate that the famous expulsion of P. Cornelius Rufinus, expelled in 275 for possessing ten pounds' weight of silver tableware, may have elicited a query about the censors' motivation for doing so: one, C. Fabricius Luscinus, had a history of enmity toward Rufinus and it is possible that the decision to expel him was questioned as having little to do with trammelling the creeping extravagance of senators, but as the furtherance of a personal vendetta.<sup>286</sup>

But we get ahead of ourselves. The point is that at this remove we cannot in every instance distinguish what the censors' motives were, and nor can we always discern

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<sup>284</sup> Plut., *Cat. Mai.* 18.1.

<sup>285</sup> On Asiaticus' ‘honourable discharge’, see n.413.

<sup>286</sup> The animosity felt by Fabricius toward Rufinus went at least as far back as the consular elections of 278 and is best demonstrated by a lengthy anecdote at Gell., IV.8.1-8 (=T.2P in Appendix). Cf Cic., *De Orat.* II.66.268.

between those who were primary targets of the *nota censoria* and those who were secondary.

## 2. *Regimen morum* as a factor of censorial (un)popularity

M. Caelius Rufus, in Rome, to Cicero; c.8 August 50:

Did you know that Appius is performing prodigies of censorial vigour? Works of art, size of estates, debt, are all grist to his mill. He is convinced that the censorship is face cream or washing soda, but I fancy he is making a mistake, in trying to scrub out the stains he is laying open all his veins and vitals. Make haste in the gods' name and man's and get here as soon as you can and laugh at our frolics...

*Scis Appium censorem hic ostenta facere, de signis et tabulis, de agri modo, de aere alieno acerrime agere? Persuasum est ei censuram lomentum aut nitrum esse. Errare mihi videtur; nam sordis eluere vult, venas sibi omnis et viscera aperit. Curre, per deos atque hominis, et quam primum haec risum veni...*<sup>287</sup>

Cicero, in Athens, to Atticus; 15 October 50:

On your side please write to me as you promise, all about... the political situation... and the censors, more particularly what is toward about statues and pictures – is there to be a motion in the Senate? [*de censoribus, maximeque de signis, tabulis quid fiat, referaturne*].<sup>288</sup>

This exchange of correspondence between friends reveals a humorous disquiet at the way another friend, the censor Ap. Claudius Pulcher, was conducting himself with regard to *regimen morum disciplinaeque Romanae*: that no censor was meant to use his authority to vigorously pursue every questionable work of art or luxurious estate or debtor, and that to even attempt the enterprise of systematically hunting for and 'curing' debt and luxury was laughable. The censors were meant to provide exemplary punishments, and it was not the

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<sup>287</sup> Caelius Rufus *ap. Cic.*, *Fam.* 97.4<sup>SB</sup>.

<sup>288</sup> *Cic.*, *Att.* 123.5<sup>SB</sup>.

done thing for them to display an overly-severe attitude with regard to the number of people they punished. Moreover, the exchange reveals that, during this epoch at least, the Senate could at the minimum question alleged major deviations from this established pattern, even if they could not act upon any problems they suspected or detected. As we shall see, this would not be the last time that Pulcher's own particular brand of *regimen morum* would be questioned and criticised, even by a friend.<sup>289</sup>

Several data, relatively innocuous or of arguable interpretation when considered individually, but more persuasive when taken together, lead us to posit the existence of two closely-linked phenomena: that there existed a causal relationship between a censor's behaviour in office and his subsequent popularity. First, that those censors who were stringent in carrying out punishments connected to the processes of *regimen morum* tended to become unpopular thereafter because of it, while those who were milder tended to become more popular. Second, that those candidates for the censorship who promised during the canvass to judge and punish the behaviour of citizens with moderation if elected (the issue of sincerity aside) tended to be viewed more favourably by those who would vote for them than candidates who threatened to act more severely, and that this favour tended to translate to success at the ballot-box of the *Comitia Centuriata*.<sup>290</sup> Importantly,

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<sup>289</sup> Cic., *Divinat.* I.16.29-30; Caelius Rufus *ap. Cic.*, *Fam.* 98.1-3<sup>SB</sup>.

<sup>290</sup> The elections of censors, as with those of consuls and praetors, were contested in the *Comitia Centuriata*, where the groups with the greatest voting-power, the *equites* and Class I, were also the first to cast their ballots. Because of this there would have been times when victors would have been declared and elections over before the inferior classes (containing progressively poorer constituents) got the chance to vote. As a result there is a well-trodden debate about how big a part these poorer members of the electorate played in deciding the outcome of praetorian, consular, and censorial elections. It is probably fair to say that they did contribute, but more so at the canvass than at the ballot. On the issue, and electoral procedure: U.Hall, 'Voting procedure in Roman assemblies', *Historia* 13 (1964), 267-306; L.R.Taylor, *Roman Voting Assemblies: From the Hannibalic War to the Dictatorship of Caesar*. Jerome Lectures 8 (Ann Arbor, 1966), *passim*; E.S.Staveley, *Greek and Roman Voting and Elections* (London, 1972), 121-190; R.MacMullen, 'How many Romans voted?',

the single datum which at first appears to countervail strongly the contention that moderation was desired more than austerity – the electoral success of Cato, who as a candidate pledged a harsh exercise of the *censura* – upon a closer analysis can be shown to in fact support it.

Dio describes the nature of the relationship between, and the personalities of, the censors of 142-141, Mummius Achaicus and Scipio Aemilianus:

As regards their characters, Mummius and [Aemilianus] Africanus were utterly different from each other in every respect. The latter performed his official duties as censor with the strictest integrity and with impartiality, not esteeming one person above another; indeed, he called to account many of the senators and many of the equestrians, as well as other individuals. Mummius, on the other hand, was more popular in his sympathies and more charitable; he not only attached no *nota* himself to anyone, but he even undid many of the acts of Africanus, whenever it was possible.

ὅτι Μόμμιος καὶ ὁ Ἀφρικανὸς παμπληθεῖς ἀλλήλων τοῖς τρόποις ἐς πάντα διέφερον. ὁ μὲν γὰρ ἐπὶ τε τὸ σωφρονέστατον καὶ μετὰ ἀκριβείας, μηδενὸς μηδὲν προτιμῶν, ἤρξεν, καὶ πολλοὺς μὲν ἐκ τῆς βουλῆς, πολλοὺς δὲ καὶ ἐκ τῶν ἰππέων τῶν τε ἄλλων ὡς ἐκάστους εὐθύνεν: ὁ δὲ δὴ Μόμμιος πρὸς τε τὸ δημοτικώτερον καὶ πρὸς τὸ ἀνθρωπινώτερον οὐτ' αὐτὸς τι κηλῖδα προσέθηκε, καὶ συχνὰ τῶν ὑπ' ἐκείνου πραχθέντων, ὅσα γε καὶ ἐνεδέχετο, κατέλυσεν.<sup>291</sup>

Hence we learn that Mummius, desirous when censor to exude the persona of a man who was liberal and sympathetic to the people, refused to append the *nota censoria* beside the name of any senator, equestrian, or “other”; in doing so frustrating the ambition of his colleague, Scipio Aemilianus, who had wished to conduct the duties of *regimen morum* in

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*Athenaeum* 58 (1980), 454-457; J.Linderski, ‘Buying the vote: electoral corruption in the late Republic’, *AncW* 11 (1985), 87-94; A.W.Lintott, ‘Electoral bribery in the Roman Republic’, *JRS* 80 (1990), 1-16; A.Yakobson, ‘*Petitio et largitio*: popular participation in the Centuriate Assembly of the late Republic’, *JRS* 82 (1992), 32-52; A.Yakobson, *Elections and Electioneering in Rome: A Study in the Political System of the Late Republic*. *Historia Einzelschriften* 128 (Stuttgart, 1999), *passim*; *CRR* 57-61; H.Mouritsen, *Plebs and Politics in the Late Roman Republic* (Cambridge, 2001), 90-127; F.Millar, *The Crowd in Rome in the Late Republic*. *Jerome Lectures* 22 (Ann Arbor, 2002), 197-226.

<sup>291</sup> Dio, XXII.76.1.

a stricter fashion.<sup>292</sup> (On the other hand, Mummius appears to have fully co-operated with his colleague in those areas of censorial operation where powerful enemies were less likely to emerge: leasing state property, organising works contracts, and contributing toward the beautification of the city.<sup>293</sup>) Clearly Mummius was cognisant of the existence of some kind of basic causal relationship between a censor's leniency with regard to the processes of the *regimen morum* and his subsequent popularity, and he acted upon this concept.<sup>294</sup> In an episode specifically concerning the enrolment of the equestrian order, but which appears to highlight the same phenomenon, Livy writes that the *recognitio equitum* of C. Claudius Pulcher and Ti. Gracchus (*censs.* 169-168) was "invidious" and "offensive" to the equestrian order, and that it was so expressly because it was "stern and harsh" in that many *equites* were cashiered: *In equitibus recensendis tristis admodum eorum atque aspera censura fuit: multis equos ademerunt. In ea re cum equestrem ordinem offendissent, flammam invidiae adiecere edicto....*<sup>295</sup> Likewise Plutarch reports that Marius, contrary to a popular expectation that he would put himself forward as a candidate for the censorship, chose not to run in the elections of 97 because he secretly feared that if he did so he would be defeated. Obviously such an anxiety could not be made common-knowledge, so a plausible pretext was needed to explain his decision not to run. Thus Plutarch proceeds to report that Marius' officially-stated reason for not putting himself up for election was that he was not willing to incur "the hatred of many citizens" by carrying

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<sup>292</sup> While no sitting senators would have been expelled (the process requiring censorial agreement), acting-senators may have been, by Scipio acting alone.

<sup>293</sup> A.E.Astin, *Scipio Aemilianus*, 115.

<sup>294</sup> Similar dynamics, in which one censor blocked the wishes to expel of another, are attested for other pairs, most notably those of 179 (Livy, XL.51.2), 136 (Dio, XXIII.81), 102 (Cic., *Sest.* 47.101; App., I.4.28), and 50 (Dio, XL.63.5-64.1). In none of these accounts is it said that the 'blocking' censor did so because of a desire to court popularity, although such a motive may have informed the behaviour of some, if not all.

<sup>295</sup> Livy, XLIII.16.1-2.

out a necessarily strict examination of their lives and manners: Ἄλλως δ' αὐτὸς ἐκαλλωπιζέτο πολλοῖ μὴ θέλειν ἀπεχθάνεσθαι, τοὺς βρύς αὐτῶν καὶ τὰ ἦθη πικρῶς ἐξετάζων.<sup>296</sup> Of course, a cynical observer may have pointed out to Marius that he did not *have* to be strict, that he did not *have* to bring unpopularity down upon himself, but to have done so would have exposed Marius' true rationale for not running. Again we find an episode predicated upon the concept of a causal relationship between a censor's leniency or severity in *regimen morum* and his subsequent popularity or otherwise.

These three episodes, when considered together appear to betray a fundamental fact about the relationship between the Roman censors and those who would vote for them, specifically with regard to *regimen morum*: that those censors who were severe tended towards unpopularity, and that censors who were milder tended towards popularity. This thesis, especially as it pertains to members of the Senate, finds further support in the events surrounding the censorial election of 184. It also illustrates that candidates for the censorship (as well as serving censors) were also affected by the phenomenon.

Lengthy accounts of Cato's candidacy for the censorship are presented by Livy and Plutarch (the latter, twice).<sup>297</sup> Accordant in tone and on the general facts presented, they moreover agree that many within the senatorial aristocracy opposed it, and that in doing so put up seven candidates, three plebeian and four patrician, against him and his

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<sup>296</sup> Plut., *Mar.* 30.4. Marius' fear of defeat was founded upon his recent behaviour against the interests of the Metelli and their close associates, which had made him unpopular in certain important quarters: A.N.Sherwin-White, 'Violence in Roman politics', *JRS* 46 (1956), 5; E.Badian, 'Caepio and Norbanus: notes on the decade 100-90 BC', *Historia* 6 (1957), 333; E.Badian (1964) 'Marius and the nobles', *DUJ* 25.3 (1964), 149-150; J.Van Ooteghem, *Marius*, 249-250; A.Passerini, *C.Mario*, 162 [= *Athenaeum* n.s.12 (1934), 352].

<sup>297</sup> Livy, XXXIX.41.1-4; Plut., *Cat. Mai.* 16.3-6; *Apoph. Cat. Mai.* 22. Modern treatments of the campaign may be found, *inter alios*, in Suolahti, 347-348; *RP*<sup>2</sup> 150-151; A.E.Astin, *Cato*, 75-77.

patrician 'running mate', L. Valerius Flaccus.<sup>298</sup> Several objections were reportedly advanced against Cato's candidacy; some argued against a *novus homo* attaining the *censura*, some were invidious, and some feared retaliation for harms done by them to him. None of these objections were mutually-exclusive. Most germane to this chapter, however, was a fourth grounds for objection: fear that Cato would carry out the duties of the censorship, including those of *regimen morum*, in an overly-harsh and inexorable manner. Relevant also is that, according to Plutarch (Livy is silent on this issue), they, desperate for Cato to fail at the ballot, attempted to court the favour of the electorate (however we identify them) with promises of mild conduct in office, "supposing that it wanted to be ruled with a lax and indulgent hand". Cato retorted, Plutarch and Livy agree, by making speeches before the *populus* in which he extolled the virtue of an austere censorship and promised a return to the *ancien régime*.

An issue of provenance arises, albeit not one that will affect our conclusions overly. The accounts presented by Livy and Plutarch, concordant in their presentation of a fearful senatorial aristocracy attempting to obstruct Cato's candidacy for the censorship, and in Cato's responses to said obstruction, appear to belong to the same pro-Catonian tradition. It seems that if not derived through the direct utilisation of Cato's own work, then they were the product of one or more of the numerous and sympathetic intermediate sources that would have been available to them; from a volume of *dicta Catonis* or from a (now) lost biography, for example.<sup>299</sup> As a result we must allow for the likelihood that the

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<sup>298</sup> Livy, XXXIX.40.2-3. The other patrician candidates, while ostensibly competing against Flaccus only, were competing against Cato also, albeit indirectly: to deny Flaccus victory would deny Cato, if elected, a compliant colleague. He would instead have to endure an inflexible and independent partner who would check the more undesirable of his judgements. Several examples of such antagonistic relationships have been noted already.

<sup>299</sup> On Livy and Plutarch's sources for Cato: R.E.Smith, 'Plutarch's biographical sources in the Roman *Lives*', CQ 34 (1940), 4-10; R.E.Smith, 'The *Cato Censorius* of Plutarch', CQ 34 (1940), 105-112; A.E.Astin, *Cato*, 296-304; E.M.Carawan, 'Cato's speech against L.Flamininus: Liv. 39.42-3', CJ 85 (1990), 316-329.



accounts of Livy and Plutarch preserve the prejudices of their pro-Catonian origin(s), depicting him favourably whilst throwing a less forgiving light on his detractors and competitors. We must, therefore, be wary that their accounts, whether considered separately or as amalgamation, provide us with a somewhat biased and unhistorical representation of the campaign of 184; indeed if we pursue this line as far as it will go, we must allow for the possibility that our pro-Catonian source(s) so distorted the facts of the censorial campaign of 184 that very little historic truth has been transmitted. Despite this, the campaign of 184, as transmitted by Livy and by Plutarch, remains instructive, as clearly both *accepted as historically feasible* the scenario that was presented to them: that the prospect of an overly-austere application of the duties of *regimen morum*, including, presumably, an overly-severe *lectio*, was an issue that could worry greatly the minds of a large section of the Senate. Moreover, while Livy's silence on the matter prevents the assertion being applied to him, it is clear that Plutarch accepted as feasible a further connotation: that some within the Senate thought that there was value to be had in expressing to the electorate concerns about the prospect of a harsh censorship; that the citizenry, taken *en bloc*, cared about this issue. Again, whether or not these senators' fears were sincere or justified (or even actually expressed, depending on how biased against Cato's opponents the ultimate source(s) might have been) is largely immaterial. More pertinent to our wider thesis is that later historiographers considered it not infeasible that a sizable portion of the Republican Senate might have objected to an individual's candidature based wholly or in part upon their apprehension that his austere character might lead to the widespread and severe punishment of moral delinquencies. Also, that those who voted in the elections for the censorship tended to look more kindly upon the prospect of a mild censorship than a harsh one, and that some candidates for the censorship may have tried to attract support for their own campaigns by promising a mild conductance of *regimen morum* while at the same time attempting to weaken the

candidacy of others by informing the electorate (truthfully or not) of their less agreeable intentions.

But Cato, who as a candidate supposedly promised a harsh and austere *regimen morum*, was victorious at the ballot. At first glance this appears to be strong evidence against the foregoing proposition, that there was an association between leniency promised at the canvass and success at the ballot. It does not. The standard explanation for Cato's success (and Flaccus') is that following the various moral panics of the 190s and early 180s, which, when interpreted together, signified that much was awry with the *pax deorum*, the electorate, as if operating as a whole, recognised the need for social correction as expiation and recognised too that Cato, cognisant of the peril facing the state and aware of its cause and remedy, was the corrector required. Also, that Flaccus was elected in Cato's wake, almost as his *adiutor*.<sup>300</sup> This portrait is based largely upon the testimonies of Livy and Plutarch, however we have just argued that their accounts were founded upon a tradition that, if not derived directly from Cato, was rooted in a source that was sympathetic toward him at the expense of his competitors. As such we have a justifiable case for questioning the validity of the standard interpretations of the pair's (particularly Cato's) accession to the censorship. The case strengthens when we adduce factors that might form a better explanation for their victory at the ballot.

The identity of the man who was almost certainly the presiding consul at the censorial election cannot pass without note: Cato's kinsman and ally, L. Porcius Licinus. His presidency, if we allow it, must have had some favourable impact upon electoral chances of Cato and Flaccus, irrespective of their respective characters. More crucial still were the many formidable and worthy candidates arrayed against them, so many that they must have split the plebeian 'anyone but Cato' vote and the patrician 'anyone but Flaccus'

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<sup>300</sup> Suolahti, 348; *RP*<sup>2</sup> 153-155; A.E.Astin, *Cato*, 76-77.

vote.<sup>301</sup> Historians ancient and modern, viewing Cato's life in hindsight, have all too often given the impression that his political ascent was almost preordained, the inevitable outcome of his zeal for antique virtue. In doing so, they have not fully appreciated that some of his successes are better understood as resulting from errors made by his opponents rather than from his own behaviour and public approval of it. With regard to the election of 184, a sleeker and more thoughtfully-chosen array of competitors would have concentrated the electoral potential of the blocs set against Cato and Flaccus and probably would have denied either or both success at the ballot. In consequence it would not be unfair to summarise the issue by saying that Cato and Flaccus did not win the election on their own merits but that through a lack of foresight in concentrating their efforts, their opponents lost it. The fact would not have been one which Cato would have felt pleased or comfortable acknowledging publicly, so he didn't. Instead he formulated his own interpretation of what happened during the campaign and the ballot; an interpretation in which he downplayed the characters of his opponents while at the same time amplifying his own character, political acumen, and popularity with the electorate.<sup>302</sup> It is this tradition which is the ultimate source for the campaign accounts of Livy and Plutarch.

In sum, regardless of whether we judge the campaign accounts of Plutarch and Livy as wholly accurate and representative of historic fact, or accept them as distorted to some degree (perhaps wholly) by a pro-Catonian bias, nothing in the accounts of the campaign of 184 and in Cato's (and Flaccus') succession to the censorship counts against

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<sup>301</sup> Suolahti, 348; *RP*<sup>2</sup> 149-151. The total number of candidates is known only for three censorial elections; those for 189 (6 candidates; Livy, XXXVII.57.10), 184 (9), and 169 (6; Livy, XLIII.14.1). Although this dataset is scant, it suggests that the election of 184 saw about half as many more candidates than was typical.

<sup>302</sup> The unpopularity and opposition that Cato faced while in office is well-attested, and the summation at Livy, XXXIX.44.9 is apt: "a remarkable censorship and full of quarrels [*simulatiumque plena*]". Much of Cato's unpopularity as censor was resultant upon his austerity – austerity which, if we are to believe Cato, is exactly what the electorate voted for!

the position that those who voted at the elections for the censorship tended to prefer candidates who offered relative moderation in their *regimen morum* than those who offered relatively harshness. Importantly, if the accounts do reflect the historic truth – at least to the extent that Cato and Flaccus’ opponents promised moderation – there is nothing to suggest that this was a tactic of desperation, employed solely to block a feared Catonian victory. Rather the opposite: that they were cognisant of and attempted to exploit a simple causal relationship; that a perceived potential for moderation tended to win elections. This conforms to what we have already seen in other examples. Cato’s candidacy may have given the electoral campaign of 184 a frisson of novelty, but the other candidates would have made promises of moderation in any event.

The foregoing cases shed a different light on the censors, and their place within the wider political milieu, than that in which they are usually presented: as haughty and unyielding men largely indifferent about whether or not their *acta* went down well with their peers and/or with the electorate of the Comitia Centuriata. Quite the reverse. Despite their scant nature, the sources consistently present the censors, and potential censors, as cognisant of an electorate which tended to respond more favourably toward those who conducted a mild *regimen morum* than to those who did not – and furthermore present them behaving accordingly in response to such knowledge. Likewise, the sources also present candidates for the censorship as cognisant of an electorate which tended to vote for those whom they knew or believed would conduct a mild *regimen morum* rather than those whom they knew or believed would act in a harsher manner; likewise, the sources present candidates behaving accordingly in response to such knowledge.<sup>303</sup> On the other hand, these broad conclusions should not be taken to mean that we might not find some

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<sup>303</sup> The sources provide very little information on defeated censorial candidates (T.R.S.Broughton, *Candidates Defeated*, 31-34 lists 15) and hardly anything on reasons for defeat and success at the elections for censor. However the case of Cato and Flaccus and their opponents is instructive.

instances where the censors sought to curry favour with the electorate – or with an appreciable portion thereof – by censuring particularly notorious miscreants or, having censured, have the deed greeted with applause. In one of his speeches, Cicero offers that it was common knowledge that the censors who conducted the *lectio* of 70, Lentulus Clodianus and Gellius Publicola, looked to expel two topically unpopular characters, M. Aquillius and Ti. Gutta, in order to augment their own standing with the *populus*.<sup>304</sup> Plutarch reports that following Cassius Sabaco's expulsion, it was widely thought that he had deserved his punishment.<sup>305</sup> Such a deserved fate would have redounded positively on Sabaco's punishers. Nor should our observation of the association between moderation and popularity be taken as meaning that *undue* moderation could not be criticised, especially of censorial timidity was suspected. In this regard Dio records that the censors of 50 found that the prospect of carrying out their *lectio* left them with an unenviable dilemma: on the one hand unwilling to risk attracting enmity from those whom they would expel (however justly) but on the other not wanting to incur criticism for failing to punish those unfit individuals who deserved punishment. Dio presents this as an example of a lack of censorial backbone, and the episode is built upon an assumption that censors might sometimes be criticised for not expelling those deemed deserving of it.<sup>306</sup> Such

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<sup>304</sup> Cic., *Cluent.* 47.130.

<sup>305</sup> Plut., *Mar.* 5.3-4.

<sup>306</sup> Dio, XL.57.1-3. Dio does not name the censors, but refers to them as those in office following the abrogation, in 52, of the *lex Clodia de censoria notione*. Of these, Ap. Claudius Pulcher is otherwise-known to have been a zealot when it came to *cura morum* and was responsible for Sallust and C. Ateius Capito, among others, being refused admission to the *ordo senatorius*. In contrast, censor Piso Caesoninus refused to agree to the expulsion of any sitting *senator* (Cic., *Divinat.* I.16.29; *Att.* 123.5<sup>SB</sup>; Caelius Rufus *ap. Cic.*, *Fam.* 97.4, 98.1-3<sup>SB</sup>; Dio, XL.63.2-5). Perhaps we should take the view that only Piso was actually reticent, rather than both.

observations do not, however, negate our conclusion about the existence of a broad link between censorial moderation and subsequent popularity.

### **3. Constraints and restraints on *censoria potestas* (I): legal and quasi-legal devices; ‘blunting the censors’ pens’**

#### **I. *ignominia*, not *infamia*; *iudicia*, not *res iudicatae***

Within a lengthy section of his *Pro Cluentio*, Cicero, defending against a murder charge the *eques* A. Cluentius Habitus, whom the censors had expelled from his order for bribing jurors, addresses the phenomenon of censorial animadversion. He does this primarily to challenge two associated remarks on the issue that had been made to the court by the prosecuting counsel, the *eques* T. Accius Pisauensis. The first of Accius’ claims was that the censors’ condemnations of character were – or were equivalent to – the judicial rulings (*res iudicatae*) which issued from praetorian courts, and that just as one condemned in a praetorian court suffered *infamia*, with its attendant penalties and disabilities, so too did those assessed negatively by the censors. Accius’ second claim was that an individual’s condemnation by the censors was *prima facie* evidence that he possessed an unscrupulous character and lacked moral integrity. Cicero’s rebuttal of these views of the prosecution counsel is wide-ranging and multi-faceted, but easily characterised. At length (42.117, 119-120; 43.122) and citing several *exempla*, he demonstrates that the censors’ assessments had never been considered *res iudicatae* because it was understood that unlike praetorian verdicts, which were derived through the measured, diligent, and expert interrogation of evidence in open court, censorial assessments were opinions, often based on nothing more than rumour and hearsay (more concrete forms of evidence not being

required), and the outcome of each college's subjective interpretation of what constituted correct behaviour. Because of this marked difference in derivation, the censors' moral rebukes could not be – and were not – regarded as *prima facie* evidence of bad character; they imparted not *infamia*, but rather *ignominia*, the public diminution of one's *nomen* (*honor, dignitas, existimatio*).<sup>307</sup> Cicero continues by observing that to be afflicted by *ignominia* did not prohibit one from being elected to an office of state, from being employed by such an officer, from having one's name included in the *album iudicorum* and from serving as a *iudex* in a praetorian court, or from initiating a prosecution; the state continued to employ those with *ignominia* in positions of trust. Furthermore, he points out that it was not uncommon for succeeding censors to reverse their predecessor's moral assessments. Although the point is not made by Cicero, we know from elsewhere that the censors' mark, and its attendant *ignominia*, did not prohibit incumbent office-holders from remaining in office.<sup>308</sup> And Cicero was not engaging in lawyerly prevarication or dissimulation for the sake of his client.<sup>309</sup> While it is true that Cicero would later boast that in defending Cluentius he had thrown dust into the eyes of the jury,<sup>310</sup> not too much should be made of this comment here: there is no evidence that Cicero deceived or obfuscated when it came to his treatment of the *nota censoria*. His response to Accius' claim accords well with his famous statement in the *De Re Publica*, that "the censors' judgement imposes

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<sup>307</sup> On *ignominia* and *infamia* and their relation to censors' judgements: A.H.J.Greenidge, *Infamia*, 41-112; A.Berger, 'Encyclopedic dictionary of Roman law', *TAPS* n.s.43 (1953), 491, 500, 598-599; G.Pfaff, 'Infamia', *RE.IX*<sub>2</sub> (1916), 1537-1540; L.Pommeray, *Études sur l'Infamie en Droit Romain* (Paris, 1937), 23-39. *CRR* 119 errs in saying that censors' judgements carried *infamia*. Cicero's thesis rests in part on the assumption that contemporary Roman society took the verdicts of their courts seriously (in contrast to censorial opinion); the former assumption is tested and found valid by A.M.Riggsby, 'Did the Romans believe their verdicts?', *Rhetorica* 15 (1997), 235-251.

<sup>308</sup> See Ch.3, §.VI.

<sup>309</sup> L.Pommeray, *o.c.*, 29n.3.

<sup>310</sup> Quintil., *Inst. Orat.* II.17.21.

almost no penalty except a blush upon the man he condemns... as his decision affects nothing but the *nomen*, his condemnation is called *ignominia*" (*ensoris iudicium nihil fere damnato nisi ruborem offert... ut omnis ea iudicatio versatur tantum modo in nomine, animadversio illa ignominia dicta est*),<sup>311</sup> and the technical points and historical *exempla* adduced throughout the rebuttal are not only mutually-consistent but agree with evidence from other sources, who invariably present the censors' opinions as carrying *ignominia* but never refer to them as imparting *infamia*.<sup>312</sup> Note should also be drawn to Lucilius' brief but clear remark – "*ignominia' est nominis nota*" – and to Asconius' commentary on the the *lex Clodia de censoria notione* of 58.<sup>313</sup> Nor should the dearth of any evidence supporting Accius' stance be disregarded.<sup>314</sup>

We cannot know whether Accius' claims before the court, that censors' *iudicia* were in fact or were equivalent to *res iudicatae* and that the *nota censoria* imparted *infamia*, were made in ignorance of their markedly distinct nature, or whether he knew the remark was groundless but made it anyway in the hope that it would pass unnoticed or uncontested by the defence counsel. Mud sticks, and falsehoods might sway a juror or turn the opinion of an audience member if not challenged appropriately. Considering

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<sup>311</sup> Cic., *Rep.* IV.6.6 *ap. Non. Marc., De Proprietate Latini Sermonis*, 35 (Lindsay). C.A.Barton, *Roman Honor: the Fire in the Bones* (Berkeley, 2001), 18: "The implication... is that the blush was, in itself, penalty enough". Just as the English noun 'judgement' possesses a strict legal definition and a looser, non-legal, one (*i.e.*, a personal opinion), likewise the Latin '*iudicium*'. So while censors' assessments are sometimes called "*iudicia*" in the sources (as Cicero himself does here and at *Cluent.* 43.122; *Sest.* 25.55; *Invent.* I.30.47-48), they were not judgements in the legal sense.

<sup>312</sup> Livy, XXXIX.43.5; V.M., II.9.9; Suet., *Aug.* 29.1; *Claud.* 16.1.

<sup>313</sup> Lucil., fr.852 (Warmington) *ap. Non. Marc., De Proprietate Latini Sermonis*, 35 (Lindsay); Ascon., *In Piso.* 8.24-26 (Clark). See also the use of "*ignominia*" at Cic., *De Orat.* II.66.268.

<sup>314</sup> A misapplication of "*infamia*" at [Ascon.], *In Caecil. Divinat.* 189.24 (Stangl) notwithstanding.



Accius' experience at the bar, the latter scenario is more probably true.<sup>315</sup> If so, the tactic of misdirection and equivocation presupposed a degree of ignorance in the audience, possibly also the jury: that some portion of them would not know the difference between *ignominia* and *infamia*, between things which were *res iudicatae* and things which were not. The fact reveals something of the public understanding of law and legal terminology during the period. Yet Cicero was alert, and in responding to his adversary's claim he underscored for the court as clearly as possible the error of Accius' argument.<sup>316</sup>

In part of his rejoinder to Accius, Cicero twice alludes to the historical reason *why* the censors' assessments of character were not *res iudicatae* and did not impart *infamia*. At 44.123 he remarks that the *maiores* had foreseen that to do otherwise would open the way for the calamitous deterioration of this most latitudinous, erratic, and uncheckable of offices into the most autocratic of magistracies; that for censors to possess such power might set the Republic on course to absolute *regnum*. The orator praises this decision of the *maiores* as wise, and describes it as a metaphorically "blunting the censors' pens".<sup>317</sup>

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<sup>315</sup> While his name is not attached to any other known case (*TLRR passim*), Accius was an experienced young lawyer at the time of Cluentius' trial (Cic., *Cluent.* 24.65, 31.84, 52.143, 57.156; cf *Brutus* 78.271). In making his claim that censors' *iudicia* were *res iudicatae*, he may have willfully blurred the two distinct definitions of the former term.

<sup>316</sup> J.T.Kirby, *The Rhetoric of Cicero's Pro Cluentio* (Amsterdam, 1990), 148-156 shows that Cicero wanted his audience to pay particular attention to his response to Accius' claim, it was one which he took particular care to rebuff.

<sup>317</sup> "If the former be the case, take heed what you are about; or you will be entrusting to future censors a tyrant's power over every one of us; the censor's *subscriptio* will prove as great a source of calamity to our citizens as those cruel proscriptions; and the censor's pen, whose point our forefathers took so many precautions to blunt, will hereafter inspire us with as much terror as did once the dictator's" (*Si quia subscripserint, videte quid agatis, ne in unum quemque nostrum censoribus in posterum potestatem regiam permittatis: ne subscriptio censoria non minus calamitatis civibus quam illa acerbissima proscriptio possit*

This comment is prefaced, at 42.120, by a brief passage in which Cicero reports that whereas the *maiores* had intended for the censors' criticisms to inspire apprehension ("*timor*"), and hence conformity, within the populace, they had never intended for the effects of such criticisms to be felt for life. This presumably was because of the acknowledged erratic nature of the application of animadversion; the separate remarks dovetail into one logical rationale. Cicero was not alone in acknowledging the potential for the  *censura*, if uncontrolled, to descend to  *regnum*. Livy and Valerius Maximus would say much the same when expanding upon the reason why the two laws controlling the censorship, the  *lex Aemilia* and the  *lex Marcia*, were passed.

## II. The *lex Aemilia de censura minuenda* of 434

The office of censor was, the sources agree, created in 443. Before then, the occasional enumeration and organisation of the citizenry into their constituent orders, classes, and voting-tribes (the  *census populi*), had been the province of the kings and, following them, consuls.<sup>318</sup> According to Livy and Dio (if not garbled in Zonaras' paraphrase), in its early years the  *censura* was a quinquennial magistracy in that each college of censors occupied office for 5 years before being succeeded by a fresh pair, and that there was no interim between successive pairs.<sup>319</sup> Probably rightly, such reports have been viewed with scepticism by many moderns, who, following Mommsen, have preferred to view them as misinterpretations, probably stemming from "some later historian who could not understand the difference which existed juridically between the maximum period of office

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*adferre: ne censorium stilum, cuius mucronem multis remediis maiores nostri rettuderunt, aequae posthac atque illum dictatorium pertimescamus).*

<sup>318</sup> D.H., XI.63.1-3; Livy, IV.8.1-7;  *Per.* 4; Pomponius  *ap.* Justinian,  *Digesta* I.2.2.17; Zon., VII.19.

<sup>319</sup> Livy, IV.24.3-9; IX.33.4-34.25; Zon., VII.19.

and the interim period of 5 years between each pair of censors that was later common”.<sup>320</sup> Whatever the truth, it suffices to observe that in 434, in a move that Livy and Valerius Maximus describe as motivated by a desire to weaken the great power of the censorship and to choke any prospect of it descending into a tyranny, a *lex Aemilia* was passed, limiting normal tenure to 18 months.<sup>321</sup> The effect of this fifth century law upon the fourth to first century phenomenon of expulsion by the censors is not altogether clear. If we follow the view that the censors could not or did not revisit and revise their respective *lectiones* once they had been conducted, that they operated in accordance with the *lex Aemilia* would have had little impact upon the phenomenon of senatorial expulsion: there would have been extended periods during which no-one could be ejected from the Senate by a pair of censors, punctuated by brief periods during which this was possible. Yet if we take the view (argued in this thesis) that theoretically the censors were able to amend the *album senatorium* as long as they remained in office, then it follows that the time limit imposed by the *lex Aemilia*, albeit proleptically and not by design, would have limited the time available in which *praeteriti* could be created. With the passing of the *lex Aemilia* in 434, a phenomenon belonging to a later epoch may have been unwittingly curtailed.

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<sup>320</sup> Suolahti, 27, paraphrasing T.Mommsen, *RSt II*<sup>3</sup>.348-350. See also, for example, A.H.J.Greenidge, *Roman Public Life*, 218; *CRR* 116-117.

<sup>321</sup> Livy, IV.24.3-9; IX.33.4-34.25; V.M., IV.1.3. The Senate could, on occasion, allow extensions beyond this limit, for example if important arrangements for *opera publica* remained outstanding (Livy, XLV.15.9; Frontin., *DAUR* I.5). Rotondi, 211 calls the law “*lex Aemilia de censura minuenda*”. This is followed by most, although variants exist.

### III. The *lex Marcia de censoribus* of c.265

With the promulgation of this law, either in 265 or shortly thereafter, re-election to the censorship became illegal. The rationale behind the passage of this law is remarked upon by Livy and Valerius Maximus (the latter citing the law's promulgator): that *censoria potestas* was too great a force to entrust to any man twice.<sup>322</sup> This may be compared against the same historians' reasons as to why the *lex Aemilia* was passed, and to Cicero's explanation of why the censors' assessments did not count as a *res iudicatae* and did not impart *infamia*. The prohibition of iteration necessarily resulted in more men holding the office; that "like the changes of parties and of programmes" inhibits the stagnation of political ideas and practices in modern states, it was healthier for the state to have the greatest possible interchange and plurality of viewpoints when it came to judging what constituted acceptable or punishable behaviour.<sup>323</sup> "For a continuous moral control to have been exercised by the same men would have been intolerable".<sup>324</sup>

### IV. The *lex Clodia de censoria notione* of 58

Passed in 58 by plebeian tribune P. Clodius Pulcher, this law, according to Asconius, who presents what may be the verbatim text, was promulgated so as "to prevent the censors, in selecting the Senate, from 'passing over', or branding with any mark of *ignominia*, any man who had not been charged before them and condemned by the declared verdict of both

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<sup>322</sup> C. Marcus Rutilus Censorinus, *Oratio ad Populum ap. V.M.*, IV.1.3 (fr.1 (*ORF*<sup>4</sup> 4)); Livy, XXIII.23.2; Plut., *Coriolanus* 1.1. The law is attributed to Censorinus, *censor iterum* in 265. It cannot have been his work as censor, as censors did not possess the *ius rogandi*. He might have authored it after exiting office. Rotondi, 244 terms it "*lex Marcia de censura non iteranda*".

<sup>323</sup> A.H.J.Greenidge, *Infamia*, 49.

<sup>324</sup> A.H.J.Greenidge, *Roman Public Life*, 218.

censors” (*ne quem censores in senatu legendo praeterirent, neve qua ignominia afficerent, nisi qui apud eos accusatus et utriusque censoris sententia damnatus esset*).<sup>325</sup> Dio and the Bobbio Scholiast agree.<sup>326</sup> While the *lex Clodia* ensured that the censors remained the only officers of state with the power to expel members from the Senate and cashier *equites* from their order, it removed from them the ability to do so summarily and on their own initiative. While hitherto the censors had on occasion arranged for *cognitiones* to be held before them (public hearings at which individuals whom they suspected of delinquency were hauled before them to answer the charge), the *lex Clodia* expanded and regularised this practice, forcing their deliberations on senatorial membership wholly into the arena of public hearings; henceforth they were to be proceedings initiated and conducted within the framework of *iudicia*, with third-party complainants bringing specific charges against suspects, prosecution and defence advocates, and witnesses for both sides.<sup>327</sup>

Clodius’ law was attacked by Cicero on several occasions, in the extant works always as part of a wider attack upon the character of Clodius himself and always in extremely hyperbolic tones; in three places even stating that the law abolished the censorship.<sup>328</sup> Despite the evident overstatements, Cicero mentions that more than once before Clodius succeeded in getting his law passed, attempts had been made to similarly constrain the censors’ management of *cura morum*. He further relates that the reason for Clodius’ success, and his predecessors’ failures, was that while these predecessors (whom he terms “*improbi*”) had the desire to constrain the censorship they had not the

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<sup>325</sup> Ascon., *In Piso*. 8.24-26 (Clark).

<sup>326</sup> Dio, XXXVIII.13.1-2, XL.57.2. See also Schol. Bob., Sest. 132 (Stangl).

<sup>327</sup> Cic., *Att.* 85.1, 89.8<sup>SB</sup>; V.M., VI.2.8.

<sup>328</sup> Cic., *Prov. Cons.* 11.46; *In Piso*. 4.9, 5.10; Sest. 25.55; *Domo Sua* 51.130; *Harusp. Resp.* 27.58. The assessment at Ascon., *In Piso*. 8.12-13 (Clark) mirrors Cicero’s hostility. Naturally, Cicero’s response to this law – and to Clodius – must be considered within the context of the fraught relationship between the two.

capacity, but that Clodius had both attributes.<sup>329</sup> If true, these remarks demonstrate not only that the traditional processes of *cura morum* came under attack more than once before Clodius took his turn, but also that these previous attempts failed because their sponsors did not have the ability to see their attacks come to fruition.

Despite his attacks on Clodius' character and his hyperbolic assessments of Clodius' law, Cicero nowhere ascribes a motive to Clodius' desire to curtail the powers of the censors. Neither do Asconius and the Bobbio Scholiast. Dio on the other hand claims that it, alongside other legislation Clodius passed, formed part of a wider strategy to win over the Senate and the *equites* so as to more easily counter Cicero's opposition to him.<sup>330</sup> The most recent – and fullest – treatments of the law and of the motivation behind it are given by Tatum, who, expanding upon Dio's testimony, argues convincingly that Clodius' brought forward his legislative programme in order to secure for himself the support of junior members of the Senate, equestrians, and commoners, with the *lex Clodia de censoria notione* appealing to the former component.<sup>331</sup> As we have seen, one of the results of Sulla's reformation of the Senate was to create a situation in which recruitment into it outstripped loss from it, the net effect being that year on year the number of members expanded well beyond the Senate's nominal establishment. The first censors in office after the reformation, those of 70-69, responded to the resultant excess membership

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<sup>329</sup> Cic., *In Piso*. 5.10.

<sup>330</sup> Dio, XXXVIII.13.1-2. On the other arms of Clodius' legislative programme: A.H.J.Greenidge, 'The repeal of the *lex Aelia Fufia*', *CR* 7 (1893), 158-161; S.Weinstock, 'Clodius and the *lex Aelia Fufia*', *JRS* 27 (1937), 212-222; J.P.V.D.Balsdon, 'Roman history, 58-56 BC: three Ciceronian problems', *JRS* 47 (1957), 15-16; G.V.Sumner, '*Lex Aelia, lex Fufia*', *AJPh* 84 (1963), 337-358; *LGRR* 255-257; T.N.Mitchell, 'The *leges Clodiae* and *obnuntiatio*', *CQ* n.s.36 (1986), 172-176; W.J.Tatum, 'Cicero's opposition to the *lex Clodia de collegiis*', *CQ* n.s.40 (1990), 187-194; W.J.Tatum, *The Patrician Tribune: P.Clodius Pulcher* (Chapel Hill, 1999), 114-149.

<sup>331</sup> W.J.Tatum, *CP* 85 (1990), 34-43; W.J.Tatum, *Patrician Tribune*, 133-135. Supported by R.G.Lewis & A.C.Clark, *Asconius: Commentaries on Speeches of Cicero* (Oxford, 2006), 202-203.

by conducting a mass ejection (64 in total). But the underlying cause, recruitment outstripping loss, remained in place. The next pair to conduct a *lectio*, those of 61-60, thus naturally faced a similar problem to that which existed the decade before. Instead of repeating their predecessors' remedy they decided to ignore the Senate's nominal establishment and allowed the newly accrued excess membership to remain. Despite the moderation shown during this *lectio*, in the years immediately following there would have been many members still wary of the security of their seats, in that there were no guarantees that the precedent of 70 would not be repeated at some point in order to par the Senate back down to its 'correct' size. Indeed it could be said that the censors who conducted the *lectio* of 61, in not addressing the problem of an expanded Senate, deferred it; furthermore, that in doing so they greatly increased the likelihood that their successors would be forced to conduct an appropriately massive expulsion in order to compensate for the moderation shown in 61. Junior members would have felt this vulnerability more acutely than senior members, and so a nervous constituency would have formed, grateful to any benefactor willing and able to afford them some lasting protection from the growing threat of a event which would see many of them lose their places in the Senate. As Tatum characterises, "such forebodings inform the drafting of Clodius' measure, which provided each senator a legal ground for challenging the censors should he feel, as indeed he must, that his removal from the Senate would be unjust... Clodius' law, with its safeguards... must have held wide appeal".<sup>332</sup> If Tatum's assessment is correct, which I feel it must, then the background to the promulgation of the *lex Clodia de censorial notione* represents the pinnacle of senatorial resistance to the powers of the censors. That while the sources provide many examples of individuals fighting against expulsion, of groups criticising certain acts of expulsion, and even of groups arising to evade the threat of it occurring to

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<sup>332</sup> W.J.Tatum, *Patrician Tribune*, 134-135.

them, they never report opposition on such a large scale as that which evidently existed during the period from 61 to 58.

And yet in practice the law turned out to be unworkable. The first pair of censors in office after its promulgation, those of 55-54, became mired in hearings and as a result it took them months to conclude their *lectio*; a full 15 months after entering office they were still presiding over trials. Naturally the censors' other duties, in particular the *census populi*, already a time-consuming process, suffered as a consequence.<sup>333</sup> In light of this, and, perhaps, in light of Clodius' death at the beginning of the year, the *lex Clodia* was abrogated in 52 by a law of consul Metellus Scipio.<sup>334</sup> What the reaction was of the group, mainly nervous junior members of the Senate, whom Clodius had intended to be main beneficiaries of the protection from expulsion offered by his law, is not recorded. It seems unlikely, however, that the proposal to abrogate the *lex Clodia* would have passed wholly uncontested by them. Or that if it did, some alternative assurance against expulsion was offered. Tatum observes that in another context, Metellus Scipio would be described as being motivated by "*iudiciorum metus*", and speculates that he might have abrogated Clodius' law because he "may have thought that he was likely to be vulnerable in the next *lectio*" and that in restoring the censors' prerogatives he protected himself against this potentiality.<sup>335</sup>

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<sup>333</sup> Only one named defendant is known: L.Scribonius Libo, prosecuted by Helvius Mancina Formianus and defended by Pompey. The outcome of his trial is unknown. Other trials are known to have taken place throughout 55 and 54: Cic., *Att.* 85.1, 89.8<sup>SB</sup>; V.M., VI.2.8. W.J.Tatum, *CP* 85 (1990), 42-43 perhaps overplays the number of hearings held.

<sup>334</sup> Dio, XL.57.1-3.

<sup>335</sup> W.J.Tatum, *CP* 85 (1990), 43 (quoting Caesar, *BC* I.4).



## V. Vulnerability to *intercessio* and sacred law, and the issue of *obnuntiatio*

According to Festus, utilising historical *exempla* found in one of the works of Varro (itself incorporating information found in the *Annales* of Piso Frugi (*cens.* 120-119)), it was considered an act of irreligiosity to oppose a censor. The assertion comes at the head of an extremely lacunose and by no means exhaustive list of examples of said irreligiosity, all relating to the censorships of 179-178 to 131-130.<sup>336</sup> Many of the examples provided by the piece involve one censor acting against the other. Only one is especially germane to this work and will be returned to later in this chapter, but it suffices for the moment to note the disparity that existed between the theoretical behavioural ideal as implied by the writer, and what occurred in practice. Furthermore, that this theoretical ideal was not, by and large, afforded any protection in law. Thus the censors, despite their exalted status, did not enjoy legal immunity from the powers of *intercessio* and *coercitio* possessed by other magistrates and plebeian tribunes, were not exempt from obeying the *lex sacrata* (or *leges sacratae*) which protected with deadly force tribunician *sacrosanctitas*, and may have been powerless against *obnuntiatio*.

*Obnuntiatio*, the right, possessed by magistrates, tribunes, and augurs, to hinder the proceedings of popular assemblies via the announcement of unfavourable omens, is known to have been exercised by the tribunician colleges of 55 and 54 to obstruct the performance of the *census populi*. For so long, in fact, that the censors were forced to abandon the enterprise, incomplete.<sup>337</sup> But the censors of 55-54 are known to have performed their *lectio* and there is no evidence that the tribunes manoeuvred against the

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<sup>336</sup> Varro *ap.* Festus, *Verb. Signif. s.v. 'Religionis'*; W.M.Lindsay, *o.c.*, 358-362; T.Köves-Zulauf, *o.c.*, 235-236; F.X.Ryan, *SHT* 5 (2005), A.2.4-5. On Piso as ultimate source: G.Forsythe, *The Historian L.Calpurnius Piso Frugi and the Roman Annalistic Tradition* (New York, 1994), 404-405, 496 (relating to fr.48 (Forsythe) *ap.* Pliny, *HN* XVII.38.244).

<sup>337</sup> Cic., *Att.* 85.1, 89.8<sup>SB</sup>, (27 April 55 and c.1 July 54, respectively).

revision of the senatorial roll using this or any other means of obstruction.<sup>338</sup> Against this, Dio reports that in 64, soon after the newly-elected censors entered office, the plebeian tribunes (although probably not all), fearing they might be expelled, “hindered” the censors so completely they were prevented from conducting their *lectio* and were ultimately compelled to abandon their office altogether.<sup>339</sup> The notice is frustratingly curt and the episode is not mentioned in any other source. Among other details lacking in this account, we do not know the mechanism through which the tribunes hindered the censors, whether through *intercessio* or via *obnuntiatio*. As we have seen, the censors’ deliberations over who they would retain or eject were conducted *in camera* and in confidence, with their decisions only becoming known at the public reading (*recitatio*) of the updated senatorial roll. Thus if the tribunes of 64 hindered the censors’ *lectio* through *obnuntiatio*, it follows that they must have done so at the *recitatio*.<sup>340</sup> This reconstruction does not preclude the possibility that the tribunes’ opposition to the censors might have started in advance of the *recitatio* (they might, for example, have used *obnuntiatio* to prevent the censors from making the traditional post-election ‘manifesto’ speeches to the public), but if they did do

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<sup>338</sup> Cic., *Att.*, 89.8<sup>SB</sup>; V.M., VI.2.8; F.Münzer, ‘Helvius Mancianus(15)’, *RE.VIII*<sub>1</sub> (1912), 229; F.Münzer, ‘L.Scribonius Libo(20)’, *RE.IIA*<sub>1</sub> (1921), 882-883. The *lectio* of the censors of 55-54 was still being conducted in July 54: trials under the *lex Clodia* are attested for that month. That the *lectio* was incomplete at such a late date should not be taken as evidence that the tribunes delayed it, only that the *lex* resulted in a more time-consuming enrolment.

<sup>339</sup> Dio, XXXVII.9.4: “Καὶ διὰ τοῦτο καὶ οἱ διάδοχοι αὐτῶν ἐν τῷ ὑστέρω ἔει οὐδὲν ἐποίησαν, ἐμποδισάντων σαφῶς τῶν δημάρχων πρὸς τὸν τῆς βουλῆς κατάλογον, δεῖ τοῦ μὴ τῆς γερουσίας αὐτοὺς ἔκπεσεῖν”.

<sup>340</sup> E.G.Hardy, *JRS* 6 (1916), 77 assumes *intercessio*, without question; M.Dondin, *o.c.*, 128, 132-138 favours *intercessio*, although her argument against the possibility of *obnuntiatio* is erroneous. Willems, I.421; Suolahti, 474; A.E.Astin, *Historia* 34 (1985), 177, 181, 187; El-Beheiri, 97 offer only that the censors were prevented from conducting their duties and do not hazard the form of this prevention. S.Weinstock, ‘*Obnuntiatio*’, *RE.XVII*<sub>2</sub> (1937), 1726-1735 does not refer to the events of 64 at all, possibly implying that he thought the tribunes did not employ *obnuntiatio*.

this it would hardly have been enough to drive the censors to abandon their office altogether.

As it stands the evidence from the censorships of 64 and 55-54 leaves us unable to conclude whether or not a *lectio* could be affected or delayed by *obnuntiatio*: the allusion to tribunician hindrance against the censors of 64 offers the possibility that it did but is too vague for a conclusion to be drawn, and while *obnuntiatio* was used by the tribunes against the censors of 55-54 to obstruct their performance of the *census populi*, there is no evidence that the tribunes used to obstruct the censors' *lectio* also.

The employment, by the plebeian tribunes, of *intercessio* against the censors is better attested. And while the evidence shows that the censors might ignore an intercession against them, it also reveals that this was not without risk. Away from the possibility that *intercessio* was used to hinder the performance of the *lectio* in 64, the phenomenon of tribunes interceding against censors is thrice attested. In two of these instances, from 310 and 168, we see it employed against attempts made by censors to continue in office beyond the 18-month limit stipulated by the *lex Aemilia*.<sup>341</sup> In the third attested instance, from 169, we see it used against the censors' command that a freedman client of tribune P. Rutilius demolish a wall that he, the freedman, had built upon public land. The freedman appealed to each of the tribunes to intercede, but only his patron agreed to do so. The censors stood firm. In the sequel, Rutilius consecrated the property of one of them, Ti. Gracchus, on the grounds that, in ignoring his *intercessio*, Gracchus had violated Rutilius' tribunician *sacrosanctitas*.<sup>342</sup> While no definite examples are known of *intercessio* being used to hinder a *lectio*, it is interesting to note that the case in 168 was

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<sup>341</sup> Livy, IX.33.4-34.26 (seven tribunes unsuccessfully intercede against Ap.Claudius Caecus' continuance in office); XLV.15.9 (Cn.Tremellius successfully intercedes against the request of Ti.Gracchus and C.Claudius Pulcher to extend their term).

<sup>342</sup> Livy, XLIII.16.1-16, XLIV.16.8; Cic., *Rep.* VI.2 *ap.* Gell., VII.16.11; Varro *ap.* Festus, *Verb. Signif. s.v.* 'Religionis'; V.M., VI.5.3 (mistakenly naming Rutilius "P.Popillius"); [Victor], *Vir. Ill.* 57.3.

born out of vengeance for an act performed as part of one: Cn. Tremellius, the tribune who successfully interceded against the censors request for the prolongation of their term, had been expelled by them as part of their *lectio*, performed the year before.

That we do not see more examples of plebeian tribunes exercising their *ius intercessionis* against censors and their *acta* (and, if it were possible, of the use of *obnuntiatio*), illustrates not a deficiency within these sources – the drama of clashes with censors would not have been something to pass over lightly – but rather the absolute rarity of the phenomenon. Two related factors may account for the lack of observed instances of tribunician intercession: there may have been some reluctance on the part of the censors' plebeian victims to appeal to their tribunes for aid, and/or there may have been some reluctance on the part of the tribunes to render such aid. We may posit in turn that such reluctance, be it on the part of victims or tribunes, was founded on an appreciation of the authority of the censors and of religious scruple, acting against the censors being impious. Whichever mechanism, it would have been unwise for anyone fearing expulsion (either of himself or of another) to cling on to the hope that the intervention of a tribune would save them from their impending fate.

Consuls and praetors (as well as, presumably, dictators and *magistri equitum*), while nominally superior to the censors, could not act against the more important of their *acta*, including those connected to the *census populi*.<sup>343</sup> We do not know for certain whether they possessed the ability to reject and override the censors' amendments to the *album senatorium*, as apart from in one seemingly spurious episode from the late fourth century, they are never observed doing so.<sup>344</sup> If the consuls could ever override *lectiones*,

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<sup>343</sup> A.H.J.Greenidge, *Roman Public Life*, 218; Suolahti, 30.

<sup>344</sup> D.S., XX.36.5-6 and Livy, IX.30.1-3 report that the *lectio* of 312 was rejected by the consuls because they disapproved of the fact that the censors enrolled individuals of unworthy character – descendants of freedmen admitted because of their wealth. But Plut., *Pomp.* 13.7 illustrates that the *lectio* of 312 was ultimately accepted as he reports the presence of these undesirables in the Senate for several years thereafter, until their final

then they must have done so rarely; the same source considerations apply to consul-censor clashes as they do tribune-censor clashes. This rarity of employment may in turn have been the result of religious scruples and an appreciation of censorial authority.

The Senate possessed the ability to investigate certain aspects of censorial behaviour as pertaining to *regimen morum* (though not, it appears, the *lectio*). How far they could act on such investigations, if at all, is unclear.<sup>345</sup> The Senate could, however, cancel the censors' tax contracts, if deemed unsatisfactory, and to order the making of fresh contracts.<sup>346</sup> A tribune could do the same, through plebiscite.<sup>347</sup>

A *lex sacrata*, possibly two *leges sacratae*, one of 494/493 and/or the *lex Valeria-Horatia de tribunicia potestate* of 449, ensured that plebeian tribunes were sacrosanct. Anyone who assaulted or who otherwise insulted a tribune (such as hindering him in the performance of his official duties) was liable to be declared *homo sacer*: that his property was to be confiscated and consecrated to Ceres, Liber, and Libera (*consecratio bonorum*). Also, that his life was forfeit and that if killed by another the act would not be considered homicide but a consecration to Jupiter (*consecratio capitis*).<sup>348</sup> The law applied to censors as it did to all others, and more than once we find in the sources tribunes making *homines sacri* of serving censors whom they deem to have violated their *sacrosanctitas*. We have

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removal in the *lectio* of 304. Cf Livy, IX.46.13-15; *Per.* 9; V.M., II.2.9b; Plut., *Fab. Max.* 1.2; Ampel., 18.6; [Victor], *Vir. Ill.* 32.1-3 and the confused account of Polyb., III.87.6.

<sup>345</sup> Cic., *Att.* 123.5<sup>SB</sup>.

<sup>346</sup> Livy, XXXIX.44.8; XLIII.16.2-3.

<sup>347</sup> Livy, XLIII.16.6-8.

<sup>348</sup> Livy, II.33.1-3; III.55.6-12; D.H., VI.89.2-4; Festus, *Verb. Signif.* s.v. 'Sacer Mons'; Macrobius, III.7.5; Rotondi, 192-193, 204-205; H.Bennett, 'Sacer esto', *TAPhA* 61 (1930), 5-18; A.Berger, *o.c.*, 687, 689; R.M.Ogilvie, *A Commentary on Livy, Books 1-5* 2nd edition (Oxford, 1970), 342-343, 497-498, 500-502; B.Stanley Spaeth, 'The goddess Ceres and the death of Tiberius Gracchus', *Historia* 39 (1990), 182-195; F.Sini, 'Interpretazioni giurisprudenziali in tema di inviolabilità tribunitia (a proposito di Liv. 3, 55, 6-12)', *Ius Antiquum* 1 (1996), 80-95.

just seen that in 169, P. Rutilius consecrated the property of censor Ti. Gracchus for having ignored the tribune's intercession in a case dealing with the management of public land. In addition to this, a tribune in 70 or 69, whose identity and motive are not transmitted by our source, consecrated the property of one of the censors in office at the time, Lentulus Clodianus.<sup>349</sup> As far as we know, no attempt was made to consecrate the persons of Gracchus and Lentulus; *consecratio bonorum* was as far as the punishments of these *homines sacri* seem to have extended. This is not surprising; notwithstanding the killing of Ti. Gracchus (*tr.pl.* 133) in 133, the practice of *consecratio capitis* had lapsed to obsolescence by the second century. So too the practice of hurling miscreants from the Tarpeian Rock.<sup>350</sup> In spite of this, in 131 or 130, tribune C. Atinius Labeo Macerio not only succeeded in consecrating the property of censor Metellus Macedonicus but also came near to fulfilling his desire to consecrate the person of the censor by precipitating him from the Rock (a site sacred to the cult of Jupiter and the site traditionally used for consecrating *homines sacri*). Despite the presence of many of Metellus' family and associates at the event, their respect for tribunician *sacrosanctitas* meant that they do not stop Labeo, and only the timely intercession of other tribunes halted the proceedings and saved the censor from death. On the other hand, Metellus was financially ruined by the episode and was thereafter forced to live off the favour of others.<sup>351</sup> Although the exact chronology of Labeo's expulsion and later confrontation with Metellus is not wholly clear, the most likely reconstruction – *i.e.*, the one which provides the most probable context for Labeo's outburst – is that Labeo was a tribune when expelled and that he interpreted his censure as a violation on his tribunician *sacrosanctitas*. After all, Metellus must have alleged some kind of moral deficiency in Labeo in order to punish him thus, and *sacrosanctitas* was

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<sup>349</sup> Cic., *Domo Sua* 47.123-124.

<sup>350</sup> H.Bennett, *o.c.*, 5-18; B.Stanley Spaeth, *o.c.*, 182-195.

<sup>351</sup> Cic., *Domo Sua* 47.123; Livy, *Per.* 59; Pliny, *HN* VII.44.142-146.

violable by insult as well as by physical assault.<sup>352</sup> In the run-up to the event Labeo must have foreseen the presence of a large crowd at the scene, many associates of and sympathetic to Metellus; so too the ultimate intercession of other tribunes. It is therefore hard to credit that he sincerely believed that he could succeed in inflicting such an unusual form punishment on the censor, or that if successful he would not face serious, almost certainly fatal, repercussions, irrespective of his temporary inviolate status. The killing, in 133, of *homo sacer* Ti. Gracchus would have been a fresh memory, but so too would have been the bad blood it engendered and the fate of his killer. It is thus tempting to surmise that while the episode was intended to achieve a public and dramatic humiliation of Metellus through the consecration of his property, Labeo relied on the intercession of his colleagues to get him out of consecrating the censor. Nonetheless the possibility remains that after his expulsion, Labeo was so desperate to correct the perceived injury done to him and his office that he cared little about the negative repercussions which killing an incumbent censor would bring upon his own head.

Metellus' associates, while dismayed by Labeo's hostility towards the censor, were unable to prevent the consecration of the censor's property. Sacred law was, after all, on Labeo's side. Labeo's colleagues within the tribuneship seem to have recognised this, because while they forestalled Metellus' killing they did not intercede against the consecration of his property. Doubtless censors Ti. Gracchus and Lentulus Clodianus had their horrified partisans also, but again, none who could prevent insulted tribunes from legitimately consecrating their property. The opinions of later commentators are interesting, betraying as they of their sympathies. Livy, describing P. Rutilius' general attitude of hostility toward Ti. Gracchus and his co-censor, C. Pulcher (he also prosecuted

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<sup>352</sup> A less likely reconstruction is that Labeo became tribune soon after his censure in order to avenge himself on Metellus, still censor. Whichever reconstruction is correct, the case provides an example of a tribune consecrating the property and person of a censor.

both for *perduellio*), opines that the tribune had acted “*violenter*”.<sup>353</sup> Cicero, criticising Labeo’s consecration of Metellus’ property, describes the episode as an example of “*furor*” (Labeo’s) and gives that it did nothing to dent the *existimatio* of the censor. The orator does not mention the aborted *consecratio capitis*.<sup>354</sup> The account of the elder Pliny treats both the consecration of Metellus’ property and his attempted execution, although pays far greater emphasis to the latter. It too is wholly sympathetic toward the censor and is unsupportive of the tribune, most notably in describing the whole affair as one of “*violentia*”, as a “great outrage” (*contumelia tanta*), a “great crime” (*maius scelus*), and “evil audacity” (*audacia sceleratus*). In commenting on the sequel, the encyclopaedist remarks that he was undecided whether it counted to the credit of Roman *mores* or whether it increased his sense of indignation that despite the multitude of Metelli who could have avenged the censor, the *praeteritus*’ behaviour forever went unpunished.<sup>355</sup>

## VI. Vulnerability to *coercitio* and prosecution, and the question of *sponsiones*

Censors, as magistrates not in possession of *imperium* or *sacrosanctitas*, were not immune from civil or criminal prosecution (nor were *ensorii* immune from civil or criminal indictment for deeds performed in office, even on capital charges); moreover they were vulnerable to *coercitio* from tribunes and magistrates with *par maiorve potestas*.<sup>356</sup> It is

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<sup>353</sup> Livy, XLIV.16.8.

<sup>354</sup> Cic., *Domo Sua* 47.123.

<sup>355</sup> Pliny, *HN* VII.44.142-146. Livy also reported on the episode, but what remains of his account (at Livy, *Per.* 59) does not preserve his own thoughts on the matter (if ever offered).

<sup>356</sup> On the prosecution of censors: E.J.Weinrib, ‘The prosecution of Roman magistrates’, *Phoenix* 22 (1968), 32-56; *TLRR* nos.347-348; F.X.Ryan, ‘The *lex Scantinia* and the prosecution of censors and aediles’, *CP* 89 (1994), 159-162; J.Plescia, ‘Judicial accountability and immunity in Roman law’, *Am J Leg Hist* 45 (2001), 51-70.



perhaps unsurprising that many of the examples we have of such episodes are explicitly or can be interpreted as being retaliatory in nature; where the censors were pursued by individuals or groupings whom they had slighted, personally or through association, in the *census populi* (including the *recognitio equitum*) or the *lectio senatus*.

In an act supported by six of his colleagues, the tribune P. Sempronius Sophus in 310 ordered the arrest and incarceration of Ap. Claudius Caecus when the latter, at the end of his 18-month term, attempted to continue in office alone. Appius was saved only after he successfully appealed to the rest of the tribunes to intercede against their colleague, and no further actions against him are reported.<sup>357</sup> Livy's comment on the censor's request, that it was done "greatly to the indignation of all classes" (*summaque invidia omnium ordinum solus censuram gessit*), a gloss which, notwithstanding his mainly hostile view of Appius' occupation of the *censura*, indicates that he favoured Sempronius over Appius in this regard.<sup>358</sup>

Soon upon his election to the tribuneship, in December 214, L. Metellus ordered censors P. Furius Philus and M. Atilius Regulus before a *iudicium populi* to answer some unknown charge. The censors appealed to the rest of the tribunes to intercede on their behalf, which they did, and the censors were excused from having to answer the charge while still in office.<sup>359</sup> Philus died shortly thereafter, compelling Regulus' abdication from the *censura*. Nothing is heard of any interaction between Metellus and Regulus thereafter, and we may assume that the case was abandoned. Metellus' decision to haul the censors *ad populum* was clearly a retaliatory act, stemming from the fact that they had cashiered him from the equestrian order and reduced him *ad aerarios* for having advocated, immediately after Cannae, that Italy be abandoned to Carthage.

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<sup>357</sup> Livy, IX.34.23-26.

<sup>358</sup> Livy, IX.34.26 *cf* 33.3-34.25.

<sup>359</sup> Livy, XXIV.43.2-4.

Livy reports that in 203: “since the censors [C. Claudius Nero and M. Livius Salinator] were unpopular, Cn. Baebius [Tamphilus], tribune of the plebs, thinking it an opportunity to advance himself at their expense, named a day for both to appear before the People” (*in invidia censores cum essent, crescendi ex iis ratus esse occasionem Cn. Baebius tribunus plebis diem ad populum utrisque dixit*); but, “that procedure was quashed by unanimity among the senators, lest the censorship should be subject thereafter to the caprice of the populace” (*ea res consensu patrum discussa est, ne postea obnoxia populari aerae censura esset*).<sup>360</sup> The Senate’s decision is sometimes adduced as evidence that *ensores* and *ensorii* were immune from prosecution for deeds performed in office, but this supposition is negated by later examples of such prosecutions. Livy does not directly report why these censors were so unpopular, but his placement of Baebius’ attempted prosecution of them immediately after his lengthy account of their contentious and strange *census populi* surely gives us the reason: each, during the *recognitio equitum*, attempted to cashier the other and transfer him *ad aerarios*; further, Salinator had wanted to transfer the entire *populus Romanus*, except for one voting-tribe, to the *aerarii*.<sup>361</sup> Compare this against Valerius Maximus’ report, that Baebius moved against the censors “because of their unduly harsh exercise of the censorship”, a statement provided without context but which can be married to what Livy says about their eccentric behaviour.<sup>362</sup> Thus whereas Baebius moved against these unpopular censors in order to advance his own political prospects, we can justifiably conclude that his motion was nonetheless also retaliatory, initiated not because of personal enmity toward them, but because they, in

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<sup>360</sup> Livy, XXIX.37.17. Livy, conforming to his habit of reporting censors’ activities under their first calendar year of office, records this under 204. *MRR* I.312 *cf* 307 dates it to 203 (agreed with here).

<sup>361</sup> Livy, XXIX.37.7-16. *Cf* Livy, *Per.* 29; V.M., II.9.6a-b; Dio, XVII.71; [Victor], *Vir.* III. 50.3.

<sup>362</sup> V.M., VII.2.6a: “*Eosdem senatus, cum ob nimis aspere actam censuram a Cn. Baebius tribuno plebis pro rostris agerentur rei...*”

letting their ill-will for each other interfere with their duties, had not only acted petulantly but had offered insult to the entire citizen body.

The example of Cato and the Flaminii *in contione* in 184, as reported by Livy and Plutarch (accounts almost certainly ultimately derived from the pen of the censor, although transmitted via different intermediaries), illustrates that censors were able to initiate *sponsiones* against those who questioned their decisions, including *praeteriti*. Nowhere are we told whether the reciprocal route was possible; if a *praeteritus* could challenge the censor(s) who had castigated him. Certainly there are no known instances of *sponsiones* being levelled against incumbent magistrates or tribunes to challenge deeds performed in relation to their office. Nor are we told what would have happened if L. Flamininus had accepted Cato's challenge and won; whether Cato would have been enjoined, by *lex* or *mos*, to reverse his assessment and hence re-admit Flamininus, or whether Flamininus would have remained *praeteritus*, albeit with the double consolation of having recouped his honour and tarnished Cato's reputation. Either conclusion is defensible, although the latter seems more likely. In response to Lucius' expulsion, his brother, Titus, so Plutarch records, became the head of a powerful cadre within the Senate which arrayed themselves against the censor. They manoeuvred against Cato politically and brought "many heavy indictments" against him, including one in which they "incited the boldest of the tribunes to call him to account before the People and fine him two talents". The cadre's tribunician ally has been plausibly identified as M. Caelius, against whom Cato is known to have spoken, almost certainly in the context of a *sponsio*; if, so, a second stemming from the one act of expulsion.<sup>363</sup>

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<sup>363</sup> Cato, *Si se M.Caelius tribunus plebis appellasset* fr.111-120 (*ORF*<sup>4</sup> 46-49); Cic., *Senect.* 12.42; Livy, XXXIX.42.5-43.5; V.M., II.9.3; Plut., *Cat. Mai.* 17.1-6, 19.2; *T.Flamin.* 18.2-19.3; A.E.Astin, *Cato*, 86n.34. On *sponsiones*: J.Crook, 'Sponsione provocare: its place in Roman litigation', *JRS* 66 (1976), 132-138; J.B.Churchill, 'Sponsio quae in verba facta est? Two lost speeches and the formula of the Roman legal wager',

In 169, censors Gracchus and Pulcher were indicted for *perduellio* – a capital offence – by tribune Rutilius (*cf* Rutilius’ consecration of Gracchus’ property for breaking his tribunician *sacrosanctitas*). Livy reports that the basis of the charge was that the censors had wrested the control of a *contio* from a tribune (Rutilius); Valerius Maximus, that it was because “[they] had exasperated the majority of the community by over-severity in their exercise of the censorship” (*ob nimis severe gestam censuram maiorem partem civitatis exasperassent*). There may be some confusion here, but the two rationales are not necessarily discrepant: censorial “over-severity” feasibly describes usurpation of a *contio*. Valerius Maximus also reports a further motive on Rutilius’ part: anger at the way a freedman client had been treated by the censors (they had demanded that he demolish a wall that he had built on state land and fined him when he did not immediately do so). Tried together before a *iudicium publicum*, both escaped condemnation; Pulcher was acquitted narrowly and the case against Gracchus was dropped. The threat of conviction was real, and both had touted escape into exile if convicted. Valerius Maximus, despite his view that the censors had alienated themselves, betrays his sympathy towards their side against that of the tribune: their victory is described as “*iustitia*” and is related in a chapter “*de iustitia*”. Festus’ stance is revealed by his placement of this episode within his list of acts which were impious and thus hazardous to the safety of the state. The opinions of Festus’ sources, Piso Frugi and Varro, may have been likewise.<sup>364</sup>

C. Duronius (*tr.pl.* 103/97) was expelled by M. Antonius and L. Valerius Flaccus during the *lectio* of 97 for having, as plebeian tribune, spoken against, then abrogated, the

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CQ n.s.50 (2000), 159-169. On Cato’s speech against L. Flamininus and its transmission: E.M. Carawan, *CJ* 85 (1990), 316-329.

<sup>364</sup> Livy, XLIII.16.2-16, XLIV.16.8; Varro *ap. Festus, Verb. Signif. s.v. ‘Religionis’*; V.M., VI.5.3 (naming Rutilius “*P. Popillius*”); [Victor], *Vir. Ill.* 57.3; E.G. Hardy, ‘Some notable judicia populi on capital charges’, *JRS* 3 (1913), 36-37; D.F. Epstein, *o.c.*, 61, 70, 105. *Cf* Cic., *Rep.* VI.2.2 *ap. Gell.*, VII.16.11. I find nothing to support J. Plešcia, *o.c.*, 56 that the censors “voluntarily resigned their office in order to stand trial as private citizens”.

*lex Licinia sumptuaria*. Valerius Maximus, our source for this episode, lets his readership know what he thought of the tribune's behaviour: "*impudens*". Also, of the censors' response: "a remarkable/wonderful reason for the *nota*" (*mirifica notae causa*).<sup>365</sup> In the sequel, possibly while the censors were still in office, Duronius prosecuted Antonius on a charge of *ambitus* committed during the campaign for the censorship. In this Duronius did not operate in isolation: among those who testified against Antonius was C. Coelius Caldus (*pr. c.*99; *cos.* 94), who claimed that he himself had distributed bribe money on Antonius' behalf. Another possible ally may have been the noted orator Helvius Mancina Formianus, who made a biting quip at Antonius' expense when he heard that he faced prosecution.<sup>366</sup> Macrobius reports that the promulgation of the *lex Licinia* was enthusiastically supported by the *optimates*, who forced the legislation through without first receiving the assent of the People.<sup>367</sup> From this it might be inferred that the wider populace were not so passionate about the law; Lucilius wrote about it disparagingly, as may have the poet Laevius, and the law gave rise to a novel form of slang to describe unfavourably a meagre dinner.<sup>368</sup> This in turn gives credence to the conjecture that the unpopularity of the

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<sup>365</sup> V.M., II.9.5. E.Badian, 'Two Roman non-entities', *CQ* n.s.19 (1969), 198-200 doubts the historicity of Valerius' version of the speech but agrees that Duronius gave it.

<sup>366</sup> Cic., *De Orat.* II.64.257 (called "Caelius"); 68.274; *In Verr.* II.1.23.60; *TLRR* no.83. Caldus must have enjoyed popularity: *novus homo*, he would go on to hold the consulship (*NM* 203, 225). Mancina's quip demonstrates that Antonius was either censor or *ensorius* when indicted (*contra* Gruen, *Historia* 15 (1966), 41n.56 and *RPCC* 194, placing the trial during the campaign). Cf *De Orat.* II.66.266 – another legal example – where Mancina is target of another joke of Antonius'. If this trial is not that of Duronius against Antonius, it might indicate the existence of a running feud between Mancina and Antonius. Cf in turn Quintil., *Inst. Orat.* VI.3.38; Pliny, *HN* XXXV.8.25.

<sup>367</sup> Macrobius, III.17.7-10. Cf Favonius/Favorinus *ap.* Gell., XV.8.2 (*ORF*<sup>2</sup> 207; *ORF*<sup>4</sup> 503); Gell. II.24.7-10; XV.8.pr-1.

<sup>368</sup> Lucil., fr.599 (Warmington) *ap.* Gell., II.24.10; Laevius, *Erotopaegnia* fr.23 (Bährens) *ap.* Gell., II.24.8-9; Festus, *Verb. Signif.* s.v. 'Centenariae Coenae'.

*lex Licinia* 'on the ground' may have translated into the political sphere, and that Duronius may have enjoyed a considerable groundswell of support in his assault on it and on the censor who defended it. Indeed Gruen goes further, considering Duronius' attacks part of a larger movement to further weaken the now-moribund grouping which once had the great Metelli at its centre.<sup>369</sup> Gruen's sentiment may stretch the evidence but is worth consideration.

Sometime between early August and mid-September 50, curule aedile M. Caelius Rufus (*pr.* 48) indicted censor Ap. Claudius Pulcher for sexual misconduct (under the *lex Scantinia*) and for failing to keep a *sacellum*, which was in his house, open to the public. Caelius' suits were not connected to Pulcher's exercise of the *censura* but were rather purely personal affairs; retaliatory counter-suits levelled in response to Pulcher's own suits against him. Their outcomes are not known, but Caesar's crossing of the Rubicon probably necessitated their abandonment.<sup>370</sup> Although our evidence for these cases comes from Caelius' own hand, his declaration that his actions against the censor were greeted with approval throughout Rome may not be as biased as we might first suspect. As we have seen, the censor seems to have made himself unpopular with remarkable speed and ease.

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<sup>369</sup> *RPCC*, 194.

<sup>370</sup> Caelius Rufus *ap. Cic., Fam.* 97.4, 98.1-3<sup>SB</sup>; D.F.Epstein, *o.c.*, 4-5, 47, 88, 103, 118; *TLRR* nos.347-348, 351; F.X.Ryan, *CP* 89 (1994), 159-162. Pulcher had been tried and acquitted under the *lex Pompeia de ambitu* in May 50: *Cic., Fam.* 74.2, 75.1<sup>SB</sup>; *Brutus* 64.230, 94.324; D.R.Shackleton Bailey, 'The prosecution of Roman magistrates-elect', *Phoenix* 24 (1970), 163; E.J.Weinrib, 'The prosecution of magistrates-designate', *Phoenix* 25 (1971), 145-150; G.V.Sumner, *Orators*, 122-123; *TLRR* no.345.

## VII. The collegiate nature of decision-making

One of the main mechanisms by which *censoria potestas* could be curbed was through the principle of censorial collegiality; they had to agree before any *senator* could be removed from the *ordo senatorius* and before any acting-senator could be admitted to the order. Each censor checked the other.<sup>371</sup> This principle, which we touched upon in the last chapter, was recognised by Cicero as being of prime importance for ‘blunting the censors’ pens’ as a safeguard against the potential deterioration of *censura* to *regnum*:

So little importance indeed do the censors themselves attach to each other’s verdicts that one will not only arraign and annul his colleague’s verdict. One will propose to expel a man from the Senate, while the other keeps him there, and holds him worthy of the most honourable rank. One orders him to be degraded to the *aerarii* or expelled from his tribe, the other forbids it.

*Atque etiam ipsi inter se censores sua iudicia tanti esse arbitrantur, ut alter alterius iudicium non modo reprehendat, sed etiam rescindat. Ut alter de senatu movere velit, alter retineat et ordine amplissimo dignum existimet. Ut alter in aerarios referre aut tribu movere iubeat, alter vetet.*<sup>372</sup>

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<sup>371</sup> *Inter alios*, A.H.J.Greenidge, *Infamia*, 49-50; H.Siber, ‘Zur kollegialität der Römischen zensoren’ in H.Niedermeyer & W.Flume (edd.), *Festschrift Fritz Schulz, Band I* (Weimar, 1951), 466-474; Suolahti, 26-31; R.Bunse, ‘Die frühe zensur und die entstehung der kollegialität’, *Historia* 50 (2001), 145-162. It follows that if one censor objected to the admission of an acting-senator to the *ordo senatorius*, then he was not admitted. We have already seen that such individuals fell within the definition of *praeteriti*. The foregoing does not exclude the possibility that in some cases, *both* censors agreed to expel certain acting-senators. That one censor could create a *praeteritus* goes toward explaining those instances in which the sources name only one victimising censor (e.g., Cic., *Domo Sua* 47.123; *Divinat.* I.16.29-30; Livy, *Per.* 59; Pliny, *HN* VII.44.142-146). Yet it does not mean that all such instances need be understood this way, as V.M., II.9.3 and 9.4 demonstrate (cf II.9.2, 5, 9; IV.5.1).

<sup>372</sup> Cic., *Cluent.* 43.122.

As Greenidge observes, without this mechanism “degradation from the highest positions and on the scantiest evidence might have been due to caprice”.<sup>373</sup> Cicero does not provide examples of the phenomenon, but the sources are replete with episodes in which one censor, wishing to erase someone’s name from the *album senatorium*, is prohibited by the refusal of his colleague to agree to the desire. We observe the phenomenon played out in the *lectiones* of 179, 142, 136, 102, and 50.<sup>374</sup> The collegiate principle is also demonstrated in notices on the *lectiones* of 174 and 169, albeit in a different way. In reporting on the former, Livy writes that “neither censor approved anyone who had been marked for censure by the other” (*neque ab altero notatum alter probavit*).<sup>375</sup> He employs similar phraseology in his report on the latter *lectio*: “nor was the *ignominia* of anyone who had been given the *nota* by the one relieved by the other” (*neque ullius, quem alter notarat, ab altero levata ignominia*).<sup>376</sup> It thus seems that on occasion the censors could circumvent the ‘blunting’ of their *potestas* through a kind of ‘non-aggression pact’ wherein each agreed to ratify the other’s desires about whom to expel.

### VIII. Assessments not binding on subsequent censors

Abbott contends that each *praeteritus* who managed to survive the interim between his expulsion and the next *lectio* was automatically readmitted as part of that later enrolment – as long as the new censors offered no objection to his readmission, presumably.<sup>377</sup> In effect, that expulsion was an open-ended suspension. Greenidge, in discussing the censors’ power to expel, writes that “it is not known whether the censors at a subsequent

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<sup>373</sup> A.H.J.Greenidge, *Roman Public Life*, 218.

<sup>374</sup> Cic., *Sest.* 47.101; Livy, XL.51.2; App., I.4.28; Dio, XXII.76.1; XXIII.81; XL.63.5-64.1.

<sup>375</sup> Livy, XLII.10.4.

<sup>376</sup> Livy, XLV.15.8.

<sup>377</sup> F.F.Abbott, *o.c.*, 193.



*lustrum* [*sic – lectio senatus*]... retained the power of reversing an *infamia* [*sic – ignominia*] once pronounced”.<sup>378</sup> Neither adduces evidence. As we shall see, the latter is demonstrably false and the former is almost certainly so.

In defending Cluentius, Cicero makes it clear that an individual expelled from the Senate, from his tribe, or, like his client, from the equestrian order, could have his punishment reversed by a subsequent censorial college; his brief remark, “the censors themselves have time after time not stood by the verdicts... of their predecessors” (*censores... ipsi saepe numero superiorum censorum iudiciis... non steterunt*), and an even briefer allusion to the same process that follows shortly upon this remark, illustrate the point.<sup>379</sup> No ancient source alludes to Abbott’s model. As it was offered without supporting references it is hard to discern how it was constructed, but it is possible that it was founded upon a misinterpretation of a comment made by Cicero, who in the same defence speech states that the punishments meted out by the censors, albeit designed to inspire fear (and hence conformity to societal norms), were not meant to be felt for life.<sup>380</sup> The statement is not unambiguous, as it could be interpreted as describing a form of time-limited suspension, wherein censorial punishments automatically lapse upon the entry into office of new censors. On the other hand it accords with the model that usually accepted and which is followed throughout this work: that being a *praeteritus* was not an insuperable setback; that there were no legal or moral prohibitions set before those who wished to regain their lost senatorial seats, either through their own efforts at the ballot box (*i.e.*, via election) or through the providence of an appropriate third party, a censor or a dictator (*e.g.*, via adlection). Multiple examples of the first mechanism, and at least one of the second, are attested. While some *praeteriti* would have decided not to try to reclaim their

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<sup>378</sup> A.H.J.Greenidge, *Roman Public Life*, 221.

<sup>379</sup> Cic., *Cluent.* 43.122.

<sup>380</sup> *Ibid.*, 43.120.

lost membership, and while others would have failed in trying, it is clear nevertheless that being *praeteritus* was not necessarily an irreversible state.

#### **4. Constraints and restraints on *ensoria potestas* (II): other normative devices**

No judicial or quasi-judicial mechanisms existed through which a *praeteritus* (or his associates) could immediately refer the matter of expulsion to a third-party body or individual for review in the hope that they might modify or reverse the censors' decision. Nor could they effectively petition the censors to reconsider their own ruling. Those who protested against either their own expulsion or that of another, to quote Tatum, "merely raged against a *fait accompli*".<sup>381</sup> The impossibility of appeal or reconsideration necessitated the formation of alternative responses on the part of *praeteriti* and their supporters, and while some may have regained their lost senatorial status by being adlected by some subsequent pair of censors or a dictator operating with *ensoria potestas*, there appears to have been only one reliable means back into the Senate: re-election by the People to a qualifying office of state.

##### **I. The potential for retaliation through physical violence**

Suetonius, in part citing Cremutius Cordus, describes the scene when Octavian and Agrippa, operating with *ensoria potestas*, purged the Senate of its more disreputable members:

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<sup>381</sup> W.J.Tatum, *CP* 85 (1990), 36-39.

Since the number of the senators was swelled by a low-born and ill-assorted rabble – in fact, the Senate numbered more than 1,000, some of whom, called by the vulgar ‘*Orcivi*’, were wholly unworthy, and had been admitted after Caesar’s death through favour or bribery – he restored it to its former limits and distinction by two *lectiones* [*senatorum affluentem numerum deformi et incondita turba – errant enim super mille, et quidam indignissimi et post necem Caesaris per gratiam et praemium adlecti, quos Orcinos vulgus vocabat – ad modum pristinum et splendorem redegit duabus lectionibus*], one according to the choice of the members themselves, each man naming one other, and a second made by Agrippa and himself. On the latter occasion it is thought that he wore a *lorica hamata* under his tunic as he presided and a sword by his side, while ten of the most robust of his friends among the senators stood by his chair.... even then the senators were not allowed to approach except one by one, and after the folds of their robes had been carefully searched.<sup>382</sup>

Dio, confirming that the Senate had swollen to 1,000 members, relates that 190 undesirables were ejected during this second *lectio*, which he dates to 29.<sup>383</sup> Such countermeasures against the potential of physical violence by those who found themselves forced from the Senate should not be dismissed as mere showmanship or posturing on the part of the latest Roman potentates. Aside from the fact that those to be removed were men who had gained admittance through bribery and their connections to Antony rather than through personal merit and free elections, and that such men might be prepared to assault those responsible for their loss, especially if emboldened by their numbers, the use of violence by *praeteriti* and would-be *praeteriti* against censors had precedent: we have already observed one plebeian tribune attempting to consecrate to Jupiter the life of the censor who had expelled him (by doing so having violated, through insult, his tribunician *sacrosanctitas*); we have also seen another censor physically

<sup>382</sup> Cremutius Cordus, *De Rebus Augusti* fr.4 (Peter) ap. Suet., *Aug.* 35.1-2.

<sup>383</sup> Dio, LII.42.1-3. Cf *Aug.*, *Res Gestae* 1.8; Suet., *Aug.* 27.5; Plut., *Ant.* 15.2. Even then, only the lesser and more ‘amoral’ *Antoniani* fell foul: Dio, LII.42.8. Cf P.A.Brunt, ‘The role of the Senate in the Augustan regime’, *CQ* n.s.34 (1984), 442; R.J.Evans, *AClass* 40 (1997), 78. Dio puts the *lectio* in 29. Augustus in the *Res Gestae* puts the completion of the *census populi* and the celebration of the *lustratio* in 28 – when he and Agrippa were consuls and 41 years after the last *lustratio* (that of 69). Rather than having either date a mistake, this should be understood as another example of a *lectio* performed in the first calendar year of a censorship.

assaulted in the Curia by a tribune when he, the censor, made it known before the Senate that he held a low opinion of the tribune and that he had wanted to expel him but had been persuaded not to. Despite these eruptions, and of Octavian and Agrippa's apprehension of physical retaliation, and notwithstanding the fact that, at times, violence played an integral part in the Republican political milieu, that the sources do not report more instances of retaliatory violence, sacred or secular, against the censors seems remarkable.<sup>384</sup> This paucity should not be seen as a result of source material deficiencies; episodes of such acts against the Republic's supreme magistrates, as dramatic, would tend to attract attention and comment. Rather, the lack of attested examples of such violence should be seen as a function of its absolute rarity. The observation is instructive and ties in with the philosophy, preserved by Festus and Varro and probably also present in the historical works of ex-censor Piso Frugi, that it was irreligious and impious for one to oppose censorial *auctoritas*.

## II. The potential for retaliation through politics and through the courts

The opposition of Atinius towards Metellus Macedonicus, the censor who had expelled him, appears to have extended beyond *consecratio bonorum* and an aborted *consecratio capitis*. Political opposition might also be conjectured, albeit based upon a most fleetingly notice, devoid of date and context: the Augustan rhetorician M. Porcius Latro notes that Atinius "inveighed violently against the absence of Metellus" (*Macerio qua violentia in absentiam Metelli strepit!*).<sup>385</sup> It is feasible that this episode occurred before the *lectio* of

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<sup>384</sup> On the use of *vis* in Republican politics: A.N.Sherwin-White, *JRS* 46 (1956), 1-9; A.W.Lintott, *Violence in Republican Rome* 2nd edition (Oxford, 1999), *passim*; A.M.Riggsby, *Crime and Community in Ciceronian Rome* (Austin, 1999), 79-119.

<sup>385</sup> M.Porcus Latro *ap. Sen., Controv.* X.1.8.

131, but it more likely to have occurred sometime between their clash upon the Tarpeian Rock and death of Metellus, in 116/115. It is also feasible that the context was political. If these assumptions are correct, the anecdote can be taken as evidence that the censors' targets may have, on occasion, taken to manoeuvring politically against the acts and desires of their erstwhile nemeses.

Better details accrue around other cases, and support the above contention. Mention has already been made of the indictments (at least one successful) levelled against the elder Cato by T. Flamininus and his sizable senatorial cadre in response to the expulsion of his brother, Lucius. Further vengeance against Cato is attested. Plutarch relays that Titus aligned himself with, and became leader of, this cadre (who were long-opposed to Cato), only upon the expulsion of his brother. Shortly thereafter, they succeeded in passing a *senatus consultum* revoking all of the censors' public works' and tax contracts.<sup>386</sup> Livy, less detailed, agrees with Plutarch.<sup>387</sup> Clearly the cadre's enmitous attitude toward Cato was founded on something more than disquiet at his expulsion of Lucius and its impact upon his brother – Plutarch describes their opposition to Cato as historic – but in contrast it is equally manifest that a sense of outrage at Lucius' treatment was the prime driving force behind Titus' antagonism toward the censor in the weeks and months following the *lectio*.<sup>388</sup> Unfortunately, little is known of the nature of the subsequent relationship between the Flaminini and Cato, although Plutarch implies that Titus was ever after an opponent of Cato; at the same time the biographer also provides his personal opinion of Titus' retaliatory response: “that he acted the part of a good man or a good citizen I cannot affirm, in thus cherishing an incurable hatred against a lawful magistrate

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<sup>386</sup> Plut., *T. Flamin.* 19.3; *Cat. Mai.* 19.2.

<sup>387</sup> Livy, XXXIX.44.8.

<sup>388</sup> *RP*<sup>2</sup> 157-158, 162-163; A.E. Astin, *Cato*, 85-86.

and a most excellent citizen on account of a man who, though a kinsman, was nevertheless unworthy and had suffered only what he deserved”.<sup>389</sup>

The sustained personal and political opposition between L. Appuleius Saturninus (*tr.pl.* 103; *II* 100; *III des.* 99) and C. Servilius Glaucia (*tr.pl.* 101?; *pr.* 100) and Metellus Numidicus (*cens.* 102-101) dominated Roman politics during the turn of the second century, and culminated, in 100, in Numidicus’ indictment by Saturninus and retreat into exile. While it is unnecessary to rehearse in detail the moves and counter-moves of each party and their supporters towards this denouement, it suffices to observe Appian’s simple chain: that during the *lectio* of 102, Numidicus had expressed a wish to expel the pair but had been thwarted by the refusal of his colleague, Metellus Capriarius, to accede; the pair, in response to this specifically and “in order to resist” (*ἀμυνούμενος*) any further action being taken against them, put themselves up for public office and adopted a stridently antagonistic stance against the man who had wanted to make them *praeteriti*. Appian is clear that the enmity felt toward Numidicus by Saturninus and Glaucia originated in his wish to expel them and did not antedate the *lectio* of 102.<sup>390</sup> Moreover, while Appian does

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<sup>389</sup> Plut., *T.Flam.* 19.3 (see T.5H in Appendix).

<sup>390</sup> App., I.4.28. Cf Cic., *Sest.* 47.101. The chronology of Appian’s account of the last years and (in late 100) downfall of Saturninus and Glaucia has been justly criticised as inaccurate. Still, there seems no reason to question his testimony with regard to the genesis of their opposition to Numidicus. For summaries and discussions of the events of 102-99 and the players: F.W.Robinson, *Marius, Saturninus und Glaucia: Beiträge zur Geschichte der Jahre 106-100 v.Chr* (Bonn, 1912), 92-132; *MRR* I.571-572, 574-576, 578; II.1-2; III.20-23, 85, 96; T.F.Carney, *o.c.*, 25-44; E.Badian, *DUJ* 25.3 (1964), 148-149; J.Van Ooteghem, *Marius*, 234-253; E.S.Gruen, ‘The exile of Metellus Numidicus’, *Latomus* 24 (1965), 576-580; J.Van Ooteghem, *Caecilii Metelli*, 165-177; R.Seager, ‘The date of Saturninus’ murder’, *CR* n.s.17 (1967), 9-10; H.B.Mattingly, ‘Saturninus’ corn bill and the circumstances of his fall’, *CR* n.s.19 (1969), 267-270; E.Badian, ‘The death of Saturninus: studies in chronology and prosopography’, *Chiron* 14 (1984), 101-147; R.J.Evans, ‘Metellus Numidicus and the elections for 100 BC’, *AClass* 30 (1987), 65-68; J.L.Beness & T.W.Hillard, ‘The death of Lucius Equitius on 10

not ascribe the word 'revenge' to their motive for opposing Numidicus, a desire for vengeance – something beyond proactive self-protection – can be justly inferred.<sup>391</sup> Success at the tribunician and the praetorian elections of autumn 101 attest to the continued popularity of Saturninus and Glaucia among the electorate, despite their recent scrape (if it was ever publicised) and unpopularity with one of the censors. Indeed success at the ballot-box during autumn 102 – if we allow his tribuneship for 101 and place the *lectio* prior to the tribunician elections – would re-enforce the fact of Glaucia's popularity. Saturninus' popularity among the electorate stretched at least as far back to his first victory at the tribunician ballot, in autumn 104. It is perhaps unsurprising that among the more active allies of the pair against Numidicus we find two whose impetus for moving against him also stemmed from their treatment by him during his tenure as censor. The first was P. Furius (*tr.pl.* 100), a freedman's son who, according to Dio's epitomator, felt hostility toward Numidicus because when censor, he, Numidicus, had removed his public horse from him and ejected him from the equestrian order.<sup>392</sup> While Furius would later (by 100) abandon and turn against his erstwhile allies, his hostility toward Numidicus would persist undiminished. As plebeian tribune that year his *intercessio* blocked the passing of a bill into law which would have allowed the return of the *ensorius* from exile. Furius' rapid attainment of the tribuneship following his cashierment, as with the lightning successes of Saturninus and Glaucia following their respective brushes with Numidicus, betrays a similarly significant popularity in spite of the setback. The second ally whose enmity toward Numidicus originated in his censorship was L. Equitius (*tr.pl.* 99), a criminal and a chancer

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December 100 BC', *CQ* n.s.40 (1990), 269-272; R.J.Evans, *Questioning Reputations: Essays on Nine Roman Politicians* (Pretoria, 2003), 99-133; G.P.Kelly, *o.c.*, 178-179.

<sup>391</sup> D.F.Epstein, *o.c.*, 78-79, especially: "I am not suggesting that *inimicitiae* alone was responsible... but political expediency is not the whole story".

<sup>392</sup> Dio, XXVIII.95.2-3. *Cf* App., I.4.33; Oros., V.17.11. E.Badian, *Chiron* 14 (1984), 137, that Furius only *nearly* lost his equestrian status, appears incorrect.

who, much to the riotous displeasure of a large proportion of the common citizenry – who swallowed, or accepted for comfort's sake, his outlandish claim that he was 'C. Sempronius Gracchus', natural son of Tiberius the tribune – not only had his request to be admitted as such into the equestrian order refused, but had also been deprived of his citizenship on the suspicion that he was of servile origin.<sup>393</sup> His rapid accession to the tribuneship (and, presumably, the restoration of his citizenship in order that he could stand) is again illustrative of the populace's continued regard for him despite his extraordinary history; also, of some not inconsiderable support from the political classes.

The political and personal risks inherent in expelling – or even in threatening to expel – are thus well-demonstrated by the case of Metellus Numidicus. More so when those involved were of a mind to co-operate in transforming their individual grievances into meaningful retaliation, and were able to motivate a significant proportion of the populace to support their efforts. It is worth recording that Metellus did not secure his recall until after Saturninus, Glaucia, Furius, and Equitius were no longer alive to obstruct it.<sup>394</sup>

In 168, as their term in office approached its end, censors C. Claudius Pulcher and Ti. Gracchus asked that their appointment be prorogued so as to enable them to oversee the completion of the public works they had contracted for. Cn. Tremellius exercised his tribunician *intercessio* to deny the request, forcing the censors to stand down at the normal time. Livy contextualises the tribune's motive for vetoing the censors' petition: it was an act of political reprisal, conducted solely because the year before, during their *lectio*, they had not deemed him worthy of inclusion in the Senate.<sup>395</sup>

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<sup>393</sup> Cic., *Sest.* 47.101; *Rab. Perd.* 7.20 ("Gracchus"); V.M., III.2.18, 8.6; IX.7.1-2, 15.1; Florus, II.4.1-6 ("C. Gracchus"); App., I.4.32-33; [Victor], *Vir. Ill.* 62.1 ("Quinctius"), 73.3-4.

<sup>394</sup> Equitius was killed on the first day of his tribuneship, 10 December 100. Saturninus and Glaucia predeceased him, being killed probably in October. In 99 Furius' popularity no longer afforded him sufficient protection. Prosecuted, he was lynched before his trial was complete.

<sup>395</sup> Livy, XLV.15.9.



Ti. Claudius Asellus was earmarked for expulsion from the equestrian order during the *recognitio equitum* of 142 by censor Scipio Aemilianus (for alleged *malitia* (malice), *nequitia* (profligacy), and the wilful destruction of his own farmland and agricultural buildings by constructing a road through them), but was saved from this fate by the refusal of censor Mummius Achaicus to support any of his colleague's decisions regarding the expulsion of senators and *equites* from their respective bodies. In 140, as plebeian tribune, Asellus indicted Aemilianus on some unknown charge and the case was heard *ad populum*. It was alleged during the trial that Aemilianus had erred when presiding over the *lustratio* and that this had led to a "*malum infelixque lustrum*", but it is highly likely that this issue in itself did not constitute the whole of the formal indictment against the ex-censor. While the outcome is nowhere attested, it is safe to conjecture that Aemilianus was acquitted. But the battle was evidently hard-fought and protracted: Aemilianus was driven to deliver at least five orations in his defence against the attacks of his adversary (the speeches *pro se contra Ti. Asellum*), and support for this tenacious tribune by the patrician Claudii is rightfully suspected by several modern commentators.<sup>396</sup> Some hesitancy on the part of the adjudicator(s) to reach a quick verdict may also be supposed.

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<sup>396</sup> Scipio Aemilianus, *Contra Ti. Asellum ap. Cic., De Orat.* II.64.258, 66.266 (frr.21-22 (ORF<sup>4</sup> 129)); *Contra Ti. Asellum ap. Gell.,* II.20.6; III.4.1-3; VI.11.9 (frr.18-20 (ORF<sup>4</sup> 127-129)); Lucil., XI.424-425 *ap. Gell.,* IV.17.1; Varro *ap. Festus, Verb. Signif. s.v. 'Religionis'.* Cf Varro, *Ling. Lat.* VI.9.86-87; V.M., IV.1.10. For modern discussions: H.H.Scullard, 'Scipio Aemilianus and Roman politics', *JRS* 50 (1960), 67-69; A.E.Astin, *Scipio Aemilianus*, 91, 120, 123-124, 127, 175-177, 182, 246-247, 253-258, 325-331; *RPCC*, 28, 31; D.F.Epstein, *o.c.*, 60, 103-104, 113; *TLRR* no.6. It is almost certain that Mummius, rather than Aemilianus, performed the *lustratio*. If so it is very likely that the formal charge against Aemilianus had little to do with the *lustratio*: why would Asellus indict a man for the incorrect performance of a public ritual when it would have been common knowledge and a matter of official record that another had conducted it? Asellus' remark about a "*malum infelixque lustrum*" was thus likely incidental to his main complaint.

Aemilianus' victory over Asellus, if it is allowed, was not quick; the tribune was no push-over.<sup>397</sup>

## 5. Other responses

### I. *Pudor et verecundia*

Whereas the target of a censorial rebuke suffered no legal penalties or disabilities, and no punishment other than the loss of his place in whichever order he had belonged, he did suffer *ignominia* – shame and humiliation (*pudor, verecundia*) and the public diminution of his *honor, dignitas, and existimatio* (esteem, reputation). In a society where the personal merits and failings of its individual members were constantly measured against those of their fellow countrymen and their ancestors, *ignominia* – and the prospect of *ignominia* – was a primary, potent, and effective normative device. Indeed it would not be a mischaracterisation to argue that *ignominia*, whether actual or potential, underpinned Roman social psychology during the Republican and early Imperial periods, promoting or enforcing those activities which were by common consent considered socially valuable, and discouraging and limiting those which were condemned.<sup>398</sup> During these centuries, Rome was an archetypal shame society – and the phenomenon was not restricted to male

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<sup>397</sup> Consider also Asellus' extremely rapid attainment of the tribuneship following his near-cashierment; entering office on 10 December 141, he was elected in the first or second ballot following his scrape. His quick recovery betrays popularity with the electorate and strong backing, possibly by the patrician Claudii. We cannot discount the possibility that a motivation for becoming tribune may have been to pursue Aemilianus.

<sup>398</sup> J.M.Kelly, *Studies in the Civil Judicature of the Roman Republic* (Oxford, 1976), 93-111; R.A.Kaster, 'The shame of the Romans', *TAPhA* 127 (1997), 1-19; C.A.Barton, *o.c.*, 199-288; R.A.Kaster, *Emotion, Restraint, and Community in Ancient Rome* (Oxford, 2005), 13-65.

elites, but suffused all social strata and both sexes. But despite this, outside the *Pro Cluentio* the extant sources seldom explicitly portray those punished by the censors, including the *praeteriti*, as actively feeling a sense of shame for their behaviour or as individuals whom the reader should understand as shamed or deserving of it. One of the better and more instructive exceptions to this trend is provided by Valerius Maximus, who in his joint treatment of the cases of C. Licinius Geta and M. Valerius Messalla Niger not only explicitly refers to the “*ignominia*” and “*rubor*” (blushes) of these *praeteriti*, but also relates how large and important a part their respective humiliations played in directing their subsequent behaviour; in both cases, positively:

Their *ignominia* whetted their *virtus* [*quorum ignominia virtutem acuit*]. Urged by the shame [*rubor*] of it, they strove with might and main to make their countrymen think them deserving to have the censorship bestowed upon them rather than brought up against them.<sup>399</sup>

Thus Valerius Maximus uses the cases of these *praeteriti* to provide an uplifting double-*exemplum*; demonstrating to his readership that for the resilient, diligent, and skilful individual, the public diminution of his *nomen* – even when resulting from a high-profile act such as ejection from the Senate – was not necessarily an insuperable catastrophe; that for a man possessing a correct and balanced character, *pudor* could be expiated, *honor*, *dignitas*, and *existimatio* could be reclaimed, and social rehabilitation and redemption could be achieved. More: that *ignominia* should incentivise its sufferers to redouble their exertions; to surpass their previous standing almost as if to spite their shame. The moralist would admit to a therapeutic and uplifting element in studying the examples of men who strove to better their fortunes after suffering setbacks which might have crushed those possessing lesser characters.<sup>400</sup> And the censors’ assessments could crush. The primary

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<sup>399</sup> V.M., II.9.9.

<sup>400</sup> V.M., VI.9.pr.

evidence of the fact comes from another of one of rare examples of explicitly shamed victims, in a variant sequel to a famous case. Following Rome's defeat to Hannibal at Cannae, the Carthaginian deputed some of his equestrian prisoners to return to the city to negotiate the ransom of the rest of the captives; in doing so, he made the *equites* swear they would return to his camp. Oath taken, they departed. Soon thereafter, a number briefly returned to the camp on the pretext that they had forgotten some things and then departed again to continue their mission. On reaching Rome, they argued that their oath to go back had already been fulfilled and refused to return again. Although technically in the right, their trickery was uncomfortable to many who considered their behaviour perfidious nonetheless. The sources diverge as to what happened next. In what may be called the Polybian version, the offenders were returned in shackles to the Carthaginians.<sup>401</sup> Another, evidently more popular, tradition stems from the *Historiae* of the early/mid-second century senator, C. Acilius. It reports that the case was hotly debated in the Senate and that the *patres*, narrowly judging the behaviour not to have breached *fides*, permitted the tricksters to remain in Rome. Still, two years later:

Under the next censors they were so overwhelmed with every species of reprobation and *ignominia* that some of them killed themselves forthwith [*ceterum proximis censoribus adeo omnibus notis ignominiisque confectos esse ut quidam eorum mortem sibi ipsi extemplo consciverint*], and the rest during all that remained of their lives avoided not only the Forum, but, one might almost say, the light of day and the public streets.<sup>402</sup>

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<sup>401</sup> Polyb., VI.58.1-13; Cic., *Off.* I.13.40; III.32.113 (naming Polybius as source); Livy, XXII.58.5-61.4; App., *Bell. Hann.* 5.28. F.W.Walbank, *A Historical Commentary on Polybius, Vol.I: Commentary on Books I-VI* (Oxford, 1970), 746 adds little.

<sup>402</sup> C.Acilius, *Hist.* fr.3 (Peter) *ap.* Cic., *Off.* III.32.115; Polyb., VI.58.1-13; Nepos, *Libri Exemplorum* fr.2 (Peter) *ap.* Gell., VI.18.11; Cic., *Off.* I.13.40; III.32.113 (naming Polybius as source); Livy, XXII.61.5-10, XXIV.18.5-6; V.M., II.9.8; Gell., VI.18.pr-11; App., *Bell. Hann.* 5.28; Zon., IX.2. See P.G.Walsh, *Cicero on Obligations (de Officiis)* (Oxford, 2000), 203-204 for preferring the Acilian version over the Polybian. The quote, although from Livy, follows the Acilian tradition.

While it is patent that the immediate stimulus for these responses was the censors' assessments, the reasons for these responses are less clear: whether the reclusions and suicides were due to the victims' sense of *pudor* – for the censorial rebuke for *perfidia* – or whether they were due to a sense of guilt and remorse (*culpa, paenitentia, mala conscientia*) – for the offence itself, but not necessarily for the rebuke of it. While we cannot know if it was found also in Acilius' work, Livy's use of the word *ignominia*, a concept more closely aligned to the emotions of *pudor* and *verecundia* than those of guilt and remorse, suggests that the reclusion and suicide of the equestrians was caused more by the censors' rebuke of their behaviour than by the behaviour itself. This in its turn suggests that in some instances, targets of the censors may have felt that their *ignominia* was a sufficient and acceptable cause for extreme social reclusion and/or suicide; for social and/or physical death. The existence of a major variant tradition regarding the fate of the perfidious *equites* – and one that is irreconcilable with that of Acilius/Livy – lends strength to any claim that Acilius' description may be largely or wholly unhistorical. This may be so, but more importantly it matters little. The very existence and acceptance of an historical tradition of suicide and extreme social reclusion in response to the shame of censure is of more importance than the verisimilitude of that tradition. For Acilius and for his audience (including many subsequent historiographers), suicide and reclusion must have been credible and feasible reactions to censorial animadversion, and that they were credible and feasible reactions accords extremely well with what we can glean from elsewhere about Roman psychology (individual and social) in relation to disgrace and self-killing.<sup>403</sup> That the subjects in this anecdote were dismounted equestrians is largely

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<sup>403</sup> Y.Grisé, *Le Suicide dans la Rome Antique* (Paris, 1982), 34-53; A.J.Van Hooff, *From Autothanasia to Suicide: Self-Killing in Classical Antiquity* (London, 1990), 107-120, 198-232, 236-237; R.A.Kaster, *TAPhA* 127 (1997), 1-19; C.A.Barton, *o.c.*, 199-288; R.A.Kaster, *Emotion, Restraint, Community*, 13-65.

immaterial, as it would be special pleading indeed to argue that whereas some *equites* ejected from their order might credibly react to their treatment with social or physical death, no newly-minted *praeteriti* would do so in reply to their own similar species of setback. Therefore although the extant sources do not provide any positive evidence of extreme social reclusion or suicide in response to expulsion specifically, in light of the Acilian tradition of the fate of the perfidious *equites* and what we know about Roman psychology as it related to shame and humiliation, we can surmise that such extreme reactions may have translated to the *praeteriti*.

Some targets of the censors might have felt little or no shame for their punishments. Manius Aquilius and Ti. Gutta, irrespective of the justice of their respective expulsions, might both have drawn to the attention of others (as Cicero later did in the *Pro Cluentio*) the suspicion that the censors had expelled them in order to ingratiate themselves with the populace. In doing so, any criticism the censors had of them could thus be obscured and mitigated, if not wholly deflected: their respective expulsions could be explained away as not really down to any 'proper' misbehaviour on their part, but rather as indicative of the censors' own sense of insecurity and the resultant improper application of their power. Any impropriety could be feasibly transferred to the censors who expelled them. Similarly, those who could point toward some prior personal or political enmity with the censors who had punished them might also find mitigation or remedy for their plight, regardless of whether or not they were censured with just cause. Again, their respective animadversions could be brushed off as nothing to do with any moral laxity on their part; rather, that they had been the target of a selfish misapplication of *ensoria potestas*. Others still might have argued that they had been punished not because they had done anything truly wrong but because they had the misfortune to fall foul of a censor who wished to make or re-enforce a reputation for moral rectitude. It is not hard to imagine Manilius, expelled by Cato for kissing his wife in the company of their daughter, making

this complaint. The potential for such reactions from victims may have had a normative effect on the censors with regard to whom they chose to punish and their number. Few censors would have wished to open themselves to accusations of having employed the power of their office to inflict punishments for personal and/or for political gain; such behaviour would not reflect well on them and, if repeated by successive holders of the *censura*, would at the same time have the effect of bringing the office into disrepute and of diminishing the currency of the *nota censoria*. That does not, of course, mean that the occasional personal vendetta could not be pursued, that the odd partisan expulsion could not be carried out, and that some eccentric expulsions could not be tolerated – indeed, several can be detected or supposed – but that too many would have bought in their wake a diminution of faith in the whole edifice of the censorship.<sup>404</sup> And this reluctance by the censors to act in such a way would have been self-perpetuating: not many censors (or colleges) would have wanted to be thought of as deviating too far from the practices of their predecessors, either in the numbers of *praeteriti* they created or in the reasons they had in expelling them.

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<sup>404</sup> Several examples of expulsions and near-expulsions stemming from personal enmity or from partisan feelings – and expulsions which we may suspect were thus caused – are provided in the first section of this chapter. To these we might add the two Scipiones expelled in 174, who may have been political opponents of the censors who expelled them. Scipio Asiaticus' removal from the equestrian order was seen by some as being stimulated by political enmity (Plut., *Cat. Mai.* 18.1). In 168 P. Rutilius was cashiered from the equestrian order and transferred *ad aerarios*. His prior opposition, as tribune, to the censors who would go on to target him has been noted in this chapter. It is questionable whether they would have targeted him if he had not antagonised them.

## II. Public responses

Plutarch writes that following the *lectio* of 304, the People, through the *Concilium Plebis*, bestowed the *cognomen* 'Maximus' upon censor Q. Fabius Rullianus because he expelled from the Senate descendants of freedmen who had originally been admitted because of their wealth. He continues by comparing to the bestowal of the *cognomen* 'Maximus' upon M'. Valerius (*dict.* 494) for his steering of the First Secession of the Plebs to a peaceful resolution, and with the 'Magnus' assigned to Pompey for his military accomplishments.<sup>405</sup> The gushing version presented by Livy – and followed Valerius Maximus – relays that Rullianus was awarded the honorific because he, as censor, confined the unruly "*factio forensis*" to four urban tribes, thereby negating their potential to influence the outcome of popular elections.<sup>406</sup> Livy's description is not wholly irreconcilable with Plutarch's, indeed Ampelius joins both traditions. Further, Ampelius judges these censorial deeds of Rullianus' as just two of many (and the only ones conducted within the civil sphere) which propelled him into the ranks of the "*clarissimi duces Romanorum*" (the others being his various victories in battle over the Etruscans, Samnites, Umbrians, and Gauls).<sup>407</sup> In doing this he follows Livy and Valerius Maximus. Irrespective of whether we accept the accounts of Plutarch, Livy, Valerius Maximus as being mutually reconcilable and concordant (as Ampelius did), we are left to observe the high regard in which Rullianus' two prime *acta*

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<sup>405</sup> Plut., *Pomp.* 13.3-7. The *praeteriti* of 304 were almost certainly the men of libertine descent whom Ap.Claudius Caecus and C.Plautius Venox admitted during the contentious *lectio* of 312. Most famous among them was Cn.Flavius, Appius' erstwhile *scriba*.

<sup>406</sup> Livy, IX.46.13-15; *Per.* 9; V.M., II.2.9b.

<sup>407</sup> Ampel., 18.6. S.P.Oakley, *A Commentary on Livy, Books VI-X, Vol.III: Book IX* (Oxford, 2005), 641-642 observes the difference between Plutarch and Livy, but (following Ampelius) does not offer them as irreconcilable. [Victor], *Vir. III.* 32.1-3 adds nothing not in the others.



*censoria* were held – of greater benefit to the state than all of the censor’s victories over foreign foes.

Further examples of popular support for acts of expulsion are known. As we have seen, Cassius Sabaco’s expulsion in 115 by Metellus Diadematus and Cn. Ahenobarbus was, according to Plutarch, felt to have been deserved, although felt by whom the biographer does not detail.<sup>408</sup> Cicero opines that that it was common knowledge that during the *lectio* of 70, Lentulus Clodianus and Gellius Publicola expelled M’. Aquillius and Ti. Gutta in order to ingratiate themselves with the populace.<sup>409</sup> If true, the censors’ behaviour was clearly predicated upon an assumption that sometimes certain acts of expulsion tended to go down well with the contemporary audience, including the proletariat.

There can be little doubt that the contemporary audience reactions to the above events were in reality far less generalised and far more nuanced and multifaceted than the sources imply. Not everyone would have approved of Rullianus’ behaviour, or of the expulsions of Sabaco, Aquillius, and Gutta. There must have been, on some level or another, a degree of sympathy for these *praeteriti*, and a degree of criticism of Rullianus’ targetting of *libertini*. Indeed it is uncontroversial to posit that every individual act of censorial animadversion, irrespective of the alleged misdeed of the victim, would have had those who supported the censors’ assessment, those who supported the *praeteritus*, and those who were ambivalent. Furthermore, these reactions were probably often divided according to the victim’s political outlook, magisterial rank, and social background as well as the social background of the audience. For example we can venture that the expulsion of a tribune or of a magistrate with *popularis* leanings will have been viewed with more

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<sup>408</sup> Plut., *Mar.* 5.4.

<sup>409</sup> Cic., *Cluent.* 47.130.

sympathy by a member of the *plebs Romanus* than it would have been by a conservative member of the senatorial aristocracy.

The nuanced nature of popular reaction is perhaps best exemplified by the expulsion of L. Flamininus and its sequel. Plutarch writes that when T. Flamininus forced Cato to explain at a *contio* why he, Cato, had expelled L. Flamininus, Cato not only did so but “the justice of his [Flamininus’] punishment was recognised”.<sup>410</sup> The biographer does not expand upon the identity of those who acknowledged the rectitude of Lucius’ censure, but the *populus* amassed at the *contio* is almost certainly meant, if not others also. In spite of this, it appears that there remained a high degree of public sympathy for the *praeteritus*. Plutarch and Valerius Maximus – in accounts that are wholly sympathetic to Cato’s target – relate that soon after his expulsion, Lucius entered one of the theatres of Rome and, as his new status demanded, passed by the senators’ enclosure to take his place among the common citizenry. The audience, seeing this, reportedly raised a spontaneous tumult and compelled Lucius to take his seat among the senators.<sup>411</sup> Valerius Maximus states that it was Lucius’ public show of *verecundia*, in setting himself within the commoners’ stalls, that stimulated their clamour for him to sit back among his honoured ex-colleagues; that “all present compelled him to move to a place appropriate to his standing”. Plutarch, not discordant with Valerius Maximus, adds that the audience acted as they did because they “took pity upon him” and were “rectifying, as far as was possible, and alleviating” the delicate and novel social situation in which the *praeteritus* found himself. Assuming that the whole event was not orchestrated and that the audience’s reaction was sincere, the episode illustrates that a *praeteritus*, suitably humbled, could feasibly stimulate a large-

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<sup>410</sup> Plut., *Cat. Mai.* 17.5-6 (see T.5G in Appendix). We have already seen that the ultimate source for this anecdote is pro-Catonian, almost certainly Cato himself. If so, the veracity of the claim that Lucius’ censure was recognised as just might be questioned. If false, material is salvageable: the account presupposes that some cases of expulsion were approved of, which is useful knowledge.

<sup>411</sup> V.M., IV.5.1 (see T.5F in Appendix); Plut., *Cat. Mai.* 17.6.

scale public show of sympathy. Also the implied corollary: criticism of those who had expelled him. Then again it is unlikely that Lucius would have garnered as much sympathy if he were not *consularis* and, perhaps more importantly, brother of one of the most prominent and popular public figures of the age. A more obscure *praeteritus* with less illustrious relatives very probably would not have enjoyed such a marked response, regardless of any public displays of his *verecundia*.

It is impossible to gauge the level of public sympathy or support for Flamininus thereafter, as the theatre episode marks his final appearance in the historical record. It is feasible that this disappearance in itself attests to a lack of any significant lasting support for him. Equally (and among other possibilities), he may have decided to retire from public life, a figure attracting residual sympathy though no longer politically active. Although it takes us away from the phenomenon of senatorial expulsion for a moment, it is fitting to mention here another of Cato's targets. Plutarch states that, as censor, Cato was "rather bitterly censured" for dismissing Scipio Asiaticus from the equestrian order. The biographer further avers that he was thought to have done this as an insult to the memory of Scipio Africanus, who had recently died.<sup>412</sup> Again, we are left in the dark as to *who* exactly criticised Cato and *who* exactly thought that he had acted against Asiaticus only to tarnish the memory of his brother, but the biographer reveals his own judgement of Cato's behaviour in removing Asiaticus from the *ordo equester*: he describes as something that was obnoxious or distressing.<sup>413</sup>

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<sup>412</sup> Plut., *Cat. Mai.* 18.1: "Ἦνεγκε δέ τινα τῷ Κάτωνι καὶ Λεύκιος ὁ Σκιπίωνος ἀδελφός ἐπὶ φθονον αἰπὴν, θριαμβικὸς ἀνὴρ ἀφαιρεθεὶς ὑπ' αὐτοῦ τὸν ἵππον· ἔδοξε γὰρ οὖν ἐφυβρῶν Ἀφρικανῶ Σκιπίωνι τεθνηκότι τοῦτο ποιῆσαι".

<sup>413</sup> Plut., *Cat. Mai.* 18.1, where a relative comparison is made: "Τοὺς δὲ πλείστους ἠγάσσε μάλιστα τῇ περικοπῇ τῆς πολυτελείας, ἣν ἀνικρυς μὲν ἀφελῆσθαι...". Livy, XXXIX.44.1 and [Victor], *Vir. Ill.* 53.1-2 also report Asiaticus' removal from the equestrian corps, the latter claiming that he was physically infirm and was dismissed "*ignominiae causa*". The second assertion is incorrect: that Asiaticus was not also expelled from the

We have already seen how Cicero, in the *Pro Cluentio*, described the supposed rationale behind the expulsion of M. Aquillius and Ti. Gutta; that the censors removed them in order to ingratiate themselves with the *populus Romanus*.<sup>414</sup> While before making this observation the orator is very careful to establish and emphasise his great regard for and friendly relationship with both censors, his subsequent description of their behaviour carries an obvious criticism: the *nota censoria* was a tool meant to punish immorality, not as a means to augment the popularity of those who wielded it.

Another, and far less veiled, example of Ciceronean support for the expelled and criticism of their punishers is found in Cicero's defence, published in 44 as part of the first book of his treatise on divination, of C. Ateius Capito, a lifelong and well-regarded friend

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Senate suggests that there were no major complaints of misbehaviour. He was just no longer in good enough physical condition to be considered suitable for cavalry service. The view that his dismissal was *sine ignominia* is followed by most moderns, including Suolahti, 357; D.Kienast, *o.c.*, 149n.73; P.Fraccaro, 'Ricerche storiche e letterarie sulla censura del 184/183 (M.Porcio Catone L.Valerio Flacco)', *Studi Storici per L'Antichità Classica* 4 (1911), 112 [= *Opuscula I: Scritti di Carattere Generale Studi Catoniani i Processi Degli Scipioni* (Pavia, 1956), 492]; H.Hill, *Roman Middle Class*, 43-44; *RP*<sup>2</sup>, 159-160; A.E.Astin, *Cato*, 81. Even if honourable, Asiaticus' discharge may have been a cause for embarrassment to him. Certainly Cato (and his allies) had a history of enmity with Asiaticus and his brother, Scipio Africanus, particularly from 188 onward (J.Ruebel, *CW* 71 (1977), 161-173). Also, Asiaticus had been a competitor for the censorship and the other candidates (excepting Flaccus) had been members of what older writers term 'the Scipionic circle'. All had run with the aim of preventing Cato becoming censor. With this history of protracted animosity and recent fierce competition between Cato and this Scipionic grouping, it is hardly surprising that some took the opportunity to attack his dismissal of Asiaticus (and concomitant perceived sleight of Africanus' shade) as done not in the interests of the *res publica*, but as the continuation of a personal feud and an abuse of his *censoria potestas*. In sum, Cato's rationale for dismissing Asiaticus may have been to cause him embarrassment, but the deed could feasibly be presented as unconnected to personalities or politics.

<sup>414</sup> Cic., *Cluent.* 47.130.

and a colleague in the *collegium augurum*.<sup>415</sup> Capito had, in November 55, attempted to prevent M. Crassus from departing on campaign against the Parthians by stating that the auspices warned of dire consequences for Crassus and Rome should the triumvir make war against Parthia. The campaign culminated in the military catastrophe at Carrhae, in June 53. As part of the *lectio* of 50, Capito was censured by Ap. Claudius Pulcher for having, on the occasion of Crassus' departure, publicised false auspices (*ementita auspicia*) that had, in turn, resulted in the subsequent catastrophe. Cicero's defence is reproduced in the Appendix as T.22.<sup>416</sup>

Much has been written on the religious technicalities surrounding Capito's announcement of *dirae* to the departing Crassus and its relation to subsequent events – Crassus' defeat and Capito's expulsion by Pulcher – and a full rehearsal need not be presented here.<sup>417</sup> It suffices merely to state that, in Roman religious practice, *ementita*

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<sup>415</sup> On the friendship between Cicero and Capito, which spanned the entirety of Cicero's career to 44 at least: Cic., *Fam.* 282.2-8<sup>SB</sup>; *Att.* 330.1, 407c.1-4, f.1-2<sup>SB</sup>.

<sup>416</sup> Cic., *Divinat.* I.16.29-30. On Crassus' departure and Capito's augury of disaster: V.P., II.46.3; Lucan, III.125-127; Flor., I.46.11.2-3 (calling Capito "*Metellus*"); Plut., *Crassus* 16.4-5; App., II.3.18; Dio, XXXIX.39.1-7. A.D.Simpson, 'The departure of Crassus for Parthia', *TAPhA* 69 (1938), 532-541 demonstrates that many of the details of the episode, as presented by the post-Ciceronian sources, were confused and conflated with two of the more notable events of 131: tribune Atinius' argument with censor Metellus Macedonicus and the contentious departure from Rome of consul Crassus Mucianus to fight Aristonicus. These later confusions do not alter the discussion on Cicero's attitude to the events of 55.

<sup>417</sup> For modern discussions: I.M.J.Valeton, 'De modis auspicandi Romanorum', *Mnemosyne* 18 (1890), 441-443; A.S.Pease, *M. Tulli Ciceronis de Divinatione Liber Primus* (Urbana, 1921), 295-298; A.D.Simpson, *TAPhA* 69 (1938), 532-541; J.Bayet, *Croyances et Rites dans la Rome Antique* (Paris, 1971), 353-365 [= 'Les malédictions du tribun C. Ateius Capito' in *Hommages à Georges Dumézil*. Collection Latomus 45 (Brussels, 1960), 31-45; J.Linderski, 'Cicero and Roman divination', *PP* 37 (1982), 12-38; J.Linderski, *ANRW* II.16.3 (1986), 2200-2203; C.Schäublin, 'Ementita auspicia', *WS* n.s.20 (1986), 165-181; J.Kany-Turpin, 'Comment échapper au destin: signes auguraux et pouvoir politique à Rome' in E.Smadja & E.Geny (edd.), *Pouvoir, Divination, Prédestination dans la Monde Antique* (Paris, 1999), 268-269; C.F.Konrad, 'Vellere signa' in

*auspicia* were valid unless appropriate propitiations were made; as Konrad puts it, “the report... created the reality”, irrespective of whether its provenance was divine or fabricated wholesale by the augur.<sup>418</sup> Germane is Cicero’s reaction to Capito’s expulsion: that he publicly, and at some length, questioned Pulcher’s judgement as a censor, as an augur, and as an authority on augural lore. Cicero’s defence takes on another dimension if Capito’s false report of *dirae* could have been justly considered a major cause of the disaster that subsequently befell Crassus.<sup>419</sup> Indeed Cicero probably knew that the stance he had taken with regard to Capito’s false report of *dirae* was wrong – and that Pulcher’s interpretation of augural law was correct. In October 44, only a few months after writing in Capito’s defence, Cicero published his second Philippic. In it he attacked Antony for proclaiming *ementita auspicia*; for committing the same act that Capito had committed and been punished for by Pulcher. In Antony’s case, he was alleged to have announced *ementita auspicia* in order to void elections. In criticising Antony’s alleged action, Cicero was clearly aware that even false *dirae* were valid and thus not without dangerous consequences to the state:

So, by Hercules, you falsified the auspices – I hope with great disaster to yourself, not to the state; you bound the Roman people by a religious liability [*tua potius quam rei publicae calamitate ementitus es auspicia, obstrinxisti religione populum Romanum*].<sup>420</sup>

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C.F.Konrad (ed.), *Augusto Augurio: Rerum Humanarum et Divinarum Commentationes in Honorem Jerzy Linderski* (Stuttgart, 2004), 181-185; D.Wardle, *Cicero on Divination: De Divinatione Book I* (Oxford, 2006), 180-187.

<sup>418</sup> C.F.Konrad *ap.* C.F.Konrad, *o.c.*, 183.

<sup>419</sup> J.E.G.Whitehome, ‘Sallust and Fausta’, *CW* 68 (1975), 430 judges that Capito’s expulsion was purely political; this does not tell the whole story if Capito’s behaviour indeed contributed to the Carrhae disaster.

<sup>420</sup> Cic., *Philippic.* II.33.83. See also II.35.88; III.4.9; V.3.8-9.

That the overall relationship between Antony and Cicero was at the time one of great hostility is immaterial when assessing Cicero's attitude toward what Antony was supposed to have done. That Antony was an *inimicus* to Cicero does not mean that the orator unduly exaggerated the importance and possible dire consequences of Antony's alleged misdemeanour. All reports of *dirae* were valid reports of *dirae*, even those which were fabricated, and Cicero would have been justified in criticising anyone who had acted as Antony was alleged to have.<sup>421</sup> That Cicero knew, when composing his second Philippic, that false *dirae* were nonetheless valid *dirae* suggests that he almost certainly knew this when he wrote, so shortly beforehand, on the case of Pulcher's treatment of Capito.<sup>422</sup> Cicero's willingness to argue publicly the case for his friend, Capito, against his punishment by a censor is remarkable; more so when Cicero must have known that his complaint against Capito's treatment was invalid theologically.

A brief discursus is called for on the relationship between Cicero and Pulcher at the time. They were friends;<sup>423</sup> Pulcher, also a member of the *collegium augurum*, was the foremost expert on the augural lore, and Cicero eagerly awaited the publication of his friend's volumes of the *De Augurali Disciplina* throughout 51 and the early months of 50 as – despite being an augur himself – he wished to become even more familiar with the art.<sup>424</sup> The first book Pulcher dedicated to Cicero, in 51.<sup>425</sup> In the summer of 50, Cicero was optimistic of Pulcher's nascent censorship, instructing him to keep in mind his illustrious

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<sup>421</sup> See also Livy, X.40.2-5, 9-14, a famous *exemplum* of which Cicero must have been aware.

<sup>422</sup> C.F.Konrad *ap.* C.F.Konrad, *o.c.*, 184-185; Wardle, *o.c.*, 185.

<sup>423</sup> On the friendship between Cicero and Pulcher from 53/52 to 50 (they had been opponents prior): Cic., *TD* I.16.37; *Brutus* 77.267; *Fam.* 64-76, 93.1-2<sup>SB</sup>.

<sup>424</sup> Cic., *Fam.* 67.2, 72.3, 74.4<sup>SB</sup>. On Pulcher's expertise: Cic., *Divinat.* I.47.105, 58.132, II.35.75; *Leg.* II.13.32-33; *TD* I.16.37; *Brutus* 77.267.

<sup>425</sup> Cic., *Fam.* 67.2<sup>SB</sup>.

ancestor, Ap. Claudius Caecus (*cens.* 312-307).<sup>426</sup> Unless we posit a marked deterioration in the health of their relationship in the interim (not impossible, but unattested), Cicero's motivation, in 44, for incorrectly rebuking Pulcher's rationale for expelling Capito cannot be contextualised as a vindictive or point-scoring exercise over a personal or political *inimicus*. At the same time the orator's criticisms of his friend and colleague are not in the same class as those sustained and sometimes vituperative attacks of his made in order to demolish a legal or political opponent. His criticism of the censor's logic in punishing Capito smacks more of honest appraisal of a friend's judgement rather than a concerted assault upon his knowledge and character. Nor might it be going too far to speculate that Cicero's literary treatment of the case in 44 may have reflected discussions within the *collegium augurum* at the time of Capito's expulsion, with some of its members (like Cicero, incorrectly) arguing in defence of the *praeteritus* and others (correctly) supporting Pulcher's interpretation of augural law. Thus while Cicero is unique, as far as we know, in using the written word to conduct a lengthy defence against a particular act of censure, it is possible that he was merely continuing or paraphrasing a debate that had already occurred, albeit in a different arena, and that at that discussion a fair proportion of the protagonists would have voiced the same opinion that Cicero presented, five years later, in his *De Divinatione*. As we have seen, it would not have been the first time that worries had been expressed regarding Pulcher's erratic behaviour in exercising the duties of censor.

### III. Restoration: re-election and adlection

We have already seen how C. Licinius Geta and M. Messalla Niger, both spurred by the *pudor* of expulsion, sought to restore their respective reputations through re-election to magistracies. In succeeding – and to the censorship, no less – both provided satisfying

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<sup>426</sup> *Ibid.*, 73.11, 74.1, 5<sup>SB</sup>.



moral *exempla* to Valerius Maximus. Although the careers of these two provide us with undoubtedly extreme examples of the phenomenon of restitution following censorial reproach, the recovery of one's political career does not appear to have been an uncommon phenomenon in the lives of those who had been made *praeteriti*.<sup>427</sup>

Of the 24 *praeteriti* whose names we know, at least 8 or 9 (33 or 38%) are known to have – or can be strongly suspected to have – resumed their political careers by being elected to an office of state, and at least one, probably two (Sallust definitely, Capito maybe) were directly appointed to offices by a superior magistrate (both by Caesar, as dictator). The remainder are not known to have held any official appointments subsequent to their respective expulsions. A detailed survey of these data is presented in Part II of this work. Obviously these data come with large caveats. Accepting the conclusions presented in Chapter 2 of this work means that we know the identities of less than one in ten of those who were expelled during the period under investigation. Furthermore, even these do not constitute a representative sample of the whole. In addition the careers of those whom we can identify as *praeteriti* are imperfectly known, and it is highly likely that some of those for whom there is no extant evidence of political recovery did in fact recover, either through re-election or adlection. These deficiencies in our knowledge mean that while we may make several general observations about political recovery, more nuanced conclusions cannot be made. For example our small and unrepresentative dataset allows us to say that political recoveries did occur and could do so with remarkable rapidity, but it does not allow us to estimate the prevalence of recovery or, when it occurred, its average speed. Likewise while in some instances we can garner or confidently deduce the general methodology employed by a particular *praeteritus* in engineering his recovery, in most cases the state of the available data means that this cannot be done. Nor can we ascertain whether the

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<sup>427</sup> See also the remarks at Plut., *Cic.* 17.1 (=T.16A in Appendix) regarding Lentulus Sura and other *praetores iterum*. On such *praetores iterum*, see especially T.C.Brennan, *Athenaeum* n.s.67 (1989), 467-487.

frequency of recovery fluctuated over time, or closely interrogate the question of whether different recovery methodologies changed over time. This being said, looking outside our dataset does allow for some broad speculation on this issue.

There is good evidence that following the extraordinarily harsh *lectio* of 70, many *praeteriti* took to employing identical methodologies in their individual attempts to regain senatorial status, and that this was a major contributory factor in an electoral crisis that emerged in the early 60s. Dio reports:

In the year of [M.] Acilius [Glabrio] and [C. Calpurnius] Piso, a law directed at men convicted of bribery in seeking office was framed by the consuls themselves, to the effect that any such person should neither hold office nor be a senator, and should incur a fine besides. For now that the power of the tribunes had been restored to its ancient status, and many of those whose names had been stricken off the *album senatorium* by the censors were aspiring to regain the rank of senator by one means or another, a great many factions and cliques were being formed aiming at all the offices [Ἐπειδὴ γὰρ ἢ τε τῶν δημάρχων δυναστεία ἐς τὸ ἀρχαῶν ἐπανεληλύθει, καὶ πολλοὶ τῶν ὑπὸ τῶν τιμητῶν διαγεγραμμένων ἀναλαβεῖν τρόπον τινὰ τὴν βουλευάν ἐσπούδαζον, συστάσεις καὶ παρακελευσμοὶ παμπληθεῖς ἐφ' ἀπάσαις ταῖς ἀρχαῖς ἐγίνοντο].<sup>428</sup>

Dio continues, reporting that some canvassers were even murdered in the violence that accompanied the fervent solicitation of votes, and that at length the consuls' bill was passed into law (to become the *lex Calpurnia de ambitu*).<sup>429</sup> Obviously electoral bribery was a feature of Roman politics well before the 60s, but Dio identifies the years following the *lectio* of 70 as those in which *ambitus* and *sodalitium* went from being a relatively low-level aspects of Roman electioneering to behaviours which threatened to cripple the

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<sup>428</sup> Dio, XXXVI.38.1-2.

<sup>429</sup> Dio, XXXVI.38.1-40.1. Cf Cic., *Muren.* 46-47; Ascon., *Corn.* 69.9-13 (Clark); Schol. Bob., *Pro Sulla* 78 (Stangl). On the passing of the *lex Calpurnia* (and wider *ambitus* in the 60s) in relation to the *lectio* of 70: W.McDonald, 'The tribunate of Cornelius', CQ23 (1929), 196-208; M.Griffin, 'The tribune C. Cornelius', JRS63 (1973), 196-213; LGRR 212-224 (following Dio, all identifying the *lectio* of 70 as causative); T.P.Wiseman (1969) JRS 59 (1969), 59-75 (doubting that it contributed much).

electoral process altogether.<sup>430</sup> Connected to this, the scramble for offices, precipitated by the restored power and status of the plebeian tribuneship and by the mass expulsions of 70, would almost certainly have been a feature of the elections of 69 and 68 as well as those of 67, where Dio actually reports the phenomenon. Indeed he appears to pick 67, rather than 69 or 68, because a conflict between the consuls and plebeian tribune C. Cornelius (who wanted to pass his own *lex de ambitu*) provides a convenient framing device. This being so, it seems that the aftermath of the *lectio* of 70 provided an exceptionally difficult electoral environment for those expelled during it, and that this heightened difficulty was a function both of the sheer number of men trying to regain their lost senatorial status and of increased competition for the tribuneship, an appointment of renewed attraction. The response of many to this exceptionally difficult electoral environment was to use unorthodox means in the attempt to gain an edge over the competition. The response of competitors (political newcomers and sitting members, as well as fellow *praeteriti*), would have been to tend to do the same only more so, thus establishing a positive feedback loop for which the only outcome was an electoral turmoil in which few candidates (if any) were operating in accordance with the spirit of electoral law. Unsuccessful candidates, failing to regain their status during one electoral cycle would have tried again in subsequent years, possibly several times. If Livy's characterisation of defeated *candidati* may be applied, at each time with an increasing sense of desperation: "who after defeats were again seeking an office which was due them all the more because

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<sup>430</sup> Dio reports that both consuls had engaged in what he euphemistically calls "vigorous" canvassing during their respective consular campaigns, and that Piso had even been indicted *de ambitu* (Dio, XXXVI.38.3; *TLRR* no.190). He does not name anyone else who engaged in this practice, but we know of nine others prosecuted for *ambitus* or *sodalitium* during the 60s: *TLRR* nos.185, 200-202, 207, 211, 214, 224; also, Cic., *QF7.5*<sup>SB</sup>, *Q.Cic.*, 19. There would have been more, such the anonymous defendant of Cic., *Cluent.* 53.147 (*TLRR* no.199). Of these, only P.Popillius can be linked to the *lectio* of 70 (he was expelled).

it had been at first refused".<sup>431</sup> In spite of this, during the middle years of the 60s candidates who had been recent *praeteriti* might have enjoyed some electoral advantage over candidates who had not been expelled. Those indicted *de ambitu* in the four years between the promulgation *lex Calpurnia* and the passing of the *lex Tullia*, in 63, would have been tried under the former, with those condemned suffering perpetual disqualification from seeking office, expulsion from the Senate (if a member), and a fine.<sup>432</sup> The threat of such penalties would have provided less of a deterrent for some than for others, expulsion from the Senate being no disincentive to those who had already lost their membership. As a result during these years the elections may have become populated by two distinct types of candidate: those for whom the *lex Calpurnia* provided comparatively little deterrence, and those for whom it did. The former group, the *praeteriti*, able to push the boundaries of electoral behaviour in the knowledge that if any bribery charges brought against them matured to conviction their punishment would amount to nothing more than a continuance of their present status and the fine, could well have possessed the competitive edge over those for whom all three penalties were substantive. If so, it is possible that the effective handicapping of 'honest' candidates, seemingly an unforeseen consequence of the *lex Calpurnia*, stimulated, in part or whole, the passing of the *lex Tullia*. This law added 10 years' exile to the punishment for *ambitus*: a penalty that would instil equal fear in all, it would thus have neutralised any advantage previously, and briefly, enjoyed by the *praeteriti* under the *lex Calpurnia*.<sup>433</sup>

We may characterise the early to mid 60s as a period in which a significant proportion of *praeteriti* engaged in electoral bribery in order to better their chances of electoral success and thence political restitution. The sources also permit speculation on

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<sup>431</sup> Livy, XXXIX.32.6.

<sup>432</sup> Dio, XXXVI.39.1.

<sup>433</sup> Cic., *Muren.* 45, 47, 89; *Planc.* 34.83; Dio, XXXVII. 29.1.

the late 80s and the early to mid 40s, when two dictators both had under-strength Senates to refill and expand. Sallust's political recovery following his expulsion was contrived by Caesar, a man very often more concerned with cultivating the able and the useful than with their personal histories: appointed praetor by the dictator in 46, he might also have been appointed to quaestor two years prior. Capito, whose relationship with Caesar was historically good, may also have benefited from the new dictatorship, either through direct adlection back into the Senate or else through appointment to a post that would give him membership of it. As with Caesar, so too with Sulla. He may well have brought some erstwhile *praeteriti* back into the Senate, either to reward them for services rendered or in expectation of future cooperation. If so, their identities are unknown.

While the sources thus allow us to make some broad and unnuanced speculations, other questions surrounding the *praeteriti* elude any answer. They do not allow, for example, for any estimate at all of the number of those who, expelled by one college of censors, were restored (that is, adlected) by a subsequent pair without having held a qualifying post in the interim. Presumably it happened, but the process would be relatively silent and no examples are known nor can be confidently asserted.<sup>434</sup> Indeed it is feasible that censorial adlection was the most common way through which *praeteriti* regained their lost senatorial status.

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<sup>434</sup> See the entry for C.Licinius Geta in Ch.5 for the suggestion of E.Badian, *Chiron* 14 (1984), 129 regarding him (not agreed with here).

## **PART II – REGISTER OF THE EXPELLED**

## Chapter 5: *Praeteriti certi*; case studies of the expelled

This chapter consists of chronologically-arranged case-studies of all whom the sources positively attest were expelled from the Roman Senate, by the censors, between the promulgation of the *plebiscitum Ovinium* and the final censorship of the functioning Republic. Each case-study is headed with the full name and filiation (if known) of the *praeteritus*, his *RE* number, relevant *cursus honorum*, the year of his censure, and the names of the censors who conducted the *lectio* in which he was expelled. Except in a handful of instances where necessity dictates a deviation from the form, each study is then divided into three sections. The first section (under the heading 'A.') directs the reader toward the relevant source testimonia/um in the Appendix; the second ('B.') comprises a discussion of what is known about the *praeteritus*' later career, with special attention paid to senatorial restitution and how it was or may have been achieved; the third ('C.') discusses known and possible descendants.

The limitations of space preclude any lengthy discussion of those whom we may characterise as *praeteriti incerti*. This group includes Cn. Flavius (*tr.pl.* 304?; *aed.cur.* 304; *pr.*?), for whom an extremely good case may be made for expulsion during the *lectio* of 304. Also L. Scribonius Libo (*cos.* 34), known to have been investigated by the censors of 55-54, but whose fate, vis-à-vis expulsion, is unknown.<sup>435</sup> Nor can any discussion here be entered into regarding the identity of the anonymous plebeian tribune who, in 70 or 69, in imitation of Atinius against censor Metellus Macedonicus, attempted to propel censor

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<sup>435</sup> V.M., VI.2.8; Willems, I.422; F.Münzer, 'Helvius Mancina Formianus(15)', *RE.VIII*<sub>1</sub> (1912) 229; F.Münzer, 'L.Scribonius Libo(20)', *RE.IIA*<sub>1</sub> (1921), 882-883; Schmähling, 17, 139; *LGRR* 108, 314.

Lentulus Clodianus from the Tarpeian Rock.<sup>436</sup> Nor Q. Calpenus (1), “*quondam senator*” by 46, according to Suetonius. The description might allude to an expulsion by the censors.<sup>437</sup> Senior officers of consul C. Aurelius Cotta while he campaigned in Sicily in 252, Q. Cassius (20), a noble named Valerius (3), and a kinsman of the consul called P. Aurelius Pecuniola (187), were each punished severely by their commander for military failings. That same year a major mutiny broke out among the consul’s cavalry and the censors of 252-251 cashiered 400 of these mutineers during the *recognitio equitum*. The same censors also expelled 16 members from the Senate, and the extreme severity shown to this body was doubtless also a consequence of the mutiny.<sup>438</sup> If members of the Senate, Cotta’s failed officers might have numbered among the *praeteriti* of this *lectio*.

Other groups of note must also be passed over, viz, the targets of the censorial orations of Cato the Elder, the adherents of the Gracchi, the victims of the *quaestio Mamiliana* of 110/109, and the membership of the *coniuratio Catilinae*, all groupings which have at one time or another been posited – with mixed degrees of certainty – to contain *praeteriti*.<sup>439</sup> In a similar vein following Plutarch and Dio’s respective commentaries on the post-expulsion career of Lentulus Sura, some *praetores iterum* have also fallen under suspicion of being recovering *praeteriti*; so too, by extension, others whose progression of

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<sup>436</sup> Cic., *Domo Sua* 47.123-124.

<sup>437</sup> Suet., *Iulius* 39.1. Cf Dio, XLIII.23.5 and see R.Syme, ‘Missing senators’, *Historia* 4 (1955), 62.

<sup>438</sup> Livy, *Per.* 18; V.M., II.7.4; Frontin., *Strat.* IV.1.22, 30-31; Zon., VIII.14.

<sup>439</sup> Cato: *inter alios*, B.Janzer, *Historische Untersuchungen zu den Redenfragmenten des M.Porcius Cato: Beiträge zur Lebensgeschichte und Politik Catos* (Würzburg & Ausmühle, 1937), 37; *ORF*<sup>3</sup> 32-49; *RP*<sup>2</sup> 260-265. *Gracchani*: A.E.Astin, *JRS* 78 (1988), 31. *Quaestio Mamiliana*: M.Bonnefond-Coudry, *MEFRA* 105 (1993), 8-9. *Catilinarians*: F.X.Ryan, ‘The quaestorships of Q.Curius and C.Cornelius Cethegus’, *CP* 89 (1994), 256, 257n.9. Of course, two Catilinarians are known to have had been expelled – Lentulus Sura and Q.Curius.



offices point toward a possible, although otherwise-unattested, expulsion.<sup>440</sup> Likewise, following Dio's explicit association of the extraordinarily severe *lectio* of 70 with the rise in electoral bribery in the following decade (mentioned in the last chapter), those engaging in the practice in the 60s form a group of note. Of the ten named practitioners known to us, it is very likely that some portion were expelled in 70. Following the archetype of Sallust (and possibly Ateius Capito), the appointed officers of state and *adlecti* of dictators Sulla and Caesar, touched upon also in the previous chapter, also probably contain many *praeteriti*.

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<sup>440</sup> Plut., *Cic.* 17.1; Dio, XXXVII.30.4. On *praetores iterum*, see especially T.C.Brennan, *Athenaeum* n.s.67 (1989), 467-487.

**Summarised register of known named *praeteriti*, relating to offices and immediate descent**

Name	Later offices	Politically-active male descendants in the first and second generations
L.An(to)nius ( <i>sen.307</i> )		
P.Cornelius Rufinus ( <i>dict.289/285; cos.II 277</i> )		Son: P.Sulla ( <i>flam.Dial. c.250</i> ); Grandson: P.Sulla Rufus ( <i>pr.212</i> )
L.Caecilius Metellus ( <i>tr.pl.213</i> )		<i>None known</i>
L.Quinctius Flaminius ( <i>cos.190</i> )		<i>None known</i>
(P.?) Manilius ( <i>sen.184</i> )		None positive. Sons?: P.Manilius ( <i>leg.167</i> ) & M'.Manilius ( <i>cos.149</i> ) Grandson?: P.Manilius ( <i>cos.120</i> )
L.Cornelius Scipio ( <i>pr.174</i> )	<i>sen.173</i>	
M.Cornelius Scipio Maluginensis ( <i>pr.176</i> )		
M.Fulvius (Flaccus/Nobilior) ( <i>sen.174</i> )		
Cn.Tremellius ( <i>tr.pl.168</i> )	<i>sen.167; pr.159</i>	Son: L.Tremellius Scrofa ( <i>pr. by 136</i> ); Grandson: (Cn.) Tremellius (Scrofa) ( <i>pr. c.100</i> )
C.Atinius Labeo Macerio ( <i>tr.pl.131/130</i> )	<i>pr. c.123/122</i>	
Cassius Sabaco ( <i>sen.115</i> )		
C.Licinius Geta ( <i>cos.116</i> )	<i>cens.108-107</i>	
M.Duronius ( <i>tr.pl.103/97</i> )	<i>sen.96?</i>	
M.Antonius Hybrida ( <i>q. by 70</i> )	<i>tr.pl.68; pr.66; leg.65; cos.63; procos.62-60; cens.42</i>	<i>None known</i> (sons-in-law: M.Antonius (triumvir) & L.Caninius Gallus ( <i>tr.pl.57 or cos.37</i> ))
M'.Aquillius (Florus?) ( <i>sen.74/70</i> )	<i>sen. by 66</i>	Son?: Aquillius Florus ( <i>sen.?</i> )
P.Cornelius Lentulus Sura ( <i>cos 71</i> )	<i>pr.II 63</i>	
Q.Curius ( <i>q. by 71</i> )	None	
Cn.Egnatius ( <i>sen.74/70</i> )	Prob. none (†by 66)	Sons: Cn.Egnatius (Maximus)( <i>sen.74/70</i> ) & C.Egnatius Maximus ( <i>procos. c.74</i> )
Ti. (Albius?) Gutta ( <i>sen.74/70</i> )	<i>sen. by 66; pr.55/54?</i>	
P.Popillius ( <i>sen.74/70</i> )	Possibly <i>sen. by 66</i>	
M.Valerius Messalla Niger ( <i>q. c.73</i> )	<i>pr.64; cos.61; cens.55-54</i>	Son: M.Messalla Corvinus ( <i>cos.31</i> ); Grandsons: M.Messalla Messallinus ( <i>cos.3</i> ) & M.Aurelius Cotta Maximus ( <i>cos. AD 20</i> )
C.Ateius Capito ( <i>tr.pl.55</i> )	<i>praef.a.d.a. 45-44</i>	
C.Sallustius Crispus ( <i>tr.pl.52</i> )	<i>leg. legionis 49; q.? or q.II? 48; pr.46; procos.45(-44?)</i>	Son: C.Sallustius Crispus (jurist); Grandson: C.Sallustius Crispus Passienus ( <i>cos.II ord. AD 44</i> )
M.Lucilius ( <i>tr.pl. ann. incert.</i> )		

1.  
**L. An(to)nius (not in RE) (sen. 307);  
Expelled, 307: M. Valerius Maximus & C. Junius Bubulcus Brutus**

**A.**

T.1.

In his discussion on early Roman divorce, Watson ably demonstrates that there is no contradiction between this case and that involving Sp. Carvilius Ruga, by far the more famous, which was generally considered by the ancient sources – and often still by moderns – as the first Roman divorce,<sup>441</sup> but is usually dated after the case of An(to)nius: by Tertullian to c.154 or shortly thereafter,<sup>442</sup> Ser. Sulpicius Rufus to 227,<sup>443</sup> Dionysius to 231,<sup>444</sup> Valerius Maximus to 234,<sup>445</sup> Gellius to 235,<sup>446</sup> and by Plutarch (twice) to 524.<sup>447</sup>

**B.**

No subsequent appointments are attested.

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<sup>441</sup> A.Watson, 'The divorce of Carvilius Ruga', *TRG* 33 (1965), 38-50. Cf Schmähling, 32-33; R.Syme, *Historia* 4 (1955), 55; R.Syme, 'Seianus on the Aventine', *Hermes* 84 (1956), 262-263; O.Robleda, 'Il divorzio in Roma prima di Costantino', *ANRW* II.14 (1982), 355-365; J.L.Hilton & L.L.V.Matthews, 'Veiled or unveiled? (Plut. *Quaest. Rom.* 267B-C)', *CQ* 58 (2008), 336-342.

<sup>442</sup> Tertull., *Apolog.* 6; *Monog.* 9.11.

<sup>443</sup> Ser.Sulp. Rufus, *De Dotibus* fr.1 (Hüschke) ap. Gell., IV.3.pr-2.

<sup>444</sup> D.H., II.25.7.

<sup>445</sup> V.M., II.1.4.

<sup>446</sup> Gell., XVII.21.44.

<sup>447</sup> Plut., *Theseus-Romulus* 6.3-4; *Lycurgus-Numa*. Cf *RQ* 14, 59, where the event is undated. Ruga is usually identified as the consul of 228; impossible if Plutarch's date is followed.

## C.

The Annii do not appear to have provided the state with any further office-holders until well into the third century: thus Q. An(n)ius (8), either praetor or quaestor sometime during the century; also M. Annius (15), who as *praetorius* served as *triumvir a.d.a.* 218.<sup>448</sup> Neither of them, nor any of the many senatorial Annii attested thereafter, can be linked to the *praeteritus*.

Three senatorial Antonii are attested during the fifth and the fourth centuries, but the *gens* otherwise disappears thereafter until the early second century: hence T. Antonius Merenda (*Xvir cos.imp.* 450-449), Q. Antonius T.f. Merenda (*tr.mil.cos.pot.* 422), and M. Antonius (*mag.eq.* 334/333) are followed after a long interval by Q. Antonius (Merenda?) (*leg.senat.* 190), A. Antonius (*leg.senat.* 168), and M. Antonius (*tr.pl.* 167).<sup>449</sup> Again none of these individuals, nor any of the senatorial Antonii attested thereafter, can be linked to the *praeteritus*.

## 2.

### **P. Cornelius Cn.f. P.n. Rufinus (302, 305) (*dict.* 289/285; *cos.II* 277); Expelled, 275: C. Fabricius Luscinus & Q. Aemilius Papus**

## A.

T.2A-V.

Perhaps the prime *exemplum* of censorial discipline and the old virtue of the Romans, the expulsion of P. Cornelius Rufinus is the best-attested of all enactments of the *nota censoria*. With it, commentators could frame their discourses on the upstanding morality of the generations of Romans gone and the failed *mores* of their own decadent times.

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<sup>448</sup> *MRR* I.240, 241n.12; II.462, 474.

<sup>449</sup> *MRR* I.46, 48, 69, 140, 141, 358, 430, 433.

## B.

No subsequent appointments are attested.

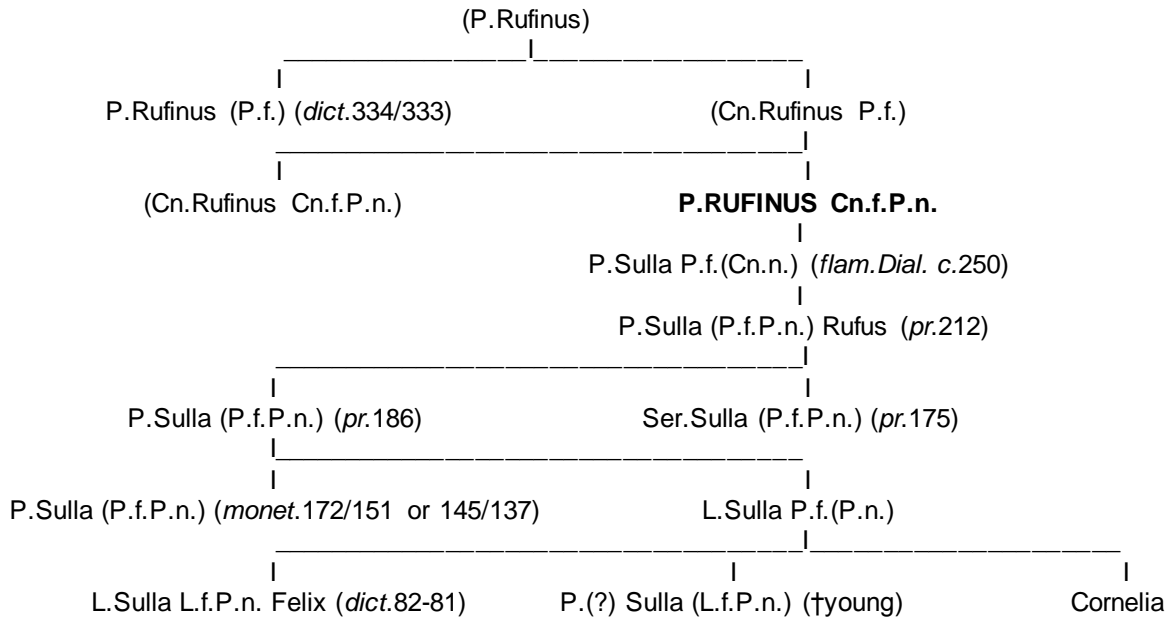
## C.

The posterity of the *praeteritus* – most notably, the direct line of descent from him to Sulla the dictator – is largely known; moreover, in the few instances where connections between individuals are not certainly established, they may be deduced to a high degree of probability.<sup>450</sup> A detailed discussion of Rufinus' line is thus not required here. There is only one significant point of uncertainty, ascertainable from the stemmata presented:

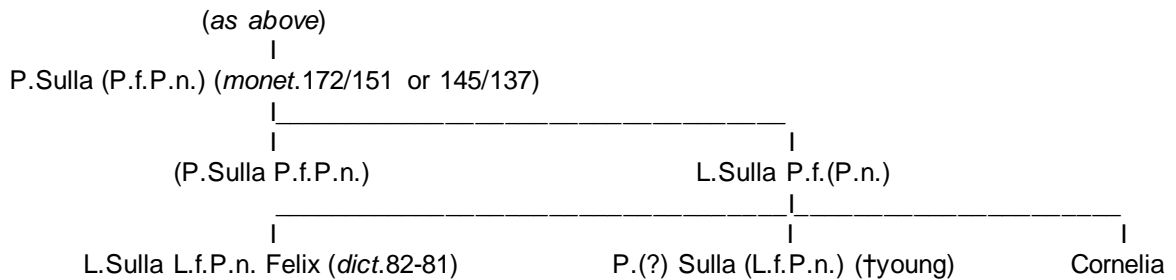
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<sup>450</sup> The biographical literature on Sulla and his ascendants is lengthy. Of moderns, only a selection need be presented: F.Fröhlich, 'L.Cornelius L.f.P.n. Sulla Felix(392)', *RE*.IV<sub>1</sub> (1900), 1522; E.Groag & F.Münzer, 'Cornelius Sulla(376ff)', *RE*.IV<sub>1</sub> (1900), 1513-1515; F.Münzer, 'Cornelius(2)', *RE*.IV<sub>1</sub> (1900), 1250; F.Münzer, 'L.Cornelius Rufinus(300)', *RE*.IV<sub>1</sub> (1900), 1422; F.Münzer, 'P.Cornelius Rufinus(301)', *RE*.IV<sub>1</sub> (1900), 1422; F.Münzer, 'P.Cornelius Rufinus(302)', *RE*.IV<sub>1</sub> (1900), 1422-1424; F.Münzer, 'Cornelius Rufus(303)', *RE*.IV<sub>1</sub> (1900), 1424; F.Münzer, 'P.Cornelius Rufus(305)', *RE*.IV<sub>1</sub> (1900), 1424; F.Münzer, 'L.Cornelius Sulla(379)', *RE*.IV<sub>1</sub> (1900), 1517; F.Münzer, 'P.Cornelius Sulla(382)', *RE*.IV<sub>1</sub> (1900), 1517-1518; F.Münzer, 'P.Cornelius Sulla(383)', *RE*.IV<sub>1</sub> (1900), 1518; F.Münzer, 'P.Cornelius Sulla(384)', *RE*.IV<sub>1</sub> (1900), 1518; F.Münzer, 'Ser.Cornelius Sulla(388)', *RE*.IV<sub>1</sub> (1900), 1521; G.J.Szemler, *The Priests of the Roman Republic: A Study of Interactions Between Priesthoods and Magistracies*. Collection Latomus 127 (Brussels, 1972), 68n.5; B.R.Katz, 'Notes on Sulla's ancestors', *LCM* 7 (1982), 148-149; L.E.Reams, 'The strange case of Sulla's brother', *CJ* 82 (1987), 301-305; A.Keaveney, *Sulla: the Last Republican* 2nd edition (London, 2005), 5-6, 194n.10; *MRR passim*. For the Sullae after the dictator: R.Syme, *The Augustan Aristocracy* (Oxford, 1986), 255-269, app.16.

Proposed stemma of the Cornelii Rufini/Sullae to Sulla the dictator



OR



Plutarch mentions that after Rufinus’ expulsion, “his posterity became at once obscure, and continued so”. In making this observation, Plutarch is alone amongst the ancient sources in directly attributing a family’s declined political fortune to an application of the *nota censoria*.<sup>451</sup> But while the statement may well be true for Rufinus (he is not known to have held any subsequent appointment), “obscurity” appears to have been a relative term as far as Rufinus’ descendants are concerned. Whereas none – until Sulla – attained the

<sup>451</sup> Though see also V.P., II.17.2.

consulship or the dictatorship, many enjoyed political success: of the six or seven male descendants known before Sulla's generation, three (a grandson and two great grandsons) succeeded to the praetorship while one – his son – attained the post of *flamen Dialis*.<sup>452</sup> This being so, Plutarch's remark that the *praeteritus*' descendants were obscure cannot stand. In light of this arguments such as those forwarded by Katz, who offers that "for a son of Rufinus to hold that priesthood was a face-saving measure, a compromise of sorts" must falter. At the same time his suggestion that the family of the *praeteritus* abandoned their traditional *cognomen* for one unconnected with political misfortune is valid, if unproveable.<sup>453</sup>

Support for the *praeteritus*' son in attaining the post of *flamen Dialis* would have come from the *pontifex maximus*, as appointments were made directly by him. Thus depending on when exactly Sulla took up the post, the consent of either Ti. Coruncanius (*cos.* 280; *pont.max.* 255/252-243) or his successor, L. Metellus (*cos.II* 247; *pont.max.* 243-221), may be assured. Here I do no more than observe two things: first, that the aged Coruncanius' political career commenced at a time when the political career of the flamen's father, the *praeteritus*, was at its peak; second, that Coruncanius appears to have been ~10 years younger than Rufinus. Perhaps the *praeteritus*' son gained his priestly appointment thanks to alliances forged by his father in the 280s.

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<sup>452</sup> The orthodox view – that the Dial flaminiate was a post of little religious importance and imparting no real distinction upon its holders, reserved for the untalented and unpromising scions of the great families and actively avoided by those with any acumen or ambition – is thoroughly overturned by J.H.Vanggaard, *The Flamen: A Study in the History and Sociology of Roman Religion* (Copenhagen, 1988), *passim*; F.M.Simón, *Flamen Dialis: El Sacerdote de Júpiter en la Religión Romana* (Madrid, 1996), *passim*. Cf A.Michels, [Review of J.H.Vanggaard, o.c.], *AJPh* 111 (1990), 118-120

<sup>453</sup> B.R.Katz, *LCM* 7 (1982), 148-149.

**3.**  
**L. Caecilius L.f. L.n. Metellus (73) (q. 214; tr.pl. 213);**  
**Expelled, 209: P. Sempronius Tuditanus & M. Cornelius Cethegus**

**A.**

T.3.

Metellus' suggestion after Cannae (though not his subsequent expulsion) is mentioned by Livy at XXII.53.1-13 (where his name is given as "*L. Metellus*"), and at XXIV.18.2-4, 6 and 43.2-3 ("*M. Metellus*"). Also twice apiece in Valerius Maximus (II.9.8, "*M. Metellus*"; V.6.7, "*Q. Metellus*") and Silius Italicus' *Punica* (X.415-448, XII.304-306, "*Metellus*"), and once in Dio (XV.28-29, unnamed), the *De Viris Illustribus* of the pseudo-Victor (49.5-6, unnamed), and Orosius (IV.16.6, "*senator... Caecilius Metellus*"). Scullard, Van Ooteghem, El-Beheiri, and Evans refer to the *praeteritus* as 'Marcus', although they do so either unaware of the conflicting nature of the sources or, if aware, cursorily explore it. In calling the *praeteritus* 'Marcus' all (except Scullard) identify him with M. Metellus (*aed.pl.* 208; *pr.* 206), younger brother of Q. Metellus L.f. L.n. (*cos.* 206; *dict.* 205); both sons of L. Metellus L.f. C.n. (*cos.* II 247).<sup>454</sup> 'Lucius' is favoured by Willems, Drumann & Groebe, Niccolini, Schmähling, Broughton, Suolahti, and Flower; writers aware of the conflicting *praenomina* supplied by the sources and who take time to apprise and offer judgement on the question.<sup>455</sup> That the

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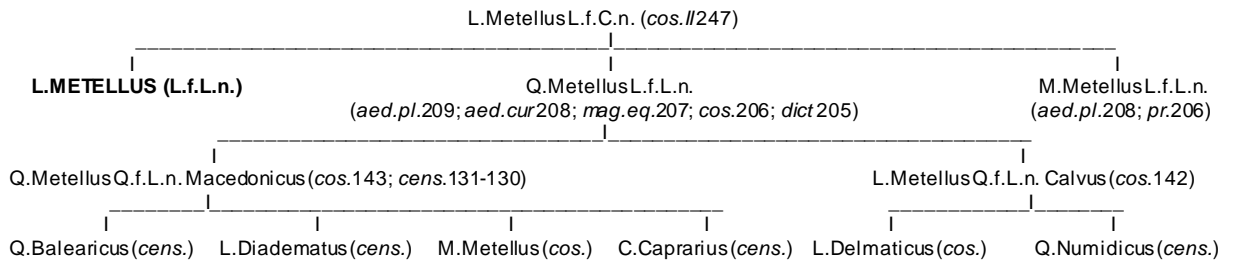
<sup>454</sup> J. Van Ooteghem, *Caecilii Metelli*, 45-46; *RP*<sup>2</sup> 59-60, 70, 254, 314; El-Beheiri, 77; R.J. Evans, 'Q. Caecilius Metellus Macedonicus', *AClass* 29 (1986), 99-103; R.J. Evans, 'Was M. Caecilius Metellus a renegade? A note on Livy, 22.53.5', *AClass* 32 (1989), 117-121 (going so far as to express doubt as to the historicity of Metellus' suggestion after Cannae). F. Münzer, 'Caecilius Metellus (73 und 76)', *RE* S.III (1918), 221-222 also calls the *praeteritus* 'Marcus', although he had earlier considered him a 'Lucius' (see note below).

<sup>455</sup> Willems, I.290, 292; W. Drumann & P. Groebe, *Geschichte Roms in seinem Übergange von der Republikanischen zur Monarchischen Verfassung. Zweiter Band: Asinii-Cornificii* (Leipzig, 1902), 14, 16-17; G. Niccolini, *o.c.*, 92-93; Schmähling, 16, 100, 115; *MRR* I.260, 261n.2, 264; II.538; Suolahti, 311; H.I. Flower, *Ancestor Masks and Aristocratic Power in Roman Culture* (Oxford, 1996), 136-137, 354-355. R.T. Ridley, 'Was



*praeteritus* was named 'Lucius', rather than 'Marcus' (or 'Quintus'), and that he was the first-born (homonymous) son of the consul of 247 and eldest brother to the consul and praetor of 206, are almost certainly correct. The stemma is presented:

**Stemma of the Metelli**  
(simplified from Drumann & Groebe, *GR II.14* and Flower, *Ancestor Masks*, app. E)



Note: Not shown is C. Metellus L.f.L.n., otherwise-unknown second son of the consul of 247 and older brother to the consul and praetor of 206.

**B.**

Metellus' advocacy, following Cannae, that Italy be abandoned to the Carthaginians, was not immediately detrimental to his career, appointed as he was quaestor for 214. In the *census populi* of that year, as incumbent quaestor, he was removed from the equestrian order, ejected from his voting-tribe, and reduced *ad aerarios*. Despite the setback, late in the year he was elected plebeian tribune in the first subsequent set of tribunician elections. He does not appear subsequent to his expulsion in 209.

Q. Metellus was already an orator of note at the time of his brother's misfortune: it was he who in 221 gave the famous *laudatio* that declared the life of his father as the most

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Scipio Africanus at Cannae?', *Latomus* 34 (1975), 161-165, while not engaging the issue of identity, also calls him 'Lucius'. F.Münzer, 'L.Caecilius Metellus (73)', *RE*.III<sub>1</sub> (1899), 1204, 1229-1230 has him as 'Lucius', although he later joined the camp considering him a 'Marcus' (see above note).

complete example of personal and political success since the foundation of the city.<sup>456</sup> The family's choice of Quintus as *laudator* over his elder brother reveals a particular eloquence even as an adolescent. This being so it is possible that his talents were utilised on the occasions of his brother's censures, in speeches before the censors or before the people.

### C.

The *praeteritus*, and his more successful brother, M. Metellus, appear to have died childless – if they did not, their offspring have left no trace within the extant sources. Q. Metellus, on the other hand, had at least two sons; one *consularis*, the other *ensorius*. Of his six grandsons, three were *consulares* and three were *ensorii*. Taken as a group it is clear that the Metelli overcame the *ignominia* that would have attended Lucius' expulsion.

## 4.

### (P.?) Manilius (P.f.?) (2) (sen. 184); Expelled, 184/183: M. Porcius Cato & L. Valerius Flaccus

### A.

T.4A-C.

### B & C.

The identity of Cato's target, "*Μανίλιος*", named only in T.4A, has caused much second-guessing.<sup>457</sup> Pighius identifies him with P. Manlius (Vulso?), on the strength of the fact that he, Manlius, was *praetor iterum* in 182 and that attainment of a second praetorship was a

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<sup>456</sup> Pliny, *HN* VII.43.139-44.142. Cf Cic., *Brutus* 14.57, 19.77; V.M., 7.2.3.

<sup>457</sup> Some MSS give "*Μανίλλιος*". Such dittography is not uncommon in Greek transliterations of Roman names: W.Dittenberger, 'Römische namen in Griechischen inschriften und literaturwerken', *Hermes* 6 (1872), 152-153.

(supposedly) common reaction by those who had been expelled and wished to recover their lost status.<sup>458</sup> On the basis of Plutarch's description that "*Μανίλιος*" was thought to have good prospects for the consulship, Meyer, while reporting Pighius' identification, suggests that the *praeteritus* is perhaps instead to be identified with the first consular Manilius following the *lectio* of Cato and Flaccus: M. Manilius (cos. 149).<sup>459</sup> Jordan cites both possibilities, without indicating preference.<sup>460</sup> Willems, seeing Plutarch's *praeteritus* as necessarily a *praetorius*, observing that the praetorian *fasti* for 218-179 are essentially entirely known, and noting that there are no Manilii named on them, concludes that the victim's name, as preserved in the manuscripts, is probably wrong. Willems hazards no further suggestions as to the identity of Plutarch's man, save that he does not think it possible that he be identified with the P. Manilius who was a senatorial *legatus* in 167.<sup>461</sup>

Accepting *in toto* Willems' assessment of '*Μανίλιος*' – that he was *praetorius*, that he was not necessarily a Manilius, and that he was not the legate of 167 – Fraccaro expands upon them. Noting Plutarch's habit of confusing Roman *nomina*, he suggests that "*Μανίλιος*" could be a 'Manlius', 'Manilius', or 'Mamilius', but that he probably a member of the Manlii. Further, that he was most probably A. Manlius Vulso, who succeeded to the consulship in 178 and who is fairly conjectured to have been *praetor suffectus* in 189. Following the same reasoning as Pighius, Fraccaro also suggests that "*Μανίλιος*" might otherwise be identified with P. Manlius (Vulso?), *praetor iterum*. In re-stating this possibility, Fraccaro adduces the fact, unobserved by Pighius, that as praetor of Hispania Citerior in 195, P. Manlius served as Cato's second-in-command when Cato, then consul,

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<sup>458</sup> S.W.Pighius, *Annales Magistratum Romanorum, Tome II* (Antwerp, 1615), 326, cited by Meyer, Jordan, and Fraccaro (see below). See Plut., *Cic.* 17.1 for iteration of the praetorship as a route through which *praeteriti* could regain senatorial status.

<sup>459</sup> *ORF*<sup>2</sup> 59 (calling Cato's attack "*In Manilium*"). Cf *ORF*<sup>1</sup> 132. Not in *ORF*<sup>3</sup> and *ORF*<sup>4</sup>.

<sup>460</sup> H.Jordan, *Cato* (Leipzig, 1860), 104n.7.

<sup>461</sup> Willems, I.299.

campaigned against the rebellious tribes of both Spanish *provinciae*.<sup>462</sup> The final significant contribution to the issue of the *praeteritus*' identity comes from Janzer, who, in connecting the target of Cato's hostile oration *De moribus Claudii Neronis* with the name of another of Cato's subordinate officers on his Spanish campaign – Ap. Claudius Nero, praetor of Hispania Ulterior in 195 – surmises that Cato may have not only censured his ex-deputy, but also his erstwhile third-in-command.<sup>463</sup>

The vast majority of subsequent commentators have been satisfied to identify this expelled “senator... thought to have good prospects of the consulship” as *praetorius*, and as either A. Manlius Vulso or P. Manlius (Vulso?).<sup>464</sup> Those who veer from the orthodoxy are few, and even then their detours tend to be unadventurous. Drumann & Groebe, Cram, Suolahti, and Evans call him “Manilius”, simultaneously regarding him *praetorius* despite

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<sup>462</sup> P.Fracarro, *Studi Storici* 4 (1911), 26-28 (= *Opuscula*, I.433-434). Aulus Vulso's tenure as *praetor suffectus* in 189 is widely accepted, not only by Willems and Fraccaro but by many of the sources below and *MRR* I.361.

<sup>463</sup> B.Janzer, *o.c.*, 37.

<sup>464</sup> F.Münzer, 'Manilius(2)', *RE*.XIV<sub>1</sub> (1928), 1114-1115; F.Münzer, 'P.Manlius(31)', *RE*.XIV<sub>1</sub> (1928), 1160; F.Münzer, 'A.Manlius Vulso(90)', *RE*.XIV<sub>1</sub> (1928), 1214-1215; E.V.Marmorale, *Cato Maior* 2nd edition (Bari, 1949), 93-94; *MRR* I.383n.1; M.Gelzer & R.Helm, 'M.Porcus Cato Censorius(9)', *RE*.XXII<sub>1</sub> (1953), 127; D.Kienast, *o.c.*, 74; F.Della Corte, *Catone Censore: La Vita e la Fortuna* 2nd edition (Florence, 1969), 253-254; *RP*<sup>2</sup>, 157, 158n.3, 159n.3; A.E.Astin, *Cato*, 80-81; A.E.Astin, *JRS* 78 (1989), 25, 28; T.C.Brennan, *Athenaeum* n.s.67 (1989), 477 (appearing to recant at *Praetorship*, I.166); R.J.Evans, 'Candidates and competition in consular elections at Rome between 218 and 49 BC', *AClass* 34 (1991), 127; A.-M.Adam, *Tite-Live Historie Romaine Tome XXIX Livre XXXIX* (Paris, 1994), 166; P.G.Walsh, *Livy Book XXXIX (Liber XXXIX)* (Warminster, 1994), 158; M.T.Sblendorio Cugusi & P.Cugusi, 'Problematica Catoniana: rassegna di studi 1987-1993 e contributi critici', *BSL* 26 (1996), 204; P.Cugusi & M.T.Sblendorio Cugusi, *Opere di Marco Porcio Catone Censore, Vol.II* (Turin, 2001), 510-511n.23; J.-N.Robert, *Caton ou le Citoyen: Biographie* (Paris, 2002), 200.

the impossibility of the conjecture.<sup>465</sup> Scardigli, confusing identities, creates the basilisk “Manilius, P. ?praet. 195” for the *praeteritus*.<sup>466</sup> Briscoe, without alluding to the debate surrounding this individual, curtly lists Cato’s victim as a senator named ‘Manilius’.<sup>467</sup> Baltrusch simply lists him as “senator Manlius”.<sup>468</sup> While not going as far as Briscoe and Baltrusch especially, Astin provides a significant warning against paying too much attention to the orthodoxy: “It is worth considering whether Plutarch’s comment has not been taken too literally or accepted too confidently” and that “the whole question of identity is... open for any conjecture”.<sup>469</sup> Fraccaro gives the same sage advice. In warning against investing any great faith in even his most favoured suggestion in this matter, he writes: “*tuttavia avverto che non do gran valore alla identificazione che quo propongo*”.

## II.

The first objection against the orthodoxy is that it treats Plutarch’s “senator... thought to have good prospects of the consulship” as describing a *praetorius*. As Astin and Fraccaro warn, this need not be so. No doubt in the Republic’s highly-competitive political system, a large proportion of its members would have been cognisant of the personalities, capabilities, and potential of others, young as well as old; they were, after all, past,

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<sup>465</sup> W.Drumann & P.Groebe, *Geschichte Roms in seinem Übergange von der Republikanischen zur Monarchischen Verfassung. Fünfter Band: Pomponii, Porcii, Tullii* (Leipzig, 1919), 124; Cram, 92; Suolahti, 356, 786; R.J.Evans, *AClass* 40 (1997), 79n.11 (though see n.464).

<sup>466</sup> B.Scardigli, *Die Römerbiographien Plutarchs* (Munich, 1979), 219 (cf 51: “Manilius”).

<sup>467</sup> J.Briscoe, *A Commentary on Livy, Books 38-40* (Oxford, 2008), 357, 588. Others, such as O.Schönberger, ‘Der glückliche Cato’, *RhM* 112 (1964), 190; J.B.Churchill, ‘The lucky Cato, and his wife’, *Phoenix* 55 (2001), 98-107, concentrate on Cato’s quip, but not the identity of his target.

<sup>468</sup> E.Baltrusch, *o.c.*, 15.

<sup>469</sup> A.E.Astin, *Cato*, 80n.7. See also the query at A.E.Astin, *JRS* 78 (1989), 25, 28.

present, and prospective allies and competitors. Cato himself was reputedly singled out as a promising prospect for state service while still a young man on his Sabine farm: Plutarch records that Cato's neighbour, L. Valerius Flaccus (his future colleague as consul and censor), was so impressed by his oratorical skills, industry, frugality, and rectitude that he persuaded him emigrate to Rome to embark on a political life.<sup>470</sup> Granted the example does not provide an exact parallel to the case in hand, but the principle remains that in a competitive and socially and economically close-knit milieu, any especially talented (or talented enough) young individual might be detected and appraised as a suitable contender for public office long before they reached the point where they could actually vie for it. Therefore it does not necessarily follow that one described as having "good prospects for the consulship" must be *praetorius*; a rising political talent, an exceptional youngster, fits also.

### III.

Despite Plutarch's assertion of such when describing the career of the *praeteritus* Lentulus Sura, second tenure of the praetorship does not reliably indicate previous exposure to the *nota censoria*; not all *praetores iterum* were so in order to recover senatorial status lost since their first term in office.<sup>471</sup> The case of C. Livius Salinator (*cos.* 188) provides the prime example. Praetor in 202 and 191, he cannot have been a target of the censorial *nota* in the interim as no-one of curule rank was expelled in that time.<sup>472</sup> An explanation for Salinator's decision to hold a second praetorship may easily be found if one accepts that,

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<sup>470</sup> Plut., *Cat. Mai.* 3.1-4.

<sup>471</sup> Plut., *Cic.* 17.1 (=T.16A in Appendix). On such *praetores iterum*, see especially T.C.Brennan, *Athenaeum* n.s.67 (1989), 467-487.

<sup>472</sup> Livy, XXXII.7.3; XXXIV.44.4.

having held his first praetorship over a decade prior, he desired to raise his public profile in preparation for a (ultimately successful) consular campaign. Although other interpretations are possible, the cases of C. Cotta (*pr. c.220; pr. II 202; cos. 200*) and A. Atilius Serranus (*pr. 192; pr. II 173; cos. 170*) may be similarly explained. The motivation behind P. Manlius' second praetorship might have been a slight variant on this type. The unprecedented circumstances of Manlius' first praetorship could well have sat uncomfortably with him: having consul Cato campaigning in his province meant that Manlius' praetorian *imperium* was subordinated to the consular *imperium* of Cato; where typically he would have been in supreme command in his province and able to exercise that command, with a senior officer present he was unable to enjoy this privilege. Livy's turn of phrase in describing the nature of Manlius' position is telling – “*adiutor consuli datus*” – and Astin is justified in calling the command structure a “highly unorthodox arrangement, by which a praetor was assigned... almost in the manner of a *legatus*”.<sup>473</sup> Nothing is known of Manlius' activities in the decade thereafter, and it would be nice to know whether he was a defeated candidate at one or more of the consular elections of the early to mid 180s. It is tempting to hypothesise that he did. Speculation aside, Manlius resurfaces as *praetor iterum* for 182, thence to his province of Hispania Ulterior where with great distinction he served his year as praetor and the next as either propraetor or proconsul.<sup>474</sup> Shackled and frustrated by the unusual nature of his first praetorship, one is compelled to agree with the judgement of Brennan, who suggests that perhaps Manlius took the decision to iterate in order to demonstrate his capacity for independent command and to gain fresh military renown in the hope of promoting his chances in some subsequent consular election.<sup>475</sup> That P.

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<sup>473</sup> Livy, XXXIII.43.5; A.E.Astin, *Cato*, 33.

<sup>474</sup> Livy, XXXIX.56.5; XL.1.2, 16.7-10, 34.1, 39.2, 41.10, 42.7.

<sup>475</sup> T.C.Brennan, *Praetorship*, I.166. Cf T.C.Brennan, *Athenaeum* n.s.67 (1989), 477.

Manlius never became consul does not count against this reconstruction: he died in 180, shortly after his return from Spain and before he could run for office.<sup>476</sup>

Nor does the evidence of the oration *De moribus Claudii Neronis* carry as much weight as has been assigned to it. The context of the speech and the identity of its target are unknown, and if it was delivered in relation to the *lectio* (itself uncertain), then its target may well have been some other member of the senatorial Claudii Neronis: C. Nero (cos. 207), Ti. Nero (cos. 202), Ti. Nero (*pr.* 181), Ti. Nero (*pr.* 178), Ti. Nero (*pr.* 167), or another, unknown to us.

#### IV.

There are further objections to identifying “*Μανίλιος*” with either P. Manlius or A. Manlius Vulso. Or with any of the prominent Manlii of the period.<sup>477</sup> None have been noted by any of the commentators listed above. The first two objections, the former relating to P. Manlius only, stem from a failure on the part of these commentators to consider what Plutarch does *not* say about the *praeteritus*. The third, and I feel gravest, objection arises from a hitherto-neglected passage of Livy, in which he describes the social quality and political attainments of Cato and Flaccus’ *praeteriti*. The fourth objection perhaps does not possess much weight on its own, but taken with the others assumes a stronger aspect. Nor is the issue of identity merely one of raising objections to the view that “*Μανίλιος*” was P. Manlius, A. Manlius Vulso, or any other member of the Manlii; attractive alternative identities can be raised in their place.

First. It is part of Plutarch’s intention, in his narrative of the censorship of Cato and Flaccus, to emphasise the extraordinarily stern and austere nature of it. It is his

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<sup>476</sup> Livy, XL.42.7.

<sup>477</sup> Such as L.Vulso (*pr.*197; *leg.*189-188).



intention to emphasise the contribution of Cato – always portrayed as the dominant censor – in making the censorship of 184-183 one of severity and ancient rigor.<sup>478</sup> Naturally this extends to his account of their *lectio*. This being so it raises the question of why, if “*Μανίλιος*” was in fact P. Manlius, does Plutarch fail to furnish his description of the *praeteritus* with the basic, but extremely illustrative, detail that he had served as Cato’s second-in-command during the latter’s Spanish campaign? The provision of such a simple and presumably well-known piece of biographical information surely would have had the effect of producing a far more salutary picture of Catonian severity and inflexibility than the non-specific and cursory description that Plutarch does provide for the victim. If ‘*Μανίλιος*’ was in fact Cato’s erstwhile deputy, then the biographer’s failure to mention it constitutes a remarkable missed opportunity to add to his portrait of the censor as singular in his possession of the antique virtues – the very intention that Plutarch had for his subject. While it might be argued that Plutarch’s source for this anecdote did not provide this detail (was possibly interested in transmitting a witty *dictum Catonis*), it nevertheless remains a detail which Plutarch must have known from other sources and could have added. The issue becomes even more inexplicable if one follows the suggestion that Cato also expelled Ap. Claudius Nero, his other subordinate praetor during his Spanish campaign. As well as Plutarch, note also Livy’s silence on Cato’s putative punishment of one (or both) of his erstwhile subordinates.

Second. Plutarch also presents the austere censorship of Cato and Flaccus as one which stimulated the fierce opposition of those they acted against, be they individual senators, selected groups of senators, or the collected *populus Romanus*. It is within this

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<sup>478</sup> Particularly Plut., *Cat. Mai.* 16.4-6, 17.1, 18.1-3, 19.1, 19.3, 19.5-6. Of course Plutarch was not alone in portraying Cato as the dominant censor, possessing a tendency toward severity and austerity (in life as well as in his censorship). For Plutarch on Cato: R.E.Smith, ‘Cato Censorius’, *G&R* 9 (1940), 150-165; R.E.Smith, *CQ* 34 (1940), 105-112; J.B.Churchill, *Phoenix* 55 (2001), 102-103.

context, a dynamic of antagonism, that Plutarch reports the bitter opposition which followed the dismissal from the equestrian order (albeit *sine ignominia*) of Scipio Asiaticus; T. Flamininus' public protest against the expulsion of his brother, Lucius; and its sequel, in which a senatorial cadre, led by Titus, reversed of many of the censors' enactments relating to tax and public works.<sup>479</sup> Although Plutarch does not provide the detail of exactly *who* protested so bitterly against Asiaticus' cashierment, it is valid to assume that the wider Scipiones were involved. These accounts bookend that of the expulsion of "Μανίλιος", but while Plutarch reports resistance to and reactions against the punishments of L. Flamininus and Scipio Asiaticus, no repercussions are attached to the "Μανίλιος" episode. Plutarch's silence on the matter might indicate that the *praeteritus* did not belong to the type of family that could and/or would put up any meaningful resistance to the censors' judgement, or that their protestations were inconsequential and unworthy of note either by the biographer or by his source. Neither scenario sits well with the contention that Cato's target belonged to the Manlii; even more so the Manlii Vulsones, one of the most influential families of the epoch. As with the Flaminini and Scipiones, one would expect them to have contested the censure of one of their own, and one would expect such a complaint to have found some place, no matter how slight, in Plutarch's narrative.

Third. The term '*nobilitas*', in a Republican context, has been much-debated by moderns, with no clear definition yet reached. In spite of this there is agreement that during this epoch, at the very minimum all who could claim direct descent from a *consularis* were commonly acknowledged to possess *nobilitas*.<sup>480</sup> Accepting this, we are

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<sup>479</sup> Plut., *Cat. Mai.* 17.5, 18.1. Cf Livy, XXXIX.42.5-44.1; V.M., II.9.3; Plut., *T.Flamin.* 19.1-3; [Victor], *Vir. Ill.* 47.4, 53.1-2.

<sup>480</sup> M.Gelzer, *The Roman Nobility*, trans. R.Seager (Oxford, 1975), *passim*; A.Afzelius, 'Zur definition der Römischen nobilität in der zeit Ciceros', *C&M* 1 (1938), 40-94; A.Afzelius, 'Zur definition der Römischen nobilität vor der zeit Ciceros', *C&M* 7 (1945), 150-200; H.Drexler, '*Nobilitas*', *Romanitas* 3 (1961), 158-188; J.Bleicken, 'Die nobilität der Römischen Republik', *Gymnasium* 88 (1981), 236-253; P.A.Brunt, '*Nobilitas* and

able to turn to a brief notice from Livy regarding the social status and political attainments of the *praeteriti* of Cato and Flaccus' *lectio*. Taken literally it is proof against any suggestion that 'Μανίλιος' might have been the P. Manlius, A. Manlius Vulso, or any other prominent member of the senatorial Manlii. Livy states:

M. Porcius and L. Valerius... expelled seven from the Senate, one of whom was distinguished by both *nobilitas* and *honores*, L. Quinctius Flaminius, *consularis* [... *septem moverunt senatu, ex quibus unum insignem et nobilitate et honoribus, L. Quinctium Flaminiū consulare*].<sup>481</sup>

The notice is clear: one of the censors' *praeteriti* was *nobilis* and had enjoyed *honores* – L. Flaminius. The converse is strongly implied; that the remaining six, in contraposition, did not possess noble status nor had attained any significant political distinction. At first this passage appears to be contradicted by a brief statement by Cornelius Nepos, who in his *Cato Maior* reports that Cato and Flaccus inflicted punishment upon several *nobiles*: “*nam et in complures nobiles animadvertit*”.<sup>482</sup> However in the clause immediately following “*animadvertit*”, Nepos outlines the censors' provisions against that incipient social bane, *luxuria*. It thus appears that the whole passage is better understood not as relating to the censors' *lectio* specifically but to their general attitude toward *cura morum*. Nepos' passage is therefore easily reconcilable with that of Livy: Cato and Flaccus did indeed strike at “*complures nobiles*”, but did so via means other than expunging names from the *album senatorium* – for example through cashierment from the equestrian order, through

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*novitas*', *JRS* 72 (1982), 1-17; F.Millar, 'The political character of the classical Roman Republic, 200-151 BC', *JRS* 74 (1984), 11; D.R.Shackleton Bailey, 'Nobiles and novi reconsidered', *AJPh* 107 (1986), 255-260; L.Burckhardt, 'The political elite of the Roman Republic: comments on recent discussion of the concepts *nobilitas* and *homo novus*', *Historia* 39 (1990), 76-99.

<sup>481</sup> Livy, XXXIX.42.5.

<sup>482</sup> Nepos, *Cat. Mai.* 2.3.

the withholding of public works contracts, or through simple verbal rebukes.<sup>483</sup> Accepting Livy's testimony and that it is not discordant with that of Nepos draws us to conclude that neither A. Manlius Vulso nor P. Manlius were expelled by Cato and Flaccus. The former was not only *nobilis* but as *praetorius* he cannot by any stretch be described as having not attained *honores*. The latter is often assumed a Vulso also, although the issue is uncertain. If not, he might or might not have belonged to some other noble *stirps* of the Manlii; in either case the question of his *nobilitas* is open. Regardless he too cannot have been expelled by Cato and Flaccus: he also was *praetorius*, and similarly cannot be described as having not attained *honores*. Neither are "*Μανίλιος*".

Fourth. That '*Μανίλιος*' had not obtained significant political status when expelled may go some way to explaining a curious omission of Livy's: his failure to name or allude to him in his account of Cato and Flaccus' *lectio*. While he often enumerates them, Livy never provides us with the names of non-curule *praeteriti* unless their respective expulsions were for some reason remarkable: a notorious traitor (Metellus), a censor's brother (Fulvius), a vengeful victim (Tremellius; Atinius).<sup>484</sup> Conversely he names *praeteriti* of curule rank even when their respective expulsions are not expanded upon or presented as otherwise-dramatic (P. Cornelius Rufinus; L. Flamininus; L. Scipio; M. Scipio Maluginensis). If "*Μανίλιος*" was of curule rank, then Livy's failure to name him constitutes a marked departure from his typical practice. The absence of his name does not constitute a deviation from type if we accept that he was of non-curule rank.

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<sup>483</sup> The censors' treatment of Scipio Asiaticus has already been noted. We might also note the otherwise-unknown L. Scipio Nasica (possibly son of P. Scipio Nasica (*cos.* 191)), reduced *ad aerarios* for making an ill-received witticism during his *census* declaration (Cic., *De Orat.* II.64.260; Gell., IV.20.2). Doubtless other *nobiles* were punished or subjected to verbal criticism. Among others, *orationes censoriae* against an Aemilius Lepidus and a C. Piso are known.

<sup>484</sup> At Livy, XXIX.37.1; XXXIV.44.4-5; XXXVIII.28.2, none-curule *praeteriti* are enumerated but not named.

## V.

If, as the evidence indicates, “*Μανίλιος*” was an individual of ignoble status and non-curule rank, then the question of who he might have been remains. If the name is to be considered corrupt, ‘Manlius’ and ‘Mamilius’ are the only amendments that need be contemplated, similar *nomina gentilicia* such as ‘Manius’, ‘Mallius’, ‘Mamius’, ‘Malleolus’, and ‘Maloleius’ being so extremely rare they need not be seriously entertained.<sup>485</sup>

Despite the scholarly dispute surrounding the exact definition of the word, it is accepted that during the epoch in question, consular descent carried *nobilitas*. Thus our *praeteritus* was not of the Manlii Vulsones, nor of any other branch of the *gens Manlia* claiming consular descent (these being the Torquati, Capitolini, and Cincinnati). The Acidini in contrast first attained the consulship in 179, so if we adhere to the strictest agreed usage of the word they were not yet *nobiles* when Cato and Flaccus were censors. It is hence feasible that the *praeteritus* was a member of this family.<sup>486</sup> Similarly we cannot reject the possibility that he might have been a member of an ignoble, *cognomen*-less branch of the Manlii (as praetor P. Manlius may have if not of the Vulsones).<sup>487</sup>

*Pace* Fraccaro and Scullard, the possibility that “*Μανίλιος*” was a member of the Mamilii cannot be rejected.<sup>488</sup> If so he cannot have been of the Vitulli or Turrini: they were undoubtedly *nobiles*; the former through brothers Q. and L. Mamilius Vitullus (*cos.* 265,

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<sup>485</sup> On ‘Manius’ as a *nomen gentilicium*: NM239-240. On the singular rarity of ‘Mallius’, n.484.

<sup>486</sup> J.-N.Robert, *o.c.*, 200 posits that L.Manlius Acidinus Fulvianus (*pr.*188; *cos.*179) might have been ‘*Μανίλιος*’. This cannot be. He cannot be described as not having achieved political distinction by 184, and he is attested in the Senate in 183 (Livy, XXXIX.54.13, 55.6).

<sup>487</sup> Four, possibly five, Manlian *stirpes* of non-consular descent are attested providing lesser office-holders: the Lentini, Mancini, Maltini, and Prisci; possibly also Sergiani. As none are attested as active before the last decade of the second century we can reject any notion that the *praeteritus* belonged to one of them.

<sup>488</sup> Note also D.S., XXXII.6.3, where in one MS variant, “*Μαιμίλιος*” (“*Maemilius*”), is given for a Manilius.

262), the latter through C. Mamilius Turrinus (*cos.* 239). Another branch, the Limetani, are not attested as politically active until a much later epoch: hence C. Mamilius Limetanus (*tr.pl.* 109; *Xvir a.d.a.?* 91) and a homonymous *monetalis* of c.82/81. We can discard any suggestion that the *praeteritus* belonged to them. On the other hand membership of a non-consular branch active during the era remains feasible, and note L. Mamilius (*monet.* c.189/180) who cannot certainly be attached to any known *stirps*.<sup>489</sup>

The principles of orthographic parsimony and *lectio difficilior potior* favour that notion that Plutarch's "*Μανίλιος*" should be read as "Manilius" rather than "Manlius". In Greek literary and epigraphic sources, the *nomen* 'Manlius' is usually transliterated into the Greek alphabet as '*Μάλλιος*', not '*Μανίλιος*', and Plutarch provides no exception to this trend. Outside the *Cato Maior* we note him rendering the name of every Manlius appearing in his work as '*Μάλλιος*' and presenting none under any other transliterated form.<sup>490</sup> Plutarch knew his Manlii, and always used the correct Greek transliteration, and if '*Μανίλιος*' hides a true Manlius, then the error – or corruption – is unique within his work. More than this. '*Μανίλιος*', and its dittographic variant, '*Μανίλλιος*', are the usual transliterations into Greek of 'Manilius', and are found as such in the works of Polybius, Diodorus, Appian, Dio, and Zonaras.<sup>491</sup> The *praeteritus* excluded, two Manilii appear in

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<sup>489</sup> *MRR* III.132.

<sup>490</sup> Plut., *Cam.* 27.4-5, 36.2-7; *Cic.* 14.3, 15.3, 16.1, 16.4; *Fab. Max.* 9.2; *Numa* 20.2; *Sert.* 12.4, 26.1-2; 27.4. Cf *Ti.Gracch.* 11.1; *Pomp.* 30.1 where separate Manilii are rendered "*Μάλλιος*". The Greek habit of transliterating 'Manlius' to '*Μάλλιος*' has caused confusion, with many Manlii being misidentified as Mallii. In fact only one uncontested Mallius is known: Cn.Mallius Maximus (*cos.*105). On this and '*Μάλλιος*' as the usual Greek transliteration of 'Manlius': W.Dittenberger, *o.c.*, 153-154n.3; L.R.Taylor, *The Voting Districts of the Roman Republic: the Thirty-Five Urban and Rural Tribes*. Papers and Monographs of the American Academy in Rome 20 (Rome, 1960), 228; *MRR* III.132.

<sup>491</sup> Polyb., XXXVI.11.1; D.S., XXXII.6.3 (although with one MS variant reading "*Μαιμίλιος*" ("Maemilius")); App., *Iberica* 10.56; *Libyca* 11.75, 14.97, 14.99-100, 15.102, 15.104-16.105, 16.108-109; Dio, XXXVI.42.1-44.2; Zon., IX.26-27. Corrupt or mistaken forms are found only in D.H., XI.44.2 ("*Σέξτος Μάλλιος*"; referring to

Plutarch's biographical corpus: M. Manilius (*cos.* 149) and C. Manilius (Crispus?) (*tr.pl.* 66). The name of the tribune is correctly transliterated four times in the *Cicero* and once, incorrectly, as 'Μάλλιος', in the *Pompey*.<sup>492</sup> The name of the consul appears once in the *Tiberius Gracchus*, wrongly transliterated as 'Μάλλιος'.<sup>493</sup> Conversely outside the *Cato Maior* nowhere does the name 'Manlius' appear incorrectly transliterated. These patterns are to be expected if one assumes that texts are more susceptible (hence likely) to suffer corruption through the deletion of characters than they are to suffer through addition. In this example, while the names of Plutarch's Manilii can (and do) corrupt 'down' to 'Manlius', the names of Manlii do not corrupt 'up' to 'Manilius'.

Orthography, and evidence from elsewhere within his works, strongly suggests that Plutarch's "Μανίλιος" was of the Manilii, not the Manlii.

## VI.

While a Sex. Manilius is recorded as a military tribune in 449,<sup>494</sup> no other Manilii are known to have held magistracies or are attested in the Senate before the early 160s. Thereupon the fortune of the Manilii within the Senate rose rapidly, albeit briefly. Thus known are P. Manilius (*leg.senat.* 167) and M. Manilius P.f. P.n. (*cos.* 149) – doubtless brothers, sons of a P. Manilius with the former the elder and homonymous to the father – and P. Manilius

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Sex.Manilius (*tr.mil.* 449) *cf.* Livy, III.51.10), and Dio, XXXVI.42.1-44 ("Μάλλιος"/"Μαλλίος" for C.Manilius (Crispus?) (*tr.pl.*66) – this second mistake is also made by Plutarch in the *Pompey* (see following note)).

<sup>492</sup> Plut., *Cic.* 9.4-6; *Pomp.* 30.1.

<sup>493</sup> Plut., *Ti.Gracch.* 11.1.

<sup>494</sup> Called 'Σέξτος Μάλιος' at D.H., XI.44.2. F.Münzer, 'Sex.Manilius(15)', *RE*.XIV<sub>1</sub> (1928), 1139-1140 and *MRR* I.49, following Livy, III.51.10, accept him as Sex.Manilius.

(cos. 120), son of one or the other of the brothers.<sup>495</sup> Upon the passing of the latter the Manilii appear to have fallen into senatorial obscurity for nearly a century and then when re-emerging only providing junior members.<sup>496</sup> Despite Meyer, “*Μανίλιος*” cannot have been the consul of 149: Sumner demonstrates that he was born in the mid-180s, and thus was no more than an infant when Cato and Flaccus were censors.<sup>497</sup> The consul’s elder brother, P. Manilius, at first glance seems a slightly better proposition, as it might not be too much a stretch to conjecture that one serving on a senatorial legation in 167 might have been in the Senate 17 years prior. However the embassy to which he was assigned consisted of five members, and of these he was evidently the most junior.<sup>498</sup> This is not suggestive of any great prior experience, and it is best to suppose that this mission was one of his first experiences of service to the state. This fits with an assumed birth date of 200/195, as Sumner thinks reasonable.<sup>499</sup> In light of the rejection of either brother being “*Μανίλιος*”, we can revisit a fleeting suggestion, made by Astin, that “perhaps there was a... Manilius... widely regarded as exceptionally promising until Cato’s censorship”.<sup>500</sup> This scenario is perhaps the most likely of all. Furthermore it leads one to wonder about the character and possible career of the brothers’ father, P. Manilius P.f., a man who generated for the apparently hitherto non-senatorial Manilii two senatorial sons. More: a consular son and a consular grandson. The quality of his progeny demonstrates that the

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<sup>495</sup> F.Münzer, ‘M.Manilius(12)’, *RE*.XIV<sub>1</sub> (1928), 1135-1139; F.Münzer, ‘P.Manilius(13)’, *RE*.XIV<sub>1</sub> (1928), 1139; G.V.Sumner, *Orators*, 62; *MRR* III.134.

<sup>496</sup> *MRR* II.585, III.134: Manilius (*leg. (pr.?)* by 82) and T.Manilius (*sen.76*) – both possibly Manlii – and C.Manilius (Crispus?) (*tr.pl.66*) and Manilius Cumanus (*tr.pl.52*).

<sup>497</sup> G.V.Sumner, *Orators*, 44, 61-62 citing Cic., *Att.* 89.2<sup>SB</sup>; *Rep.* III.10.17.

<sup>498</sup> Livy, XLV.17.4. The embassy comprised a consular, two praetorians, and two of subpraetorian grade (Livy lists them in order of seniority). Manilius is last, behind the obscure P.Terentius Tuscivicanus.

<sup>499</sup> G.V.Sumner, *Orators*, 62.

<sup>500</sup> A.E.Astin, *Cato*, 80n.7.



elder P. Manilius was a man of not inconsiderable means and status. It is eminently possible that he was a senator, certainly our knowledge of the composition of the Senate of the 190s and 180s allows for the existence of many *ignoti* within the junior strata. Thus there is, I feel, a strong possibility that P. Manilius P.f., father of two senators, one a consul, and grandfather of another consul, might be identified as Plutarch's *praeteritus* – a man whom, somewhat ironically, before his expulsion was thought of as a good prospect for that very office.

## 5.

### **L. Quinctius T.f. L.n. Flamininus (4) (cos. 192); Expelled, 184/183: M. Porcius Cato & L. Valerius Flaccus**

#### **A.**

T.5A-J.<sup>501</sup>

#### **B.**

Notwithstanding his illustrious name and rank, the *post eventum* efforts of his brother, and the popular support that was so evident in the theatre following his expulsion, no subsequent magistracies are attested. An as augur he would have retained this position until his death, in 170.<sup>502</sup>

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<sup>501</sup> Seneca, *Controv.* IX.2.pr-29 shows that Flamininus' summary execution of a prisoner, the episode which precipitated his expulsion, became a favourite legal *controversia* of Roman and Greek jurists. None (as preserved in Seneca, at least) mention his expulsion for the deed.

<sup>502</sup> Livy, XLIII.11.13.

## C.

In contrast with the successful progeny of his brother (son, T. Flamininus T.f. T.n. (cos. 150); grandson, T. Flamininus T.f. T.n. (cos. 123)),<sup>503</sup> the descendants of L. Flamininus, if he had any, leave no trace.<sup>504</sup>

## 6.

### L. Cornelius P. Africani.f. P.n. Scipio (325) (sen. by 174; pr. 174); Expelled, 174: A. Postumius Albinus Luscus & Q. Fulvius Flaccus

## A.

### T.6.

The nature of his praetorship (peregrine), and the fact that his election to the office came a year before that of C. Cicereius (pr. 173), argues for identifying Livy's *praeteritus*, whom he identifies only as "*L. Cornelius Scipio*", as the notorious (second) son of Scipio Africanus and who appears in two *exempla* of Valerius Maximus, once as "*Cn. Scipio Africani superioris filius*" (IV.5.3; in an *exemplum de verecundia*) and again as "*Scipio Africani*

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<sup>503</sup> H.G.Gundel. 'T.Quinctius Flamininus(46)', *RE*.XXIV (1963), 1100; H.G.Gundel, 'T.Quinctius Flamininus(47)', *RE*.XXIV (1963), 1100; E.Badian, 'The family and early career of T.Quinctius Flamininus', *JRS* 61 (1971), 103, 104, 108. A *monetalis* of c.112/110, known from his coinage only as T Q, is regarded as the consul of 123, a homonymous son, or a Quinctilius: H.G.Gundel, 'T.Q(uinctius?) (Flamininus?) (48)', *RE*.XXIV (1963), 1101; G.V.Sumner, *Orators*, 68; *RRC* I.291; *MRR* II.420, 611; III.178.

<sup>504</sup> H.G.Gundel, 'C.Quinctius Flamininus(40)', *RE*.XXIV (1963), 1039, postulates that the praetor of 177, C. (or better, K.) Flamininus may have been son of either Titus or Lucius, although he also suggests that the praetor may have been their younger brother. He cannot have been son of either: a praetor for 177 must have been born before 216, and even Titus, the elder brother, was only born c.229/228 (Polyb., XVIII.12.3; Livy, XXXIII.33.3; Plut., *T.Flamin.* 2.2; H.G.Gundel, 'T.Quinctius Flamininus(45)', *RE*.XXIV (1963), 1049; E.Badian, *JRS* 61 (1971), 105-107, 111; R.Develin, *Patterns*, 71, 74).

*superioris filius*" (III.5.1b – "of those who degenerated from famous parents" (*qui a parentibus claris degeneraverunt*)). In both anecdotes he comes across as a scoundrel, unliked by the *populus Romanus* and whose election to a judicial praetorship was resultant upon C. Cicereius, a client and ex-scribe of Africanus, selflessly stepping down from his own victory-bound praetorian candidacy in order to lend his support (and supporters) to the floundering candidacy of his patron's son. Moreover, at III.5.1b we learn that in the sequel, the Scipiones, cognisant of his shameful behaviour while occupying the praetorship, ensured that he could not carry out the duties of his office (they prohibited him from setting up his curule chair and hence from giving judgement), and confiscated from him a signet ring which bore an engraved portrait of his father. Valerius Maximus then injects his own opinion of the scion: darkness born from a thunderbolt.<sup>505</sup>

Did these manoeuvres by the Scipiones against their scion occur before or after his expulsion? If after, we are justified in questioning their motivation. Whether the family's sanctions were imposed in the sincere belief that the praetor was not equal to the dignity of the praetorship and was a political liability, or whether the punishments were a façade, performed in order to dissociate themselves from him so as to protect the *existimatio* of the wider family against the censors' negative judgement of one of their number; a face-saving damage-limitation exercise in which a unified and public display of accord with the censors' criticism of the praetor's character lessened their own humiliation. With

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<sup>505</sup> For discussions on the identity of the *praeteritus*: MRR I.399n.1, 406n.2; Willems, I.382-383; F.Münzer, 'Cn.Cornelius Scipio(320)', *RE*.IV<sub>1</sub> (1900), 1427; F.Münzer, 'L.Cornelius Scipio(325)', *RE*.IV<sub>1</sub> (1900), 1431-1433; Schmähling, 102; Suolahti, 48, 369; J.P.V.D.Balsdon, 'L.Cornelius Scipio: a salvage operation', *Historia* 21 (1972), 228-233; *RP*<sup>2</sup> 130, 191-192, 302, 309; R.A.Billows, 'The last of the Scipios', *AJAH* 7 (1982), 53-68. All identify the praetor of 174 as the incapable son of Africanus, L.Scipio. El-Beheiri, 86 admits to the expulsion of a son of Scipio, but names him "Publius". This was a different son, the adoptive father of Scipio Aemilianus. A.E.Astin, *Scipio Aemilianus*, 357; F.Münzer, *Roman Aristocratic Parties and Families*, trans. T. Ridley (Baltimore, 2000), 98 do not feature Lucius in their respective *stemmata Scipionis*.

chronology uncertain the issue is insoluble, still it is worth bearing in mind that, the events of 174 notwithstanding, Africanus' son was a source of embarrassment to the Scipiones. In 192, upon the outbreak of the Asian War, he was captured – under discreditable circumstances – while on patrol by the forces of Antiochus III. His liberation too, in 190, was not without controversy: there were allegations that Africanus, at the armistice negotiations, granted Antiochus too easy a peace so as to expedite the release of his captive son. While there is no evidence that Africanus was ever unsympathetic towards his unlucky son, the stance of young man's uncle appears to have been unaccommodating; Scipio Asiaticus apparently felt no reticence in including an illustration of his nephew's ignoble capture in the triumphal procession he held following Antiochus' defeat.<sup>506</sup>

While the censors' reason for expelling Lucius is not provided by Livy, our only source on it, the circumstances of his capture during the Asian War and/or of his victory at the praetorian ballot may be reasonably conjectured as causes. So too the politics of the censors, both of whom belonged to *gentes* which were traditional political opponents of the Scipiones and of their allies. As a consequence of, *inter alia*, the prosecutions of Africanus and Asiaticus in the 180s, the Scipiones of the 170s had become as weak politically as they had been for four decades, and any attack made upon them in 174 would have had more chance of success than they would previously have had; old scores might be settled with relatively little risk.<sup>507</sup> The censors' move against Lucius thus may have been

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<sup>506</sup> D.S., XXIX.8.1-2; Livy, XXXVII.34.1-8, 36.1-9; V.M., III.5.1a; Pliny, *HN* XXXV.7.22; App., *Syriaca* 6.29 (misidentifying the son as Scipio Aemilianus).

<sup>507</sup> For more modern discussions of the ('factional') milieu facing the Scipiones from the end of the Second Punic War through to the 170s: J.Briscoe, 'Q. Marcius Philippus and the nova sapientia', *JRS* 54 (1964), 73-77; *RP*<sup>2</sup>, *passim*; A.E.Astin, *Scipio Aemilianus*, 342-343; J.Briscoe, 'Fulvii and Postumii', *Latomus* 27 (1968), 149-156; J.Briscoe, 'Livy and senatorial politics, 200-167 BC: the evidence of the fourth and fifth decades', *ANRW* II.30.2 (1982), 1075-1121; J.Briscoe, 'Political groupings in the middle Republic: a restatement' in C.Deroux (ed.) *Studies in Latin Literature and Roman History VI*. Collection Latomus 217 (Brussels, 1992), 70-83;

motivated by a desire to further diminish the political influence of the family by going after one of their more infamous, less popular, and weaker members. The suspicion that 'factional' politics was at play strengthens when we note that Lucius was not the only Scipio expelled in 174: M. Scipio Maluginensis (*pr.* 176) was as well.

## **B.**

No subsequent appointments are recorded.

## **C.**

No offspring or descendants are directly attested, although it is possible that some subsequent Scipiones, *inter alios*, were descendants.<sup>508</sup>

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F.Münzer, *Parties and Families*, 94-204. See also the comments of Suolahti, 369. On the dangers in attributing too much to factional alliances: F.Cassola, *I Gruppi Politici Romani nel III Seculo AC*. Instituto di Storia Antica 2 (Trieste, 1962), *passim* (albeit concentrating on the period 342-200); R.Seager, 'Factio: some observations', *JRS* 62 (1972), 53-58; K.-J.Hölkeskamp, 'Fact(ions) or Fiction?: Friedrich Münzer and the aristocracy of the Roman Republic', *IJCT* 8 (2001), 92-105. See also the review of Cassola *o.c.*, at J.Briscoe, 'Roman political groups', *CR* n.s.13 (1963), 321-324.

<sup>508</sup> R.A.Billows, *AJAH* 7 (1982), 53-68 offers Cornelia, the subject of Propertius, *Elegiae* IV.11, and Scipio Salvitto and Scipio Pomponianus (M.Messalla Rufus, *De Familiis Romanis* fr.1 (Peter) *ap.* Pliny, *HN* XXXV.2.8; Pliny, *HN* VII.12.54; Suet., *Iulius* 59; Plut., *Caesar* 52.2-3; Dio, XLII.58.1) as possible descendants, as all claimed descent from Africanus. Moreover, Billows posits that Salvitto was father of Cornelia and Pomponianus. Notwithstanding the fact that Cornelia's descent from Africanus is known to have derived from her ancestor, P.Scipio Nasica Corculum (*cens.*159-158; *cos.*II 155), who married a daughter of Africanus, and that Cornelia's husband and brother most assuredly were not Salvitto and Pomponianus, it remains possible (albeit unproveable) that Salvitto and Pomponianus were descended from Africanus via the *praeteritus*.

7.  
**M. Cornelius Scipio Maluginensis (348) (*pr.* 176);  
Expelled, 174: A. Postumius Albinus Luscus & Q. Fulvius Flaccus**

**A.**

T.7.

The censors' rationale for acting against Scipio Maluginensis is not recorded. Three possible reasons, not mutually-exclusive, may be forwarded. The first stems from an episode which occurred shortly after the praetorian *sortitio*, two years prior. Livy relates that the praetor assigned to Hispania Citerior, P. Licinius Crassus, claimed that he was hindered by obligatory sacrifices from proceeding to his province. Ordered to either go to his province or swear before the Assembly that obligatory sacrifices prevented him from doing so, he did the latter and was thus excused from departing. Shortly thereafter, Scipio Maluginensis, who had been assigned to Hispania Ulterior, gave the same rationale for not being able to depart to his province and he too was excused from doing so after swearing a similar oath before the Assembly.<sup>509</sup> As a result of these exemptions, the Senate was compelled to order the proconsuls then stationed in the Spanish provinces to remain there in command for a further year.<sup>510</sup> Livy's narrative makes clear that Crassus had already been exempted before Scipio made his identical request to be discharged, so the censors in 174 may have looked back on his plea to remain in Rome as nothing more than an excuse given by one unwilling to leave the city to govern his province – trying it on because he had recently seen the ploy work successfully for another. That Scipio's stratagem would have necessitated his offending against the gods (*i.e.*, making a false oath) would only have denigrated him in their eyes.<sup>511</sup> That Crassus (later consul, in 171)

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<sup>509</sup> Livy, XLI.15.5-10. Cf XLI.32.1-5.

<sup>510</sup> Livy, XLI.15.11.

<sup>511</sup> See also A.E.Astin, *JRS* 78 (1988), 21.

escaped censure may be a function of censorial caprice, but it is possible that his request, made before Scipio's, was seen by them as sincere.

The second possible rationale lies in a witticism. Cicero records that during the consular elections of 180, Scipio, whose task it was to announce to the presiding consul the vote of his century, thought to lighten the solemn occasion by deliberately misconstruing the consul's brief and formulaic command "*dic de L. Manlio*" (*i.e.*, give your century's vote for candidate L. Manlius), as an invitation to offer his own personal opinion of the candidate's character.<sup>512</sup> This suggestion, that Scipio's intentionally-comic take on the president's instruction may have caused his later censure, gains extra credence when we consider that the president may have been A. Postumius Albinus Luscus, one of the men who, as censor, would go on to expel Scipio.<sup>513</sup> Furthermore the man whose candidacy Scipio used as the basis of his joke, L. Manlius Acidinus Fulvianus, was the natural brother of the other censor who would eventually censure him, Q. Fulvius Flaccus. That Cicero bookends his report of Scipio's quip between anecdotes unambiguously relating to humour and matters censorial might be significant.

Thirdly, as noted in our discussion of *praeteritus* L. Scipio (*pr.* 174), the censors who conducted the *lectio* of 174 belonged to *gentes* traditionally held as politically hostile to the Scipiones and their allies, and this being so may have expelled L. Scipio wholly or in part in order to further weaken their adversaries, already politically moribund. Hence possibly also Scipio Maluginensis. This does not mean that Scipio's unwillingness to take up his praetorian command in 176, or his witticism at the consular election of 180 – or some entirely different misdemeanour – might not have been adduced by the censors as

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<sup>512</sup> Cic., *De Orat.* II.64.260.

<sup>513</sup> Livy, in reporting the election, records neither the president's status nor name. Cicero confirms that he was a consul but does not provide his name. The other consul at the time was the suffect, Q. Flaccus Cn.f.M.n., who was related to the other censor who would target Scipio, Q. Flaccus Q.f.M.n..

cause for expulsion, just that his being a Scipio might have made the censors' decision to expel him an easier one for them to make than it would otherwise have been.

## **B.**

No subsequent appointments are attested.

## **C.**

None are known, nor may any known individual be feasibly hypothesised a descendent.<sup>514</sup>

The lack of known magisterial Maluginenses subsequent to the *praeteritus* is not to be seen as a result of his expulsion; rather the vagaries of onomastics. The Maluginenses, commonly found holding the higher magistracies during the opening century and a half of the Republic, abruptly disappear from the *fasti* in the middle of the fourth century: their last attested office-holders before the praetor of 176 being M. Maluginensis (*tr.mil.cos.pot.II* 367) and Ser. Maluginensis (*tr.mil.cos.pot.VII* 368; *mag.eq.* 361). But it will not do to assume that the sudden disappearance of the Maluginenses during the mid-fourth century was due to the decline or extinction of their line. Rather that they abandoned the *cognomen* altogether. The Maluginenses aside, there seems to have been a genuine development in Roman onomastics throughout the mid to late fourth centuries wherein the use of toponymic *cognomina* terminating in '-ensis' fell out of favour, at least among the old senatorial *gentes* who had carried them: the Claudii abandoned 'Inregillensis' in preference to 'Crassus', the Postumii ditched 'Regillensis' for 'Albinus', and the Genucii set aside 'Aventinensis' in preference to no *cognomen* at all. With this in mind, it may be no

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<sup>514</sup> Neither C.Cornelius M.f. *Stell.* nor L.Cornelius M.f. *Rom.*, both epigraphically attested on the *SC de Agro Pergameno*, likely of 101 (see n.737), are linked to the *praeteritus*: L.R.Taylor, *VDRR*, 206-207, 307; *MRR* III.62; R.K.Sherk, *Roman Documents from the Greek East: Senatus Consulta and Epistulae to the Age of Augustus* (Baltimore, 1969), 63-73.



coincidence that the Cornelii Scipiones begin to appear within the *fasti* just as the Cornelii Maluginenses begin to peter out, so that what appears to be a new *stirps* starts to flourish upon the disappearance of an old one: thus P. Scipio (*tr.mil.cos.pot.* 395), P. Scipio (*aed.cur.* 366), P. Scipio (*mag.eq.* 350; *cens.?* 340), and L. Scipio (*cos.* 350; *cens.?* 340). That we find a Scipio in 176 bearing the (by then) archaic *cognomen* Maluginensis may itself be taken as evidence that the Scipiones were aware of their ancestral connection to the Maluginenses and were, for some reason now lost to us, advertising this link to the wider community through the name of this individual.<sup>515</sup>

Only two Cornelii Maluginenses subsequent to the *praeteritus* are certainly known: Ser. Lentulus Maluginensis Cn.f. Cn.n. (*cos.suff.* AD 10; *flam.Dial.* ?-AD 23) and his son, [-.] Lentulus Maluginensis Ser.f. Cn.n. (*flam.Dial.* AD 23-?). According to the most likely reconstruction, neither were descended from the *praeteritus*: the father of the consul was probably Cn. Lentulus Augur (*cos.* 14), son of Cn. Lentulus Clodianus (*pr.* 59) and grandson of Cn. Lentulus Clodianus (*cens.* 70-69).<sup>516</sup> The consul's (elder) brother is known to have been P. Lentulus Scipio (*cos.suff.* AD 2). No known member of the Lentuli is recorded using either Scipio or Maluginensis at any point before the naming of the consular brothers, so it seems that their father, Lentulus Augur, was conforming to the fashion, briefly prevalent during the early Principate, wherein the more ancient of the *gentes*, those most constrained by and reacting against the new order of limited opportunities for military renown and political *honores*, "revived decayed *cognomina*,

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<sup>515</sup> T.Mommsen (1864) *Römische Forschungen* I.50; G.W.Botsford, 'Some problems connected with the Roman gens', *PSQ* 22 (1907), 683n.4; H.I.Flower, *o.c.*, 176-177.

<sup>516</sup> G.V.Sumner, 'The familyconnections of L. Aelius Sejanus', *Phoenix* 19 (1965), 134-139. *Contra, inter alios*, C.Cichorius, 'Zur familiengeschichte Seians', *Hermes* 39 (1904), 461-471; R.Syme, *The Roman Revolution* (Oxford, 1939), app.6; R.Sealey, 'The political attachments of L. Aelius Seianus', *Phoenix* 15 (1961), 103, who identify the father of the consul as an otherwise-unknown Cn.Lentulus Maluginensis. R.A.Billows, *AJAH* 7 (1982), 68n.34 briefly discusses the issue.

invented *praenomina* to recall historic glories, remembered old ties of kinship and furbished up the *imagines* of their ancestors, genuine or supposed”.<sup>517</sup> A parallel is seen in the way that others among the Lentuli of the Principate appropriated the old Cornelian *cognomen* ‘Cossus’ and, in order to advertise their perceived connection to the ancient and great Cornelii Cossi (last attested in 320), put it to novel use as a *praenomen*. Allowing that the Lentuli were probably not unjustified in considering themselves as ultimately descended from the Maluginenses and Scipiones (and the Cossi), they were nonetheless an old family in their own right. As such, when M. Scipio Maluginensis was expelled, the Lentuli had been established for more than a century and a half as a collateral *stirps* of the *gens Cornelia*. Thus while the brothers and the *praeteritus* were related, they were so only because they shared a common ancestor from which their separate lines descended.

## 8.

**M. Fulvius (Q.f. M.n.?) Flaccus or Nobilior (57, cf 20, 92)  
(*tr.mil.* 181-180; *sen.* 174);  
Expelled, 174: A. Postumius Albinus Luscus & Q. Fulvius Flaccus**

### A.

T.8A-E.

Fully identifying the *praeteritus* remains problematic, ultimately insoluble. Valerius Maximus and Frontinus call him merely “*Fulvius*”; Velleius Paterculus offers “*Cn. Fulvius*”. Livy, giving notice of the *praeteritus*’ expulsion at XLI.27.1-2 (=T.8A; citing Valerius Antias) reports “*L. Fulvius*”. Evidently Livy did not notice that at XL.41.8-10 (=T.8B), when writing about the episode in Liguria in 180 that would culminate in Fulvius’ censure, he had called

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<sup>517</sup> R.Syme, *RR*, 377.

him “*M. Fulvius Nobilior*”. Note too XL.30.1-4, on Hispania Citerior in 181: “*Q. Fulvius Flaccus eam obtinebat provinciam... M. Fulvium fratrem...*”.

Observing the rarity of the use of the *praenomen* ‘Lucius’ within the Fulvii Flacci and mistakenly thinking that two distinct Q. Flacci were the subjects of these accounts (Q. Flaccus Q.f. M.f. (*procos.* Hispania Citerior 181-180; *cos.* 179; *cens.* 174-173) and his cousin, Q. Flaccus Cn.f. M.n. (*cos.suff.* 180)), Mommsen lists the *praeteritus* as Cn. Fulvius Flaccus and has him as brother of the censor, has the military tribune of 181 as M. Fulvius Flaccus, their brother, and identifies the military tribune of 180 as M. Fulvius, brother of the suffect and possibly adopted into the Nobiliores from the Flacci.<sup>518</sup> Willems, following Mommsen’s identifications, suggests moreover that the military tribune of 181 may have been expelled during the *lectio* of 179 and that the *praeteritus* of 174 may have been Cn. Fulvius (*pr.* 167).<sup>519</sup>

Münzer, unwilling in the *RE* to treat the *praeteritus* and the tribune as one person, nonetheless concludes that the expelled man was called M. Fulvius Flaccus, probably the otherwise-unknown father of M. Fulvius M.f. Q.n. Flaccus (*cos.* 125).<sup>520</sup> To this suggestion may be added some small observations. The censor’s filiation betrays the fact that he was his father’s first son, and that any putative brother would be named ‘Marcus’, after their paternal grandfather.<sup>521</sup> Also, that if we assume that the consul of 125 was born c.170 (in

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<sup>518</sup> T.Mommsen, ‘*Additamentum ad fastos consulares Capitolinos*’ in W.Henzen *et al.* (edd.), *Ephemeris Epigraphica: Corporis Inscriptionum Latinarum Supplementum* (Rome & Berlin, 1872), 155-156. Moreover identifying the tribune of 181 as father of M.Flaccus M.f.Q.n. (*cos.*125).

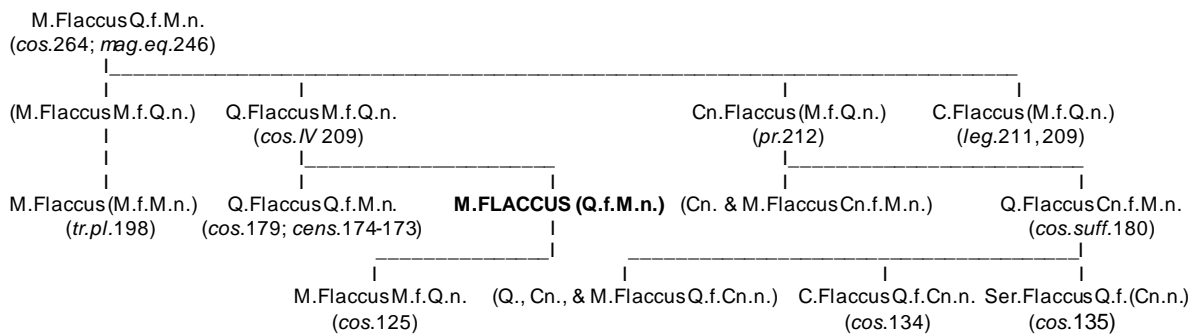
<sup>519</sup> Willems, I.383 (disregarding Cn.Fulvius (*pr.*190)).

<sup>520</sup> F.Münzer, ‘L.Fulvius(20)’, *RE.VII*<sub>1</sub> (1910), 233; F.Münzer, ‘M.Fulvius Flaccus(57)’, *RE.VII*<sub>1</sub> (1910), 240-241; F.Münzer, ‘M.Fulvius Flaccus(58)’, *RE.VII*<sub>1</sub> (1910), 241 F.Münzer, ‘M.Fulvius Nobilior(92)’, *RE.VII*<sub>1</sub> (1910), 267.

<sup>521</sup> Their father being Q.Fulvius M.f.Q.n. Flaccus (*cos.*IV 209); grandfather, M.Fulvius Q.f.M.n. Flaccus (*cos.*264; *mag.eq.*246). Another brother of the censor, who was adopted by L.Manlius L.f. Acidinus (*pr.*210) and who would become L.Manlius L.f.L.n. Acidinus Fulvianus (*cos.*179), would, in this reconstruction, have

accordance with the *lex Villia annalis*, certainly no later than 167), then we may further conjecture that his father was born during the last decade of the third century and that he was in his 20s in 181/180 – a good age for a seemingly-naïve officer, new to military protocol. The known and easily-deducible biographical details of this otherwise-unknown father of the consul of 125, M. Fulvius Q.f. Flaccus thus accord very closely with what we know about the *praeteritus*, if only we accept that Livy misreported his *cognomen* and slipped once (when following to Antias) with his *praenomen*. A stemma of the Fulvii Flacci, incorporating Münzer’s suggestion, is presented:<sup>522</sup>

**Stemma of the Fulvii Flacci, with M.Flaccus M.f.Q.n. (cos.125) as son of the *praeteritus***



Not shown: The (third?) son of Q.Flaccus (cos.IV 209), adopted by L.Manlius Acidinus (pr.210) to become L.Manlius L.f. Acidinus Fulvianus (cos.179).

Münzer’s solution (wholly accepted by Schmähling and El-Beheiri) is not the only possible one to the problem presented by the conflicting evidence.<sup>523</sup> Accepting for the moment the validity of all of his arguments, other interpretations remain. Without too much speculation, alternative viable solutions to the issue of the patrimony of the consul of 125 may be found

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been at least the third son. His birth name is unknown, but Cn.Fulvius Flaccus seems appropriate. See F.Münzer, ‘L.Manlius Acidinus Fulvianus(47)’, *RE*.XIV<sub>1</sub> (1928), 1164.

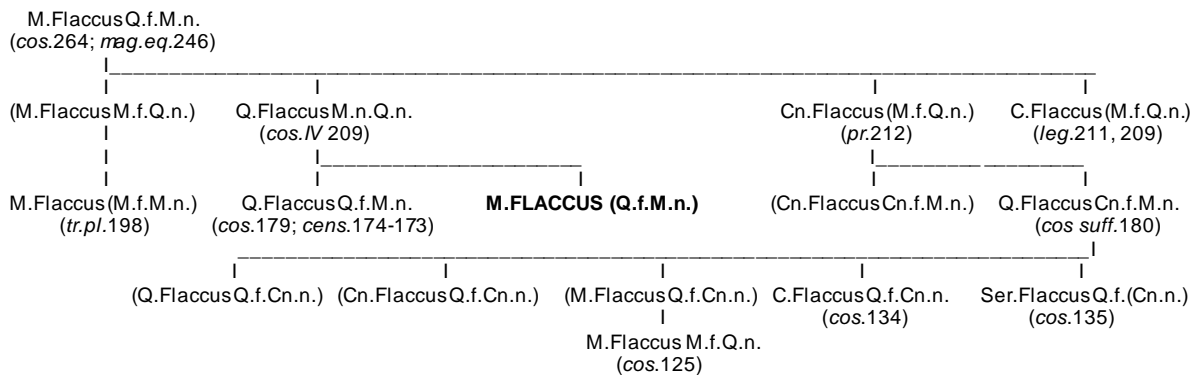
<sup>522</sup> G.V.Sumner, *Orators*, 41, upon which this proposed stemma is founded, incorrectly shows the military tribune as “M.Fulvius Cn.f.M.n. (Nobilior?)” and brother of the suffect of 180, not, as should be, brother of the consul of 179 (and cens.174-173).

<sup>523</sup> Schmähling, 120-121; El-Beheiri, 85.

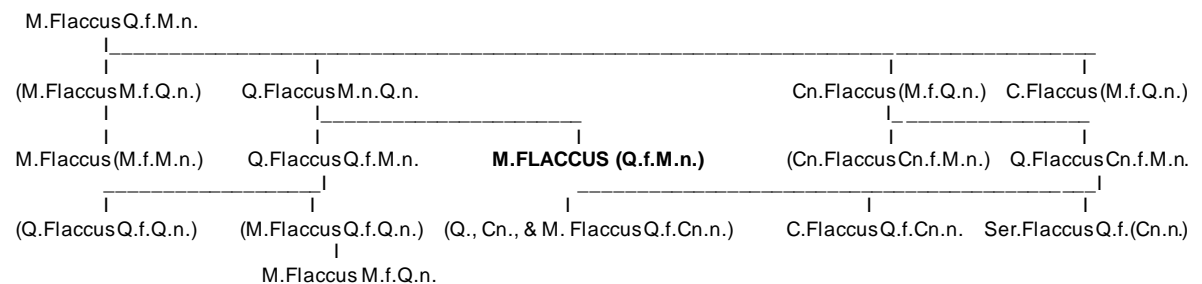
in the suggestion that he was either the grandson of Q. Flaccus (*cos.suff.* 180) or the grandson of Q. Flaccus (*cens.* 174-173). The first reconstruction sees the consul of 125 as son of the suffect's otherwise-unknown third son, M. Flaccus Q.f. Cn.n., the existence of whom we can safely conjecture based upon normal onomastic practice (the first and second sons being the otherwise unknown Q. and Cn. Flaccus Q.f. Cn.n.; the fourth and fifth sons being C. and Ser. Flaccus Q.f. Cn.n., consuls in 134 and 135, respectively). The second reconstruction has the disadvantage of creating two wholly hypothetical personages – Q. and M. Flaccus Q.f. Q.n. – the latter being the second son of the censor and father of the consul of 125, the former being the father's older brother (the consul's uncle). Both reconstructions are less economical and have greater problems with chronology than Münzer's solution, but they are feasible, albeit less likely, interpretations nonetheless.<sup>524</sup>

Broughton, while looking upon Münzer's reconstruction favourably, and building on a suggestion by Sage & Schlesinger that the censor's brother, if a Flaccus by birth, may

<sup>524</sup> Hence:



OR



have been adopted into the Nobiliores, concludes that “no certain solution has been found” to the problem presented to us by the conflicting evidence of the sources, as indeed do Sage & Schlesinger (“contradictory... hopeless confusion”; “impossible to be certain”).<sup>525</sup> Briscoe notes that if the *praeteritus* was adopted from the Flacci into the Nobiliores, his adoptive father may have been M. Nobilior M.f. Ser.n. (*cos.* 189; *cens.* 179-178) while the *praeteritus* might be further identified with M. Nobilior M.f. M.n. (*cos.* 159).<sup>526</sup> Although not noted by Briscoe, his hypothesis gains traction when we consider that the censor’s father had form in adopting his offspring: one son (the third?) going to L. Manlius Acidinus (*pr.* 210) to become L. Manlius L.f. Acidinus Fulvianus (*cos.* 179).

Yet another alternative solution arises when we note that the terms “*fratres*”, “*germani*”, and “*consortes*” did not just describe full-brothers, but could also be used to describe half (uterine) brothers. It is possible, therefore, that the relationship between the censor and the *praeteritus* was that while they shared the same mother, their fathers were Flacci and Nobiliores, respectively.<sup>527</sup>

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<sup>525</sup> E.T.Sage & A.C.Schlesinger – 128-129, 277n.3 in their 1938 LCL translation; *MRR* I.389 (“M.Fulvius (Nobilior?)”), 391n.3. *Cf.* I.385 (“M.Fulvius (Flaccus)”), 387n.6, 423 (“M.Fulvius (Nobilior or Flaccus?)”); II.568 (“M.Fulvius (Nobilior?)”); III.93-94 (“L.Fulvius” – recanting?) The erroneous stemma of G.V.Sumner, *Orators*, 41, 190 might indicate that he believed that the *praeteritus* was adopted into the Nobiliores from the Flacci. Note also A.H.McDonald, [Review of T.R.S.Broughton, *Supplement to the MRR*], *JRS* 51 (1961), 240, who, commenting on *MRR* III.93-94 and its listing of “L.Fulvius” as the *praeteritus*, agrees.

<sup>526</sup> J.Briscoe, *Comm. Livy 38-40*, 514-515, 579.

<sup>527</sup> Suolahti, 369 calls the *praeteritus* “L. (or M.) Fulvius” in his brief discussion of him. Cram, 93 leaves him unnamed.

## **B & C.**

We have already mentioned the possibility that the *praeteritus* and M. Nobilior M.f. M.n. (cos. 159) may have been the same man. If so, he recovered his senatorial status in the interim. The possibility that the *praeteritus*' son was M. Flaccus M.f. Q.n. (cos. 125) has also been mentioned already. If so, consular progeny despite his setback. However as the issue of the *praeteritus*' place within the noble Fulvii is essentially insoluble, the question of his later career (if any) and descendants (if any) is equally intractable. Still note may be drawn to M. Fulvius Flaccus (57), who as a senatorial *legatus* in 170 was sent to investigate the condition of the Roman army in Greece, and to M. Fulvius (52, cf 92), who in 171 was sent as senatorial *legatus* to restrain consul C. Cassius Longinus from marching through Illyricum and Macedonia.<sup>528</sup> Either might be identified with the *praeteritus* (indeed, Münzer considers him the former). If so, it follows that he must have been successful in attaining a senatorial office very soon after his expulsion.<sup>529</sup>

## **9.**

**Cn. Tremellius (2) (q. by 168?: tr.pl. 168; pr. 159);  
Expelled, 169: C. Claudius Pulcher & Ti. Sempronius Gracchus**

## **A.**

T.9.

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<sup>528</sup> Livy, XLIII.1.12, 11.1-2.

<sup>529</sup> *MRR* I.423n.8 warns against identifying the legate of 170 (and, by extension, the legate of 171) with the *praeteritus* because the *praeteritus* "could not have been restored before [the *lectio* of] 169". An error: Senate membership was not necessarily dependent upon subsequent censors, as it could arise via service in a qualifying office. The same error is found at *RP*<sup>2</sup> 286.

### C.

The testimony of Cn. Tremellius Scrofa (5) (*pr.* 78/67) the agronomist, as he appears as an interlocutor in Varro's *De Re Rustica*, forms the basis from which a stemma of the Tremellii can be constructed:

My grandfather was the first to be called 'Scrofa' [*Avus meus primum appellatus est Scrofa*]. He was quaestor to praetor Licinius Nerva, in... Macedonia, and was left in command of the army until the return of the praetor. The enemy, thinking that they had an opportunity to win a victory, began a vigorous assault on the camp. In the course of his plea to the soldiers to seize arms and go to meet them, my grandfather said that he would scatter those people as a sow scatters her pigs; and he was as good as his word. For he so scattered and routed the enemy in that battle that because of it praetor Nerva received the title '*imperator*', and my grandfather earned the *cognomen* 'Scrofa'. Hence neither my great-grandfather nor any of the Tremellii who preceded him was called by this name, 'Scrofa'; and I am no less than the seventh praetorian in succession in our family [*nec minus septimus sum deinceps praetorius in gente nostra*].<sup>530</sup>

This account of the battle is corroborated by Livy's epitomator, who provides the first Scrofa with a *praenomen* – Lucius – and dates it to 143/142.<sup>531</sup> Thus we start with seven consecutive generations of praetorian Tremellii, with the fifth and seventh (and presumably, sixth) bearing the *cognomen* Scrofa, and the fifth, L. Tremellius Scrofa (6), serving as quaestor under praetor Licinius Nerva in Macedonia in 143/142. He attained the praetorship c.136, and may be identified as the “Λεύκιος Τρεμήλιος Γναίου Καμελλία” named first in the list of witnesses to the *SC de Priensibus* of 135.<sup>532</sup>

The *nomen* 'Tremellius' is comparatively rare and suggestive of a familial link between those few who bore it; even more so when the same *praenomina* occur in

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<sup>530</sup> Varro, *De Re Rust.* II.4.1-2. Cf Macrob., I.6.30, giving an altogether different story of the origin of the *cognomen*.

<sup>531</sup> Livy, *Per.* 53. Cf Eutrop., IV.16.

<sup>532</sup> F.Münzer, 'Cn.Tremellius Scrofa(5)', *RE.VIA*<sub>2</sub> (1937), 2287-2289; F.Münzer, 'L.Tremellius Scrofa(6)', *RE.VIA*<sub>2</sub> (1937), 2289; *MRR* I.472, 473n.2, 487; III.207-208; R.K.Sherk, *o.c.*, 54-58; G.Perl, 'Cn.Tremellius Scrofa in Gallia Transalpina: zu Varro, *RR* 1, 7, 8', *AJAH* 5 (1980), 98.



conjunction. It is safe to assume that the *praeteritus* Cn. Tremellius is part of our line of seven consecutive generations of praetorian Tremellii. Chronology suggests that he was the father of Nerva's quaestor, and this man's filiation – Cn.f., according to the above-cited *senatus consultum* – makes the issue virtually certain.<sup>533</sup> The *praeteritus* is thus fourth in the sequence of praetorian Tremellii. From the quaestor's *praenomen* it may be inferred that he was not the first son of the *praeteritus*. This first son, homonymous to his father (in accordance with usual Roman onomastic practice), is otherwise-unknown. Judging from chronology and nomenclature, it is not unreasonable to assume that the *praeteritus*' father, hence the third successive praetor of the line, was Cn. Tremellius Flaccus (4) (*pr.* 202). This man's praetorian father and grandfather are not otherwise-known, but their praetorships may be dated to c.240 and c.275.<sup>534</sup> C. Tremellius (1) (*pr.* 170), judging from the date of his praetorship (two years before the *praeteritus*' tribuneship, 11 before his praetorship) was either a precocious younger brother of the *praeteritus*, or, more probably, an older first cousin.<sup>535</sup>

The filiation of the agronomist is not known, although 'L.f.' and 'Cn.f.' have been conjectured. Son of the first Scrofa, and the sixth of the consecutive praetorian Tremellii, the agronomist's father, be he a 'Lucius' or 'Cnaeus', must have been praetor c.100.<sup>536</sup> The dramatic date of the dialogue in which Varro has his interlocutor, the agronomist,

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<sup>533</sup> F.Münzer, 'L.Tremellius Scrofa(6)', *RE.VIA*<sub>2</sub> (1937), 2289.

<sup>534</sup> Absent from *MRR* and *RE*, these praetors should be added. On Flaccus: F.Münzer, 'Cn.Tremellius Flaccus(4)', *RE.VIA*<sub>2</sub> (1937), 2287.

<sup>535</sup> F.Münzer, 'C.Tremellius(1)', *RE.VIA*<sub>2</sub> (1937), 2287; F.Münzer, 'Cn.Tremellius(2)', *RE.VIA*<sub>2</sub> (1937), 2287 regards him the *praeteritus*' son. The date of his praetorship is not certain (it may have been 175, 174, or 170), but see *MRR* I.420.

<sup>536</sup> F.Münzer, 'Cn.Tremellius Scrofa(5)', *RE.VIA*<sub>2</sub> (1937), 2287; P.A.Brunt, 'Cn.Tremellius Scrofa the agronomist', *CR* n.s.22 (1972), 306; G.Perl, *o.c.*; *MRR* I.575; II.627; III.207. The praetorian father of the agronomist is not in the *RE*.

rehearse his family history, and in which he describes himself as “*praetorius*”, is 67. Hence the agronomist was praetor by 68 at the latest. Varro also has him allude to commanding an army in Gallia Transalpina, and has another interlocutor mention the agronomist as *XXvir a.d.a.* Whereas the start of the agronomist’s tenure as land commissioner may be accurately dated (to 59), the date of his Gallic command cannot be pinned-down; possible dates are 79, 77/75, and (more likely) 72/68; the date of the latter provides the *terminus post quem* of the praetorship.<sup>537</sup>

The agronomist apart, the names ‘Tremellius’ and ‘Scrofa’ are found in other first century contexts. Plutarch attests to a “*Σχρώφας*”, quaestor to Crassus in 71.<sup>538</sup> Cicero speaks of a “*Cn. Tremellius*”, senator in 70 and military tribune in 69.<sup>539</sup> He also attests to an individual, identified only as “*Scrofa*”, governor of an eastern province, probably Crete and Cyrene, in 51/50,<sup>540</sup> and to a similarly-identified friend alive in 45.<sup>541</sup> They may or may not be the same man. Münzer, Martin, Brunt, Nicolet, and Perl have all attempted to rationalise these first century Scrofae.<sup>542</sup> Most satisfactory is Brunt, who concludes that while the quaestor, military tribune, and governor *might* have been one person, that person cannot have been the agronomist. If these three were one person (that is, another Cn. Tremellius Scrofa) then he cannot have been the agronomist’s brother and we may consider him belonging to a collateral line. If not one person, whereas the quaestor and/or

<sup>537</sup> Varro, *De Re Rust.* l.2.10, 7.8; P.A.Brunt, *CR* n.s.22 (1972), 304-306; G.Perl, *o.c.*, 99; *MRR* III.20.

<sup>538</sup> Plut., *Crassus* 11.4. Too confidently identified as a ‘Cnaeus’ by G.Perl, *o.c.*.

<sup>539</sup> Cic., *In Verr.* l.10.30.

<sup>540</sup> Cic., *Att.* 97.2, 115.13, 124.8<sup>SB</sup>.

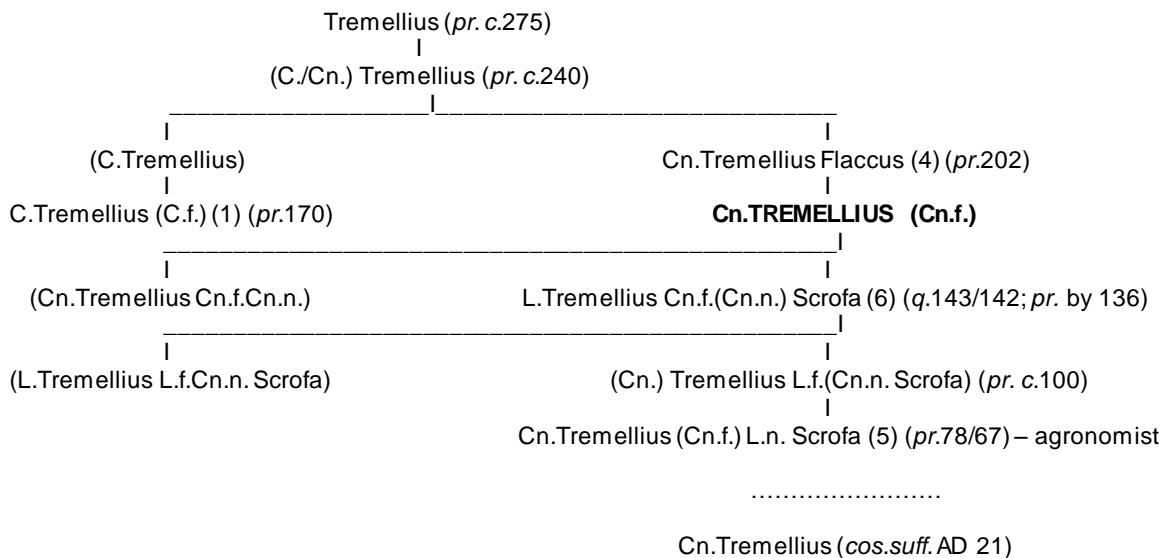
<sup>541</sup> *Ibid.*, 327.4<sup>SB</sup>.

<sup>542</sup> F.Münzer, ‘Cn.Tremellius Scrofa(5)’, *RE.VIA*<sub>2</sub> (1937), 2287-2289; R.Martin, *Recherches sur les Agronomes Latins: et Conceptions Économiques et Sociales* (Paris, 1971), 237-255; P.A.Brunt, *CR* n.s.22 (1972), 304-308; P.A.Brunt, ‘Corrigendum: Cn.Tremellius Scrofa’, *CR* n.s.23 (1973), 295; C.Nicolet, *L’Ordre Équestre à l’Époque Républicaine (312-43 av.J.-C.)*, Tome 2: *Prosopographie des Chevaliers Romains* (Paris, 1974), 1049-1051; G.Perl, *o.c.*, 97-109.

the governor may have been the agronomist's younger brother(s), the military tribune must still be considered a collateral.

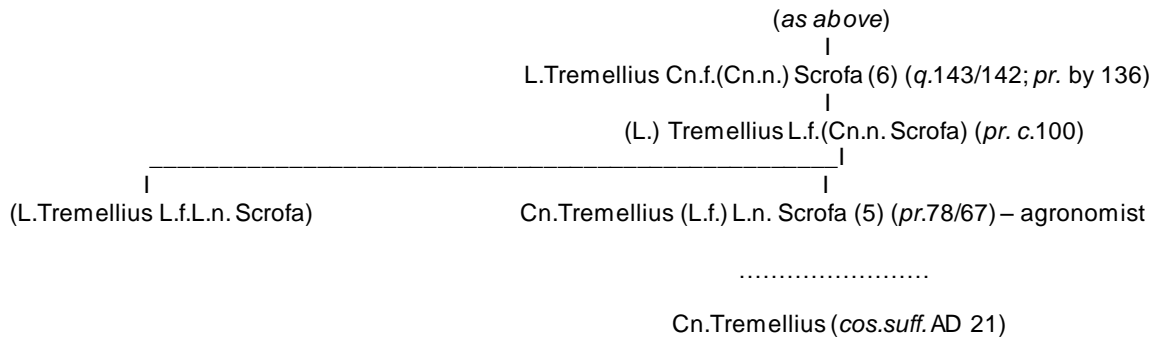
The Tremellii disappear after 45 until a brief resurgence in the reign of Tiberius: Cn. Tremellius (*cos.suff.* AD 21), the last known member of the family.<sup>543</sup> Whether the consul was directly descended from the *praeteritus* or from a collateral line is not ascertainable, but his *praenomen* suggests the former.

**Possible stemmata of the Scrofae, (I): If the agronomist was Cn.f.:**



<sup>543</sup> W.Hoffmann, 'Cn.Tremellius(3)', *RE.VIA*<sub>2</sub> (1937), 2287; S.J.De Laet, *De Samenstelling van der Romienschen Senaat Gedurende de Eerste Eeuw van het Principaat (28 voor Chr.-68 na Chr.)* (Antwerp, 1941), no.384; V.Ehrenberg & A.H.M.Jones, *Documents Illustrating the Reigns of Augustus and Tiberius* (Oxford, 1955), 41.

**(II) If the agronomist was L.f.:**



Note: Σχρώφας (*q.*71), Cn.Tremellius (*tr.mil.*69), and Scrofa (governor 51/50) not shown.

**B.**

Following his veto of the censors' request for the prorogation of their term, Tremellius disappears from the sources until, as praetor in 159, he reappears opposing M. Lepidus (*cens.* 179-178), *pontifex maximus* and *princeps senatus*, on a point of whether religion or the civil administration took precedence on some issue.<sup>544</sup> Tremellius' success at the praetorian elections of 160 finds further context when we consider a previously undetected nexus that apparently existed, persisting through the middle decades of the second century, between his family, the Licinii Nervae and Licinii Crassi, the Anicii (or Anicii Galli), and Aemilius Paullus.

The relationship between a provincial quaestor and his commander was classically seen (or idealised) as analogous to that between father and son, and it is no great surprise that provincial commanders enjoyed a great deal of discretion in selecting their quaestors.<sup>545</sup> The fact suggests a link between Licinius Nerva the Macedonian praetor of 143/142 and his courageous and trusted quaestor, son of the *praeteritus*. An investigation into the connections of the Tremellii and the Licinii Nervae during the second

<sup>544</sup> Livy, *Per.* 47.

<sup>545</sup> L.A.Thompson, 'The relationship between provincial quaestors and their commanders-in-chief', *Historia* 11 (1962), 339-355; *CRR* 136.

century appears to reveal a genuine and lasting nexus of interdependent, mutually-supportive families, consisting not only of the Tremellii, but also the of Licinii Crassi, and the Anicii (Galli). Also, during his zenith, the great Aemilius Paullus. From it, an explanation and mechanism for the re-emergence of the *praeteritus* as praetor may be posited.

C. Licinius Nerva (*pr.* 166) in 168 and 167 served as *legatus* under praetor (later propraeator) L. Anicius Gallus (*cos.* 160), who had charge of the Illyrian War against Genthius. Nerva seems to have been held in high regard by his commander. According to one of the two variants supplied by Livy, it was Nerva who in 168 was one of two *legati* entrusted to return to Rome to announce Gallus' final victory and the subjugation of Illyricum.<sup>546</sup> Uncertainties over this particular episode aside, in 167 Gallus left Nerva as co-commander of the forces remaining in Illyricum and Thrace when he, Gallus, returned home to celebrate his triumph.<sup>547</sup>

In 171, A. Licinius Nerva (*pr.* 167) served in the Third Macedonian War as *legatus* under the commanding consul P. Licinius Crassus. As part of his appointment Nerva was charged with raising auxiliary forces from Crete.<sup>548</sup> He is next recorded in 169 as one of three officers charged with investigating the military situation in Greece and Macedonia. Livy reports that the Senate tasked consul Cn. Caepio with selecting these investigators, but that only those whom Aemilius Paullus personally approved of were

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<sup>546</sup> Livy, XLV.3.1. Cf XLIV.32.4, where only M.Perperna returns.

<sup>547</sup> Livy, XLV.26.1-2, 42.11. Nerva's continued employment in Illyricum and Thrace throughout 167 means that the statement at XLV.16.4, that he was in that year praetor of Hispania Ulterior, cannot stand (*MRR* I.432n.1 *cf* I.433; II.581). The issue is resolved by assuming that Livy (or his source) has here confused C.Nerva with A.Nerva (see XLV.44.2); that Aulus was praetor of Hispania Ulterior in 167, and Caius praetor of Citerior in 166.

<sup>548</sup> Livy, XLII.35.7.

given the job.<sup>549</sup> The date and province of Nerva's praetorship, given by Livy as 166 and Hispania Citerior, should be amended to 167 and Hispania Ulterior.<sup>550</sup> If this amendment is accepted, then Nerva's success at the praetorian ballot of 168 would have been presided over by a kinsman of his old commander, consul C. Crassus (known to have remained in Italy while his colleague, Aemilius Paullus, fought in the east).<sup>551</sup>

Likewise we note that *praeteritus* Cn. Tremellius' praetorian candidature and election, in late 160, was probably accepted by and presided over by the aforementioned L. Anicius Gallus, C. Nerva's old commander, now senior consul.<sup>552</sup> Apart from L. Gallus, the only other Anicius known to have held office in the second century comes to attention solely by virtue of his having served Aemilius Paullus: Cn. Anicius, *legatus* in 168.<sup>553</sup> It would be interesting to know whether he too possessed the *cognomen* 'Gallus'.

This putative nexus does not appear to have been a temporary structure, confined only to the 170s, 160s, and 150s; traces of it are detectable well into the first century. Around 91, a Q. Anicius L.f. is attested epigraphically as a member of a magisterial college, probably *Xviri a.d.a.*. Whatever their title and function, the college was headed by a "*licinius L.f. Crassus*", probably L. Licinius L.f. Crassus (*cos.* 95).<sup>554</sup> The quaestor of 71, whom Plutarch names only as "*Σχρώφας*", has already been mentioned.

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<sup>549</sup> Livy, XLIV.18.5.

<sup>550</sup> See n.547.

<sup>551</sup> After 166 the Licinii Nervae vanish from record until their reappearance in the form of L. Tremellius' praetorian commander. The relative obscurity of later known Licinii Nervae means that their respective positions within any networks of patronage or friendship cannot be surveyed.

<sup>552</sup> Note also that in the opening months of 168, before he was sent to take over command of the war against Genthius, Gallus was peregrine praetor. As Cn. Tremellius was plebeian tribune in 168, it is possible that Gallus may have been in Rome when Tremellius denied the censors their request. Was Gallus involved?

<sup>553</sup> Livy, XLIV.46.3.

<sup>554</sup> *CIL* X.1.44 p.1003 (Vibo). *MRR* II.23, 529 is undecided as to whether Anicius was a 'Gallus' or 'Balbus'.

He served under the great M. Licinius Crassus, then praetor, during the Third Servile War.<sup>555</sup>

From the above survey it appears that the Tremellii, Licinii Nervae and Crassi, and Anicii (or Anicii Galli) comprised a relatively long-lasting nexus of interdependent families which were bound together by ties of mutual obligation. It also appears that for at the height of his fame, the great Aemilius Paullus was connected. Other families may have been included.<sup>556</sup> Throughout it appears that the Licinii Crassi were dominant. The *praeteritus* may have benefited from the existence of this nexus of allied families, particularly from Aemilius Paullus' association with it. Censor for 164-163, the next censorship after Tremellius' expulsion, it is not unfeasible to suggest that Paullus and his colleague allowed Tremellius back into the Senate.

Following Tremellius' praetorship, no subsequent appointments are attested.

## 10.

**C. Atinius C.f. Labeo Macerio (10, cf 3)  
(sen. by 131; tr.pl. 131/130; pr. c.123/122);  
Expelled, 131: Q. Caecilius Metellus Macedonicus & Q. Pompeius**

### A.

T.10A-C.<sup>557</sup>

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<sup>555</sup> Plut., *Crassus* 11.4.

<sup>556</sup> One wonders, for example, what drew Paullus to recommend, in 169, the otherwise-unknown L.Baebius for inclusion on such an important commission.

<sup>557</sup> N.Rudd, 'The names in Horace's *Satires*', *CQ* n.s.10 (1960), 164n.1 offers that "*Labeo insanior*" of Hor., *Ser.* I.3.82 is the violent tribune. D.S.Wiesen, 'Two problems in Horace's satires', *Mnemosyne* 35 (1981), 91-92 convincingly argues that he is rather Pacuvius Antistius Labeo who, after Philippi, commanded his slave to kill him.

Although the exact chronology of Labeo's expulsion and later confrontation with Metellus is not made clear by the sources, the one which provides the likeliest context for Labeo's outburst is that he was plebeian tribune when expelled and that he interpreted the act as a violation of his tribunician *sacrosanctitas*. Metellus must have alleged some kind of moral deficiency in Labeo in order to expel him, and *sacrosanctitas* was violable by insult as well as by physical assault. It is thus also most probable that Labeo's expulsion occurred in 131, the censors' first calendar year in office, and that his outburst against Metellus took place shortly thereafter, within the same year. However *lectiones* were not always conducted in the censors' first year in office, so expulsion, and confrontation, in 130 is not impossible. Less probable is that expulsion occurred in 131 with retaliation occurring the following year, with Labeo becoming tribune *after* his expulsion, perhaps with the intention of using his post to strike back against Metellus, who was still in office. Whichever reconstruction one follows, that he evidently blamed only one of the censors for his predicament indicates that his was a case of an acting-senator being denied admission to the *ordo senatorius* and to 'full' senator status.

The reason for Labeo's expulsion is unattested. He is often considered the author of the *plebiscitum Atinium*, and by extension his treatment is often linked to his putative promulgation of this law. Notwithstanding the uncertainty of Labeo's status when expelled, the date of the *plebiscitum Atinium* is very uncertain and the connection of the *praeteritus*' to it is based upon little more than their shared name. If they were connected there is little to suggest that the passage of the law and his expulsion were linked events.<sup>558</sup>

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<sup>558</sup> On the *plebiscitum Atinium* and the putative connection between it and the *praeteritus*, see Ch.1, §.VI.



## B.

The Atinii were prominent briefly, between 212 and 186 (and particularly 197-186), providing three praetors and several more junior office-holders during the period. Thereafter until the *praeteritus* (notwithstanding the difficulty regarding the date and author of the *plebiscitum Atinium*, and of another Atinian plebiscite of the second century, *de usucapione*), they appear to have suffered eclipse, in that none are attested holding an office of state.<sup>559</sup>

The question of the date of his tribuneship aside, Labeo seems to have recovered somewhat from his setback. A governor of Asia, identified as “ΣΤΡΑΤΗΓΟΣ... ΓΑΙΟΣ ΛΑΒΕΩ”, is attested on *I. Priene* 121, an inscription from c.90 which honours the work of a local dignitary who during his long career made many embassies to the provinces’ various *strategoï*. Second, Ephesian *cistophori*, dated to the thirteenth year of that city’s civic status (September 122 to September 121) reveal a “C. Atin. C.f.” as governor of Asia at the time. Whereas the Fabii and Antistii are known to have used the *cognomen* ‘Labeo’ during the Republican period, neither the Fabii Labeones nor the Antistii Labeones are known to have employed the *praenomen* ‘Caius’. In contrast the Atinii/Atinii Labeones are known to have used ‘Caius’ almost to the exclusion of all other *praenomina* (‘Marcus’ is found intermittently, no others). Thus *strategos* C. Labeo is usually identified as belonging to the Atinii. Moreover because of the similarities in nomenclature and chronological and geographical proximity, C. (Atinius) Labeo, governor of Asia in the generation before c.90, and C. Atin(ius) C.f., governor of Asia in 122/121, are usually considered identical: C. Atinius C.f. Labeo. This individual is in turn usually further identified as the violent *praeteritus*.<sup>560</sup>

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<sup>559</sup> A.E.Astin *ap.* J.Bibauw, *o.c.*.

<sup>560</sup> G.R.Stumpf, ‘C.Atinius C.f., praetor in Asia 122-121 v.Chr., auf einem kistophor’, *ZPE* 61 (1985), 186-190; G.R.Stumpf, *Numismatische Studien zue Chronologie der Römischen Statthalter in Kleinasien (122 v.Chr. -163*

Labeo's election to the praetorship within a decade of his extraordinary public confrontation with Metellus Macedonicus is in itself a measure of a good degree of enduring popularity. Indeed we might posit that within some quarters, particularly among the political opponents of Macedonicus specifically and the wider Metelli in general, Labeo's manoeuvres against the censor would have made him even more popular than he would have been otherwise. If, as is less probable, his election to the tribuneship occurred after his expulsion, then his remarkably rapid return to political distinction again highlights popularity with the (plebeian) electorate and significant support from within the political elite. No other contemporary Atinii are attested, let alone any who may have been able to wield influence or power on behalf of the *praeteritus*; familial support, if it occurred, is not detectable. Likewise while the Atinii appear to have enjoyed a connection to the Sempronii Longi in the 190s, we cannot discern whether this was still active at the time of Labeo's expulsion, and if so, whether he was able to exploit it at all.<sup>561</sup> Note also that while Labeo's

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*n.Chr.*) Saarbrücker Studien zur Archäologie und Alten Geschichte 4. (Saarbrücken, 1991), 6-12; C.Eilers, 'Silanus & Murena (*I. Priene* 121)', *CQ* n.s.46 (1966), 175, 177, 181; *MRR* II.463, 465, 535; III.27-28. Cf the outdated (in this regard) D.Magie, *Roman Rule in Asia Minor to the End of the Third Century after Christ*, Vol.2 (Princeton, 1950), 1579; F.S.Kleiner, 'The dated cistophori of Ephesus', *ANSMN* 18 (1972), 30; G.V.Sumner, 'Governors of Asia in the nineties BC', *GRBS* 19 (1978), 151 (noting a natural, though unlikely, alternative: "the governor of Asia C.Labeo... almost certainly a C.Atinius Labeo... might well be the tribune's son"). A.E.Astin *ap.* J.Bibauw, *o.c.* is too timid in stating that the *strategos* was only "probably" an Atinius. As a result he does not connect him with the violent tribune, nor connect the Ephesian with the *praeteritus* (or with the *strategos*). Known Republican Fabii Labeones are rare, and only ever found using the *praenomen* 'Quintus'. Only one Republican Antistius Labeo is known: the Philippi suicide.

<sup>561</sup> A.E.Astin *ap.* J.Bibauw, *o.c.*, 36-37. In 197, C.Atinius Labeo (*pr.*195) carried a tribunician bill authorising the establishment of colonies; Ti.Sempronius Longus (*cos.*194) was assigned to the commission (Livy, XXXII.29.3-4. Cf XXXIV.45.1-2; V.P., I.15.3). In 194 a C.Atinius served with distinction as *tribunus militum* under the same Longus, now consul. Furthermore, a M.Atinius and P.Sempronius served and died under Longus as *praefecti sociorum* (Livy, XXXIV.46.12, 47.2).

tribunician colleagues interceded when he tried to hurl Metellus to his death, evidently not one intervened when he confiscated and consecrated the censor's property.<sup>562</sup> Their inaction in this regard, individual as well as collective, might be illustrative of their relationship with the censor; maybe also with the wider Metelli.<sup>563</sup> None can be positively identified, although C. Papirius Carbo (*tr.pl.* 131/130; *pr.* by 123; *cos.* 120) and Q. Aelius Tubero (*tr.pl.* by 129) are contenders, the former more likely than the latter.<sup>564</sup>

### C.

In merging the Asian governors with each other and with the *praeteritus*, and notwithstanding uncertainties regarding the dating of the two second century *leges Atiniae*, no senatorial Atinii Labeones are attested subsequent to the violent tribune. Indeed only one senatorial Atinius, and he not a Labeo, is attested after 120: T. Atinius T.f. *Fab. Turan(n)us*, possibly *quaestorius*, attested epigraphically on the *SC de Panamareis* of 39 and on the *SC de Aphrodisiensibus* of 39/38.<sup>565</sup> On onomastic and chronological grounds, no link between him and the *praeteritus* should be ventured.<sup>566</sup> Even more so if, as Taylor argues, the *praeteritus* belonged to Horatian voting-tribe.<sup>567</sup>

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<sup>562</sup> That Labeo successfully devoted Metellus' property is reported by Cicero and Pliny. Denied by E.Rawson, 'Religion and politics in the late second century BC at Rome', *Phoenix* 28 (1974), 196; A.C.Schlesinger, 66n.2 in his 1959 (rev. 1967) LCL edition of the *Periochae*.

<sup>563</sup> A.E.Astin *ap.* J.Bibauw, *o.c.*, II.38.

<sup>564</sup> G.V.Sumner, *Orators*, 58-59; *MRR* I.502, 503n.1; III.5, 27, 154.

<sup>565</sup> G.Deschamps, 'Le senatus-consulte de Panamara', *BCH* 11 (1887) 225-228, 236; R.K.Sherk, *o.c.*, 158, 162; J.Reynolds, *Aphrodisias and Rome*. JRS Monographs 1 (London, 1982), 38-41, 54-91; E.Badian, 'Notes on a new list of Roman senators', *ZPE* 55 (1984), 111-113; *MRR* II.475, 488.

<sup>566</sup> G.Deschamps, *o.c.*, 236; A.E.Astin *ap.* J.Bibauw, *o.c.*, II.34n.2.

<sup>567</sup> L.R.Taylor, *VDRR*, 195-196.

**11.**  
**Cassius Sabaco (85) (*sen. 115*);**  
**Expelled, 115: L. Caecilius Metellus Diadematus & Cn. Domitius**  
**Ahenobarbus**

**A.**

T.11.

Plutarch subsequently adds that during the first few days of his trial, Marius fared badly and found the jurors set towards him, but on the last day, contrary to all expectation, was acquitted.<sup>568</sup> The identity of Marius' prosecutor is unknown, but Passerini, Badian, Carney, and Gruen, almost certainly correctly, detect the hand of his disaffected erstwhile patrons, the Metelli, moving against him as they later did against his friend Sabaco.<sup>569</sup> That Marius was only just acquitted indicates that the case against him may not have been spurious. The jury, consisting as it did of equestrians, should, in the normal run of things, have been strongly sympathetic toward the plight of any struggling *novus homo* hauled before it, and an easy acquittal should have resulted if Marius' behaviour was wholly above suspicion.<sup>570</sup> Sabaco's own questionable behaviour at the ballot must be assessed with Marius' probable guilt in mind.<sup>571</sup>

The Metelli were at the time hostile to Marius and fervently unwelcoming toward the political aspirations of their erstwhile protégé, now broken loose from their control. His

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<sup>568</sup> Plut., *Mar.* 5.5; *TLRR* no.36. *Cf V.M.*, VI.9.14. Willems, I.392 has Sabaco expelled in 108, an error.

<sup>569</sup> A.Passerini, *Athenaeum* n.s.12 (1934), 16-17 (= *Studi su C.Mario*, 20-21); E.Badian, *JRS* 46 (1956), 94; E.Badian, *Foreign Clientelae*, 195n.3; T.F.Carney, *o.c.*, 22; *RPCC*, 123-124. *Cf* Suolahti, 419, who, while not linking Marius' trial to Sabaco's expulsion, notes that the latter "may fundamentally have been due to political reasons"; also the intimation of J.Van Ooteghem, *Marius*, 89.

<sup>570</sup> E.Badian, *JRS* 46 (1956), 94; T.F.Carney, *o.c.*, 22; *RPCC*, 124.

<sup>571</sup> For a possible link between Sabaco's expulsion and that of C.Licinius Geta, see the discussion on Geta, following.

narrow acquittal, evidently unjust, would have rankled. Unable or unwilling to attack Marius directly – the expulsion of a man for a crime for which he had been acquitted may not have gone down well – a sidelong assault on associates such as Sabaco would have been the next best strategy for them to employ in minimising Marius’ nascent powerbase.

## **B.**

Plutarch notes that, following his expulsion, popular sentiment was not on Sabaco’s side. No magistracies, either before or after his censure, are known, and he is not heard of thereafter.

## **C.**

No other Cassii Sabacones are known, and the identity of the *praeteritus* has caused not little debate. Rowland offers the possibility that he was related to the *monetalis* of c.83, C. Cassius, himself usually – though not, as Rowland shows, necessarily – identified with the consul of 73, C. Cassius Longinus.<sup>572</sup> However as the main conclusion of Rowland’s discussion on the moneyer is that he cannot comfortably be linked to any of the known Cassii (let alone Longini) of the epoch, the suggestion does not take us far. Syme notes that ‘Sabaco’ may not have been a true *cognomen* but a pejorative nickname (*σαβακός*; ‘effeminate’, ‘weak’, being an adjective applied to Greek *hetaerae*). Syme’s appraisal of Sabaco’s standing – “clearly not a person of class or consequence” – may thus be justified, although Syme also concedes that similarly-pejorative nicknames are known to have attached themselves to members of even the most elevated families. Syme does not link him to any of the known Cassii of the age.<sup>573</sup> Rossi tentatively speculates that he might

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<sup>572</sup> R.J.Rowland, ‘Numismatic propaganda under Cinna’, *TAPhA* 97 (1966), 413. Cf F.Münzer, ‘C.Cassius Longinus(58)’, *RE*.III<sub>2</sub> (1899), 1727; *MRR* II.542.

<sup>573</sup> R.Syme, *Historia* 4 (1955), 59.

be identified with L. Cassius L.f. Longinus, who partnered Marius in the consulship in 107 and who was probably son of a censor (L. Longinus Ravilla (*cens.* 125-124)).<sup>574</sup> The speculation is successfully countered by Katz, who nonetheless admits the possibility that Sabaco was either some lowlier member of the Longini or a client of theirs.<sup>575</sup> In this Katz is in agreement with Gruen, who, furthermore, notes the history of wider *inimicitiae* between the Longini and the Metelli.<sup>576</sup>

Thus the family connections of the *praeteritus* cannot be satisfactorily deduced. It seems wisest to conclude nothing more than he was either a relatively lowly member of the Cassii Longini (through blood or clienthood) and/or belonged to a linked, albeit inferior, branch of *gens Cassia*.<sup>577</sup>

## 12.

### **C. Licinius P.f. (P.n.?) Geta (88) (cos. 116; cens. 108-107); Expelled, 115: L. Caecilius Metellus Diadematus & Cn. Domitius Ahenobarbus**

#### **A.**

##### T.12A-B.

The reason for Geta's expulsion is unattested. Willems hazards no motive; neither do Münzer and Schmähling.<sup>578</sup> Suolahti opines that it was "political", but does not expand.<sup>579</sup>

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<sup>574</sup> R.F.Rossi, *Storia di Roma, Vol.IV: Dai Gracchi a Silla* (Bologna, 1980), 463-465, 476.

<sup>575</sup> B.R.Katz, 'Sabaco and Sallust', *RhM* 131 (1988), 194-196.

<sup>576</sup> *RPCC* 124n.97.

<sup>577</sup> Cf L.Cassius Caecianus (*monet.*93/1). Also note C.Cassius (*pr.*90?) and L.Cassius (*tr.pl.*89), although either or both might have been Longini.

<sup>578</sup> Willems, I.390; F.Münzer, 'C.Licinius Geta(88)', *RE*.XIII<sub>1</sub> (1926), 370; Schmähling, 18-19.

<sup>579</sup> Suolahti, 419, 429.

Gruen presents the episode as one of many in which the ascendant Metelli and their satellites acted against members and associates of the so-called ‘Scipionic’ grouping, now coming into eclipse.<sup>580</sup> (Such ‘factional’ labels are somewhat blunt and inexact, but seem to satisfactorily describe loose political agglomerations.) Factional tensions, albeit of a different type, also feature in Wiseman’s conjecture on the event. He posits that Geta was punished because he, as consul, had allowed, at the *Ludi Plebeii*, the performance of what the censors saw as an inflammatory play about the (to Geta, unjust) killing of C. Gracchus and its aftermath, including the unfortunate fate suffered by the dead tribune’s widow, Licinia, to whom Geta may have been related.<sup>581</sup>

Another rationale may be postulated, albeit one which does not remove the possibility that factional tensions were a contributory factor. It might be considered an adjunct to Gruen’s thesis. If Geta was the presiding consul at the praetorian elections of 116, he may have been expelled for complicity in – or, if deemed an inept supervisor, ignorance of – the suspicious activities of candidate C. Marius and his close associate, Cassius Sabaco, while the ballot was taking place. Later that year Marius was tried *de ambitu* for his behaviour but acquitted; Sabaco appeared for the defence and was widely thought to have committed perjury to secure Marius’ acquittal. Sabaco was expelled during the *lectio* of 115 for this reason, although intemperance was also alleged.<sup>582</sup> At the time of the election Marius’ relationship with the Metelli, his erstwhile *patroni*, was one of extreme enmity and bitterness and their expulsion of Sabaco can be fairly interpreted as a thinly-veiled attack on their breakaway client. If Geta was complicit in or ignorant of Marius’ misbehaviour during the praetorian election of 116, then his fate might be contextualised

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<sup>580</sup> E.S.Gruen, ‘Politics and the courts in 104 BC’, *TAPhA* 95 (1964), 99-110. *Cf RPPC* 106-135; *TLRR* no.62.

<sup>581</sup> T.P.Wiseman, *Remembering the Roman People: Essays on Late-Republican Politics and Literature* (Oxford, 2009), 33-57. Viewed favourably by A.W.Lintott, [Review of T.P.Wiseman, *o.c.*], *AHR* 114 (2009), 1129; J.Osgood, [Review of T.P.Wiseman, *o.c.*], *CJ Online* 2009.08.05.

<sup>582</sup> *V.M.*, VI.9.14; *Plut.*, *Mar.* 5.4-5; *TLRR* no.36.

as a Metellan attack upon one whom they perceived as working against, either actively or through neglect, their wider interests.

## B.

Geta remains a mystery. There is little record of him prior to his consulship and the extent of our knowledge of his tenure in that office is little more than an entry on the *fasti*.<sup>583</sup> Sherwin-White and Earl consider him probably *novus homo*.<sup>584</sup> Suolahti suggests that he was a scion of a noble branch of the Licinii, probably the Crassi.<sup>585</sup> Wiseman's thesis is largely predicated upon Geta being descended from the Licinii Stolones and a member of the Crassi. If, as seems most likely, Geta was a Crassus by blood, his filiation suggests the possibility that he may have been son of P. Crassus Mucianus (*cos.* 131).<sup>586</sup> Regardless, Geta's filiation shows that he possessed an older brother: P. Licinius P.f. P.n., although no suitable individual with this name is recorded in late second century.<sup>587</sup> It is possible that he died early and/or never entered politics.

As mentioned, it has been argued that his main political allies belonged to the so-called 'Scipionic' grouping. Another apparent member of this group, Q. Fabius Maximus Eburnus, was Geta's colleague in the consulship and in the censorship, so it can be fairly supposed that the pair enjoyed a relationship of mutual cooperation and friendship throughout their respective careers and it seems assured that Eburnus would have rendered some degree of personal and political assistance to Geta following his expulsion.

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<sup>583</sup> *MRR* III.120-121.

<sup>584</sup> A.N.Sherwin-White, *JRS* 46 (1956), 3; D.C.Earl, 'The early career of Sallust', *Historia* 15 (1966), 303.

<sup>585</sup> Suolahti, 428. The Luculli and Calvi were also consular, albeit less distinguished than the Crassi.

<sup>586</sup> Suolahti, 429 considers him grandson of P.Crassus (*cos.*171) through an otherwise-unknown son, P.Crassus P.f.C.n.. Crassus Mucianus was by birth son of a Licinia (of the Crassi) and P.Mucius Q.f.P.n. Scaevola (*cos.*175), adopted into his mother's *gens* by a P.Crassus P.f. (Dives?).

<sup>587</sup> Except for the aforementioned Crassus Mucianus who was, in any case, a Mucius Scaevola by birth.



Geta's unprecedented achievement in attaining the censorship following his expulsion was utilised by Cicero and Valerius Maximus for exemplary purposes, illustrating the perplexing and wonderful caprice of fortune. Neither make explicit his route to recovery. Evans confidently asserts that he "regained his former position by winning election to a curule office in the meantime".<sup>588</sup> Badian posits that "we are practically forced to assume that the censors of 109 managed to restore him to the Senate" (before one of them died and the other – M. Scaurus – was compelled to abdicate as a result).<sup>589</sup> The image of Scaurus, a 'Metellan' by marriage and politics, choosing to engineer the political recovery of individual who evidently belonged to a grouping so often opposed to his own does not chime well with this hypothesis. More damaging still to Badian's supposition is that Valerius Maximus (Cicero is silent on the issue) very strongly implies that Geta's rehabilitation, far from brought about through third-party intervention, such as that which might come from sympathetic censors, was wholly or largely achieved through his own energy and success at the ballot-box. The fact of his unprecedented victory betrays a great deal of popularity with the electorate. Having been partners in the consulship of 116, it seems that they saw Geta and Eburnus as men who could cooperate and who could appropriately conduct the duties of the censorship; they were natural 'running-mates'. No doubt the electoral machinery of the candidates' families was also brought into play; so too possibly that of the Mucii Scaevolae and of the Servilii Caepiones, distant blood-relations of Geta and Eburnus, respectively.<sup>590</sup> Tenure of an intermediate curule magistracy, such as a praetorship, while possible, does not fit best with the available evidence.

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<sup>588</sup> R.J.Evans, *AClass* 40 (1997), 81.

<sup>589</sup> E.Badian, *Chiron* 14 (1984), 129.

<sup>590</sup> Geta's family has been touched upon. Eburnus was son of Q.Fabius Maximus Servilianus (cos.142), a Servilius Caepio by birth.

Little is known of the censorship of Geta and Eburnus beyond the fact of it and their reappointment to the *principatus* of M. Scaurus. Thereafter Geta disappears from the sources and no further Licinii Getae are known. The *cognomen* is distinctive, being found only in one other *gens* during the Republican period: the Hosidii. Their earliest known member is C. Hosidius C.f. Geta (*monet.* 71/54). It is possible that the Hosidii Getae, recorded well into the Imperial period, were related, through blood or adoption, to the *praeteritus*.<sup>591</sup> A Tacitean anecdote on the events of AD 69 provides an interesting collocation of the name 'Geta' with the Licinii Crassi.<sup>592</sup>

**13.**  
**M. Duronius (3) (*tr.pl.* 103/97);**  
**Expelled, 97: M. Antonius & L. Valerius Flaccus**

**A.**

T.13.

The date of Duronius' plebeian tribuneship is unknown; anywhere between 103 and 97 (inclusive) being possible.<sup>593</sup> That he apparently only held M. Antonius responsible for his expulsion (there are no records of any manoeuvres against Flaccus) indicates that his was

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<sup>591</sup> A.Stein, 'Geta(1)', *RE.VII*<sub>1</sub> (1910), 1330; F.Münzer, 'C.Hosidius Geta(4)', *RE.VIII*<sub>2</sub> (1913), 2490; F.Münzer, 'C.Licinius Geta(88)', *RE.XIII*<sub>1</sub> (1926), 370; *MRR* II.441; Suolahti, 428; *NM*no.210. The *cognomen* is attested within other *gentes* (Lusii, Septimii), but not until deep in the Imperial period.

<sup>592</sup> Tacit., *Hist.* II.72; A.Stein, 'Geta(1)', *RE.VII*<sub>1</sub> (1910), 1330.

<sup>593</sup> M.Ziegler, *o.c.*, 15; F.Münzer, 'M.Duronius(3)', *RE.V*<sub>2</sub> (1905), 1862; G.Niccolini, *o.c.*, 210; *MRR* II.7, 8n.3, 561; *ORF*<sup>3</sup> 262; *ORF*<sup>4</sup> 263; E.S.Gruen, *Historia* 15 (1966), 41n.56; *RPCC* 194, 325; E.Badian, *CQ* n.s.19 (1969), 198; F.Millar, 'Politics, persuasion and the people before the Social War (150-90 BC)', *JRS* 76 (1986), 6; W.J.Tatum, *CP* 85 (1990), 38.

an example of an acting-senator being refused admission to the *ordo senatorius*, to 'full' senator status.

## **B.**

Following his prosecution of Antonius, Duronius is not heard of again.

## **C.**

Chronology and the rarity of the *nomen* means that C. Duronius (1), *amicissimus* of Milo and well-considered acquaintance of Cicero and Atticus, might be reckoned as linked in some way to the *praeteritus*. In the summer of 51, following Milo's exile and condemnation the previous year, it was this Duronius who in conjunction with Cicero purchased Milo's estate at public auction in order to prevent it from falling into the hands of opportunist profiteers or vindictive *inimici* of Milo.<sup>594</sup> From his evident financial solvency and connections, it may be assumed that this Duronius was of equestrian status at least. While the *nomen* is obscure, no other subsequent Duronii can be feasibly posited as linked to M. Duronius.<sup>595</sup>

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<sup>594</sup> Cic., *Att.* 101.2-3<sup>SB</sup>. For vital importance of this to Milo: D.Lange, 'Two financial maneuvers of Cicero', *CW* 65 (1972), 154; A.W.Lintott, 'Cicero and Milo', *JRS* 64 (1974), 78; P.Walcot, 'Cicero on private property: theory and practice', *G&R* 22 (1975), 126; G.P.Kelly, *o.c.*, 140-141.

<sup>595</sup> *CIL* III.5701; V.8377 (Aquileia); VI.17080; VIII.2569; X.2863 (Naples); XII.2018, 2347; XIV.2188 (Aricia).

14.  
**C. Antonius M.f. M.n. Hybrida (19)**  
**(q. by 70; tr.pl. 68; pr. 66; leg. 65; cos. 63; procos. 62-60; cens. 42);**  
**Expelled, 70: Cn. Cornelius Lentulus Clodianus & L. Gellius Publicola**

**A.**

T.14A-B.

Compare these with the somewhat confused account of the trial (though not mentioning Hybrida's subsequent expulsion) in Plutarch's *Caesar*.<sup>596</sup> Hybrida's service under Sulla, and his cavalry prefecture and depredations, took place in or shortly before 84; his defeat at trial, in 76.<sup>597</sup> His standing as a *Sullanus* is confirmed by Cicero and Asconius.<sup>598</sup>

“Antonius is an unattractive character, for whom a host of delinquencies but no positive contributions stand on record”.<sup>599</sup> Gruen's assessment of the history and character Hybrida may be taken as an accurate summation of how he is presented in the extant sources, in particular the *Bellum Catilinae* of Sallust, the *Commentariolum Petitionis* of Q. Cicero, Cicero's *In Toga Candida*, and Asconius' commentary on the latter. Biased as these may be against Hybrida, his appearances in other sources are not discordant and cast him in no better light.<sup>600</sup> Asconius' testimonium in particular is interesting, as his need to expand upon the fact of and rationale behind Hybrida's expulsion demonstrates that Cicero provided none of this information in his speech as consular candidate. Cicero's failure to mention the past expulsion of his opponent, taken with his later failure to even allude to the fact of the prior expulsion of the Catilinarian Lentulus Sura, even when

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<sup>596</sup> Plut., *Caesar* 4.1-2. See also Quintil., *Inst. Orat.* XII.6.1, 7.3-4; Juv., VIII.98-107.

<sup>597</sup> *MRR* II.61-62, 93; *TLRR* no.141.

<sup>598</sup> Cic., *ap. Ascon.*, *In Toga Cand.* 88.20-22 (Clark); Ascon., *In Toga Cand.* 88.23-29 (Clark).

<sup>599</sup> E.S.Gruen, 'The trial of C.Antonius', *Latomus* 32 (1973), 301.

<sup>600</sup> One illustration suffices: Pliny, *HN* VIII.79.213. Only Plut., *Cic.* 11.1 presents him in a way approaching positive.

speaking out against the conspiracy and otherwise heavily and consistently denigrating the character and history of Sura specifically, lends credence to the suggestion that having been targeted by the censors was not something which was typically levelled against a *praeteritus*, at least within the context of a speech before the Senate or the wider *populus*.

## B.

Quintus Cicero charts the fortunes and character of Hybrida, following his expulsion:

He was a competitor of ours for the praetorship, when Sabidius and Panthera were his only friends, when he had no slaves left to auction off (already in office he brought from the stands in the slave-market a girlfriend to keep openly at home). In the consular candidature, rather than present himself to solicit the votes of the Roman people, he preferred a most wicked legation abroad, where he plundered all the innkeepers.<sup>601</sup>

Even in this brief account, Quintus may be caught bending the truth. He omits the fact that prior to his election as praetor, Hybrida was successful in securing a plebeian tribuneship. Further, that his political rehabilitation was remarkably rapid: elected plebeian tribune in late 69, he succeeded in the first or second set of elections following his expulsion (depending on when in 70 he was expelled).<sup>602</sup> Such rapid success indicates that Hybrida enjoyed wide popular support in 69, and probably had influential backers among the political classes, probably most prominently among the erstwhile *Sullani*.<sup>603</sup> Certainly

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<sup>601</sup> Q.Cic., 8.

<sup>602</sup> On the dating of Hybrida's tribuneship, itself dependent upon the dating of the tribunician *lex Antonia de Termessibus*: L.R.Taylor, 'Caesar's early career', *CP* 36 (1941), 121; *MRR* II.141n.8; R.Syme, 'Ten tribunes', *JRS* 53 (1963), 55-60; M.Griffin, *o.c.*, 210; A.N.Sherwin-White, 'Rome, Pamphylia and Cilicia, 133-70 BC', *JRS* 66 (1976), 11-14; B.A.Marshall, *A Historical Commentary on Asconius* (Columbia, 1985), 282, 294. The *lex* would have shored up Hybrida's standing in southern Asia Minor, and might have been passed as part of an attempt to recover his political fortune.

<sup>603</sup> E.S.Gruen, *Latomus* 32 (1973), 301.

following his rapid attainment of the tribuneship, Hybrida progressed quickly through the *cursus honorum*, at each time attaining successive office at the first available opportunity following the one preceding. The fact suggests that Hybrida possessed far greater political acumen than the sources generally, and Quintus specifically, credit him.

Quintus' report that Hybrida, as candidate for the praetorship of 66, was brought to near bankruptcy, and as praetor was still poor, probably holds. Political campaigns in Rome were expensive, and crippling debts could be accrued even by comparatively wealthy candidates in the attempt to curry favour with the electorate and other supporters.<sup>604</sup> Conversely, Quintus' allegation that Hybrida enjoyed the significant backing of only two associates, seemingly lowly, is not feasible. Many of Hybrida's adherents and supporters in 69 must have been with him still for the elections of 67. Furthermore we learn from Cicero's speech *In Toga Candida*, and from Asconius' commentary on it, that even Cicero, although a competitor against Hybrida in the praetorian election, rendered some assistance to him. The aid, according to the orator, had the effect of taking Hybrida from last to third place in the polls.<sup>605</sup> Even so, Cicero's assessment of how much his intervention assisted Hybrida's candidature may be somewhat exaggerated, distorting Hybrida's own political capabilities.

For the consular elections of 64, Hybrida entered a *coitio* with Catiline. The manoeuvre was opposed by Cicero, who was also a candidate and who alleged that the *coitio* had been formed for the express purpose of inhibiting his own candidacy (the three were the only serious candidates in a field of six). Cicero and Asconius would allege that the pair were debtors, supported and bankrolled from behind the scenes by Crassus and

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<sup>604</sup> On his games, Cic., *Muren.* 40; V.M., II.4.6; Pliny, *HN* XXXIII.16.53. See *MRR* II.152 for the suggestion (not accepted by Broughton) that Hybrida was aedile when presenting his games.

<sup>605</sup> Cic., *ap.* Ascon., *In Toga Cand.* 85.21-24 (Clark); Ascon., *In Toga Cand.* 85.17-20 (Clark). *Cf.* Cic., *ap.* Ascon., *In Toga Cand.* 92.26-93.3 (Clark).

Caesar. Heavy bribery was also alleged, as was the complicity of Q. Mucius Orestinus (a relative of Catiline's), who as tribune vetoed the Senate's attempts to introduce tougher legislation *de ambitu*, itself evidently a reaction against the bribery allegations levelled against the *coitio*. Hybrida and Catiline responded by launching their own attacks against Cicero's candidacy, reportedly on the grounds that he was a *novus homo*. At the ballot, Cicero and Hybrida were elected consuls; the latter beating Catiline into third place by a handful of centuries. Asconius reports that Hybrida's narrow success was down to the good name of his father – the famed orator, M. Antonius (*cos.* 99; *cens.* 97-96) – and the fact that those who canvassed for him were more reputable than those who worked for Catiline.<sup>606</sup> Faint praise perhaps, but the fact remains that Hybrida was successful in attaining the consulship despite Cicero's vehement and public opposition toward him and despite suspicions within the Senate about the conduct of his campaign. Hybrida's attainment of the consulship marks, for the purpose of this study at least, the completion of Hybrida's political recovery following his expulsion.<sup>607</sup>

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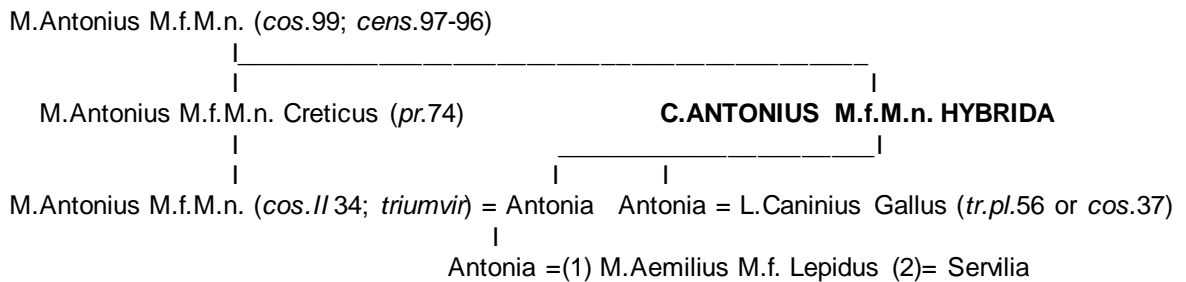
<sup>606</sup> Cic., *ap. Ascon.*, *In Toga Cand.* 83.14-17, 19-22, 86.3-5, 87.26-28, 88.10-14 (Clark); Ascon., *In Toga Cand.* 82.4-83.12, 83.18-22, 85.28-86.2, 87.29, 88.18-19, 93.24-94.6 (Clark). *Cf* Plut., *Cic.* 11.1-2. The level of involvement of Caesar and Crassus in the candidacy of Hybrida and Catiline is disputed, but the consensus seems that at least either one or the other supported the pair: R.E.Smith, *Cicero the Statesman* (Cambridge, 1966), 95-97; M.Gelzer, *Caesar: Politician and Statesman* (Cambridge MA, 1968), 41; C.Meier, *Caesar* (London, 1982), 157; D.Stockton, *Cicero: A Political Biography* (Oxford, 1971), 79-81; E.Rawson, *Cicero* (London, 1975), 58; B.A.Marshall, *Asconius*, 285. However, P.A.Brunt, 'Three passages from Asconius', *CR* n.s.7 (1957), 195; E.S.Gruen, *Latomus* 32 (1973), 301n.2; R.G.Lewis & A.C.Clark, *o.c.*, 291, are of the view that Caesar and Crassus did not back the candidatures of Catiline and Hybrida, and that Asconius' remarks carry no weight (*cf* *LGRR* 136-138, 217-218). On Catiline and Orestinus: R.J.Evans, 'Catiline's wife', *AClass* 30 (1987), 69-72.

<sup>607</sup> *MRR* II.165-166, 175-176, 180, 184, 358-359; III.18; E.S.Gruen, *Latomus* 32 (1973), 301-310; *TLRR* no.241; G.P.Kelly, *o.c.*, 190 for the many sources on Hybrida's career after the elections of 64.

### C.

Hybrida's noted father has already been mentioned. One (older) brother is known: M. Antonius Creticus (*pr.* 74), whose son, Mark Antony, Hybrida's nephew, would become triumvir. Two daughters are known to have been born to Hybrida. One married a L. Caninius Gallus, either the plebeian tribune of 56 or his homonymous son, the consul of 37. Nothing else is known of her or the marriage. The other daughter ("*pudicissima femina*", according to Cicero), married her cousin, the future triumvir. It was her second marriage. Antony divorced her in 47 on suspicion of adultery with P. Dolabella (*cos.suff.* 44). Their daughter was betrothed to M. Lepidus, son of another future triumvir, in 44; they married in 36. She must have died or divorced Lepidus within a handful of years, as then he died, in 30, he was married to a second wife, Servilia.<sup>608</sup>

#### Simplified stemma of the Antonii



<sup>608</sup> Cic., *Philippic.* II.38.99; V.M., IV.2.6; V.P., II.88.1-3; Plut., *Ant.* 9.1-2; App., V.10.93; Dio, XLIV.53.6.



15.

**M'. Aquillius M'.f. M'.n. (Florus?) (not in RE, cf 9)  
(sen. 74/70; monet. c.72/65; sen. 66);**

**Expelled, 70: Cn. Cornelius Lentulus Clodianus & L. Gellius Publicola**

**A.**

T.15A-B.

**B.**

In his speech for Cluentius, given in 66, Cicero reports that M'. Aquillius (alongside his coeval, Ti. Gutta) had regained his place in the Senate; thus an acting-senator rather than a member of the *ordo senatorius*, seeing that no *lectio* had been performed in the interim. It follows that he must have held some qualifying office of state in either 69, 68, or 67, with the former being least probable as it necessitates election in late 70. Irrespective of the fact that we do not know when in that year the *lectio* was performed (it might indeed have been after the elections), it is hard to contemplate even an exceptionally popular politician (as the rapidly-restored Aquillius evidently was) managing to launch and oversee an electoral campaign so soon after his censure.

*A triumvir monetalis*, issuing serrate *denarii* from Rome and identifying himself as “M'. Aquil[lius] M'.f. M'.n.”, is dated by modern numismatists to c.72/65. He has been identified as the *praeteritus*; an almost definite conclusion considering the confluence of nomenclature and chronology.<sup>609</sup> If Aquillius' term as moneyer is to be placed in the mid-section of the range assigned to him, then his attainment of the post so soon upon his expulsion denotes a rapid first step in his recovery, which is not discordant with Cicero's report that the *praeteritus* was back in the Senate by 66. In itself a term as moneyer would

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<sup>609</sup> See following notes.

not have been enough to requalify him for a place in the Senate, but it would have served as a good precursor for attaining a post that did.

Independent of the question of chronology, Aquillius' coinage provides valuable information, which, when viewed with issues produced by Aquillii of the late second and late first centuries, illustrate familial connections. An example of his issue is shown:

**M'.Aquillius M'.f.M'.n., c.72/65. Serrate *denarius*, Rome. Obv.: Draped and helmeted bust of Virtus, right. Rev.: M'.Aquillius (cos.101) standing, right, holding shield and raising nude Sicilia.**



### C.

The issue of c.72/65 depicts on the reverse the figure of a Roman soldier assisting and protecting a prone, naked, female figure. The name and filiation of the moneyer take up either side of the male figure. The legend "*Sicil*" in exergue informs us that the distressed female is a personification of Sicily. The identity of the male depicted is straightforward to deduce: M'. Aquillius M'.f. M'.n., who, from 101 to 99, as consul then as proconsul, commanded Roman forces in Sicily fighting the Second Servile War and whose final victory over the rebel slaves earned him an imperatorial acclamation.<sup>610</sup> Nor is it difficult to

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<sup>610</sup> Livy, *Per.* 69; D.S., XXXVI.10; Flor., II.7.11-12 (incorrectly "*T.Aquillius*"). Son of M'.Aquillius M'.f.M'.n. (cos.129).

deduce that the honorand and the moneyer, homonymous, were father and son.<sup>611</sup> The *imperator* was himself a *monetalis* earlier in his career, c.109/108, one (*denarius*) issue type in particular being pertinent to the current discussion; the obverse showing the radiate head of Sol, facing right:<sup>612</sup>

**M'.Aquillius, 109/108. *Denarius*, Rome. Obv.: Radiate head of Sol, right. Rev.: Luna in biga.**



We find the same obverse images of Sol and Virtus, and the same reverse legend and depiction of the saviour of Sicily revived on three different issues of *denarii* by another Aquillian moneyer, self-identifying as “*L. Aquillius Flor[us]*” and “*L. Aquillius Florus Illvir*”, minting from Rome, c.19/18 (see images below). Taken together, along with his name, the co-option of the symbolism advertises in triplicate his familial connection to both the

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<sup>611</sup> E.Klebs, ‘M'.Aquil(ius) M'.f.M'.n.(9)’, *RE*.II<sub>1</sub> (1895), 323; Sydenham, no.798; *RRC* I.412 no.401, II.711; M.Cardone, *Tresviri Monetales in 18 BC: Development of a Magistracy and its Coinage under Augustus* (Bloomington, 2008), 57-70; *MRR* II.432; III.23. Cf Grueber, I.416-417; H.Mattingly, *Roman Coins from the Earliest Times to the Fall of the Western Empire* (London, 1928), 68; W.Hollstein, *Die Stadtrömische Münzprägung der Jahre 78-50 v.Chr. Zwischen Politischer Aktualität und Familienthematik* (Munich, 1993), 108-111, where a grandfather-grandson relationship is offered.

<sup>612</sup> H.A. Seaby, *Roman Silver Coins, Vol.I: The Republic to Augustus* (London, 1952), 16, 150-151; Sydenham, no.557; *RRC* I.314 no.303; F.Catalli, *La Monetazione Romana Repubblicana* (Rome, 2001), no.412; M.Cardone, o.c..

*imperator* and his son.<sup>613</sup> In view of his *cognomen*, common descent from C. Aquillius Florus (cos. 259) is possible.

L.Aquillius Florus, c.19/18. *Denarii*, Rome.

1) Obv.: Radiate head of Sol, right. Rev.: Quadriga with *modius*-shaped car in which barley



2) Obv.: Draped and helmeted bust of Virtus, right. Rev.: Augustus driving biga of elephants



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<sup>613</sup> P.Van Rohden, 'L.Aquillius Florus(21)', *RE*.II<sub>1</sub> (1895), 327; Grueber, I.416n.1, II.67-71; H.Mattingly, *Coins of the Roman Empire in the British Museum Vol.I: Augustus to Vitellius* (London, 1923), nos.36, 38, 50; S.J.De Laet, *o.c.*, no.40; H.A.Seaby, *o.c.*, 150-151; C.H.V.Sutherland, *The Roman Imperial Coinage, Vol.I: From 31 BC to AD 69* 2nd edition (London, 1984), 63 nos.301, 303, 310; M.Cardone, *o.c.*; *PIR*<sup>2</sup>, A991.

3) Obv.: Bust of Augustus. Rev.: M'.Aquillius (cos.101) standing, right, holding shield and raising nude Sicilia



An (Augustan?) inscription from Asia attests to quaestor L. Aquillius M'.f. M'.n. Florus, who restored roads built there in 129 by consul M'. Aquillius (father of the *imperator*).<sup>614</sup> Depending on his exact date, this quaestor, evidently desirous to maintain and commemorate the munificence of a notable ancestor, might be identical to the *monetalis* of c.19/18, who also deemed it important to keep the accomplishments of an ancestor alive in the public eye.<sup>615</sup> However as the date of the inscription cannot be narrowed further, this contention cannot be assured. Whatever the connection, the quaestor's filiation tells of a M'. Aquillius M'.f. (Florus?) whose *floruit* we might consider to have been around the middle of the century, and an elder brother, homonymous to the father. As we shall see, it is possible they left an impact upon the historical record.

The career of the notable L. Aquillius C.f. Florus Turcianus Gallus is known from two inscriptions: *decemvir stlitibus iudicandis*, military tribune of *Legio IX Macedonica*, quaestor Caesaris Augusti, proquaestor of Cyprus, plebeian tribune, praetor, and proconsul of Achaëa. His date is middle to late Augustan. His name and *cursus* preclude identity with the moneyer and/or with the quaestor, although if the moneyer and quaestor were separate personalities it is not altogether impossible, though unlikely, that Turcianus

<sup>614</sup> *CIL* III.479 (Güzelhissâr), III.14202<sup>4</sup> (Teira).

<sup>615</sup> *PIR*<sup>2</sup> A990.

was father of the former. In any event, that they were related is not altogether certain.<sup>616</sup> Badian considers this Turcianus' connection to the M'. Aquillii (and hence also to the *praeteritus*) "unimpeachable", which may not be the case.<sup>617</sup> The proconsul's filiation betrays his father's name, while his *cognomen* could be taken as indicative that this C. Aquillius was not the proconsul's biological father but that he was adopted from the Turcii. The father's *floruit* can be assigned to around the early Augustan period. The proconsul's other *cognomina* demonstrate links to the Aquillii Flori and the Aquillii Galli. Thus raises a question: which provided his immediate line of descent? If the Galli, then Turcianus' immediate descent was probably from C. Aquillius Gallus (*pr.* 66) and as such he and his father cannot have been anything more than indirectly related to the line of the *praeteritus*. If Turcianus and his father were more closely linked to the Flori, then it is possible that the proconsul was descended from the *praeteritus*, possibly even his great-grandson.

L. Aquillius L.f. Florus, a *rex sacrorum* (of Rome or of a municipality, presumably in Latium, possibly Lanuvium) during the reign of Augustus and/or Tiberius, has been identified with the Augustan moneyer and as related in some regard to his contemporary, Florus Turcianus. Also to be considered is the possibility that he was the quaestor's son, if

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<sup>616</sup> *CIL* III.551 (Athens); *ILS* 928 (=IG<sup>2</sup> 4126) (Corinth); P.Van Rohden, 'L.Aquillius Florus(21)', *RE*.II<sub>1</sub> (1895), 327; P.Van Rohden, 'L.Aquillius C.f. Florus Turcianus Gallus(22)', *RE*.II<sub>1</sub>.327; L.R.Dean, 'Latin inscriptions from Corinth II', *AJA* 23 (1919), 163-166; A.B.West, *Corinth. Results and Excavations Conducted by the American School of Classical Studies at Athens, Vol. VIII, Pt.II: Latin Inscriptions 1896-1926* (Cambridge MA, 1931), 31-35; S.J.De Laet, *o.c.*, nos.40-41; R.Syme, 'Senators, towns and tribes', *Historia* 13 (1964), 111; G.C.R.Schmalz, *Julio-Claudian Athens: A New Epigraphy and Prosopography* (Leiden, 2009), 182-183; *PIR*<sup>2</sup> A993. Grueber, II.67n.1 considers it "not improbable" that the moneyer L.Aquillius Florus and L.Aquillius Florus Turcianus Gallus were the same man. Turcianus' detailed *cursus* points otherwise.

<sup>617</sup> E.Badian, 'Notes on Roman senators of the Republic', *Historia* 12 (1963), 131.

he and the moneyer were not the same man.<sup>618</sup> Highly unlikely if the proconsul's main line of descent was from the Aquillii Galli rather than from the Aquillii Flori.

Finally we come to two Aquillii Flori (19a, b), father and son, who sided with Antony during his war against Octavian and were captured after the defeat of their commander at Actium. Brought before the young Caesar, who deemed that one must die, the son volunteered for execution. The father committed suicide over his son's corpse.<sup>619</sup> Their tale implies not inconsequential status, and we can infer they were probably of senatorial or equestrian rank. Their date also allows us to posit that father and son might have been the otherwise-unknown homonymous father and elder brother of quaestor L. Aquillius M'.f. M'.n. Florus, and that the former could have been the (homonymous, first or only) son of the *praeteritus*.<sup>620</sup> The implication of this reconstruction – that Augustus permitted within the machinery of the principate an individual who had been son and brother of erstwhile enemies (if not also an enemy himself) – does not count against it: the young Caesar could afford to – indeed needed to – cultivate a reputation for *clementia*

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<sup>618</sup> *CIL* VI.2122 (Rome); P.Van Rohden, 'L.Aquillius Florus(21)', *RE*.II<sub>1</sub> (1895), 327; A.B.West, *Corinth*, 35; S.J.De Laet, o.c., nos.40,513; M.W.Hoffman Lewis, *The Official Priests of Rome Under the Julio-Claudians: A Study of the Nobility from 44 BC to 68 AD*. Papers and Monographs of the American Academy in Rome 16 (Rome, 1955), 76; R.Syme, *Historia* 13 (1964), 112; J.Rüpke & A.Glock, *Fasti Sacerdotum: Die Mitglieder der Priesterschaften und das Sakrale Funktionspersonal Römischer, Griechischer, Orientalischer und Jüdisch-Christlicher Kulte in der Stadt Rom von 300 v.Chr. bis 499 n.Chr.* (Stuttgart, 2005), II.776 no.699; R.T.Ridley, 'The absent pontifex maximus', *Historia* 54 (2005), 290; *PIR*<sup>2</sup> A992.

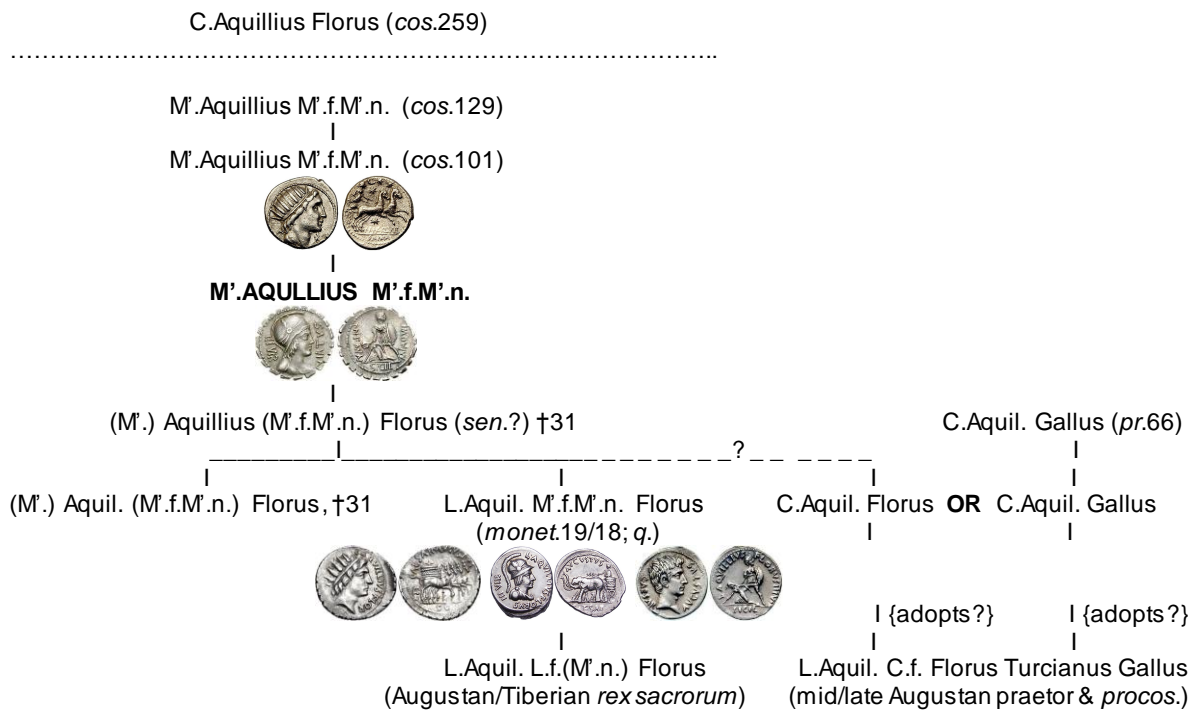
<sup>619</sup> Dio, LI.2.5-6; E.Klebs, 'Aquillius Florus, vater und sohn(19)', *RE*.II<sub>1</sub> (1895), 327; *PIR*<sup>2</sup> A989. Suet., *Aug.* 13.2 appears to involve a different captured father-son pair.

<sup>620</sup> M'.Aquillius Crassus (*pr.*43), a victim of the triumviral proscriptions, also sits well chronologically between the *praeteritus* and the moneyer/quaestor, and his *praenomen* fits. However his *cognomen* cannot easily be incorporated. On him: E.Klebs, 'M'.Aquillius Crassus(16)', *RE*.II<sub>1</sub> (1895), 326; F.Hinard, *Les Proscriptions de la Rome Républicaine*. Collection de l'École Française de Rome 83 (Rome, 1985), 428-429.

following the demise of the Antonian cause; it paid not to let too many of the surviving *Antoniani*, particularly from among the *nobiles*, remain disaffected and without occupation.

The foregoing allows the proposition of a stemma, necessarily tentative in places, of the ascendants and possible descendants of the *praeteritus*.

**Proposed stemma of the Aquilli Flori**



Of uncertain position or relevance: M'.Aquillius Crassus (*pr.*43).

**16.**

**P. Cornelius P.f. P.n. Lentulus Sura (240) (*pr.* 75; *cos.* 71; *pr.*II 63);  
 Expelled, 70: Cn. Cornelius Lentulus Clodianus & L. Gellius Publicola**

**A.**

T.16A-B.



Apart from Plutarch's rather vague allusions to Sura's "low life" and "licentiousness", the reason or reasons for his expulsion are not detailed. Indeed it is somewhat surprising that those commentators who most heavily and repeatedly attack Sura's character (Cicero in his *In Catilinam* and Sallust in his *Bellum Catilinae*) fail to mention anything of what must have been one of the most troublesome episodes of Sura's life.<sup>621</sup> Assuming that Sura's expulsion was deserved, that Cicero especially, as the Catilinarians' chief tormentor, did not use the fact of it to denigrate Sura's character might be thought perplexing. Yet it accords with Cicero's argument, expounded at length in his defence speech for Cluentius, that having been punished by the censors was not as grave an indictment of character as the prosecution counsel had claimed. Thus the picture that emerges is one of expulsion being a setback – even an embarrassment to one extent or another – but not of the type that would normally be exploited by one's opponents in their speeches before the Senate or the People. Parallels with the experience of exile and military defeat may be drawn; so too allegations or imputations of illegitimate birth.<sup>622</sup>

Three episodes from Sura's life before his involvement with the Catilinarian conspiracy are known. None cast his character in any better light. Two occurred before the censorship of 70-69; the third belongs to the period 80/64. Any, either individually or in combination, may have provided the censors with cause to expel him.<sup>623</sup>

In 80, following the completion of his term as quaestor the previous year, Sura was questioned by Sulla before the Senate to explain why he had lost and wasted large amounts of public money that had been placed in his care. Sura reportedly responded by saying that he had no intention to account for his behaviour, instead offering to show his

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<sup>621</sup> Sallust does, however, mention the expulsion of Sura's co-conspirator, Q.Curius: Sall., *BC* 23.1.

<sup>622</sup> On the latter point: R.Syme, 'Bastards in the Roman aristocracy', *PAPhS* 104 (1960), 324.

<sup>623</sup> More general treatments of Sura may be found at F.Münzer, 'P.Cornelius Lentulus Sura(240)', *RE*.IV<sub>1</sub> (1900), 1399-1402; W.Drumann & P.Groebe, *Geschichte Roms*, II:452-455.

leg. Despite the extraordinary nature of his reply, Sura was acquitted.<sup>624</sup> Sometime between his quaestorship and his involvement with Catiline's plot, Sura was prosecuted on an unknown charge. Plutarch reports that he bribed some of the jurors and that when acquitted by two votes remarked that the sum given for one had turned out to be wasted money, since acquittal by a single vote would have sufficed.<sup>625</sup> As praetor *de repetundis* in 74, Sura presided over the trial of (A.?) Terentius Varro (*pr.* 78?). Varro's acquittal, and the discovery that the voting-tablets of the jury were marked, caused a scandal (the implication being that the defence had bribed some portion of the jury and had marked the tablets to verify whether the bribed members had voted 'correctly'). Sura, as president, would have been deeply embroiled; perhaps even suspected as complicit.<sup>626</sup> Cicero, while not providing any further details, reports that out of this scandal "it was felt... impossible that this stain on the honour of the courts should be passed by unnoticed by the censors" (*praetermitti ab censoribus et neglegi macula iudiciorum posse non videbatur*).<sup>627</sup> The remark may indicate that Sura's expulsion was indeed brought about by his suspected or actual misbehaviour at this trial.

## B.

Assuming no undetected office(s) in the interim, Sura's election to a second praetorship, in 64, means that he re-attained senatorial status at the sixth or seventh available opportunity following his expulsion. Political support from L. Caesar (*cos.* 64; *cens.* 61-60), his wife's

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<sup>624</sup> Cic., *Att.* 16.9<sup>SB</sup>; Plut., *Cic.* 17.2-3; *TLRR* no.130.

<sup>625</sup> Cic., *Att.* 16.9<sup>SB</sup>; Plut., *Cic.* 17.3; *TLRR* no.219.

<sup>626</sup> Cic., *In Caecil. Divinat.* 7.24; *Cluent.* 47.130; *In Verr.* 1.7.17, 13.40; [Acro], *Hor. Ser.* II.1.49; [Ascon.], *In Caecil. Divinat.* 193.19-26 (Stangl); Schol. Gronov. B, *In Verr.* 336.3-15 (Stangl); Schol. Gronov. C, *In Verr.* 349.10-24 (Stangl); *TLRR* no.158.

<sup>627</sup> Cic., *Cluent.* 47.130.

brother, might be argued.<sup>628</sup> Sura's place as one of the principals of the Catilinarian conspiracy is well-known, and his activities (and, on 5 December 63, execution) as a plotter do not need rehearsal in any detail here. It suffices merely to say that the sources report that Sura's rationale for joining the conspiracy was his belief that a prophecy, which

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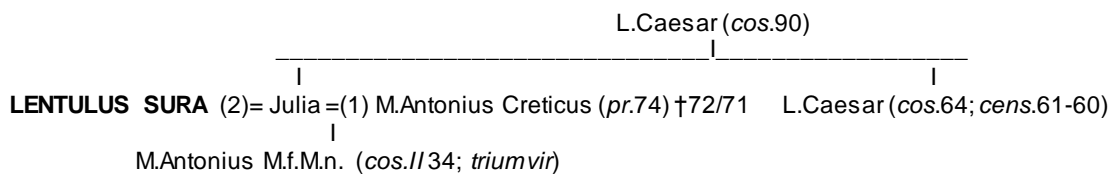
<sup>628</sup> *Tetradrachmae* bearing the obverse legend MAKEΔONΩN and the reverse legend SVVRA · LEG PRO·Q, die-linked to others carrying CAE · PR MAKEΔONΩN on the obverse, have been posited as pertaining to the *praeteritus* and his brother-in-law, L.Caesar. If so, Sura found employment as *legatus pro quaestore* in Macedonia sometime between his expulsion and his second praetorship. However, the numismatic evidence very strongly favours dating this coin issue to the late 90s/early 80s rather than to the mid-60s (or any other period). This being so, the proquaestorian legate may be comfortably identified with Q.Braetius (or Bruttius) Sura, otherwise-attested as legate in Macedonia c.93-87. Moreover CAE · PR MAKEΔONΩN (if 'Cae.' must be taken as 'Caesar') can be identified with L.Caesar (*pr.*95; *cos.*90), whose praetorian command was likely that of Macedonia. See Cic., *Philippic.* II.6.14, 7.17-18; VIII.1.1; Plut., *Ant.* 1.1-2.1; *Sulla* 11.4; App., *Bell. Mithrid.* 5.29; *IG IX.2.613*; *MRR* II.15-16, 50; III.35; B.Borghesi, *o.c.*, II.239-242; M.Thompson, *The New Style Silver Coinage of Athens*. Numismatic Studies 10 (New York, 1961), x-x; D.M.Lewis, 'The chronology of the Athenian New Style', *NC* 7.2 (1962), 297-299; M.Thompson, 'Athens again', *NC* 7.2 (1962), 329-331; T.Hackens & E.Levy, 'Trésor Hellénistique trouvé à Délos en 1964', *BCH* 89 (1965), 514; C.M.Kraay, 'Mainland Greece and Asia Minor' in O.Mørkholm (ed.), *A Survey of Numismatic Research 1960-1965, Vol.I: Ancient Numismatics* (Copenhagen, 1967), 37-38; H.B.Mattingly, 'Some problems in second century Attic prosopography', *ZPE* 71 (1971), 43; M.Thompson, 'Byzantium over Aesillas', *RN* 6.15 (1973), 54-65; C.Boehring, 'Hellenistischer münzschatz aus Trapezunt 1970', *SNR* 54 (1975), 62; H.B.Mattingly, 'L.Julius Caesar, governor of Macedonia', *Chiron* 9 (1979), 147-165 [= *From Coins to History: Selected Numismatic Studies* (Ann Arbor, 2004), 152-175]; O.Mørkholm, 'The chronology of the New Style coinage of Athens', *ANSMN* 29 (1984), 35-38; F.De Callatay, 'The coins in the name of Sura' in A.Burnett, U.Wartenberg, & R.Witschonke (edd.), *Coins of Macedonia and Rome: Essays in Honour of Charles Hersh* (London, 1998); R.A.Bauslaugh, *Silver Coinage with the Type of Aesillas the Quaestor*. Numismatic Studies 22 (New York, 2000), 23-26, 109-115. A certain C.Caesar is attested as a Macedonian governor of the early first century (*IG XII.8.241*), although his exact date is unknown. The father of the dictator (who was *pr.*92?) is the only C.Caesar of the period who could have held such a governorship, but his command (as proconsul) was that of Asia. *MRR* II.13, 14n.3 therefore considers the inscription *praenomen* a mistake, and makes the Macedonian governor L.Caesar (*cos.*90).

predicted that a third Cornelius (*i.e.*, following Cinna and Sulla) would succeed in establishing a *regnum* in Rome, related to his own destiny. According to Sallust, Sura was at a meeting of the nascent conspiracy on 1 June 64. Sura's joining of the plot can be put prior to date.<sup>629</sup>

### C.

No offspring, natural or adoptive, are known for Sura and his wife, Julia. After Sura's death it was tasked to Mark Antony, Julia's son by her prior marriage to M. Antonius Creticus (*pr.* 74), to ask Cicero to release the conspirator's corpse for burial.<sup>630</sup>

#### Marriage connections of Lentulus Sura



<sup>629</sup> Cic., *In Cat.* III.9, 11; Sall., *BC* 17.1-3, 47.2; Plut., *Cic.* 17.4; App., II.1.4. Cf Suet., *Aug.* 31; Tacit., *Ann.* VI.12. There was another prophecy, Sura believed linked to the first, that the year 63 would see civil war and the destruction of the government and, presumably, the introduction of a new regime. Sura's motivation for joining the conspiracy seems outlandish, but he appears to have been sincere in his belief. If he joined the plot as just a disgruntled outsider desperate to gain power at any cost, one would think he would have abandoned the conspiracy upon his election to the praetorship and the legitimate satisfaction of his desire. Pace R.J.Evans, *AClass* 30 (1987), 70, who posits that he might have joined the conspiracy because Catiline might have been son-in-law of C.Aufidius Orestes, Sura's consular colleague.

<sup>630</sup> Cic., *In Cat.* IV.13; *Philippic.* II.7.17-18; VIII.1.1; Plut., *Ant.* 2.1-2.2.

17.  
**Q. Curius (7, 1) (q. by 71);  
Expelled, 70: Cn. Cornelius Lentulus Clodianus & L. Gellius Publicola**

**A.**

T.17A-B.

Although the date and identity of the censors who punished Curius are nowhere specified in the sources, it is comfortable to assume that he was expelled during the extraordinarily severe *lectio* of 70.<sup>631</sup> According to the *Commentiolarum Petitionis*, ostensibly written in 65, Curius had been a prominent member of Catiline's inner circle of criminal and reprobate hangers-on throughout the career of the latter.<sup>632</sup> Something of a debtor and a gambling addict in his later years certainly, these weaknesses in Curius' character may have predated, but did not necessarily predate, his expulsion. If they did, we might posit that Curius' debts and gambling (linked phenomena) and his fiscal responsibilities as quaestor may not have mixed well: peculation, or some related species of financial misdemeanour in office, might be suspected. If, as is less likely, Curius descended into debt and gambling after his censure, then his decline could feasibly be presented as possible evidence of the psychological impact that being expelled could have on some.

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<sup>631</sup> Willems, I.418; F.Münzer, 'Q.Curius(7)', *RE*.IV<sub>2</sub> (1901), 1840; *LGRR* 198, 419, 526; B.A.Marshall, 'Q.Curius, homo quaestorius', *AC* 47 (1978), 208; B.A.Marshall, *Asconius*, 316-317; P.McGushin, *Sallust, the Conspiracy of Catiline* (Bristol, 1987), 45; F.X.Ryan, *CP* 89 (1994), 259; R.G.Lewis & A.C.Clark, *o.c.*, 303, 321; *MRR* II.122, 126, 143, 149n.1.

<sup>632</sup> Q.Cic., 10.

## B.

It appears that Curius either never tried to regain his lost status in the years following his being expelled, or, if he did, failed.<sup>633</sup> By June 64, still a *privatus*, Curius' straitened condition compelled him to join the nascent conspiracy of his close associate, Catiline.<sup>634</sup> At least one fellow-conspirator, Lentulus Sura, was also *praeteritus*, and there may have been others among the plotters. In January 63, shortly after Curius disclosed the plot to his mistress, a noble named Fulvia, and after she, in turn, had communicated her intelligence to the new consul, Cicero, he, by way of promises of immunity from prosecution or punishment made through Fulvia, induced Curius to betray the plot to him.<sup>635</sup> Subsequently Curius, while ostensibly still a Catilinarian, was part of Cicero's counter-conspiracy against the plotters, keeping the consul informed of their goings-on. Indeed it was Curius – still through the intermediary Fulvia – who that autumn informed the consul of the plan, by L. Vargunteius and C. Cornelius, to assassinate him during a morning *salutatio*.<sup>636</sup> Upon the successful suppression of the conspiracy, the Senate voted Curius a reward from the public treasury for being the first person to bring the plot to the attention of the state. However, Curius' allegation that Caesar had been involved drove the latter to make the counter-claim that *he* had been the first to report the plot. Believed, Caesar blocked Curius from gaining the reward.<sup>637</sup>

In later life Curius retained some notoriety in Roman society. The poet Licinius Calvus (†47) quips on a gambling addiction and Asconius opines that he “was a notorious

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<sup>633</sup> F.X.Ryan, *Rank*, 259-261. Cf F.Münzer, 'Curius(1)', *RE*.IV<sub>2</sub> (1901), 1839; F.Münzer, 'Q.Curius(7)', *RE*.IV<sub>2</sub> (1901), 1840; B.A.Marshall, *AC* 47 (1978), 207-209; B.A.Marshall, *Asconius*, 316-317; *MRR* II.143, 149n.1; III.78.

<sup>634</sup> Sall., *BC* 17.1-3.

<sup>635</sup> Sall., *BC* 26.3, 30.6-7. Cf Flor., II.12.6; App., II.1.3.

<sup>636</sup> Sall., *BC* 28.2.

<sup>637</sup> Suet., *Iulius* 17.1-2.

gambler” who following the plot “was later convicted” (*notissimus fuit aleator, damnatusque postea est*).<sup>638</sup> The implication seems that Curius’ conviction was linked to his gambling; if so, probably for debt. The date of this trial is unknown.

### C.

Subsequent Curii, and hence possible descendants of Q. Curius, are few. The plebeian *gens Curia* was relatively modest and sparsely populated, their obscurity overshadowed by the stature and fame of M'. Dentatus (*cos. III 274; cens. 272-271*). Sallust’s appraisal of the Catilinarian as “a man of no mean birth” (*natus haud obscuro loco*) demonstrates that he was from a family of means, possibly senatorial.<sup>639</sup> Furthermore, Florus includes the *praeteritus* among Catiline’s more distinguished accomplices, ranking him alongside the senatorial M. Porcius Laeca, Ser. Sulla, C. Cornelius Cethegus, P. Autronius Paetus (*cos. des. 65*), L. Vargunteius, L. Cassius Longinus (*pr. 66*), and Lentulus Sura (*cos. 71*) with the exclamatory “*Qua familiae! Quae senatus insignia!*”.<sup>640</sup> Also, while it is not unknown for noblewomen to choose lovers of humble status and means, they are more likely to take on lovers of approximate social standing to themselves, even if those inamoratos are financially compromised. That Curius could, over an extended period, retain a mistress from the exalted Fulvii – at the same time telling her that he was aspiring toward regaining lost wealth and status – further indicates that he was a scion of a family of means. Despite his straitened circumstances, these factors, taken together, point toward a tentative conclusion that Q. Curius might have been a descendant of the great Dentatus.

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<sup>638</sup> C. Licinius Calvus *ap. Ascon., In Toga Cand.* 93.22-23 (Clark); Ascon., *In Toga Cand.* 93.21-22 (Clark); F.X. Ryan, *Rank* 259-261.

<sup>639</sup> Suolahti, 264 considers all subsequent known senatorial Curii as either kinsmen or direct descendants of Dentatus. *LGRR* 198n.141, 519, considers it possible, but uncertain.

<sup>640</sup> Flor., II.12.3.

Judging by their *praenomina*, certain other descendants of Dentatus can be posited in M'. Curius (*tr.pl.* 199/198), M'.Curius (5), who flourished c.94/93, and the long-time friend of Cicero and Atticus, M'. Curius (6), possibly son of the foregoing.<sup>641</sup> Vibius Curius (8), attested as *praefectus equitum* under Caesar in 49, seems, from his Italic name-form, not to have been closely associated to the Roman Curii.<sup>642</sup> Nothing more is known of him. Around 47/45, a correspondent of Cicero's, called only "Curius" (2) in the letter in which he appears, is known to have been proconsul in some unnamed province. He might be identical to Caesar's prefect, although he could just as easily be identified with M'. Curius (6), known friend of Cicero and Atticus.<sup>643</sup>

Of these later Curii none should be linked to the turncoat Catilinarian. Caesar would not have accepted under his command or in charge of a province an individual who had attempted to implicate him in Catiline's plot; nor would Cicero have endured a long-term friendship of such a man. This does not preclude the possibility that any might have been related to the *praeteritus*.

Finally, Curius (3), who in 35, while on the staff of Cn. Ahenobarbus (*cos.* 32) in Bithynia, was executed for conniving with Sex. Pompeius to capture Ahenobarbus and hold him hostage. His title is not preserved, although he was probably a *legatus* or *praefectus*.<sup>644</sup> The nature – if any – of his connection with the *praeteritus* cannot be deduced.

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<sup>641</sup> On the latter: Cic., *Att.* 125.3, 126.9, 12, 154.5, 157.2, 186.2, 413.3<sup>SB</sup>; *Fam.* 116.2, 123.4, 124.1-2, 127.3-4, 200.1-3, 265.1-3, 266.1-2, 267.1-2, 283.1-3<sup>SB</sup>; M'.Curius *ap.* Cic., *Fam.* 264.1-2<sup>SB</sup>; F.Münzer, 'M'.Curius(6)', *RE.IV*<sub>2</sub> (1901), 1840.

<sup>642</sup> Caesar, *BC I.*24.3; Cic., *Att.* 172.1<sup>SB</sup>.

<sup>643</sup> Cic., *Fam.* 313<sup>SB</sup>; *Att.* 413.3<sup>SB</sup>; F.Münzer, 'Curius(2)', *RE.IV*<sub>2</sub> (1901), 1839; F.Münzer, 'M'.Curius(6)', *RE.IV*<sub>2</sub> (1901), 1840; F.Münzer, 'Vibius Curius(8)', *RE.IV*<sub>2</sub> (1901), 1841; *MRR II.*271, 308, 558; D.R.Shackleton Bailey, *Cicero: Epistulae ad Familiares, Vol.II: 47-43 BC* (Cambridge, 1977).

<sup>644</sup> App., *V.*14.137; F.Münzer, 'Curius(3)', *RE.IV*<sub>2</sub> (1901), 1839; *MRR II.*410.



**18.**  
**Cn. Egnatius Cn.f. (C.n.) (8) (sen. 74/70);**  
**Expelled, 70: Cn. Cornelius Lentulus Clodianus & L. Gellius Publicola**

**A.**

T.18.

**B.**

None known, although it is evident that the *praeteritus* was dead by the time Cicero's speech for Cluentius was given, in 66.

**C.**

The name 'Egnatius' was common during the Republican era; Wikander lists 51 in his collation of known Republican Egnatii, including the *praeteritus*. The catalogue indicates that the name enjoyed a wide geographic spread even at early stage; moreover, that there was no single *gens Egnatia*, instead several unconnected and independent families, from Etruria, Samnium, Campania, and Lucania, bore the name. From this no Republican-era bearer of the name can be assumed to have been a Roman citizen unless other evidence is available for them. Matters get more complicated when we find that many Egnatii appear to have eschewed *cognomina*, so lines of ascent and descent, even within units sharing the same ethnicity, are often impossible to discern with any appreciable degree of confidence.<sup>645</sup> Despite these issues and the difficulties they produce, the descendents of

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<sup>645</sup> Ö.Wikander, 'Senators and *equites* IV: the case of the Egnatii', *OpRom* 18 (1990), 207-211 (the *praeteritus* is no.16 in Wikander's list). Cf F.Münzer (1905) 'Egnatius', *RE.V2* (1905), 1993; R.Syme, *Historia* 4 (1955), 61; L.R.Taylor, *VDRR*, 211; W.Hollstein, *o.c.*, 46-55; M.Torelli, *Studies in the Romanization of Italy*, trans. H.Fracchia & M.Gualtieri (Edmonton, 1995), 71, 87-88; G.D.Farney, *Ethnic Identity and Aristocratic Competition in Republican Rome* (Cambridge, 2007), 37, 131.

the *praeteritus* are easily detected, and from them we may infer Samnite origin. His close ascendants and immediate family are more difficult to discern, but probable candidates can be posited nonetheless.

Two sons of the *praeteritus* are mentioned in Cicero's speech. The first a senator who in 74 served as a *iudex* at the trial of Stat. Albius Oppianicus, and who was disinherited by his father on suspicion of having accepted a bribe to find the defendant guilty. Despite his fathers' action, and the fact that two other senatorial *iudices* (M. Aquillius and Ti. Gutta) were expelled during the *lectio* of 70 for the same crime, the son escaped such punishment by the censors. The possibility, posited by Münzer, that the corrupt son might be a *monetalis* who issued coins bearing the name "C. Egnatius Cn.f. Cn.n. Maxsumus" (on whom, see below) is presented as fact by Gundel, Hamilton, and Broughton (though with the latter later recanting).<sup>646</sup> This cannot be so. Cicero's phraseology, identifying the *praeteritus* as "Cn. Egnatius pater", demonstrates that the father and his corrupt son shared the same *praenomen*. Moreover, that the corrupt son bore his father's *praenomen* indicates that he was a first-born son – in Roman onomastic practice, a first-born son was typically given the same *praenomen* as his father.<sup>647</sup>

The younger son, whom the *praeteritus* father retained in his will, the evidence of Cicero permits us to call only 'Egnatius Cn.f.'. He is widely (although at times only tentatively) regarded as the aforementioned *monetalis*, whose activities modern numismatists place and date to Rome, c.76/70 (with a slightly later date not being

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<sup>646</sup> F.Münzer, 'Egnatius(2)', *RE.V<sub>2</sub>* (1905), 1993; F.Münzer, 'C.Egnatius Maximus(27)', *RE.V<sub>2</sub>* (1905), 1997; *MRR* II.490; H.G.Gundel (1967) 'C.Egnatius Maximus(5)', *KP*.II (1967), 205; C.D.Hamilton, 'The *tresviri monetales* and the Republican *cursus honorum*', *TAPhA* 100 (1969), 198.

<sup>647</sup> R.Syme, *Historia* 4 (1955), 61; L.R.Taylor, *VDRR*, 211; *LGRR* 197, 519; D.R.Shackleton Bailey, *Two Studies*<sup>2</sup>, 23; *MRR* III.85; O.Wikander, o.c., 208 no.17 cf no.3.

unfeasible) and whose die-types appear to betray an *origio* in Samnium.<sup>648</sup> The archaised form of his *cognomen*, as advertised on his coinage, should be noted.<sup>649</sup> The good son might be further identified with the C. Egnatius (7a [suppl.III.418]) who in 74 was active as magistrate (proconsul?) in Asia Minor.<sup>650</sup> Furthermore, a Egnatius Maximus (26), a friend and neighbour of Atticus' in 45, was known also to Cicero. The clement way in which the orator writes of him indicates that he was not the corrupt juror, and it is feasible that he and the *monetalis* and/or the magistrate of Asia Minor were identical.<sup>651</sup> Appian reports that two Egnatii (6a and 6b), father and son (no further identifiers are provided), were among those killed during the triumviral proscriptions of 43-42.<sup>652</sup> Hinard and Wikander suggest that the victims were the corrupt brother and a son.<sup>653</sup> This is possible, although it is equally possible that the victims were the good brother and a son. It is also possible they were only related to the brothers, or not at all. An Egnatius (5), who in 55 departed with Crassus on his ill-fated Parthian campaign, is found as *praefectus equitum* at Carrhae, a disaster which he survived and in a fashion to his credit.<sup>654</sup> He has been thought of as possibly one

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<sup>648</sup> R.Syme, *Historia* 4 (1955), 61; *NM* 149n.2; D.R.Shackleton Bailey, *Two Studies*<sup>2</sup>, 23; Sydenham, 63; Grueber, I.399; *RRC*, I.405; *MRR* III.85; C.Hersh & A.Walker, 'The Mesagne hoard', *ANSMN* 29 (1984), 103-134, tab.2; O.Wikander, *o.c.*, 208-211 no.38 *cf* nos.8, 37; W.Hollstein, *o.c.*, 46-55. *Cf* F.Münzer, 'Egnatius(2)' *RE.V<sub>2</sub>* (1905), 1993; F.Münzer, 'C.Egnatius Maximus(27)', *RE.V<sub>2</sub>* (1905), 1997.

<sup>649</sup> Grueber, I.399n.3.

<sup>650</sup> F.Münzer, 'C.Egnatius(7a)', *RE* S.III (1918), 418; O.Wikander, *o.c.*, 208-209 no.8 *cf* nos.37-38.

<sup>651</sup> Cic., *Att.* 337.1, 350<sup>SB</sup>; F.Münzer, 'Egnatius(2)' *RE.V<sub>2</sub>* (1905), 1993; F.Münzer, 'Egnatius Maximus(26)', *RE.V<sub>2</sub>* (1905), 1997; F.Münzer, 'C.Egnatius Maximus(27)', *RE.V<sub>2</sub>* (1905), 1997; R.M.Ogilvie, [Review of F.O'Sullivan, *The Egnatian Way*. Great Highways Series (Newton Abbott, 1972)], *CR* n.s.25 (1975), 114; O.Wikander, *o.c.*, 208-209 no.37 *cf* nos.8, 38; *MRR* III.85.

<sup>652</sup> App., IV.4.21.

<sup>653</sup> F.Hinard, *o.c.*, 465 nos. 52-53; O.Wikander, *o.c.*, 208-209 no.3 (*cf* no.17), no.4 (*cf* no.2).

<sup>654</sup> Plut., *Crassus* 27.6-7.

of the later-proscribed Egnatii and/or one or the other of the *praeteritus*' sons.<sup>655</sup> Thomson, in turn, tentatively identifies this prefect with an Egnatius (a Celtiberian!) who is found twice as the butt of Catullus.<sup>656</sup> This takes us far enough. In none of these scenarios can the suggested connections be demonstrated beyond the fact that these roughly-contemporaneous subjects all shared the same very common name.<sup>657</sup> Hinard and Magnino, in discussing the identities of the Egnatian *proscripti* specifically, and touching upon hypothetical identifications, recognises the difficulty – and futility – in trying to distinguish and sort the various Egnatii of the late Republic.<sup>658</sup> Nonetheless we can work toward tracking the *praeteritus*' close ascendants and charting his line down to the early second century AD.

Accepting, as chronology and nomenclature make reasonable, that the *praeteritus*' younger (honest) son and the *monetalis* are identical, it follows that his father was called Cn. Egnatius. The *praeteritus* himself, evidently an old man when he died, sometime between 70 and 66, was probably born c.150/140. His father's *floruit* must have about the same time. Chronology and nomenclature leads us to suggest that he might have been Cn. Egnatius C.f. *Stell.* (*pr.* by 142) who, as proconsul of Macedonia c.143, built the Via Egnatia through that province.<sup>659</sup> The proconsul's filiation strongly indicates that he

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<sup>655</sup> F.Hinard, *o.c.*, 465 nos. 52-53; O.Wikander, *o.c.*, 208-209 no.2 (*cf* no.4).

<sup>656</sup> Catullus, *Carmina* 37.18, 39.1-21; D.F.S.Thomson, *Catullus*. Phoenix Supplement 34 (Toronto1997), 305.

<sup>657</sup> The line of the *praeteritus* favoured the *praenomina* 'Cnaeus' and 'Caius'. A glance at the list of known Republican Egnatii by O.Wikander, *o.c.*, 207-209 reveals several individuals who bore either name, as *praenomen* or in filiation. Their respective places – if any – within the stemma of the *praeteritus* cannot be estimated. Some may not have been Roman.

<sup>658</sup> F.Hinard, *o.c.*, 465 nos.52-53; D.Magnino, *Appiani Bellorum Civiliium Liber Quartus* (Como, 1998), 173.

<sup>659</sup> On the date of the road, *MRR* III.84-5. It is assumed that the senator Cn.Egnatius C.f. (not in RE), known from an inscription dated c.175/140 (earlier in the range tending to be preferred) is the road-builder at an earlier stage of his career: *MRR* I.438, II.490; L.R.Taylor, *VDRR*, 211; R.K.Sherk, *o.c.*, 34 no.4; H.B.Mattingly,

had an elder brother, C. Egnatius C.f., homonymous to a father whose own *floruit* can be set c.180. If this older brother lived to reproduce, it is possible that he was the otherwise-unknown father of C. Egnatius C.f. Rufus (not in RE) (*Xvir a.d.a.? 91?*), and hence the progenitor of the Egnatii Rufi.<sup>660</sup>

Descendants of the *praeteritus* are easily detected. In reporting the fallout following the exposure, in AD 65, of the Pisonian conspiracy, Tacitus writes that one of the conspirators, *praetorius* P. Glitius Gallus, was sent into exile. His wife, Egnatia Maximilla, accompanied him. Tacitus further records that she possessed a great fortune, first left intact by Nero, then confiscated.<sup>661</sup> Maximilla's great wealth points towards her being of senatorial or upper-equestrian status, and, as fortunes tend to be inherited rather than gained, we may surmise that she was born into a family of means. The family of her husband seems to have been more humble, rising only through imperial favour. The sole member of note up to that time, Gallus, was evidently *homo novus*; adlected by Claudius *inter patricos* and thereafter rising to praetor. Despite the parvenu status of the Glitii, Maximilla's marriage to the favoured Gallus accords with her own family being one of

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*From Coins to History*, 251-252. O.Wikander, *o.c.*, 208-211 has the senator ("c.175/160 or 145/140") as no.14 (*cf* no.15) and the proconsul ("c.145/120") as no.15 (*cf* no.14). *Cf* M.Torelli, *o.c.*, 87-88.

<sup>660</sup> On the date and office of C.Egnatius Rufus (*Xvir a.d.a.? 91?*): C.Cichorius, *Römische Studien: Historisches Epigraphisches Literaturgeschichtliches aus Vier Jahrhunderten Roms* (Leipzig, 1922), 116-125; *MRR* II.23, 24n.10; H.G.Gundel, 'C.Egnatius Rufus (6)', *KP*.II (1967), 205; *NM* 200n.8; G.V.Sumner, *GRBS* 19 (1978), 151. O.Wikander, *o.c.*, 210-211 supposes that the descendants of the proconsular roadbuilder were the only Egnatii to achieve senatorial status during the Republican era; furthermore, that these descendants branched to form the Egnatii Rufi and Egnatii Maximi. If the reconstruction presented here is correct, Wikander's cannot be. I posit that the Rufi were likely descended from the proconsul's brother (not from the proconsul), and that only the Maximi were of the proconsul's line.

<sup>661</sup> Tacit., *Ann.* XV.56, 71.

substance.<sup>662</sup> She is thrice attested epigraphically. From the Via Appia just outside Rome comes a *cippus* to Grapte, handmaiden of Egnatia Maximilla, dedicated by Grapte's husband, C. Egnatius Arogus. Arogus was surely a freedman of either Maximilla herself or a close male relative named C. Egnatius; most likely her father, or, less probably, a brother. From Andros, evidently Maximilla and Gallus' place of exile, comes an inscription honouring him as *patronus* and *euergetes* and her as *euergetes*; another indicator of the high social standing of Maximilla as well as her husband. Clearly their benefactions to the island (although not necessarily their commemoration) belong to the interval between their expulsion from Rome and Nero's confiscation of their wealth. Indeed the good relationship they enjoyed with the islanders may have been instrumental in the confiscation of their assets, initially untouched. Lastly the funerary monument to P. Glitius L.f. Gallus, found at Falerii, describes his career and shows that his wife, "*Maximila Agnatia*" as she appears the monument, outlived him. Its find-spot indicates that the two were eventually rehabilitated.<sup>663</sup> Certainly Galba ordered the recall of all of senatorial rank exiled under Nero, and in March 69 Otho restored as much of their property as was possible. It is difficult to envisage two such popular *exules* not being included in these measures. That we find a P. Glitius Gallus, presumably their son, as suffect consul c.79/84 lends support

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<sup>662</sup> E.Groag, 'Egnatia Maximilla(45)', *RE.V2* (1905), 2004 (who has her descended from C.Egnatius Maximus and thus also the *praeteritus*); E.Groag 'P.Glitius Gallus(2)', *RE S.III* (1918), 789-790; S.J.De Laet, *o.c.*, no.1413; O.Wikander, *o.c.*, 210; *PIR*<sup>2</sup> III.75 no.40.

<sup>663</sup> *CIL* VI.9540 (=ILS 7397) (Via Appia, Rome); *IG XII.5.757* (Andros); *CIL* XI.3097 (Falerii); E.Groag, 'Egnatia Maximilla(45)', *RE.V2* (1905), 2004; E.Groag, 'P.Glitius Gallus(2)', *RE S.III* (1918), 789-790; J.Nicols, 'Patrons of Greek cities in the early Principate', *ZPE* 80 (1990), 94; C.Eilers, *Roman Patrons of Greek Cities* (Oxford, 2002), 208; *PIR*<sup>2</sup> III.75 no.40. Cf J.Nicols, '*Patrona duitatis*: gender and civic patronage (1)' in C.Deroux (ed.), *Studies in Latin Literature and Roman History V*. Collection Latomus 206 (Brussels, 1989), 117-142.

to the conclusion they were restored.<sup>664</sup> The illustrious Q. Glitius P.f. Atilius Agricola (*cos.suff.* 97; *cos.II suff.* 103; *praef.urb.* 103/117) may be considered their grandson, possibly via adoption.<sup>665</sup>

Note should be drawn to an inscription, from Rome and dated to about the end of the Republican era, to an “*Egnatia C.f. Maxuma*”.<sup>666</sup> The archaized spelling of the honorand’s *cognomen* is similar to that adopted by the Republican *monetalis*, and from this and her filiation it is very reasonable to posit Maxsumus and Maxuma as father and daughter.<sup>667</sup> Maxuma and Maximilla should not be considered direct linked: *nomina* tended not to be passed on by females to their descendants. A brother of Maxuma, however, provides us with the required link between the moneyer and Maximilla. Two generations between this putative brother and the Neronian *exul* may be comfortably assumed: the first, *fl. c.*5; the second, *fl. c.*AD 30/35 and containing Maximilla’s father, himself probably named C. Egnatius, as we have seen from the Grapte inscription. These datings, the latter particularly, fit with Maximilla’s own *floruit*. Maximilla we may thus place in the fifth generation following the *praeteritus*. A proposed stemma is presented:

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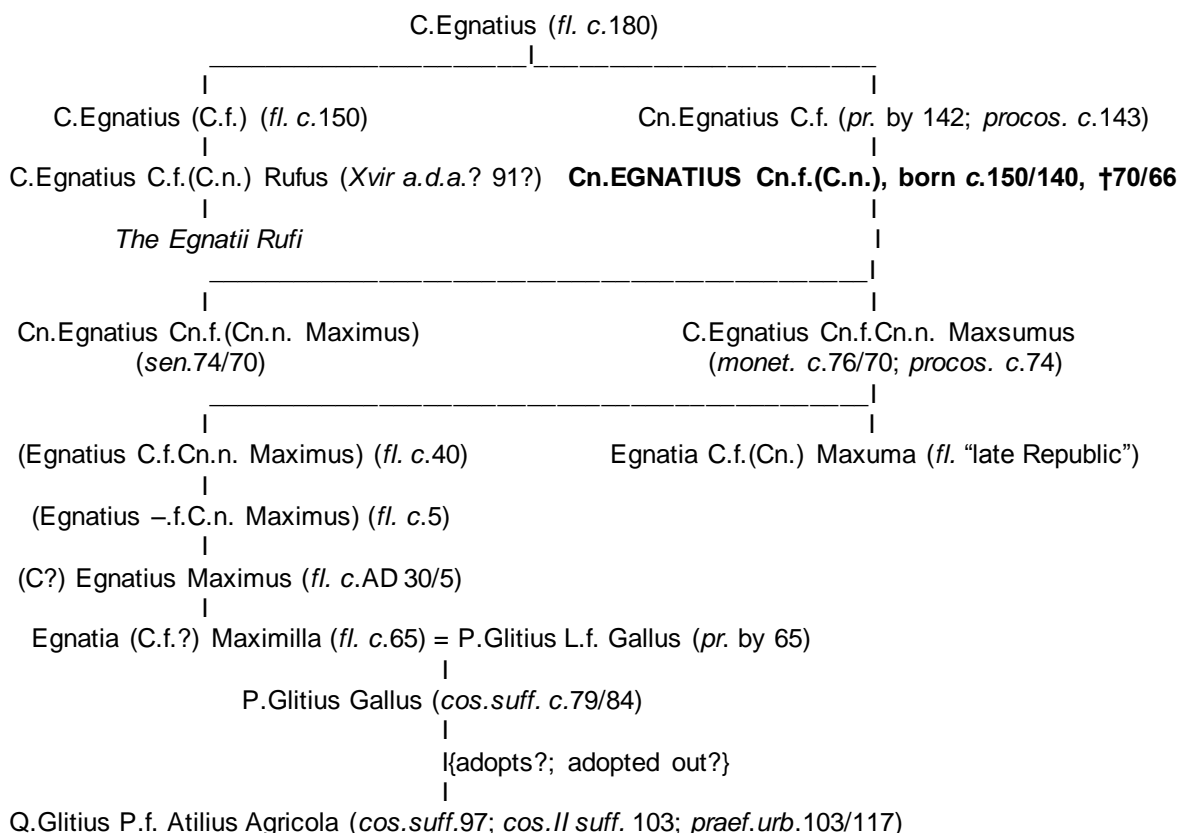
<sup>664</sup> Tacit., *Hist.* I.90; Plut., *Otho* 1.2-3; E.Groag, ‘P.Glitius Gallus (3)’, *RE* S.III (1918), 790; B.Rémy, ‘La carrière de P.Calvisius Russo Iulius Frontinus, gouverneur de Cappadoce-Galatie: a propos de l’inscription MAMA, VII, 193’, *MEFRA* 95 (1983), 173; *PIR*<sup>2</sup>, III.75 no.40.

<sup>665</sup> E.Koestermann, *Cornelius Tacitus Annalen: Band IV, Buch 14-16* (Heidelberg, 1968), 323 has him as the exiles’ son, without noting the interim generation.

<sup>666</sup> *CIL* VI.17121 (Rome).

<sup>667</sup> O.Wikander, *o.c.*, 209 notes the similarity of names but does not firmly link them. Not listed in the *RE*, she is no.51 in Wikander’s listing.

**Proposed stemma of the Egnatii Maximi**



**19.**

**Ti. (Albius?) Gutta (Gutta 1) (sen. 74/70, 66; pr. by 55?);  
Expelled, 70: Cn. Cornelius Lentulus Clodianus & L. Gellius Publicola**

**A.**

T.19A-B.

Described by Cicero as one of the “worthless and venal jurors” (*leves ac nummarai iudices*) of the trial of Stat. Albius Oppianicus (in 74), Gutta was, sometime between it and the murder trial of *eques* A. Cluentius Habitus (in 66), successfully prosecuted for having



accepted bribe-money at the former.<sup>668</sup> He also avers that Gutta was convicted *de ambitu*.<sup>669</sup> It has been assumed that these statements relate to the same trial, and that Gutta was prosecuted under a *lex de ambitu* for his judicial misbehaviour.<sup>670</sup> The assumption misses a legal point. Cicero further relates that at some time between his expulsion and Cluentius's trial, Gutta had restored himself to senatorial dignity. This being so, Gutta's trial for judicial bribery cannot have been brought under *ambitus* legislation: *ambitus* laws at the time disqualified those found guilty from competing for senatorial office, either at all or within 10 years of conviction.<sup>671</sup> If tried *de ambitu* following the trial of Oppianicus, Gutta cannot have competed for a senatorial magistracy between his expulsion and the trial of Cluentius. Bifurcation is necessary: a trial and prosecution *de ambitu* no later than 76, and a trial and prosecution for judicial misbehaviour not before 74.

## B.

As mentioned, Cicero reports that by the time of Cluentius' trial, Gutta had regained his place in the Senate; therefore, as there had been no *lectio* in the interim, Gutta had become an acting-senator. As with M'. Aquillius, who was also expelled in 70 and restored by 66, Gutta must have held his qualifying office of state in 69, 68, or 67; the former being least likely, as it necessitates election in late 70. Irrespective the fact that we do not know when in that year the *lectio* was performed (it might have been after the elections), it is hard to contemplate even an exceptionally popular politician, as the rapidly-restored Gutta

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<sup>668</sup> Cic., *Cluent.* 26.71, 28.75, 29.78-79, 45.127; Quintil., *Inst. Orat.* V.10.108; *LGRR* 527, 532 (giving 69/66); *TLRR* no.161 (giving 74/70).

<sup>669</sup> Cic., *Cluent.* 36.98.

<sup>670</sup> *LGRR* 527, 532; *TLRR* no.161 (*lex Cornelia de ambitu*).

<sup>671</sup> The *lex Calpurnia de ambitu*, passed late in 67 superceding either the *lex Cornelia de ambitu* or the *lex Baebia-Cornelia de ambitu* (Cic., *Muren.* 46-47; *Ascon.*, *Corn.* 69.9-13 (Clark); Dio, XXXVI.38.1; *Schol. Bob.*, *Pro Sulla* 78 (Stangl)).

evidently was, managing to launch and oversee an electoral campaign so soon after his expulsion.

From a letter from Cicero to his brother, Quintus, dated November 54:

Now about Milo: Pompey does nothing to help him and everything to help Gutta [*et omnia Guttae*]. He says that he will see to it that Caesar throws his weight that way.<sup>672</sup>

The context of the passage is a discussion on the preparations for the consular campaign of 53, in which Cicero's friend, Milo, was planning to compete. Pompey was evidently favouring Gutta over Milo and was threatening that he would persuade Caesar to throw his support behind Gutta as well. As the names of those who did finally compete are known – Milo, P. Plautius Hypsaeus (*pr. c.55*), and Q. Metellus Pius Scipio Nasica (*cos. 52*) – questions arise: who was Gutta and what happened to him? Modern opinion is divided regarding the identity and personal history of this candidate, with some preferring to see 'Gutta' as a corrupted form of 'Cotta', 'Cato', or 'Otho' (hence possibly an early contender ultimately never offered his candidacy); others to consider it as a Ciceronian codename for one of the other known candidates (thus either Scipio or Hypsaeus); others still prefer to leave the name unamended, at the same time making Gutta praetor by 55. Those accepting the name as valid may or may not identify him with the restored *praeteritus*.<sup>673</sup> At

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<sup>672</sup> Cic., *QF* 26.6<sup>SB</sup>.

<sup>673</sup> L.-A.Constans, *Cicéron: Correspondance, Tome 3* (Paris, 1936), 257; *MRR* II.215-216, 491, 571; III.99; D.R.Shackleton Bailey, 'Emendations of Cicero, *Ad Quintum Fratrem* and *Ad Brutum*', *PCPhS* n.s.7 (1961), 3; T.P.Wiseman, 'Some Republican senators and their tribes', *CQ* n.s.14 (1964), 127; T.P.Wiseman, 'The ambitions of Quintus Cicero', *JRS* 56 (1966), 113; J.Linderski, 'Three trials in 54 BC: Sufenas, Cato, Procius and Cicero, *Ad Atticum* 4.15.4' in *Studi in Onore di Edoardo Volterra, Vol.II* (Milan, 1971), 281-302; *NM* nos.199, 537; *LGR* 150n.123, 175, 512, 521; T.P.Wiseman, [Review D.R.Shackleton Bailey, *Two Studies in Roman Nomenclature* 1st edition. American Classical Studies 3 (New York, 1976), *CR* n.s.29 (1979), 180;

first glance the suggestion that 'Gutta' should be amended to 'Cotta', 'Cato', or 'Otho' seems plausible, and M. Aurelius Cotta (*pr. c.55*) and C. Porcius Cato (*tr.pl. 56; pr. 55*) are especially suitable candidates to fit the bill. However, why any of these *cognomina*, familiar enough for any copyist, should have been corrupted to the obscure, though nonetheless valid, 'Gutta', remains a hurdle that has not been addressed by any of the advocates of the suggestion. The orthographic principle of *lectio difficilior potior* applies. Hypsaeus and Scipio were broadly Pompeian in their allegiance and may well have expected and received support for their respective candidacies from that quarter. This, coupled with Cicero's occasional habit of assigning codenames to those about whom he was writing (especially if the topic was sensitive or he wished to write of a person in a pejorative manner or for humorous effect), makes it possible that 'Gutta' ('drop'/'gout') refers either to Scipio or Hypsaeus. Hypotheses based upon codenames are hard to prove or disprove, and whereas the names of this pair appear frequently in the Ciceronian epistolary corpus, this putative codename appears only in this instance. If 'Gutta' was a codenamee, it was never used again.<sup>674</sup> Moreover it is evident that 'Gutta' was an individual whom Caesar as well as Pompey may have supported with relative comfort. While the nature of Hypsaeus' relationship with Caesar is not known, history would soon show that Scipio was probably not the type who would have easily gained (or enjoyed) Caesarian favour. These

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D.R.Shackleton Bailey, *Cicero: Epistulae ad Quintem Fratrem et M.Brutum* (Cambridge, 1980), 223; D.R.Shackleton Bailey, *Two Studies*<sup>2</sup>, 27-28; C.F.Konrad & F.X.Ryan, 'Notes on Roman also-rans' in J.Linderski (ed.), *Imperium Sine Fine*, 106; T.C.Brennan, *Praetorship*, II.497-498, 916. See also D.R.Shackleton Bailey's note (pp.192-193) his 2002 LCL edition of Cicero's letters to Quintus. Cf Cic., QF 24.1<sup>SB</sup>. Gutta is absent from T.R.S.Broughton, *Candidates Defeated* (cf Broughton's discussions on the other candidates of 53, at 22-23, 29).

<sup>674</sup> Scipio mentioned by name: Cic., *Att.* 10.3<sup>SB</sup> (July 65); QF 24.5<sup>SB</sup> (October 54); Caelius Rufus *ap.* Cic., *Fam.* 82.5, 84.5-6, 91.2<sup>SB</sup> (September 51, October 51, April 50, respectively); Hypsaeus: Cic., *Att.* 53.3<sup>SB</sup> (May 58); *Fam.* 12.3<sup>SB</sup> (January 56). Cicero using codenames: Cic., *Att.* 29.1, 30.2, 34.1, 36.2, 37.1, 3, 40.5, 42.5, 43.2-3<sup>SB</sup>.

objections count against 'Gutta' being a codename or corruption, and towards it being a proper name; a *praetorius* whose nascent plan to run for the consulship of 52 was in November 54 finding favour with Pompey. If so we can only conjecture why he never followed through with the enterprise, but the abandonment of electoral plans by individuals was no less unknown in Republican Rome than in any other state in which popular elections are held and the reasons for such abandonments are multiple.

Accepting Gutta the *praetorius* as an historical personage, parsimony, chronology, and the rareness of the *cognomen* suggest he and the rapidly-restored *praeteritus* Ti. Gutta are identical. It is feasible that his praetorship was the office which re-qualified him for a place within the Senate, although other routes are perhaps more possible.

### C.

One possible antecedent of Ti. Gutta may be conjectured; from him, descendants also. Appian records that in 82, during the civil war between Sulla and Marius the younger, a "Capuan Gutta" (Καπυαῖον Γοῦτταν) was one of the Italic (Sabellian) commanders who attempted to raise the Sullan siege of Praeneste and hence liberate young Marius from within. Accompanying Gutta were the Sabellian commanders Pontius Telesinus of Samnium, M. Lamponius of Lucania, and a force of 70,000.<sup>675</sup> Although the titles of the three commanders are not here made explicit by the historian, elsewhere he repeatedly refers to the latter two as στρατηγói. The term, which Greek authors usually use to describe Roman *praetores* and Italic *meddices*, is employed by Appian in a rather more loosely: to describe any individual in command of a body of troops, irrespective of his

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<sup>675</sup> App., I.10.90.

rank.<sup>676</sup> However other sources attest to Pontius and Lamponius being *meddices*, and it seems that Gutta was their equal (*i.e.*, that Appian, in describing Gutta as *strategos*, employed the term in its usual sense; that Gutta too was *meddix*).<sup>677</sup> Be this as it may, it remains evident that Gutta was the commander of a significant contingent. The attempt by the three to lift the siege failed, and Gutta the Capuan is not explicitly mentioned again by the historian. We shall return to this commander shortly.

Two inscriptions from Pisa, from AD 2 and AD 4, attest to an A. Albius A.f. Gutta as one of the town's *decuriones*.<sup>678</sup> The *floruit* of his father may be assumed as c.30. The decurion sparks interest for two reasons: first, because he provides one of the few epigraphically-attested examples of the *cognomen* Gutta;<sup>679</sup> second, because he provides the only instance during the Republic or Principate where the *cognomen* is firmly linked to a *nomen gentilicium*.<sup>680</sup> Might the *praeteritus* also have been of the Albi? Evidence for the conjecture finds support in Appian, who records a “*strategos Albinus*” (*στρατηγός... Αλβινός*) who, as commander of Italic troops, fell at the Battle of the Colline Gate, in November 82. The geographic origin of the commander is not related by the historian, but he is mentioned in the same breath as two fellow *strategoí* whose unfortunate fates are recounted with his – Pontius Telesinus and M. Lamponius.<sup>681</sup> Previous to his demise *Αλβινός* is mentioned nowhere else in Appian's work, however the raising of his name

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<sup>676</sup> T.J.Luce, ‘Appian's magisterial terminology’, *CP* 56 (1961), 21-24; H.J.Mason, *Greek Terms for Roman Institutions: A Lexicon and Analysis*. American Studies in Papyrology 13 (Toronto, 1974), 86-87.

<sup>677</sup> Either *meddix Campanus* or *Capuanus*; both titles are attested: E.T.Salmon, *Samnium and the Samnites* (Cambridge, 1967), 86.

<sup>678</sup> *CIL* XI.1.1420-1421 (= *ILS* 139-140) (Pisa).

<sup>679</sup> Apart from the Pisan inscriptions, see also *CIL* IV.1093, 3539 (Pompeii); VI.10047 (= *ILS* 5288) (Rome).

<sup>680</sup> The noted Hadrianic charioteer, P.Aelius Gutta Calpurnianus (*CIL* VI.10047 = *ILS* 5288; Rome), can be disregarded.

<sup>681</sup> App., I.10.93 as well as the Marians C.Carrinas and Marcius Censorinus.

comes only three chapters after the historian's account of the failed attempt of Gutta, Pontius, and Lamponius to liberate Praeneste. While Appian does not generally refer to one person under two names, several factors – the textual and chronological proximity of Gutta and *Ἀλβινος*, that both are mentioned only once and then only in conjunction with Pontius and Lamponius, that both are commanders of large contingents, and that *Ἀλβινος* is explicitly termed a *στρατηγός* while Gutta appears of equal rank – when viewed with the Pisan inscriptions suggest that while Appian's text ostensibly contains two Italic commanders, Gutta of Capua and *στρατηγός Ἀλβινος*, what we actually have is one: Albius Gutta, *meddix Campanus/Capuanus*.<sup>682</sup> In contraposition it has been widely suggested that *Ἀλβινος* might have been a true Albinus; necessarily, a Postumius Albinus, as (disregarding Brutus Albinus, the *liberator*) the *cognomen* is attested only among the Postumii during the Republican period.<sup>683</sup> But *Ἀλβινος* as a Postumius Albinus seems unlikely. The Postumii Albini had fought and died against the Italic confederation during the Social War. One, the consul of 99, was murdered by his own troops in 89 while *legatus* under Sulla.<sup>684</sup> Another was killed by the Samnites at Nola in 90, the year in which he was

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<sup>682</sup> F.Münzer, 'Gutta(1)', *RE.VII*<sub>2</sub> (1912), 1952. Contrast with E.T.Salmon, *Samnium*, 385 and *NM*234 no.199 (cf T.P.Wiseman, *CQ* n.s.14 (1964), 127), who find it difficult to believe that the two might be identical. E.Gabba, *Appiani Bellorum Civilium Liber Primus* 2nd edition (Florence, 1967), 249n.431, 449, rejects the possibility that they are the same.

<sup>683</sup> Identified as either A.Postumius Sp.f. Albinus(35) (*monet*.92/89) or his son A.Postumius Albinus(36) (*monet*.82/79; in connection with a C.Marius C.f. Capito): Grueber, I.352-353; II.309-311; Sydenham, 87-88, 120; F.Münzer, 'A.Postumius Albinus(35, 36)', *RE.XXII*<sub>1</sub> (1953), 910; E.Gabba, *Bell. Civ. Liber I*<sup>2</sup>, 249n.431, 449; R.J.Rowland, *TAPhA* 97 (1966), 414; E.T.Salmon, *Samnium*, 385n.5; T.J.Luce, 'Political propaganda on Roman Republican coins: circa 92-82 BC', *AJA* 72 (1968), 28-30, 33; *RRC*, I.335; J.I.Combes-Dounous *et al.*, *Appien: Les Guerres Civiles à Rome* (Paris, 1993), 196n.43.

<sup>684</sup> Livy, *Per.* 75; V.M., IX.8.3; Plut., *Sulla* 6.9; Polyæn., VIII.9.1; Oros., V.18.22. There is no reason to assume he was murdered on the command of Sulla, nonetheless R.M.Ogilvie, *A Commentary on Livy, Books 1-5* (Oxford, 1965), 10 calls him a Marian.

praetor.<sup>685</sup> Nor were anti-Italian sentiments displayed by the family only during the Social War: in 173, the arrogant and insulting attitude of consul L. Postumius Albinus against the Praenestines moved them to outrage.<sup>686</sup> Such a remarkable *volte face* in the historic sensibilities of one of Rome's more prominent patrician *gentes* would not have been passed over in silence by the sources, Appian included, especially considering the supposed cause of the putative defection of the *gens* from the Roman side: that the murder of the consul's legate, unavenged by Sulla, caused them to side with the *Mariani* and rebel Italians. A mundane explanation for Appian's splitting of one Italic commander into two is not difficult to conjure: utilising two different sources for his accounts of the Siege of Praeneste and the Battle of the Colline Gate, the first source identifying the commander of the Campanian contingent only as 'Gutta', the second identifying the leader as only as 'Albius' (possibly already corrupted to the more familiar 'Albinus'), Appian synthesised the accounts without realising that in doing so he had mistakenly created two personages from one.

A certain L. (or A.) Cluentius is recorded as commander (though unattested, presumably as *meddix*) of a large Campanian/Samnite contingent during the Social War. Operating in the vicinity of Pompeii and Nola, and with enough influence to enable him to call upon and receive the rapid support of "Gallic" reinforcements, he fell in 89 fighting forces under the command of Sulla.<sup>687</sup> Assuming that the Campanians of the 80s adhered to normal procedure and chose their *meddices* from within their own local aristocracy raises the possibility that there existed an intertwining nexus of Cluentii and Albii Oppianici

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<sup>685</sup> Livy, *Per.* 73; App., I.5.42. L.Postumius, accepting him an 'Albinus'.

<sup>686</sup> Livy, XLII.1.7-12.

<sup>687</sup> App., I.6.50 ("*L.Cluentius*"; giving that he lost >23,000 in the battle); Eutrop., V.3 ("*A.Cluentius*"). Oros., V.18.23 ("*Iuventius*"). On Cluentius as a Campanian/Samnite *meddix*: E.T.Salmon, 'Notes on the Social War', *TAPhA* 89 (1958), 175-176; E.T.Salmon, *Samnium*, 366-367; A.Keaveney, *Rome and the Unification of Italy* 2nd edition (Bristol, 2005), 217.

far more extensive (temporally, geographically, and socially) than that which springs from the pages of the *Pro Cluentio*.<sup>688</sup> Regarding the Larinate (hence Sabellian Fretani) Cluentii and Albii Oppianici: note that both families were connected by marriage to the Auri Melini, an equestrian family that had also sided with the rebel Italians and in 89 had one of their scions captured at Asculum.<sup>689</sup> That Oppianicus the younger had the means to prosecute Cluentius at Rome, and that Cluentius had the means to engage the services of Cicero in his defence, illustrates that both belonged to families that were relatively prominent at the time. The defendant and prosecutor were both of equestrian status. Moreover that Cluentius the *meddix* could in 89 call upon and receive the rapid support of “Gallic” reinforcements indicates a strong Ligurian and/or Cisalpine connection, and we view this alongside the later presence of magisterial Albii Guttae in the far north of the Italian peninsula. The north Italian connection of the nexus of the Albii, Cluentii, and Auri Melini may be strengthened: the *equus* T. Accius Pisauensis, the younger Oppianicus’ partner in prosecuting Cluentius, was, as his toponym suggests, from a family centred on the Italian-Cisalpine border. Further Albii appear to have originated from or been domiciled in Latium during the second and first centuries. Two impacted upon politics: the Sabine, P. Albius P.f. *Qui*. (*pr.* by 129), and Albius (*q.*? 120), whose geographic origin is unknown.<sup>690</sup>

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<sup>688</sup> F.Münzer, ‘Cluentius(1)’, *RE*.IV<sub>1</sub> (1900), 111 suggests a familial relationship between the *meddix* Cluentius and the Cluentii of Larinum. E.T.Salmon, *TAPhA* 89 (1958), 175-176 notes and rejects this.

<sup>689</sup> Cic., *Cluent.* 7.21; *NM* 64n.1. For the interconnections the Cluentii, Albii Oppianici, and Auri Melini of Larinum, see H.G.Hodge’s stemmata on pp.214-215 of his 1927 LCL edition of *Pro Cluentio*.

<sup>690</sup> L.R.Taylor, *VDRR*, 188; *NM* 210 nos.14-15 (*cf* no.352); *MRR* III.14. That ‘Albius’, a rare name, was also the *nomen gentilicium* of Oppianicus, the defendant whom the *praeteritus* was allegedly bribed to convict, seems a remarkable coincidence. If Ti.Gutta was a direct ascendant or indirect collateral of the Pisan, the former may also have shared some bond of kinship with the equestrian defendant Oppianicus – and hence also the equestrian prosecutor, Cluentius – that has, for some reason, not been transmitted in Cicero’s *Pro Cluentio*. Perhaps Cicero thought that drawing attention to a familial relationship between the corrupt juror and his client



Irrespective of the geographic distribution of the *nomen* 'Albius', the rarity of 'Gutta', found only at Campania (Capua and Pompeii), Rome, and Pisa indicates a familial link between the Campanian *meddix*, the *praeteritus* (and *praetorius*), and the Pisan decurion.<sup>691</sup> However, the degree of their relatedness is impossible to discern with the available evidence and any proposed stemma would be speculative and fragmentary (see below).<sup>692</sup> Regardless some loose assumptions might be posited. Gutta the Capuan, it has been argued, died at the Colline Gate in November 82. While it is feasible that Ti. Gutta was his son, the chronology of this conjecture is tight and it seems unlikely that a noted Italian rebel would produce a Roman senator for a son. More probably the latter was a younger member of a cognate (and loyal) line.<sup>693</sup> The geographic separation between the Capuan rebel and the Pisan decurion (and his father) need not be an impediment to considering them related. Furthermore, as argued, the nexus which included the Cluentii and Albi seems to have included a north Italian component since at least the time of the Social War. It does not, of course, mean that the Pisans were directly descended from the rebel (although they might have been), but again a cognate relationship can be considered more likely.<sup>694</sup>

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would be detrimental to his defence of the latter. C.Nicolet, *L'Ordre Equestre*, II.755-756 lists Oppianicus as "Abbius", although his rationale seems erroneous. 'Albius' is followed by most.

<sup>691</sup> E.T.Salmon, *Samnium*, 385n.5 erroneously attributes Ti.Gutta to Larinum.

<sup>692</sup> Hence also F.Münzer, 'Gutta(1)', *RE.VII*<sub>2</sub> (1912), 1952.

<sup>693</sup> T.P.Wiseman, *CQ* n.s.14 (1964), 127; *NM* no.199 does not believe that Appian's *στρατηγός Αλβινός* is to be identified with his *Γοῦττα*, so considers it possible that the Capuan and the *praeteritus* are one. E.Badian, *Foreign Clientelae*, 247; F.Santangelo, *o.c.*, 18 assume Ti.Gutta an *adlectus* of Sulla. C.Nicolet, *L'Ordre Équestre*, I.586 that he enjoyed no such privilege.

<sup>694</sup> *NM* 234 no.199.

### Proposed stemma of the Albii Guttae

Albius Gutta (*meddix Campanus* 82, with N. Italian connections) †Nov 82

.....

Ti. (ALBIUS?) GUTTA

.....

A. Albius (Gutta?) (*fl.* c.30)

|

A. Albius A.f. Gutta (*Pisan decurio* AD 2/4)

20.

P. Popillius (10) (*sen.* 74/70);

Expelled, 70: Cn. Cornelius Lentulus Clodianus & L. Gellius Publicola

A.

T.20.<sup>695</sup>

B.

Following his expulsion, Popillius was allowed by censor Lentulus Clodianus to retain the *ornamenta senatoria* and was exempted from all *ignominia* which would normally have come with his new status. Later still he was tried *de ambitu*, with Clodianus giving testimony on Popillius' behalf (he was ultimately convicted).<sup>696</sup> The fact of the trial illustrates that Popillius tried to be elected to an office of state very soon after his censure – the trial and its associated electoral campaign must have occurred in the interval between

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<sup>695</sup> Cic., *Cluent.* 42.119-120 (=T.15A in Appendix) appears not to relate to Popillius; the reasons for his expulsion were different.

<sup>696</sup> Cic., *Cluent.* 36.98, 37.103; Quintil., *Inst. Orat.* V.10.108; *LGR* 529; *TLRR* no.185.

the *lectio* of 70 and Cicero's mention of it, in 66 (most likely, 69/67).<sup>697</sup> Depending on the date of the trial, Popillius will have been convicted either according to the *lex Cornelia de ambitu* or the *lex Calpurnia de ambitu* (passed late in 67). If the latter, Popillius can never have restored himself to senatorial dignity, as among the punishments of the *lex Calpurnia* was that of permanent disqualification from holding any office. If tried under the *lex Cornelia*, Popillius' conviction will not have carried such a disqualification. Regardless, no subsequent appointments are attested.

### C.

Despite having been numerous in previous centuries, magisterial Popillii were a rarer breed during the first century. Between the Social War and the downfall of the Republic, only five in addition to the *praeteritus* are definitely recorded: C. Popillius (*praef.class.* 88), P. Popillius Laenas (*tr.pl.* 86), C. Popillius (*tr.mil.* 72/71; *tr.pl.* 68?), Popillius Laenas (*sen.* 44), and C. Popillius Laenas (*tr.mil.* 43).<sup>698</sup> The *praeteritus* cannot be placed in relation to any of them nor with any of the more renowned Popillii of the previous centuries. As with many of the Republican Marii and Antonii (for examples), many Republican Popillii seem genuinely not to have employed *cognomina*, although doubtless many did but the names have not been preserved. We do not know to which category P. Popillius belonged. If he did possess a *cognomen* it was almost certainly 'Laenas', as this is the only *cognomen* recorded among the magisterial Popillii of the Republic.<sup>699</sup> Nicolet assumes him son of a client of the Laenates.<sup>700</sup>

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<sup>697</sup> On the extraordinary severity of *lectio* of 70 as a causative factor in the rise of electoral bribery in the early 60s: Dio, XXXVI.38.1-2 and the discussion in Ch.4, §.V. Of the *praeteriti* of 70, only Popillius is known to have engaged in *ambitus* in the 60s.

<sup>698</sup> *MRR* II.605-606; III.168-169. See also M.Popillius M.f. Laenas (23) (*leg. pro pr.* early first century), C.Popillius (16) (*sen.* by 70), and Popillia (*Vestal.* c.69).

<sup>699</sup> *MRR* II.605-606; III.168-169.

21.  
**M. Valerius M.f. M'.n. Messalla Niger (266)**  
**(q. c.73; pr. 64; cos. 61; cens. 55-54);**  
**Expelled, 70: Cn. Cornelius Lentulus Clodianus & L. Gellius Publicola**

**A.**

T.21.

Two censors named M. Valerius Messalla are known: M. Messalla (*cens.* 154-153) and M. Messalla Niger (*cens.* 55-54). Valerius Maximus' testimonium does not allow us to discern to which he is alluding, although the prevailing (and correct) opinion is that the latter is meant, and that he was expelled during the notoriously severe *lectio* of 70.<sup>701</sup> In the first instance we might assume that Valerius Maximus arranged his account of censured censors in chronological, rather than reverse-chronological, order: hence Geta (*cens.* 108-107) followed by M. Messalla Niger rather than the reverse. Also of note we have Cicero, in his speech of 66 in defence of Cluentius, providing only one example of a *praeteritus* going on to hold the censorship – Geta.<sup>702</sup> The fact strongly indicates that at the time of Cluentius' trial, Geta's was the sole *exemplum* of such a remarkable political turnaround.

The reason for Messalla's expulsion is not known, and our scant knowledge of his career prior to it presents no obvious cause(s) for censure. As a relative of Sulla (the dictator's final wife, and widow, was of the Messallae) and a known beneficiary of the dictator's patronage, it is possible that his expulsion was political rather than based upon any perceived moral questionability.<sup>703</sup>

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<sup>700</sup> C.Nicolet, *L'Ordre Equestre*, I.585.

<sup>701</sup> Willems, I.422 (although *cf* I.417-419); F.Münzer, 'M.Valerius Messalla Niger(266)', *RE.VIII*<sub>1</sub> (1955), 163-164; Suolahti, 478 (*cf* 463); *LGRR* 134; *MRR* III.214 (*cf* II.126-127). Schmähling, 18-19, 93 has the censor of 154-153 as the *praeteritus*.

<sup>702</sup> Cic., *Cluent.* 42.119.

<sup>703</sup> Suolahti, 477-478. See n.707 for the hint of a purely personal rationale.

## B.

Messalla's route back to senatorial status cannot be deduced with certainty, although (as with Geta), Valerius Maximus' account strongly implies that his political recovery was achieved through victory at the ballot-box rather than through any third-party intervention. Successful at the praetorian elections held in late 65 and allotted the urban praetorship, he rehabilitated himself at not more than the fifth or the sixth opportunity following his animadversion, depending on when in 70 he was expelled.<sup>704</sup> This interval does not illustrate a particularly rapid return to grace, especially for one who thereafter enjoyed such a distinguished political career (including a promotion to the consulship that could not have been more rapid), so we might tentatively posit that Messalla may have attained a more junior magistracy prior to his praetorship; attainment of a curule aedileship or a (second) quaestorship in the early 60s may be suggested.

Messalla's continued rise, career, and personal relations subsequent to his praetorship are outlined by Suolahti and expanded upon by Münzer.<sup>705</sup>

## C.

Known descendants are multiple, many distinguished. A son, M. Messalla Corvinus, was ordinary consul in 31, sharing the *fasces* with Octavian. A stepson, the evocatively-named L. Gellius Publicola, was ordinary consul in 36.<sup>706</sup> Two grandsons, half-brothers, also are known to have attained the consulship: M. Messalla Messallinus and M. Aurelius Cotta Maximus, sons of Corvinus from different mothers. Further consular descendants are detected in the third and fourth generations following the *praeteritus*. In the fourth

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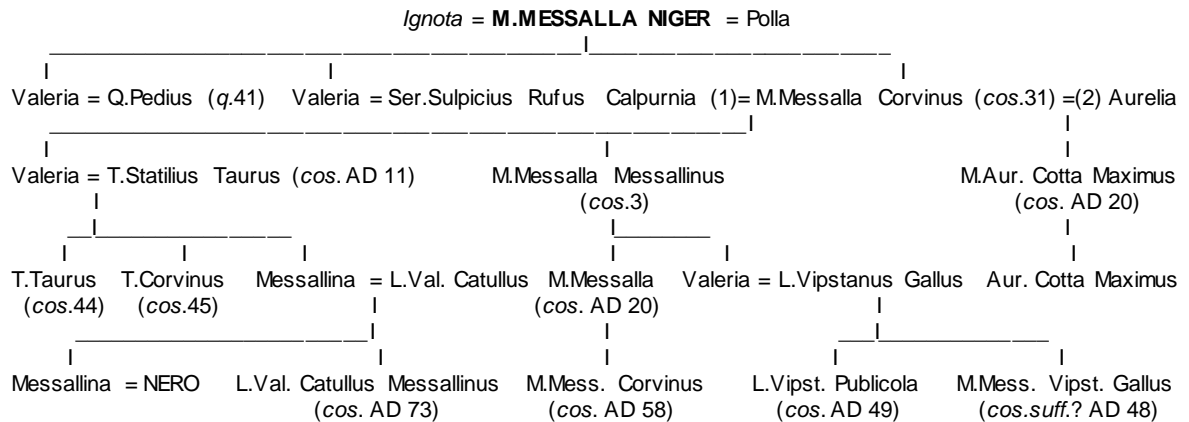
<sup>704</sup> On Messalla's praetorship, *MRR* II.162; III.214. Cf F.Münzer, 'M.Valerius Messalla Niger(266)', *RE.VIII*<sub>1</sub> (1955), 164; Suolahti, 478.

<sup>705</sup> F.Münzer, 'M.Valerius Messalla Niger(266)', *RE.VIII*<sub>1</sub> (1955), 162-165; Suolahti, 478-479.

<sup>706</sup> On him, see following note.

generation also, an empress: Statilia Messallina, Nero's third wife. A stemma, based on that of Syme, is presented:<sup>707</sup>

**Descendants of M.Messalla Niger (excluding the line of stepson L.Gellius Publicola (cos.36))**



<sup>707</sup> R.Syme, *AA*, app.IX (preferred over the reconstruction offered by R.Hanslik, [Stemma of the Valerii Messallae], *RE*.VIII<sub>1</sub> (1955), 143-146). Cf Suolahti, 480. The *praeteritus*' son, M.Corvinus (cos.31), had as stepbrother, L.Gellius Publicola (cos.36), and in 43 both could call a certain Polla mother (Livy, *Per.* 122; Hor., *Sat.* I.10.28, 85; Dio, XLVII.24.3-6). Furthermore V.M., V.9.1 tells us that Gellius had a stepmother, but as he does not name her we cannot tell whether she was Polla or someone else. The nature of the evidence thus leaves us unable to discern exactly how the Messallae and Gellii Publicolae were connected – who was married to whom and when, and whether adoption was involved: F.Münzer, 'L.Gellius Poplicola(18)', *RE*.VII<sub>1</sub> (1910), 1003-1005; R.Syme, *RR*, 269n.4; R.Hanslik, 'M.Valerius Messalla Corvinus(262)', *RE*.VIII<sub>1</sub> (1955), 158. Despite this the fact remains that by 43 the families were connected. This throws up the possibility that some issue particular to this milieu may have precipitated, or contributed to, Niger's expulsion by the elder Publicola.

22.  
**C. Ateius (L.f. Ani) Capito (7, cf 3) (tr.pl. 55; praef. a.d.a. 45-44);  
Expelled, 50: Ap. Claudius Pulcher & L. Calpurnius Piso Caesoninus**

**A.**

T.22.

**B.**

The *praeteritus* is not to be identified with the C. Ateius attested among the *Pompeiani* at Thapsus (April 46) and pardoned by Caesar.<sup>708</sup> This because about this time (in fact, in early 46 and July 45) Capito's name crops up in two of Cicero's letters, and in both instances he is shown as enjoying friendly relations with the dictator, with whom he shared an historic rapport.<sup>709</sup>

Two later letters, written around July 44, attest to the fact that sometime previously, probably soon upon the cessation of hostilities in 45, Caesar appointed Captio *praefectus agris dandis assignandis*, one of three to find land for the settlement of the dictator's veterans; moreover, that the commission was still in post at the time of composition.<sup>710</sup> The commission seems not to have been senatorial, as its members appear to have been appointed by Caesar from his own officers and connections. It is not known whether Capito regained his senatorial status, but considering his favourable

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<sup>708</sup> [Caesar], *Bell. Afr.* 89. The MSS give his name variously, as "C.*Aeteius*", "Caeteius", or "Ceteius". These are generally amended to "C.*Ateius*" by moderns, probably rightly: 'Ceteius' is not otherwise recorded; 'Aeteius' and 'Caeteius', while attested, are extremely rare. Another possibility, 'Cateius', is attested only once as a *nomen gentilicium*. On the identity of this individual: A.Cristofori, 'Note prosopografiche su personaggi di età tardo repubblicana', *ZPE* 90 (1992), 142-144.

<sup>709</sup> Cic., *Fam.* 282.1-8<sup>SB</sup>; *Att.* 330.1<sup>SB</sup>; A.Cristofori, *o.c.*, 143.

<sup>710</sup> Cic., *Att.* 407c.1-4, f.1-2<sup>SB</sup>.

standing with Caesar and the dictator's trust in him, it is more likely than not that Caesar either adlected Capito or appointed him to an office that would give him acting-senator status.<sup>711</sup>

Capito is not definitely heard of after his prefecture. It has been suggested that he might have been one of the victims of the triumvir's proscription, named only as "*Καπίτω*" by Appian. Yet the *cognomen* was relatively common at the time (in the first century being used also by the magisterial Fonteii, Gabinii, Marii, Oppii, Velleii, and Vulteii, and the non-magisterial Sinnii), and even if it could be shown that the *proscriptus* was of the Ateii, there would be little to suggest that he was our man and not a relative. Similar uncertainty surrounds an Antonian officer, Ateius (2), in (promagisterial?) command of troops in Gaul during and the Perusine War (41-40) and shortly thereafter. Thus there is no firm indication of identity or connection between the *praeteritus* and any of the known Ateii or Capitones of the period.<sup>712</sup>

### C.

No offspring are attested. The illustrious juristconsult and religious authority, C. Ateius L.f. L.n. Capito (*cos.suff.* AD 5), was, as Tacitus records in his obituary notice (†AD 22), son of a *praetorius* and grandson of a centurion who served under Sulla.<sup>713</sup> Chronology and

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<sup>711</sup> If the corrupted "*Catelus*", patron of the Caesarian *adlectus* Plaguleius, mentioned at Cic., *Att.* 199.3<sup>SB</sup>, is corrected to "C.Ateius" (over "Catulus", for example), then it could be argued that the *praeteritus* was back in the Senate by May 49: if Plaguleius was allowed into the Senate, why not also his ex-senatorial patron? On "*Catelus*" as possibly the *praeteritus*: E.Klebs, 'C.Ateius Capito(7)', *RE*.II<sub>2</sub> (1896), 1904

<sup>712</sup> App., IV.4.25; V.4.33, 6.50; E.Klebs, 'Ateius(2)', *RE*.II<sub>2</sub> (1896), 1902; *MRR* II.332, 373, 381, 533; III.26; E.Gabba, *Appiani Bellorum Civilium Liber Quintus* (Florence, 1970), 64; *NM* 215 nos.51, 52; F.Hinard, *o.c.*, 446-447; D.Magnino, *o.c.*, 175; A.Cristofori, *o.c.*, 143.

<sup>713</sup> Tacit., *Ann.* III.75. On him: E.Klebs, 'C.Ateius L.f.L.n. Capito(8)', *RE*.II<sub>2</sub> (1896), 1904-1905; S.J.De Laet, *o.c.*, no.57; *PIR*<sup>2</sup> I.260 no.1279.



nomenclature suggest that the jurist's praetorian father may have been L. Ateius L.f. *Ani. Capito* (9), attested in the Senate in 51, possibly also in 54.<sup>714</sup> Whether or not the jurist's father is to be identified with this man specifically, this senator is nonetheless generally (and credibly) regarded as the elder brother of the *praeteritus*.<sup>715</sup>

It has been suggested that the Sullan centurion might be the “*Μάρκος Ατήιος*” (5) whom Plutarch, citing Sulla's *Res Gestae*, reports distinguished himself as the first of Sulla's army over the wall of Athens when that city fell to him. If so, either Plutarch, his source Sulla, or a later editor misrecorded the man's *praenomen*. His rank is not reported, but he was evidently the kind of soldier present in the thick of battle. A centurion accords with such a description, although other possibilities exist.<sup>716</sup> Two inscriptions, of late Republican or early Imperial provenance, record an L. Ateius M.f. Capito (10) as *duumvir quinquennialis* of Castrum Novum, in southern Etruria. His voting-tribe was perhaps *Voltinia*. If so, and if the *praeteritus* was of *Aniensis*, we cannot consider him and the *praeteritus* as anything more than distantly related. It has been posited that the *duumvir* and the jurist's centurion grandfather might be identical, but considering the uncertainty surrounding the *duumvir*'s date, this must remain tentative. Furthermore the suggestion is rendered impossible if the jurist's father was indeed L. Ateius L.f. *Ani. Capito*, as it would

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<sup>714</sup> Cic., *Fam.* 84.5-6<sup>SB</sup>; E.Klebs, ‘C.Ateius L.f.L.n. Capito(8)’, *RE*.II<sub>2</sub> (1896), 1904; E.Klebs, ‘L.Ateius L.f. Capito(9)’, *RE*.II<sub>2</sub> (1896), 1910; R.Syme, ‘Personal names in *Annals* I-VI’, *JRS* 39 (1949), 8; L.R.Taylor, *VDRR*, 194 (revising her view from ‘Trebula Suffenas and the Plautii Silvani’, *MAAR* 24 (1956), 17, 21, 30); *MRR* II.462, 533; III.26 (where the filiation of the *praeteritus* is erroneously given as “C.f.”); M.Torelli, *o.c.*, 69. Cic., *QF* 21.5<sup>SB</sup> (Sept. 54) mentions a “*L.Capito*” and *Att.* 91.4<sup>SB</sup> (Oct. 54), mentions an “*Ateius*”. Either, both, or neither might be the *praeteritus*.

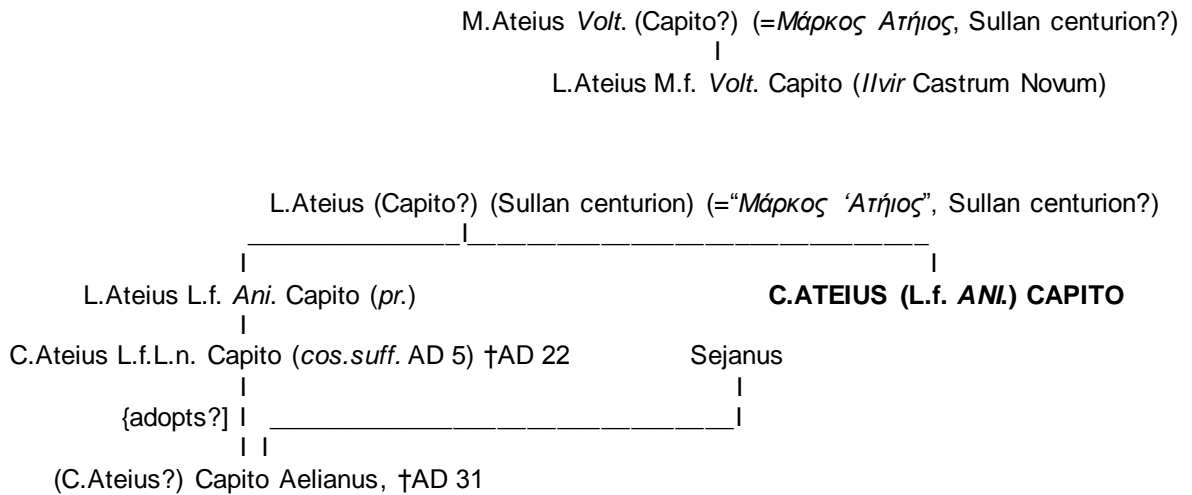
<sup>715</sup> L.R.Taylor, *MAAR* 24 (1956), 30; T.P.Wiseman, ‘The potteries of Vibienus and Rufrenus at Arretium’, *Mnemosyne* IV 16 (1963), 283; *NM*215-216 no.53; M.Torelli, *o.c.* *LGRR* 323 has “brother (or cousin)”.

<sup>716</sup> Sulla, *Res Gestae* fr.12 (Peter) *ap.* Plut., *Sulla* 14.1-2; Klebs, ‘L.Ateius(4)’, *RE*.II<sub>2</sub> (1896), 1903; E.Klebs, ‘M.Ateius(5)’, *RE*.II<sub>2</sub> (1896), 1903; *NM*216.

necessitate assigning his father, the centurion, to the *Anienses* also.<sup>717</sup> Notwithstanding this, if Plutarch/Sulla did not misreport the name of the first man over the wall into Athens, then it remains possible that he and the father of the *duumvir* were the same man.

No natural offspring are attested for the juriconsult, but it has been suggested that he was the adoptive father of Sejanus' natural son, otherwise known only as Capito Aelianus, whose own demise was a result of the downfall of his natural father.<sup>718</sup>

### Proposed stemma of the Ateii Capitones



<sup>717</sup> *CIL* XI.3583-3534 (=ILS 5515-5516) (Castrum Novum); P.Van Rohden, 'L.Ateius M.f. Capito(10)', *RE*.II<sub>2</sub> (1896), 1910; R.Syme, *JRS* 39 (1949), 8; L.R.Taylor, *VDRR*, 194; *NM* 185, 215; M.Torelli, *o.c.*, 69.

<sup>718</sup> G.V.Sumner, *Phoenix* 19 (1965), 137, 140. Cf F.Adams, 'The consular brothers of Sejanus', *AJPh* 76 (1955), 70n.2, who identifies the young man as probably C.Fonteius Capito Aelianus, likely adopted by C.Fonteius Capito (*cos.ord.* AD 12). But Fonteius appears to have had natural progeny. The praetorian "M.Aletus" of Tacit., *Ann.* II.47 is considered by some as a corruption for M.Ateius. On him: P.Van Rohden, 'M.Ateius(6)', *RE*.II<sub>2</sub> (1896), 1903; R.Syme, *JRS* 39 (1949), 8.

23.

**C. Sallustius Crispus (10)**

**(q.? 55; tr.pl. 52; leg. 49; q. or q.II 48?; pr. 46; procos. 45(-44?));  
Expelled, 50: Ap. Claudius Pulcher & L. Calpurnius Piso Caesoninus**

**A.**

T.23A-D.

**B.**

Upon the outbreak of civil war, in 49, Sallust joined Caesar's forces in Illyricum and held the command of a legion, probably as *legatus legionis*. As such he participated in a joint engagement against a Pompeian force, although the Caesarians were defeated.<sup>719</sup> In 47, Sallust, now *praetor designatus*, was charged by Caesar with quelling a nascent mutiny that threatened within legions temporarily stationed in Campania awaiting deployment to Africa. Sallust barely escaped with his life after the situation deteriorated drastically. In early 46, Sallust, as praetor, was dispatched to serve as Caesarian governor of Africa Nova. He opened his command by capturing a Pompeian supply-dump. Around the middle of the year, with Caesar's African campaign successfully concluded, he was left (with *imperium pro consule*) not only as governor of his original province, but also in command of the newly-created province of Numidia. He continued in post until late 45 or early 44.<sup>720</sup> Dio and the pseudo-Cicero who wrote the *Invectiva in Sallustium* agree in alleging that while Sallust commanded in Africa Nova, he enriched himself through an extensive programme of peculation and theft; further, that upon his return to Rome he escaped trial

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<sup>719</sup> Oros., VI.15.8; Schol. Bern., *Lucan BC* IV.433 (Usener). Perhaps also alluded to at [Cic.] *In Sall.* 16.

<sup>720</sup> [Caesar], *Bell. Afr.* 8, 34, 97; [Cic.], *In Sall.* 19; App., II.13.92, 14.100; Dio, XLII.52.2, XLIII.9.2-3. Dio's language is somewhat unclear, but for Sallust as *pr.des.47* and *pr. pro consule* in 46: T.R.S.Broughton, 'More notes on Roman magistrates', *TAPhA* 79 (1948), 66-78

and possible conviction only through Caesar's personal intervention.<sup>721</sup> After Caesar's assassination, Sallust remained aloof from active politics, preferring instead to concentrate on his literary endeavours and cultivating his gardens and wealth. His activities during this period need not be expanded upon here.

From the above, it will be observed that between Caesar's crossing of the Rubicon and the Ides of March, Sallust was among the dictator's most active and trusted lieutenants; in almost continuous employment in one capacity or another and exhibiting a discernable upward trajectory in his career, both in terms of the titles and the responsibilities assigned to him. This raises the question of what service was this loyal, trusted, and busy Caesarian providing in 48, between his legionary command and his election as *praetor designatus*. The issue is unclear. The pseudo-Cicero who wrote the *In Sallustium*, rehearsing Sallust's early *cursus*, reports that before his expulsion he began his career by serving as quaestor; moreover, that he was granted a second quaestorship by Caesar (the author does not give a year) and that it was through this office that he regained his senatorial status.<sup>722</sup> The author continues: after Sallust's second quaestorship, he obtained the office of praetor and was appointed governor of Africa Nova, during which time he committed acts of embezzlement and theft.<sup>723</sup> This account of Sallust's praetorship, which we know was in 46, accords with that of Dio. However Dio's description of Sallust's career in the close aftermath of his expulsion differs from that presented by the pseudo-Cicero in two ways. The first difference is that Dio does not mention Sallust's second quaestorship (or indeed his first). This in itself is not a major issue, as many quaestorships passed unremarked upon by the sources. The second

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<sup>721</sup> [Cic.], *In Sall.* 19; Dio XLIII.9.2-3. Cf Dio, XLIII.47.4.

<sup>722</sup> [Cic.], *In Sall.* 15-17, 21. It is generally acknowledged that Sallust was born in 86, consequently those who attach a date to his 'first' quaestorship generally give it as 55 or thereabouts.

<sup>723</sup> *Ibid.*, 19. Supposedly a continuation of his rapacious behaviour during his dual quaestorships (15-17).

difference is more important. Dio explicitly states that it was Sallust's attainment of the praetorship which rehabilitated him with senatorial dignity. The natural consequence of this statement is that Sallust, according to Dio, did not hold any position that qualified him for the Senate between his expulsion and his praetorship; an interim quaestorship is precluded. As a consequence of this conflict between these two testimonies, modern commentators have tended to favour Dio's, rejecting outright the contention that Sallust was made quaestor by Caesar. Furthermore, most have questioned – or rejected – whether Sallust was quaestor before his censure.<sup>724</sup> This seems peremptory. True, the *In Sallustium* is an unsubtle and sustained attack on the character of Sallust, full of hyperbolic language and assertions, but then again many of the authentic speeches of Cicero may be similarly-described and it is *non sequitur* to assume energetic character-assassinations as devoid of valid historical information. By his own admission the historian led a dissolute and reckless life as a young man, easily swayed as he was by the malign influences of less reputable men.<sup>725</sup> Nor was he alone in highlighting his questionable

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<sup>724</sup> R.Syme, *RR*, 248; R.Syme, *Sallust*, (Berkeley, 1964), 28-29, 36; T.R.S.Broughton, *TAPhA* 79 (1948), 77n.2; *MRR* II.217, 613; III.183; W.Allen, 'Sallust's political career', *SPh* 51 (1954), 1-14; D.C.Earl, [Review of R.Syme, *Sallust*], *JRS* 55 (1965), 237; D.C.Earl, *Historia* 15 (1966), 306; M.Chambers, [Review of R.Syme, *Sallust*], *CP* 61 (1966), 274; G.V.Sumner, [Review of R.Syme, *Sallust*], *Phoenix* 19 (1965), 240-241; G.V.Sumner, 'The *lex annalis* under Caesar', *Phoenix* 25 (1971), 259; *NM*258 no.372; *LGR* 189n.94, 517, 530; P.McGushin, *Sallust, the Histories, Vol.1, Books I-II* (Oxford, 1994), 1-2. G.Funaioli, 'C.Sallustius Crispus(10)', *RE*.1A<sub>2</sub> (1920), 1918-1919 accepts both quaestorships, dating the first to 55/54 and the second to 48. Both quaestorships are also accepted by F.Santangelo, 'Authoritative forgeries: late Republican history re-told in pseudo-Sallust', *Histos*6 (2012), 31, 37 (particularly, that the author of the *In Sallustium* had "a good general knowledge of the main stages of Sallust's life and career").

<sup>725</sup> Sall., *BC* 3.3-4.2.

*mores* and behaviour.<sup>726</sup> It must also be remembered that even if it were composed as an exercise in rhetoric and composition, the pseudo-Cicero must have built it upon a foundation of known historical facts about his subject. He cannot have fabricated his account out of nothing, and the insertion of blatant fantasies about Sallust's character and background would negate the purpose of the work – the construction of a plausible prosopopoeia, with 'Sallust' and 'Cicero' as believable actors. Nor is there anything intrinsically outlandish about the assertion that Sallust served as quaestor under Caesar before being entrusted by the dictator to progress to praetor. Dio may have been wrong. Therefore while questions must remain, neither of Sallust's putative quaestorships should be rejected merely on the basis that there are attested solely in the *In Sallustium*. While it has its faults, the work contains too much which accords with other sources for any of its assertions to be dismissed this readily.

### C.

Sallust died, in 35, without natural issue. Still he did adopt, probably through testament, his grandnephew, the grandson of his sister. The young man took the historian's name and eschewed completely that of his birth, thus no trace remains of the identity of his natural father. Famous during the reigns of Augustus and Tiberius, and confidante to both, Tacitus provides him with a gushing obituary.<sup>727</sup> His own adopted son, the natural son of L. Passienus Rufus (*cos.ord.* 4), was the noted C. Sallustius Crispus Passienus (*cos.suff.* AD 27; *cos.II ord.* 44). He would find wives in two imperial princesses: Domitia Lepida the

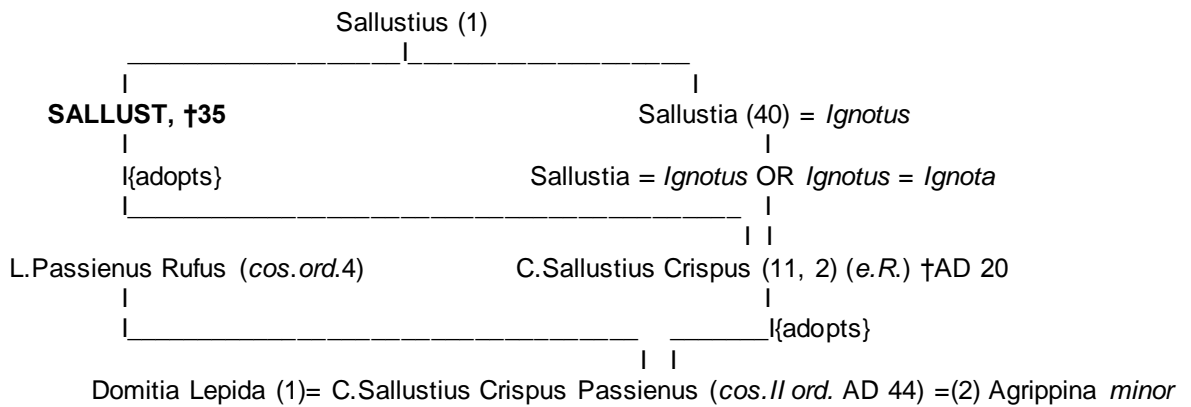
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<sup>726</sup> In addition to those already mentioned: Cn.Pompeius Lenaeus *ap.* Suet., *Gramm.* 15; Hor., *Ser.* I.1.101, 2.47-54; Varro, *Pius aut De Pace* fr.1 (Riese) *ap.* Gell., XVII.18: Ascon., *Vit. Sallusti Crispi* fr.1 (Peter) *ap.* [Acro], *Hor. Ser.* I.2.49; [Acro], *Hor. Ser.* I.1.101; Porphyrio, *Hor. Ser.* I.1.101, 2.49.

<sup>727</sup> Tacit., *Ann.* III.30.

elder (33-41) and Agrippina the younger (41-47).<sup>728</sup> Contemporary and near-contemporary Sallustii, cannot with confidence be ascribed as anything more than distantly related to the historian.<sup>729</sup>

#### Descendants of Sallust



<sup>728</sup> A. Stein, 'C. Sallustius Crispus (11)', *RE.IA<sub>2</sub>* (1920), 1955-1956; R. Hanslik, 'C. Sallustius Crispus Passienus (2)', *RE.XVIII<sub>4</sub>* (1949), 2097; R. Hanslik, 'L. Passienus Rufus (6)', *RE.XVIII<sub>4</sub>* (1949), 2098; R. Syme, *Sallust*, 277-278; R. Syme, *AA*, 119, 159-162, and *passim*. Cf F. Münzer, 'Sallustius (2)', *RE.IA<sub>2</sub>* (1920), 1910; F. Münzer, 'Sallustia (40)', *RE.IA<sub>2</sub>* (1920), 1970.

<sup>729</sup> R. Syme, *Sallust*, 9-12; D. C. Earl, *Historia* 15 (1966), 305 (albeit qualified); F. X. Ryan, 'The quaestor † Canini Salustius', *RhM* 140 (1997), 281-285. Cf F. Münzer, 'Cn. Sallustius (6)', *RE.IA<sub>2</sub>* (1920), 1912-1913; F. Münzer, 'P. Sallustius (7)', *RE.IA<sub>2</sub>* (1920), 1913.

**24.**  
**Ignotus (*tr.pl. ann. incert.*);**  
**Expelled, *ann. incert.*, “Acilius censor”**

&

**25.**  
**M. Lucilius (12) (*tr.pl. ann. incert.*);**  
**Expelled, *ann. incert.*, censors unknown**

**A.**

T.24-25.

These are commonly accepted as linked, a question and a reply pertaining to the same event: the expulsion of a plebeian tribune named M. Lucilius by an otherwise-unknown censor, Acilius.<sup>730</sup> This is not so; they are independent and relate to separate (undated) events. In the first letter the young Caesar has just finished one of his tutor’s assignments: the writing of a *controversia* or *suasoria* based upon an historical incident where “*Acilius censor*” – only one censor – placed the *nota* beside the name of an unnamed plebeian tribune. Marcus has finished his assignment – “*quem scripsi*” – and wants only to know from his tutor the name of the tribune so that can drop it into his text. Marcus’ “*mitte mihi*” is not answered in the following letter, which, although similar in theme, is unrelated to the first. Their proximity in modern collections derives from Fronto’s original editor, who often connected otherwise-unrelated correspondences, written on different occasions, on the basis of their subject matter alone. In this second letter Fronto presents his pupil with a completely fresh subject for a new *controversia* or *suasoria* – a case in which *both* censors

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<sup>730</sup> *MRR* II.470; III.128-129; B.Borghesi, *o.c.*, IV.32-39; C.Cichorius, *Untersuchungen zu Lucilius* (Berlin, 1908), 21-22; F.Münzer, ‘M.Lucilius(12)’, *RE*.XIII<sub>2</sub> (1927), 1638; Schmähling, 97n.233; Suolahti, 645-649; M.Dondin, *o.c.*, 126-144.



expelled a plebeian tribune – together with instructions on how to structure the new assignment.<sup>731</sup>

***Ignotus (tr.pl. ann. incert.).***

No censor named 'Acilius' is known. Thus Marcus Aurelius (or a later copyist) either got the censor's name wrong or the name, as it appears in the manuscripts, is correct but his tenure is unrecorded by other extant sources.

In the event that that name has been misreported or has suffered corruption, which amendments are viable? Orthographically 'Atilius' is the most likely correction, necessitating only the substitution of a 'c' for a 't' – an easily confusion when written in minuscule script. Three censors of that name are known: A. Calatinus (*cens.* 247-246), C. Bulbus (234-233), and M. Regulus (214-213). Another, though orthographically less likely, possibility is that 'Acilius' is a corruption from 'Caecilius' and that one of the five censorial Caecilii (all Metelli) stands behind the problem: Macedonicus (*cens.* 131-130), Balearicus (120-119), Diadematus (115-114), Caprarius (102-101), or Numidicus (102-101). The attraction of this suggestion, with regard to Macedonicus specifically, lies in the fact that he was involved in a very famous and dramatic case involving the expulsion of a plebeian tribune: Atinius. Such an extraordinary and noted affair would have provided a perfect historical background from which a student of rhetoric could compose an interesting *suasoria* or *controversia*. However a counterpoint to the suggestion that "Acilius censor" may have been a Caecilius comes from a point of onomastic style. Often the renown of the *stirps* eclipsed that of the *gens*; for example the names 'Scipio' and 'Piso', which signified nobility and exclusivity, brought more recognition than did 'Cornelius' or 'Calpurnius', which on their own were indistinct and somewhat anonymising. It would be irregular for any

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<sup>731</sup> Willems, I.420; M.P.J.Van Den Hout, *A Commentary on the Letters of M.Cornelius Fronto*. Mnemosyne Supplement 190 (Leiden, 1999), 203-204.

commentator, modern as well as ancient, to refer to a Scipio as merely “Cornelius”, or a Piso as just “Calpurnius”. It would be similarly unconventional to style a Metellus as simply “Caecilius”, even “*Caecilius censor*”. The same objection applies against those who wish to identify “*Acilius censor*” with M. Acilius Glabrio (*cos.* 67), an individual who, it has been convincingly argued, may be the otherwise-unknown censor of 64; it is likely that an historical Acilius Glabrio would be referred to by his distinctive *cognomen* rather than by his undistinguished *nomen gentilicium*.<sup>732</sup> Moreover Dio reports that the censors of 64 were prevented from exercising their office, including the performance of their *lectio*, and hence cannot have expelled anyone.<sup>733</sup> “*Acilius censor*” cannot have been M. Acilius Glabrio. The same onomastic objection does not apply to the Atilii, who never produced a *stirps* of renown sufficient enough to overshadow the *gens*. Context also exists, specifically with regard to M. Atilius Regulus who is known to have quarrelled with a plebeian tribune while he was censor. Perhaps Marcus Aurelius’ request for information hides a reference to L. Metellus’ attempt, ultimately aborted, to arraign Regulus and his colleague, P. Furius Philus, following their removal of him from the equestrian order and his voting-tribe.<sup>734</sup> If so, Marcus Aurelius’ reference to the *nota censoria* must be understood not in terms of Metellus being expelled, but in terms of these alternate forms of censorial punishment. An objection to this proposition might be offered from the fact that the agreement and cooperation of *both* censors would have been required to expel Metellus in such a fashion, so why the mention of only one? Solution may lie in censor Philus’ early death – the event which halted Metellus’ arraignment of the censors – and a consequent eclipse of the name of the deceased by that of his surviving partner.

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<sup>732</sup> On M. Glabrio as *cens.* 64: B. Borghesi, *o.c.*, IV.32-39; Suolahti, 646-649; M. Dondin, *o.c.*, 126-144; *MRR* III.1.

<sup>733</sup> Dio, XXXVII.9.4.

<sup>734</sup> Livy, XXIV.43.2-4.

### **M. Lucilius (*tr.pl. ann. incert.*).**

No Lucilii of magisterial status are attested before 162. In that year, according to Cicero, a Lucilius was present at a senatorial debate. He must have been a relatively young then as he was still alive in 129.<sup>735</sup> The second attestation comes a couple of decades after the first: viz, the brother of C. Lucilius the satirist (himself an *eques*). The satirist's brother cannot have entered the Senate much before c.145; the satirist's own dates (c.180-103/101) attest as much and they were of roughly the same age as one other. The brother might be identified with Lucilius Hirrus (*pr. c.135*), although the issue is not certain.<sup>736</sup> Magisterial Lucilii were relatively common thereafter; the *praenomen* 'Marcus' was not common among them. Beyond the *praeteritus*, only one definite instance of its use is attested: in M. Lucilius Rufus (31), a *monetalis* c.101/84. But note also the father of M'. (or M.) Lucilius M.f. *Pom.* (Rufus?) (11), a senator mentioned in the *senatus consultum de agro Pergameno* of 101 (less likely, 129).<sup>737</sup> The *praenomen* of this senator is uncertain;

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<sup>735</sup> Cic., *Nat. Deorum* II.4.11, 5.14, where this Lucilius is mentioned by an interlocutor: his son, Q.Lucilius Balbus (20), probably a senator. On the father: F.Münzer, 'Lucilius Balbus(18)', *RE*.XIII<sub>2</sub> (1927), 1639-1640 (doubting his senatorial status); R.Syme, *Historia* 4 (1955), 64; *MRR* III.129. Cf F.Münzer, 'Q.Lucilius Balbus(20)', *RE*.XIII<sub>2</sub> (1927), 1640.

<sup>736</sup> A.Kappelmacher, 'C.Lucilius(4)', *RE*.XIII<sub>2</sub> (1927), 1619-1620; A.B.West, 'Lucilian genealogy', *AJPh* 49 (1928), 240-252; *MRR* III.128.

<sup>737</sup> F.Münzer, 'M'.Lucilius(11)', *RE*.XIII<sub>2</sub> (1927), 1638; F.Münzer, 'M.Lucilius Rufus(31)', *RE*.XIII<sub>2</sub> (1927), 1647; R.K.Sherk, *o.c.*, 63, 67-73; *MRR* II.444; III.23-24, 127-129. The scholarship on the decree is extensive, and 101 finds favour over 129 in the more recent works. In addition to those just cited: A.Passerini, 'Le iscrizioni dell'agorà di Smirne concernenti la lite tra I pubblicani e i Pergameni', *Athenaeum* n.s.15 (1937), 252-283; D.Magie, *o.c.*, II.1005n.25; E.W.Gray, [Review of Magie, *o.c.*], *JRS* 42 (1952), 125; G.Tibiletti, 'Rome and the *ager Pergamenus*: the *acta* of 129 BC', *JRS* 47 (1957), 136-138; L.R.Taylor, *VDRR*, 171; C.Nicolet, *L'Ordre Equestre*, I.348-350; R.K.Sherk, *o.c.*, 63, 67-73; E.Badian, *Publicans and Sinners: Private Enterprise in the Service of the Roman Republic* (Oxford, 1972), 60, 64, 95, 132n.42; H.B.Mattingly, 'The date of the *senatus consultum de agro Pergameno*', *AJPh* 93 (1972), 412-423; A.N.Sherwin-White, 'Roman involvement in

recorded as 'Μάνιος' in Copy A (Adramyttium) of the decree but as 'Μάρκος' in Copy B (Smyrna). If a 'Manius', that he bore a different *praenomen* to his father indicates that he had an older brother, his father's homonym: M. Lucilius M.f.. We have no way of ascertaining whether this brother survived into adulthood, let alone held an office of state, but it is feasible that he was the moneyer. If the senator's *praenomen* was 'Marcus', then it is possible he was the moneyer. The senator's father, if also a senator, would have been so c.135 (less likely, c.165). There is no compelling reason to identify any with the *praeteritus*.

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Anatolia, 167-88 BC', *JRS* 67 (1977), 70n.57; W.J.Raschke, 'The chronology of the early books of Lucilius', *JRS* 69 (1979), 80-81; F.De Martino, 'Il senatusconsultum de agro Pergameno', *PP* 210 (1983) 161-190; A.N.Sherwin-White, *Roman Foreign Policy in the East, 168 BC to AD 1* (Norman, 1983), 96n.9; E.S.Gruen, *The Hellenistic World and the Coming of Rome*. (Berkeley, 1984), 606-608; H.B.Mattingly, 'Scipio Aemilianus and the legacy of Attalus III', *LCM* 10 (1985), 119; G.Petzl, 'Reste eines Ephesischen exemplars des 'senatusconsultum de agro Pergameno' (Sherk, Roman Documents Nr.12)', *EA* 6 (1985), 70-71; E.Badian, 'Two notes on *senatus consulta* concerning Pergamum', *LCM* 11 (1986), 15-16.

## Conclusions

The conjunction of several data, primarily the low mean rate of expulsion (observed for the whole of the period from 209 to 164), with the fact that quaestorians are recorded as members of the Senate throughout the second century and are strongly inferred as such in 216, draw us to conclude that the magistracy of quaestor ordinarily gave its holders acting-senator status, and that this membership was then retained upon exiting the quaestorship. Moreover, demographic considerations point toward this being the case for a century or more before 216. As a result we can reject the orthodox view, itself based upon the misapplication of one piece of evidence and the misreading of another, which states that quaestorian membership of the Senate only became the norm upon Sulla's reformation, as dictator, of that body. In contrast there are no indications that tribunicians ordinarily enjoyed automatic permanent membership at any point during the Republican period, certainly before the dictatorship of Sulla. This points toward another political mainstay being incorrect: that which claims that plebeian tribunes gained automatic membership sometime in the second century.

The sources allow a robust estimation of the absolute number of members expelled during the period c.319-81: ~290. Hence also the frequency and mean lifetime risk of expulsion for an 'average' member during the same epoch: ~10%; a far from insignificant risk. We can also show statistically that the censors expelled in an extremely disproportionate manner, with risk heavily front-loaded; declining sharply once a member progressed out of the subpraetorian ranks. The reasons for this extreme disproportionality seem to lie in the relative social proximity of praetorians and consulars to the censors, and the fact that, compared to subpraetorian members, these senior members were in a far better position to retaliate sharply if expelled. That the prospect of attracting strong

negative responses against their decisions could have a correspondingly strong normative effect on the censors' exercise of power is detectable in other contexts. Unperceived until now, we witness the tendency of the electorate – including, and arguably primarily consisting of, the equestrian and the senatorial orders – to look unfavourably upon those candidates for the censorship whom they suspected or knew would conduct the duties of *cura morum* in too austere a manner; furthermore, that such disfavour tended to translate to defeat at the ballot-box of the *Comitia Centuriata*. Also, the corollary – that candidates of known or suspected mild temperament tended to be looked upon by the electorate with greater favour. What is more, even censors in office recognised a causal link between their demeanor in office and their subsequent popularity; that those who were milder in their management of morals (including their performance of the *lectio senatus*) tended to be more popular thereafter than those who were harsher. Taking these factors together, along with supporting evidence, we can further conclude that censorial severity in the exercise of *cura morum* was neither the norm nor was it expected. Furthermore we note that the censors' decisions were, on occasion, met with criticism, publicly expressed, not only by their victims and their supporters, but by dissociated (or relatively dissociated) contemporary observers and by historical commentators. On occasion, even physical violence was used against the censors. On other occasions retaliation took the form of political obstruction. While these last observations do not allow us suggest that it was in any way common for censors to experience criticism or dangers in response to their decisions, taken with the foregoing we might posit that the potential for such reactions could have tended to impose some normative pressure on their behaviour, particularly at the *lectio*.

We have also seen that the censors could perform their respective *lectiones* at any point during their tenure, but that they typically did so near the outset of office. Moreover, as they conducted their moral assessments in secret, the outcome of their

appraisals became known (to the censured and others alike) only at the public recital of the new senatorial roll. However the censors could supplement their deliberations via a quasi-judicial public process, the *cognitio*, where those suspected of immoral behaviour could be brought before the censors to respond. But *cognitiones* served an alternate and allied purpose: those censors who completed their appraisal of senatorial morals early in their tenure – that is, most colleges – could, if desired, revisit and revise their assessment through the means of *cognitio*. This being so the censors could, in effect, for the entirety of their term keep alive in the minds of all members the threat of expulsion. Even if a pair of censors performed their *lectio* on their first day in office, they retained the power to expel throughout their 18-month tenure. This aspect of censorial control over the Senate has not hitherto been observed.

Such are the conclusions that may fairly be drawn from the sources available to us, despite their fragmentary and biased nature. On the other hand the sources have their limits, even when we factor for their shortcomings, and some matters are beyond resolution.

The sources allow us to observe that senatorial restoration following expulsion did occur on at least several occasions throughout the period under investigation; that some recoveries were extremely rapid, others evidently slower. The sources also allow us to observe that various methodologies might be successfully employed in bringing about rehabilitation, be it via the utilisation of different sets of personal and/or familial connections, re-election or adlection. However the sources in no way allow us to discern or estimate the prevalence of recovery, nor of the typical speed at which it occurred, nor of the relative popularity and effectiveness of the different possible routes to recovery that existed. Likewise any changes over time there may have been can neither be discerned nor estimated. As there is no way of knowing the frequency of the phenomenon, the observation that some individuals recovered their senatorial status through re-election to a

qualifying magistracy, while interesting in itself, tell us little about the electorate of the Republic and what they wanted from their political candidates. But we know enough so say that on several occasions, a candidate's history of expulsion proved no bar to subsequent victory at the ballot-box. With the evidence as it is, whether or not such candidates – and such victories – were unusual or common, we cannot know. It remains possible that the electorate of the Republic did not tend to look upon a history of expulsion as a negative when considering the merits and shortcomings of their candidates for office.



# APPENDIX

## ***Praeteriti testimonia***

### **T.1. Valerius Maximus, *Facta et Dicta Memorabilia* II.9.2.**

Their severity was imitated by censors M. Valerius Maximus and C. Junius Bubulcus Brutus with a dissimilar sort of visitation. They expelled L. An(to)nius from the Senate because he divorced the girl he had taken to wife without calling any *consilium amicorum*... It was excellent judgement on the censors' part to consider him unworthy to enter the Curia.

*Horum severitatem M. Valerius Maximus et C. Junius Brutus Bubulcus censores non simili genere animadversionis imitati sunt: L. enim An[to]nium senatu moverunt quod quam virginem in matrimonium duxerat, repudiasset nullo amicorum consilio adhibito. Optimo... iudicio censores indignum eum aditu curiae existimaverunt.*

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### **T.2A. Dionysius, *Roman Antiquities* XX.13.1.**

The consul Fabricius, having become censor, expelled from the senatorial body a man who had been honoured with two consulships and one dictatorship, P. Cornelius Rufinus, because he was believed to have been the first to be extravagant in supplying himself with silver goblets, having acquired 10 pounds' weight of them; this is a little more than 8 Attic *minae*.

*ὁ ὕπατος Φαβρίκιος τιμητῆς γενόμενος ἄνδρα δυσὶ μὲν ὑπατείαις, μιᾷ δὲ δικτατωρεῖα κεκοσμημένον, Πόπλιον Κορνήλιον Ρουφῖνον, ἐξέβαλεν ἐκ τοῦ συνεδρίου τῆς βουλῆς, ὅτι πρῶτος ἐν ἀργυρῶν ἐκπωμάτων κατασκευῇ πολυτελεῖς ἔδοξε γενέσθαι, δέκα λίτρας ἐκπωμάτων κτησάμενος: αὗται δ' εἰσὶν. ὀλίγω πλείους ὀκτώ μινῶν Ἀττικῶν.*

### **T.2B. Livy, *Periochae* 14.**

Censor Fabricius removed P. Cornelius Rufinus, *consularis*, from the Senate, because he had in his possession 10 pounds of wrought silver.

*Fabricius censor P. Cornelium Rufinum consularem senatu movit, quod is X pondo argenti facti haberet.*

### **T.2C. Ovid, *Fasti* I.195-208.**

Wealth is more valued now than in the years of old, when the people were poor, when Rome was new, when a small hut sufficed to lodge Quirinus, son of Mars, and the river sedge supplied a scanty bedding. Jupiter had hardly room to stand upright in his cramped shrine, and in his right hand was a thunderbolt of clay. They decked with leaves the Capitol, which now they deck with gems, and the senator himself fed his own sheep. It was no shame to take one's peaceful rest on straw and to pillow the head on hay. The praetor

put aside the plough to judge the people, and to own a light piece of silver plate was a crime.

*Tempore crevit amor, qui nunc est summus, habendi:  
vix ultra quo iam progrediatur habet.  
Pluris opes nunc sunt quam prisci temporis annis,  
dum populus pauper, dum nova Roma fuit,  
dum casa Martigenam capiebat parva Quirinum,  
et dabat exiguum fluminis ulva torum.  
Iuppiter angusta vix totus stabat in aede,  
inque Iovis dextra fictile fulmen erat.  
Frondebis ornabant quae nunc Capitolia gemmis,  
pascebatque suas ipse senator oves:  
nec pudor in stipula placidam cepisse quietem  
et fenum capiti subposuisse fuit.  
Iura dabat populis posito modo praetor aratro,  
et levis argenti lammina crimen erat.*

#### **T.2D. Valerius Maximus, *Facta et Dicta Memorabilia* II.9.4.**

What shall I say of the censorship of Fabricius Luscinus? Every generation has told and will tell in time to come that Cornelius Rufinus, who had gone through two consulships and a dictatorship with the highest distinction, was not kept in the senatorial order as a man given to luxury and setting a bad example because he had collected silver plate weighing 10 pounds. Upon my word, the very letters of our present epoch seem to me lost in amazement when they are required to lend their service to the recording of such severity and to fear that they may be thought to relate the proceedings of some other city than ours. For it is hard to believe that inside the same city limits 10 pounds of silver was scandalous wealth and is considered contemptible indulgence.

*Quid de Fabrici Luscini censura loquar? Narravit omnis aetas et deinceps narrabit ab eo Cornelium Rufinum, duobus consulatibus et dictatura speciosissime functum, quod decem pondo vasa argentea comparasset, perinde ac malo exemplo luxuriosum in ordine senatorio retentum non esse. Ipsae medius fidius mihi litterae saeculi nostri obstupescere videntur, cum ad tantam severitatem referendam ministerium adcommodare coguntur, ac vereri ne non nostrae urbis acta commemorare existimentur: vix enim credibile est intra idem pomerium decem pondo argenti et invidiosum fuisse censum et inopiam haberi contemptissimam.*

#### **T.2E. Florus, *Epitomae* I.13.18.22.**

Fabricius, with all the authority of the censorial office, stigmatised as a luxury the possession of Rufinus, a man of consular rank, of 10 pounds of silver.

*Fabricius decem pondo argenti circa Rufinum consularem virum quasi luxuriam censoria gravitate damnaret.*

**T.2F. Seneca, *Epistulae Morales ad Lucilium* 98.13.**

Fabricius when *imperator* refused riches, and when he was censor branded them with disapproval.

*Fabricius divitas imperator reiecit, censor notavit.*

**T.2G. Seneca, *De Vita Beata ad Gallionem* 21.3.**

M. Cato [Uticensis], when he was vaunting Curius and Coruncanius and that age in which it was a censorial offence to have a few small silver *lamellae*, himself possessed HS 4,000,000; fewer without doubt than Crassus, but more than Cato the Censor.

*M. Cato cum laudaret Curium et Coruncanium et illud saeculum, in quo censorium crimen erat paucae argenti lamellae, possidebat ipse quadragies sestertium, minus sine dubio quam Crassus, plus quam Censorius Cato.*

**T.2H. Pliny, *Historiae Naturalis* XVIII.8.39.**

But it is only fair to justify our forefathers who laid down rules for conduct by their teachings; for the term ‘bad lands’ they meant to be understood to mean the cheapest lands, and the chief point in their economy was to keep down expenses to a minimum. For the sort of instructions in question were given by men who, though they had headed triumphal processions, deemed 10 pounds of silver as part of one’s furniture a criminal extravagance.

*Sed defendi aequum est abavos qui praeceptis suis prospexere vitae, namque cum dicerent ‘malis’, intellegere voluere vilissimos, summumque providentiae illorum fuit ut quam minimum esset inpendii. Praecipiebant enim ista qui triumphales denas argenti libras in supellectile crimini dabant.*

**T.2J. Pliny, *Historiae Naturalis* XXXIII.50.142.**

For that an old warrior, honoured with a triumphal procession, incurred the *nota censoria* for possessing 10 pounds weight of silver – that nowadays seems legendary.

*Nam propter X pondo notatum a censoribus triumphalem senem fabulosum iam videtur.*

**T.2K. Pliny, *Historiae Naturalis* XXXIII.54.153.**

If only Fabricius could see these displays of luxury – women’s bathrooms with floors of silver, leaving nowhere to set your feet – and the women bathing in company with men – if only Fabricius, who forbade gallant generals to possess more than a dish and a salt-cellar of silver, could see how nowadays the rewards of valour are made from the utensils of luxury, or else broken up to make them! Alas for our present manners – Fabricius makes us blush!

*Videret haec Fabricius et stratas argento mulierum balineas ita, ut vestigio locus non sit, cum viris lavantium! Fabricius, qui bellicos imperatores plus quam pateram et salinum habere ex argento vetabat, videret hinc dona fortium fieri aut in haec frangi! Heu mores, Fabrici nos pudet!*

**T.2L. Juvenal, *Saturae* IX.140-142.**

All I want is an income of 20,000 from secure investments, some silver cups, plain, but the sort that would be banned by censor Fabricius.

*Viginti milia fenus pigneribus positis, argenti vascula puri, sed quae Fabricius censor notet.*

**T.2M. Schol. ad Juvenal, *Saturae* IX.142 (Wessner).**

Censor Fabricius had his own colleague (*sic*) removed from the Senate because he was found to have a single silver plate of more than ten pounds' weight: previously it was not lawful for a senator to have more.

*Fabricius censor collegam suum notavit in senatu, quia supra decem libras argenti unam phialam invenit: antea enim non licebat senatorem plus habere.*

**T.2N. Plutarch, *Sulla* 1.1.**

L. Cornelius Sulla belonged to a patrician, or noble, family, and one of his ancestors, Rufinus, is said to have been consul, although he was not so conspicuous for this honour as for the dishonour which he incurred. For he was found to be possessed of more than 10 pounds of silver plate, contrary to the law, and was for this reason expelled from the Senate. His posterity became at once obscure, and continued so, nor did Sulla himself enjoy a wealthy parentage.

*Λεύκιος δὲ Κορνήλιος Σύλλας γένει μὲν ἦν ἐκ πατρικίων, οὓς εὐπατρίδας ἂν τις εἴποι, τῶν δὲ προγόνων αὐτοῦ λέγουσι Ρουφῖνον ὑπατεῦσαι, καὶ τούτῳ δὲ τῆς τιμῆς ἐπιφανεστέραν γενέσθαι τὴν ἀτιμίαν. εὐρέθη γὰρ ἀργυρίου κοίλου κεκτημένος ὑπὲρ δέκα λίτρας, τοῦ νόμου μὴ δίδοντας· ἐπὶ τούτῳ δὲ τῆς βουλῆς ἐξέπεσεν. οἶδὲ μετ' ἐκεῖνον ἤδη ταπεινὰ πράττοντες διετέλεσαν, αὐτὸς τε Σύλλας ἐν οὐκ ἀφθόνοις ἐτράφη τοῖς πατράοις.*

**T.2P. Gellius, *Noctes Atticae* IV.8.pr-8 (incorp. Cicero, *De Oratore* II.66.268).<sup>738</sup>**

What C. Fabricius said of Cornelius Rufinus, an avaricious man, whose election to the consulship he supported, although he hated him and was his personal enemy.

Fabricius Luscinus was a man of great renown and great achievements. P. Cornelius Rufinus was, to be sure, a man energetic in action, a good warrior, and a master of military tactics, but thievish and keen for money. This man Fabricius neither respected nor treated as a friend, but hated him because of his character. Yet when consuls were to be chosen at a highly critical period for the state, and that Rufinus was a candidate while his competitors were without military experience and untrustworthy, Fabricius used every effort to have the office given to Rufinus. When many men expressed surprise at his attitude, in wishing an avaricious man, towards whom he felt bitter personal enmity, to be elected consul, he said: "I would rather be robbed by a fellow-citizen than sold by the enemy".

This Rufinus afterwards, when he had been dictator and twice consul, Fabricius in his censorship expelled from the Senate on the charge of extravagance, because he possessed 10 pounds weight of silver plate.

That remark of Fabricius about Rufinus I gave above in the form in which it appears in most historians; but M. Cicero, in the second book of the *De Oratore*, says that it was not made by Fabricius to others, but to Rufinus himself, when he was thanking Fabricius because he had been elected consul through his help.

*Quid C. Fabricius de Cornelio Rufino homine avaro dixerit, quem cum odisset inimicusque esset, designandum tamen consulem curavit.*

*Fabricius Luscinus magna gloria vir magnisque rebus gestis fuit. P. Cornelius Rufinus manu quidem strenuus et bellator bonus militarisque disciplinae peritus admodum fuit, sed furax homo et avaritia acri erat. Hunc Fabricius non probabat neque amico utebatur osusque eum morum causa fuit. Sed cum in temporibus rei difficillimis consules creandi forent et is Rufinus peteret consulatum competitorumque eius essent inbelles quidam et futiles, summa ope adnixus est Fabricius, uti Rufino consulatus deferretur. Eam rem plerisque admirantibus, quod hominem avarum, cui esset inimicissimus, creari consulem vellet, "malo," inquit "civis me compilet, quam hostis vendat".*

*Hunc Rufinum postea bis consulatu et dictatura functum censor Fabricius senatu movit ob luxuriae notam, quod decem pondo libras argenti facti haberet.*

*Id autem, quod supra scripsi Fabricium de Cornelio Rufino ita, uti in pleraque historia scriptum est, dixisse, M. Cicero non aliis a Fabricio, sed ipsi Rufino gratias agenti, quod ope eius designatus esset, dictum esse refert in libro secundo De Oratore.*

**T.2Q. Gellius, *Noctes Atticae* XVII.21.39.**

The censors at Rome, C. Fabricius Luscinus and Q. Aemilius Papus, expelled from the Senate P. Cornelius Rufinus, who had twice been consul and dictator; and they recorded

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<sup>738</sup> Cic., *De Orat.* II.66.268:

P. Cornelius, regarded as a covetous and dishonest man, but conspicuously brave and a competent commander, thanked C. Fabricius for having (though no friend of his) procured his election as consul, and that too in the course of an important and troublesome war. "No need to thank me", replied the other, "for choosing to be plundered rather than sold into bondage"

*C. Fabricio P. Cornelius, homo, ut existimabatur, avarus et furax, sed egregie fortis, et bonus imperator, gratias ageret quod se homo inimicus consulem fecisset, bello praesertim magno et gravi: "nihil est quo mihi gratias agas", inquit, "si malui compilari quam venire".*

as reason for that censure the fact that they had learned of his using 10 pounds' weight of silverware at a dinner.

*C. Fabricius Luscinus et Q. Aemilius Papus censores Romae fuerunt et P. Cornelium Rufinum, qui bis consul et dictator fuerat, senatu moverunt, causamque isti notae subscripserunt, quod cum comperissent argenti facti cenae gratia decem pondo libras habere.*

### **T.2R. Ampelius, *Liber Memorialis* 18.9.**

Fabricius Luscinus removed Cornelius Rufinus, *consularis*, from the Senate, for being guilty of luxury and avarice in possessing ten pounds' of silver.

*Fabricius Luscinus, qui Cornelium Rufinum consularem virum senatu amovit, luxuriae et avaritiae damnatum, quod decem pondo argenti possideret.*

### **T.2S. Tertullian, *Apologeticus* 6.2.**

Where have those laws gone that limit luxury and ostentation? The laws that forbade more than 100 asses to be allowed for a banquet or more than one fowl to be set on the table, and for that fowl not to be fattened either? The laws that dealt with a patrician because he had 10 pounds weight of silver plate, and, on the grave indictment of aspiring too high, removed him from the Senate?

*Quonam illae leges abierunt sumptum et ambitionem comprimentes? Quae centum aera non amplius in coenam subscribi iubebant nec amplius quam unam inferri gallinam, et eam non saginatam, quae patricium, quod decem pondo argenti habuisset, pro magno ambitionis titulo senatu submovebant.*

### **T.2T. Augustine, *Epistulae Morales* 104.2.6.**

Let your countrymen be well-reported of for their virtuous manners, not for their superfluous wealth; we do not wish them to be reduced through coercive measures on our account to the plough of Quinctius [Cincinnatus], or to the hearth of Fabricius. Yet by such extreme poverty these leaders of the Roman state not only did not incur the contempt of their fellow citizens, but were on that very account peculiarly dear to them, and esteemed the more qualified to govern the resources of their country. We neither desire nor endeavour to reduce the estates of your rich men, so that in their possession should remain no more than 10 pounds of silver, as was the case with Ruffinus (*sic*), who twice held the consulship, which amount the stern censorship of that time laudably required to be still further reduced as culpably large.

*Sint honesti cives tui, probis moribus, non superfluis facultatibus: non eos volumus ad aratrum Quintii, et ad Fabricii focum per nos illa coercitione perducere. Qua paupertate illi Romanae reipublicae principes non solum non viluerunt civibus suis, sed ob eam fuerunt praecipue cariores, et patriae gubernandis opibus aptiores. Ne illud quidem optamus aut agimus, ut patriae tuae divitibus illius Ruffini bis consulis argenti solum decem pondo remaneant; quod tunc laudabiliter severa censura adhuc resecandum tamquam vitium iudicavit.*

### **T.2U. Augustine, *De Civitate Dei* V.18.**

For although the state... was very rich and wealthy, the people who owned it were in their houses so poor that one of them who had been consul twice was expelled from the Senate of poor men by the action of the censors, who crossed of his name because he was found to possess silver vessels of 10 pounds' weight. Such was the poverty of the very men by whose triumphs the public treasury was enriched.

*Nam illud quod rem publicam... cum haberent opulentissimam atque ditissimam, sic ipsi in suis domibus pauperes erant ut quidam eorum, qui iam bis consul fuisset, ex illo senatu hominum pauperum pelleretur notatione censoria, quod decem pondo argenti in vasis habere compertus est; ita idem ipsi pauperes erant, quorum triumphis publicum ditabatur aerarium.*

### **T.2V. Zonaras, *Roman History* VIII.6.**

The same year Fabricius and Papus became censors; and among others whose names they erased from the lists of the *equites* and the senators was Rufinus, though he had served as dictator and had twice been consul. The reason was that he had in his possession silver plate of 10 pounds' weight. Thus the Romans regarded poverty as consisting not in not having many things, but in wanting many things.

*έν δέ τῷ αὐτῷ ἔτει ὁ τε Φαβρίκιος καί ὁ Πάππος ἐτιμήτευσαν καί ἄλλους τε τῶν ἰππέων πῆλειψαν καί τῶν βουλευτῶν καί τὸν Ῥουφῖνον, καίπερ δικτατορεύσαντα καί δὲ ὑπατεύσαντα. αἴτιον δ' ὅτι σκεύη ἀργυρα λιτρῶν δέκα εἶχεν οὕτως οἱ Ῥωμαῖοι πενίαν οὐ τὸ μὴ πολλὰ κεκτῆσθαι, ἀλλὰ τὸ πολλῶν δεῖσθαι εἶναι ἐνόμιζον.*

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### **T.3. Livy, *Ab Urbe Condita* XXVII.11.12.**

Then the rest of the *album senatorium* was made up, with 8 men made *praeteritus*, among whom was M. [*sic* – L.] Caecilius Metellus, notorious as having advised the desertion of Italy after the disaster at Cannae.

*Inde alius lectus senatus octo praeteritis, inter quos M. Caecilius Metellus erat, infamis auctor deserendae Italiae post Cannensem cladem.*

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### **T.4. Plutarch, *Cato Maior* 17.7.**

Cato expelled another senator who was thought to have good prospects for the consulship, namely, Manilius, because he embraced his wife in open day before the eyes of his daughter. For his own part, he said, he never embraced his wife unless it thundered loudly; and it was a pleasantry of his to remark that he was a happy man when it thundered.

*Ἄλλον δὲ βουλῆς ἐξέβαλεν ὑπατεύσειν ἐπδοξον ὄντα Μανλίον, ὅτι τὴν αὐτοῦ γυναῖκα μεθ' ἡμέραν ἀράσης τῆς θυγατρὸς κατεφῆλσεν. Αὐτῷ δ' ἔφη τὴν γυναῖκα μηδέποτε πλὴν*



βροντῆς μεγάλης γενομένης περιπλακῆναι, καί μετὰ παιδιᾶς εἶπε ἄνδρα ὡς μακάριός ἐστι τοῦ Διὸς βροντῶντος.

#### **T.4B. Plutarch, *Coniugalia Praecepta* 13.**

Cato expelled from the Senate a man who kissed his own wife in the presence of his daughter. This perhaps was a little severe. But if it is a disgrace (as it is) for a man and wife to caress and kiss and embrace in the presence of others, is it not more of a disgrace to air their recriminations and disagreements before others, and, granting that his intimacies and pleasures with his wife should be carried on in secret, to indulge in admonition, fault-finding, and plain speaking in the open and without reserve?

Ὁ Κάτων ἐξέβαλε τῆς βουλῆς τὸν φιλήσαντα τὴν ἑαυτοῦ γυναῖκα τῆς θυγατρὸς παρούσης. τοῦτο μὲν οὖν ἴσως σφοδρότερον εἶδ' ἀσχρόν ἐστιν, ὥσπερ ἐστίν, ἐτέρων παρόντων ἀσπάζεσθαι καὶ φιλεῖν καὶ περιβάλλειν ἀλλήλους, πᾶς οὐκ ἀσχιον ἐτέρων παρόντων λοιδορεῖσθαι καὶ διαφέρεσθαι πρὸς ἀλλήλους, καὶ τὰς μὲν ἐντεύξεις καὶ φιλοφροσύνας ἀπορρήτους πρὸς τὴν γυναῖκα ποιεῖσθαι, νουθεσίᾳ δὲ καὶ μέμψει καὶ παρρησίᾳ χρῆσθαι φανερόν καὶ ἀναπεπταμένῃ.

#### **T.4C. Ammianus Marcellinus, *Rerum Gestarum* XXVIII.4.9.**

Those who stoop to do such things [Ammianus describes the vices of his day] are men in the time of whose forefathers a senator was punished with the *nota censoria*, if he had dared, while this was still considered unseemly, to kiss his wife in the presence of their own daughter.

*Haec admittunt hi, quorum apud maiores censoria nota senator adfflictus est, ausus, dum adhuc non deceret praesente communi filia, coniugem osculari.*

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#### **T.5A. Cicero, *Cato Maior De Senectute* 12.42.**

It was a disagreeable duty that I performed in expelling L. Flamininus from the Senate, for he was a brother of that most valiant man, T. Flamininus, and had been consul 7 (*sic*) years before; but I thought his lustfulness deserved the *nota* of shame. For when in Gaul during his consulship, at the solicitation of a courtesan at a banquet, he beheaded a prisoner under condemnation for some capital offence. While his brother, my immediate predecessor, was censor, Lucius escaped punishment, but Flaccus and I could by no means approve of conduct so flagrant and abandoned, especially when to his crime against an individual he added dishonour to the state.

*Invitus feci ut fortissimi viri T. Flaminini fratrem L. Flamininum e senatu eicerem septem annis postquam consul fuisset, sed notandam putavi libidinem. Ille enim cum esset consul in Gallia exoratus in convivio a scorto est ut securi feriret aliquem eorum qui in vinculis essent, damnati rei capitalis. Hic Tito fratre suo censore, qui proximus ante me fuerat, elapsus est, mihi vero et Flacco nequiquam probari potuit tam flagitiosa et tam perdita libido, quae cum probro privato coniungeret imperi dedecus.*

**T.5B. Livy, *Ab Urbe Condita* XXXIX.42.5-43.5 (incorp. Cato the Elder, fr.69-71 (In L. Quinctium Flaminius) ap. ORF<sup>4</sup> & Valerius Antias, *Historiae* fr.48 (Peter)):**

The censors M. Porcius and L. Valerius chose the Senate amid suspense mingled with fear; they expelled 7 from the Senate, one of whom was distinguished by both high birth and political success, L. Quinctius Flaminius, *consularis*... In this case there are speeches of Cato and indeed other bitter orations against those who were either expelled from the Senate or whose horses were taken from them, [with] by far the most vehement being that against L. Quinctius, and, if he had made this speech as an accuser before the *nota* rather than as a censor after the *nota*, L. Quinctius could not have been kept in the Senate even by his brother T. Quinctius, had he been censor at the time.

Among other things he reproached him regarding Philippus, a Carthaginian, a notorious degenerate whom he loved and whom he had attracted from Rome to his province in Gaul by the promise of great gifts. This boy, says Cato, in the course of his playful jesting, used frequently to reproach the consul because just on the eve of the gladiatorial games he had been carried off from Rome, that he might sell his favours to his lover. By chance, when they were dining and were by now heated with wine, it was announced in the dining-room that a noble Boian, accompanied by his sons, had come as a deserter; he wished, they said, to meet the consul, that he might obtain a safeguard from him personally. Having been introduced into the tent, Cato continued, he began to address the consul through an interpreter. While he was speaking, Quinctius said to the boy, "do you wish, since you missed the gladiatorial show, to see now this Gaul dying?" And when he nodded, although not really in earnest, the consul, at the boy's nod, seized the sword that was hanging above his head and first struck the head of the Gaul while he was speaking, and then, as the Gaul was fleeing and calling for the protection of the Roman people and of those who were present, he stabbed him through the side.

Valerius Antias, as if he had never read the speech of Cato and had accepted the story as if it were nothing but a story anonymously circulated, gives another version, similar, however, in its lust and cruelty. He writes that at Placentia a notorious woman, with whom Flaminius was desperately in love, had been invited to dinner. There he was boasting to the courtesan, among other things, about his severity in the prosecution of cases and how many persons he had in chains, under sentence of death, whom he intended to behead. Then the woman, reclining below him, said that she had never seen a person beheaded and was very anxious to behold the sight. Hereupon, he says, the generous lover, ordering one of the wretches to be brought to him, cut off his head with his sword.

This deed, whether it was performed in the manner for which the censor rebuked him, or as Valerius Antias reports it, was savage and cruel: in the midst of drinking and feasting, where it is the custom to pour libations to the gods and pray for blessings, as a spectacle for a shameless harlot, reclining in the bosom of a consul, a human victim sacrificed and bespattering the table with his blood!

At the end of the speech a challenge of Cato to Quinctius is reported: if he would deny this act and the other things which Cato had charged, he should defend himself by *sponsio*, but if he confessed it, would he think that anyone would grieve at his *ignominia*, since he himself, mad with drink and desire, had played with a man's blood at a feast?

*Censores M. Porcius et L. Valerius metu mixta expectatione senatum legerunt; septem moverunt senatu, ex quibus unum insignem et nobilitate et honoribus, L. Quinctium Flaminius consularum... Catonis et aliae quidem acerbae orationes exstant in eos quos aut senatorio loco movit aut quibus equos ademit, longe gravissima in L. Quinctium oratio, qua si accusator ante notam, non censor post notam usus esset, retinere L. Quinctium in senatu ne frater quidem T. Quinctius, si tum censor esset, potuisset.*

*Inter cetera obiecit ei Philippum Poenum, carum ac nobile scortum, ab Roma in Galliam provinciam spe ingentium donorum perductum. Eum puerum, per lasciviam cum cavillaretur, exprobrare consuli saepe solitum, quod sub ipsum spectaculum gladiatorium abductus ab Roma esset, ut obsequium amatori venditaret. Forte epulantibus iis, cum iam vino incaluissent, nuntiatum in convivio esse nobilem Boium cum liberis transfugam venisse; convenire consulem velle, ut ab eo fidem praesens acciperet. Introductum in tabernaculum per interpretem adloqui consulem coepisse. Inter cuius sermonem Quinctius scorto "vis tu", inquit, "quoniam gladiatorium spectaculum reliquisti, iam hunc Gallum morientem videre?" Et cum is vixdum serio adnuisset, ad nutum scorti consulem stricto gladio, qui super caput pendebat, loquenti Gallo caput primum percussisse, deinde, fugienti fidemque populi Romani atque eorum, qui aderant, imploranti latus transfodisse.*

*Valerius Antias, ut qui nec orationem Catonis legisset et fabulae tantum sine auctore editae credidisset, aliud argumentum, simile tamen et libidine et crudelitate peragit. Placentiae famosam mulierem, cuius amore deperiret, in convivium accessit scribit. Ibi iactantem sese scorto inter cetera rettulisse quam acriter quaestiones exercuisset et quam multos capitis damnatos in vinculis haberet, quos securi percussurus esset. Tum illam infra eum accubantem negasse umquam vidisse quemquam securi ferientem, et peruelle id videre. Hic indulgentem amatorem unum ex illis miseris attrahi iussum securi percussisse.*

*Facinus sive eo modo quo censor obiecit, sive, ut Valerius tradit, commissum est, saevum atque atrox: inter pocula atque epulas, ubi libare diis dapes, ubi bene precari mos esset, ad spectaculum scorti procacis, in sinu consulis recubantis, mactatam humanam victimam esse et cruore mensam respersam!*

*In extrema oratione Catonis condicio Quinctio fertur ut si id factum negaret ceteraque, quae obiecisset, sponsione defenderet sese: sin fateretur, ignominiane sua quemquam doliturum censeret, cum ipse vino et venere amens sanguine hominis in convivio luisset?*

### **T.5C. Livy, *Periochae* 39.**

The censors L. Valerius Flaccus and M. Porcius Cato... expelled from the Senate L. Quinctius Flaminius, the brother of Titus, on the ground that while he was holding the province of Gaul as consul, at the request of a Carthaginian, Philippus, a notorious degenerate whom he loved, he had, at a banquet, killed with his own hand a certain Gaul, or, as some say, that he had beheaded a man under sentence of death at the request of a courtesan of Placentia with whom he was desperately in love. The speech of M. Cato against him is extant.

*A censoribus L. Valerio Flacco et M. Porcio Catone... motus est senatu L. Quinctius Flaminius, T. frater, eo quod cum Galliam provinciam consul obtineret, rogatus in convivio a Poeno Philippo quem amabat, scorto nobili, Gallum quondam sua manu occiderat sive, ut quidam tradiderunt, unum ex damnatis securi percusserat rogatus a meretrice Placentina cuius amore deperibat. Exstat oratio M. Catonis in eum.*

### **T.5D. Livy, *Periochae Oxyrhyncheae* 39.**

L. Quinctius Flaminius was removed from the Senate by M. Cato because he had, while consul in Gaul, killed with his own hand a prominent Boian, when Flaminius' minion, the Carthaginian Philippus, regretted missing a gladiatorial show.

*L. Quinctius Flam[ini]us cos. in] Gallia, quod Philipp[o Poeno, scorto] suo, desiderante gladi[atorum specta]culum sua manu Boiu[m nobilem occiderat], a M. Catone cen[sore] senatu motus est.*

### **T.5E. Valerius Maximus, *Facta et Dicta Memorabilia* II.9.3.**

Porcius Cato with L. Flamininus, whom he removed from the *album senatorium* because he had beheaded a condemned man, choosing the time of execution to suit some woman he was in love with who wanted to watch it. Cato might have been deterred by respect for the consulship which Flamininus had held and the prestige of his brother, T. Flamininus. But being censor and Cato, a twofold example of severity, he determined that the offender deserved the *nota* all the more because he had befouled the majesty of the highest office by so loathsome an act and had not let it concern him that the eyes of a harlot gratified with human blood and the hands of King Philip lifted in supplication be attached to the same family masks.

*Porcius Cato L. Flamininum, quem e numero senatorum sustulit, quia in provincia quendam damnatum securi percusserat, tempore supplicii ad arbitrium et spectaculum mulierculae, cuius amore tenebatur, electo. Et poterat inhiberi respectu consulatus, quem is gesserat, atque auctoritate fratris eius T. Flaminini; sed et censor et Cato, duplex severitatis exemplum, eo magis illum notandum statuit quod amplissimi honoris maiestatem tam taetro facinore inquinaverat, nec pensi duxerat iisdem imaginibus ascribi meretricis oculos humano sanguine delectatos et regis Philippi supplices manus.*

### **T.5F. Valerius Maximus, *Facta et Dicta Memorabilia* IV.5.1.**

[Modesty] gave most certain proof of itself, among others, on the day when L. Flamininus stood in the farthest part of the theatre because he had been removed from the Senate by censors M. Cato and L. Flaccus, though he had held the consulship and was the brother of T. Flamininus, victor over Macedonia and Philip. For all present compelled him to move to a place appropriate to his standing.

*Quae quidem certissimum sui documentum etiam illo die exhibuit quo L. Flamininus extrema in parte theatri constitit, quia a M. Catone et L. Flacco censoribus <motus> senatu fuerat, consulatus iam honore defunctus, frater etiam T. Flaminini, Macedoniae Philippique victoris: omnes enim transire eum in locum dignitati suae debitum coegerunt.*

### **T.5G. Plutarch, *Cato Maior* 17.1-6 (incorp. Cicero, *Cato Maior De Senectute* 12.42 & Livy, *Ab Urbe Condita* XXXIX.42.5-43.5).**

[Cato] also expelled many members of the Senate, including L. Quinctius. This man had been consul 7 (*sic*) years before, and, a thing which gave him more reputation than the consulship even, was brother of the T. Flamininus who conquered King Philip.

The reason for his expulsion was the following. There was a youth who, ever since his boyhood, had been the favourite of Lucius. This youth Lucius kept ever about him, and took with him on his campaigns in greater honour and power than any one of his nearest friends and kinsmen had. He was once administering the affairs of his consular province, and at a certain banquet this youth, as was his wont, reclined at his side, and began to pay his flatteries to a man who, in his cups, was too easily led about. "I love you so much," he

said, "that once, when there was a gladiatorial show at home, a thing which I had never seen, I rushed away from it to join you, although my heart was set on seeing a man slaughtered". "Well, for that matter", said Lucius, "don't lie there with any grudge against me, for I will cure it". Thereupon he commanded that one of the men who were lying under sentence of death be brought to the banquet, and that a lictor with an axe stand by his side. Then he asked his beloved if he wished to see the man smitten. The youth said he did, and Lucius ordered the man's head to be cut off.

This is the version which most writers give of the affair, and so Cicero has represented Cato himself as telling the story in his dialogue *De Senectute*. But Livy says the victim was a Gallic deserter, and that Lucius did not have the man slain by a lictor, but smote him with his own hand, and that this is the version of the story in a speech of Cato's.

On the expulsion of Lucius from the Senate by Cato, his brother was greatly indignant, and appealed to the people, urging that Cato state his reasons for the expulsion. Cato did so, narrating the incident of the banquet. Lucius attempted to make denial, but when Cato challenged him to a formal trial of the case with a wager of money upon it, he declined. Then the justice of his punishment was recognised. But once when a spectacle was given in the theatre, he passed along by the senatorial seats, and took his place as far away from them as he could. Then the people took pity upon him and shouted till they had forced him to change his seat, thus rectifying, as far as was possible, and alleviating the situation.

*Ἐξέβαλε δὲ τῆς βουλῆς ἄλλους τε συχνούς καὶ Λεύκιον Κοῖντιον, ὕπατον μὲν ἑπτὰ πρότερον ἐνιαυτοῦ γεγενημένον, ὃ δ' ἦν αὐτῷ πρὸς δόξαν ὑπατείας μεζον, ἀδελφὸν Τίου Φλαμινίου τοῦ καταπολεμήσαντος Φίλιππον.*

Αἰτίαν δὲ τῆς ἐκβολῆς ἔσχε τοιαύτην. Μειράκιον ἐκ τῆς παιδικῆς ὥρας ἑταίρου ἄνειληφώς ὁ Λεύκιος αἰεὶ περὶ αὐτὸν εἶχε, καὶ συνεπήγετο στρατηγῶν ἐπὶ τιμῆς καὶ δυνάμειος τοσαύτης ὅσην οὐδεὶς εἶχε τῶν πρώτων παρ' αὐτῷ φίλων καὶ οἰκείων. Ἐτύγχανε μὲν οὖν ἠγούμενος ὑπατικῆς ἐπαρχίας· ἐν δὲ συμποσίῳ τινὶ τὸ μειράκιον ὡσπερ εἰώθει συγκατακείμενον ἄλλην τε κολακειάν ἐκίνει πρὸς ἄνθρωπον ἐν οἴνῳ ῥαδίως ἀγόμενον, καὶ φιλεῖν αὐτὸν οὕτως ἔλεγεν, ὥστ' ἔφη ἑθῆας οὕσης οἴκοι μονομάχων οὐ τεθεαμένος πρότερον ἐξώρησα πρὸς σέ, καίπερ ἐπιθυμῶν ἰδεῖν ἄνθρωπον σφαττόμενον'. Ὁ δὲ Λεύκιος ἀντιφιλοφρονούμενος, ἄλλὰ τούτου γε χάριν εἶπε μή μοι κατάκεισο λυπούμενος, ἐγὼ γὰρ ἴσσομαι'. καὶ κελεύσας ἕνα τῶν ἐπὶ θανάτῳ κατακρίτων εἰς τὸ συμπόσιον ἀχθῆναι καὶ τὸν ὑπηρέτην ἔχοντα πέλεκυν παραστήναι, πάλιν ἠρώτησε τὸν ἐρώμενον εἰ βούλεται τυπτόμενον θεάσασθαι. Φήσαντος δὲ βούλεσθαι, προσέταξεν ἀποκόψαι τοῦ ἀνθρώπου τὸν τράχηλον.

Οἱ μὲν οὖν πλεῖστοι ταῦθ' ἱστοροῦσι, καὶ ὃ γε Κικέρων αὐτὸν τὸν Κάτωννα διηγούμενον ἐν τῷ Περὶ γήρωος διαλόγῳ πεποίηκεν· ὁ δὲ Λίβιος αὐτόμολον εἶναί φησι Γαλάτην τὸν ἀναιρεθέντα, τὸν δὲ Λεύκιον οὐ δι' ὑπηρέτου κτεῖναι τὸν ἄνθρωπον, ἀλλ' αὐτὸν ἰδίᾳ χειρὶ, καὶ ταῦτ' ἐν λόγῳ γεγράφθαι Κάτωννος.

Ἐκβληθέντος οὖν τοῦ Λευκίου τῆς βουλῆς ὑπὸ τοῦ Κάτωννος, ὁ ἀδελφὸς αὐτοῦ βαρέως φέρων ἐπὶ τὸν δῆμον κατέφυγε καὶ τὴν αἰτίαν ἐκέλευσεν εἰπεῖν τὸν Κάτωννα τῆς ἐκβολῆς. Εἰπόντος δὲ καὶ διηγησαμένου τὸ συμπόσιον, ἐπεχείρει μὲν ὁ Λεύκιος ἀρνεῖσθαι, προκαλουμένου δὲ τοῦ Κάτωννος εἰς ὀρισμὸν ἀνεδύετο. καὶ τότε μὲν ἄξια παθεῖν κατεγνώσθη· θῆας δ' οὕσης ἐν θεάτρῳ, τὴν ὑπατικὴν χώραν παρελθὼν καὶ πορρωτάτῳ που καθεσθεις οἴκτον ἔσχε παρὰ τῷ δήμῳ, καὶ βοῶντες ἠνάγκασαν αὐτὸν μετελθεῖν, ὡς ἦν δυνατὸν ἐπανορθούμενοι καὶ θεραπεύοντες τὸ γεγενημένον.

**T.5H. Plutarch, *Titus Flamininus* 18.2-19.4 (incorp. Valerius Antias, *Historiae* fr.48 (Peter) ap. Livy, *Ab Urbe Condita* XXXIX.43.1-4 & Cicero, *Cato Maior De Senectute* 12.42 & Livy, *Ab Urbe Condita* XXXIX.42.5-43.5).**

Titus Flamininus had a brother, Lucius, who was unlike him in all other ways, and especially in his shameful addiction to pleasure and his utter contempt of decency.

This brother had as a companion a young boy whom he loved, and took him about and kept him always in his train, whether he was commanding an army or administering a province. At some drinking party, then, this boy was playing the coquet with Lucius, and said he loved him so ardently that he had come away from a show of gladiators in order to be with him, although he had never in all his life seen a man killed; and he had done so, he said, because he cared more for his lover's pleasure than for his own. Lucius was delighted at this, and said: "Don't worry about that! I will give you your heart's desire". Then ordering a man who had been condemned to death to be brought forth from his prison, and sending for a lictor, he commanded him to strike off the man's head there in the banquet-hall.

Valerius Antias, however, says it was not a lover, but a mistress whom Lucius thus sought to gratify. And Livy says that in a speech of Cato himself it is written that a Gaulish deserter had come to the door with his wife and children, and that Lucius admitted him into the banquet-hall and slew him with his own hand to gratify his lover. This feature, however, was probably introduced by Cato to strengthen the force of his denunciation; for that it was not a deserter, but a prisoner, who was put to death, and one who had been condemned to die, is the testimony of many others, and especially of Cicero the orator in his treatise *De Senectute*, where he puts the story in the mouth of Cato himself.

In view of this, when Cato became censor and was purging the Senate of its unworthy members, he expelled from it L. Flamininus, although he was a man of consular dignity, and although his brother Titus was thought to be involved in his disgrace. Therefore the two brothers came before the people in lowly garb and bathed in tears, and made what seemed a reasonable request of their fellow citizens, namely, that Cato should state the reasons which had led him to visit a noble house with a disgrace so great. Without any hesitation, then, Cato came forward, and standing with his colleague before Titus, asked him if he knew about the banquet. Titus said he did not, whereupon Cato related the incident and formally challenged Lucius to say whether any part of the story told was not true. But Lucius was dumb, and the people therefore saw that he had been justly disgraced, and gave Cato a splendid escort away from the rostra.

Titus, however, was so affected by the misfortune of his brother that he leagued himself with those who had long hated Cato, and after getting the upper hand in the Senate, revoked and annulled all the public rentals and leases and contracts which Cato had made, besides bringing many heavy indictments against him. That he acted the part of a good man or a good citizen I cannot affirm, in thus cherishing an incurable hatred against a lawful magistrate and a most excellent citizen on account of a man who, though a kinsman, was nevertheless unworthy and had suffered only what he deserved.

However, as the Roman people was once enjoying a spectacle in the theatre, and the Senate, according to custom, had seats of honour in the foremost rows, Lucius was seen sitting somewhere in the rear among the poor and lowly, and excited men's pity. The multitude could not bear the sight, but kept shouting to him to change his place, until he did change his place, and was received among their own number by the men of consular rank.

*Ἀδελφὸς ἦν Τίτῳ Λεύκιος Φλαμίνιος, οὔτε τὰ ἄλλα προσεοικῶς ἐκείνῳ τὴν φύσιν, ἐν τε ταῖς ἡδοναῖς ἀνελεύθερος δεινῶς καὶ ὀλιγωρότατος τοῦ πρέποντος.*

Τούτῳ συνῆν μειρακίσκος ἐρώμενος, ὃν καὶ στρατιᾶς ἄρχων ἐπήγετο, καὶ διέπῳν ἐπαρχίαν εἶχεν ἀεὶ περὶ αὐτόν. Ἐν οὖν πτότῳ τινὶ θρυπτόμενος πρὸς τὸν Λεύκιον, οὕτως ἔφη σφόδρα φιλεῖν αὐτόν, ὥστε θεᾶν μονομάχων ἀπολιπεῖν, οὕτῳ γεγρονῶς ἀνθρώπου φονευομένου θεατῆς, τὸ πρὸς ἐκεῖνον ἡδὺ τοῦ πρὸς αὐτόν ἐν πλείονι λόγῳ θέμενος. Ὁ δὲ Λεύκιος ἡσθεὶς, “οὐδὲν”, ἔφη, “δεινόν· ἰάσομαι γὰρ ἐγὼ σου τὴν ἐπιθυμίαν”. καὶ κελεύσας ἓνα τῶν καταδίκων ἐκ τοῦ δεσμοτηρίου προαχθῆναι, καὶ τὸν ὑπηρέτην μεταπεμψάμενος, ἐν τῷ συμποσίῳ προσέταξεν ἀποκόψαι τοῦ ἀνθρώπου τὸν τράχηλον. Οὐαλέριος δ’ Ἀντίας οὐκ ἐρωμένῳ φησὶν, ἀλλ’ ἐρωμένη τοῦτο χαρίσασθαι τὸν Λεύκιον. Ὁ δὲ Λίβιος ἐν λόγῳ Κάτωνος αὐτοῦ γεγράφθαι φησὶν, ὡς Γαλάτην αὐτόμολον ἐλθόντα μετὰ παίδων καὶ γυναικὸς ἐπὶ τὰς θύρας δεξάμενος εἰς τὸ συμπόσιον ὁ Λεύκιος ἀπέκτεινεν ἰδίᾳ χειρὶ, τῷ ἐρωμένῳ χαρίζόμενος.

Τοῦτο μὲν οὖν εἰκὸς εἰς δεινῶσιν εἰρησθαι τῆς κατηγορίας ὑπὸ τοῦ Κάτωνος· ὅτι δ’ οὐκ αὐτόμολος ἦν, ἀλλὰ δεσμώτης ὁ ἀναιρεθεὶς καὶ ἐκ τῶν καταδίκων, ἄλλοι τε πολλοὶ καὶ Κικέρων ὁ ῥήτωρ ἐν τῷ περὶ γήρωσ, αὐτῷ Κάτωνι τὴν διήγησιν ἀναθεὶς, εἴρηκεν.

Ἐπὶ τούτῳ Κάτων τιμητῆς γενόμενος καὶ καθαίρων τὴν σύγκλητον, ἀπήλασε τῆς βουλῆς τὸν Λεύκιον, ὑπατικοῦ μὲν ἀξιώματος ὄντα, συνατιμοῦσθαι δὲ τοῦ ἀδελφοῦ δοκοῦντος αὐτῷ. Διὸ καὶ προελθόντες εἰς τὸν δῆμον ἀμφοτέροι ταπεινοὶ καὶ δεδακρυμένοι, μέτρια δεῖσθαι τῶν πολιτῶν ἐδόκουν, ἀξιοῦντες αἰτίαν εἰπεῖν τὸν Κάτωνα καὶ λόγον, ᾧ χρησάμενος οἶκον ἐνδοξον ἀτιμία τοσαύτη περιβέβληκεν.

Οὐδὲν οὖν ὑποστειλάμενος ὁ Κάτων προῆλθε, καὶ καταστὰς μετὰ τοῦ συνάρχοντος ἠρώτησε τὸν Τίτον εἰ γινώσκει τὸ συμπόσιον. Ἄρνούμενος δ’ ἐκεῖνου, διηγησάμενος εἰς ὄρισμὸν προεκαλεῖτο τὸν Λεύκιον, εἴ τί φησι τῶν εἰρημένων μὴ ἀληθὲς εἶναι. Τοῦ δὲ Λευκίου σιωπήσαντος, ὁ μὲν δῆμος ἔγνω δικαίαν γεγονέναι τὴν ἀτιμίαν, καὶ τὸν Κάτωνα προέπεμψε λαμπρῶς ἀπὸ τοῦ βήματος·

ὁ δὲ Τίτος τῆ συμφορᾶ τοῦ ἀδελφοῦ περιπαθῶν, συνέστη μετὰ τῶν πάλοι μισούντων τὸν Κάτωνα, καὶ πάσας μὲν ἃς ἐκεῖνος ἐποίησατο τῶν δημοσίων ἐκδόσεις καὶ μισθώσεις καὶ ὠνάς ἠκύρωσε καὶ ἀνέλυσεν, ἐν τῇ βουλῇ κρατήσας, πολλὰς δὲ καὶ μεγάλας δίκας κατ’ αὐτοῦ παρεσκεύασεν, οὐκ οἶδ’ ὅπως εὖ καὶ πολιτικῶς πρὸς ἄρχοντα νόμιμον καὶ πολίτην ἄριστον ὑπὲρ ἀνδρὸς οἰκείου μὲν, ἀναξίου δὲ καὶ τὰ προσήκοντα πεπονθότος, ἀνήκεστον ἔχθραν ἀράμενος.

Οὐ μὴν ἀλλὰ τοῦ Ῥωμαίων ποτὲ δήμου θεᾶν ἔχοντος ἐν τῷ θεάτρῳ καὶ τῆς βουλῆς ᾧπερ εἶωθε κόσμῳ προκαθημένης, ὀφθεῖς ὁ Λεύκιος ἐπ’ ἐσχάτοις που καθήμενος ἀτίμως καὶ ταπεινῶς, οἶκτον ἔσχε, καὶ τὸ πλῆθος οὐκ ἠνέσχετο τὴν ὄψιν, ἀλλ’ ἐβῶν μεταβῆναι κελεύοντες ἕως μετέβη, δεξαμένων αὐτὸν εἰς ἑαυτοῦς τῶν ὑπατικῶν.

#### **T.5J. [Victor], *De Viris Illustribus Urbis Romae* 47.4.**

A censor removed from the Senate a *consularis*, L. Flamininus, who, when giving a spectacle at a banquet in Gaul, obeyed the order of his harlot in having a prisoner’s throat cut.

*Censor L. Flaminium consularem senatu movit, quod ille in Gallia ad cuiusdam scorti spectaculum eiectum quendam e carcere in convivio iugulari iussisset.*

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#### **T.6. Valerius Antias, *Historiae* fr.50 (Peter) ap. Livy, *Ab Urbe Condita* XLI.27.1-2.**

Q. Fulvius Flaccus and A. Postumius Albinus... expelled 9 from the Senate. The conspicuous victims of the *nota* were M. Cornelius Maluginensis, who two years before had been praetor in Spain, and praetor L. Cornelius Scipio, who at the time exercised

jurisdiction over cases between citizens and foreigners, and L. Fulvius who was own brother to the censor and, as Valerius Antias writes, held their father's property jointly with the censor.

*Q. Fulvius Flaccus et A. Postumius Albinus... de senatu novem eiecerunt; insignes notae fuerunt M. Corneli Maluginensis, qui biennio ante praetor in Hispania fuerat, et L. Corneli Scipionis praetoris, cuius tum inter cives et peregrinos iurisdictio erat, et L. Fulvi, qui frater germanus et, ut Valerius Antias tradit consors etiam censoris erat.*

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**T.7. Valerius Antias, *Historiae* fr.50 (Peter) ap. Livy, *Ab Urbe Condita* XLI.27.1-2.**

See T.6.

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**T.8A. Valerius Antias, *Historiae* fr.50 (Peter) ap. Livy, *Ab Urbe Condita* XLI.27.1-2.**

See T.6.

**T.8B. Livy, *Ab Urbe Condita* XL.41.8-10.**

The brother of Q. Fulvius [Q.f. M.n. Flaccus (cos. 179)], M. Fulvius Nobilior – this Fulvius was military tribune of the 2nd Legion – during his months [in command] dismissed the legion... When this was announced to Aulus [Postumius Albinus, the consul and M. Fulvius' commander] at Placentia... following with the light cavalry the men who had been released, he punished those of them whom he could overtake; as to the rest, he notified the [other] consul [Q. Fulvius Cn.f. M.n. Flaccus, serving as *suffectus*]. On his motion the Senate passed a *senatus consultum* that M. Fulvius should be relegated to Spain beyond New Carthage.

*Frater Q. Fulvii M. Fulvius Nobilior – secundae legionis Fulvius tribunus militum is erat – mensibus suis dimisit legionem... Hoc ubi Placentiam... Aulo nuntiatum est, cum equitibus expeditis secutus dimissos, quos eorum potuit adsequi, reduxit castigatos Pisas; de ceteris consulem certiore fecit. Eo referente senatus consultum factum est, ut M. Fulvius in Hispaniam relegaretur ultra Novam Carthaginem.*

**T.8C. Valerius Maximus, *Facta et Dicta Memorabilia* II.7.5.**

Censor Q. Fulvius Flaccus too expelled Fulvius, his brother and coheritor, from the Senate because he had dared to send home the legion in which he was military tribune without the consul's orders.

*Q. etiam Fulvius Flaccus censor Fulvium fratrem consortem, legionem, in qua tribunus militum erat, iniussu consulis domum dimittere ausum, senatu movit.*



**T.8D. Velleius Paterculus, *Historiae Romanae* I.10.6.**

About this time occurred the censorship of Fulvius Flaccus and Postumius Albinus, famed for its severity. Even Cn. Fulvius, who was the brother of the censor and co-heir with him of his estate, was expelled from the Senate by these censors.

*Aspera circa haec tempora censura Fulvii Flacci et Postumii Albini fuit: quippe Fulvii censoris frater, et quidem consors, Cn. Fulvius senatu motus est ab iis censoribus.*

**T.8E. Frontinus, *Strategemata* IV.1.32.**

The censor Fulvius Flaccus removed from the Senate his own brother, Fulvius, because the latter without the command of the consul had disbanded the legion in which he was tribune of the soldiers.

*Fulvius Flaccus censor Fulvium fratrem suum, quia legionem, in qua tribunus militum erat, iniussu consulis dimiserat, senatu movit.*

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**T.9. Livy, *Ab Urbe Condita* XLV.15.9.**

When the censors asked that their term of a year and six months be prolonged in order that they might, as was customary, see to repairs to buildings and inspect the public works for which they had contracted, the request was vetoed by the tribune Cn. Tremellius, because he had not been chosen for the Senate.

*Potentibus, ut ex instituto ad sarta tecta exigenda et ad opera quae locassent probanda anni et sex mensum tempus prorogaretur, Cn. Tremellius tribunus, quia lectus non erat in senatum, intercessit.*

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**T.10A. Cicero, *Oratio de Domo Sua ad Pontifices* 47.123.**

Our fathers could remember how C. Atinius, with brazier duly placed on the rostra and with flute-player in attendance, so devoted the property of Q. Metellus, who, in his capacity as censor, had ejected him from the Senate.

*C. Atinius partum memoria bona Q. Metelli, quem eum ex senatu censor eiecerat... consecravit, foculo posito in Rostris adhibitoque tibicine.*

**T.10B. Livy, *Periochae* 59.**

C. Atinius Labeo, plebeian tribune, ordered censor Q. Metellus, who had passed him by in revising the *album senatorium*, to be thrown from the Tarpeian Rock; the other plebeian tribunes came to the aid of Metellus to prevent this from taking place.

*C. Atinius Labeo tribunus plebis Q. Metellum censorem, a quo in senatu legendo praeteritus erat, de saxo deici iussit; quod ne fieret, ceteri tribuni plebis auxilio fuerunt.*

### T.10C. Pliny, *Historiae Naturalis* VII.44.142-146.

At the height very height of his distinguished career, when coming back from the Campus Martius at midday, the Forum and Capitol being empty, [Metellus Macedonicus] was carried off to the Tarpeian Rock by C. Atinius Labeo... Macerio, plebeian tribune, whom when censor he had ejected from the Senate, with the intention of hurling him down the cliff; the numerous company of persons who called him their father did, it is true, hasten to his aid, but as was inevitable in this sudden emergency, too late and as if coming for his funeral, and as he had not the right to resist and to repel the hallowed person of a tribune his virtue and his strictness would have resulted in his destruction, but with difficulty another tribune was found to intercede, and he was recalled from the very threshold of death; and subsequently he lives on the charity of another, as his own property has immediately been confiscated on the proposal of the very man whom he himself caused to be condemned...

Victory over what enemies was worth so much? Or what honours and triumphal cars did not fortune put into the shade by that violent stroke – a censor dragged through the middle of the city (for this had been the sole reason for delaying), dragged to that same Capitol to which he himself had not dragged even prisoners when he was triumphing over the spoils taken from them?

This was rendered a greater crime by the happiness that followed [Macedonicus' lavish funeral]... Assuredly it is no firmly-founded happiness that any outrage in a man's career has shattered, let alone so great an outrage as that. For the rest I know not whether it counts to the credit of our morals or increases the anguish of our indignation that among all the many Metelli, that criminal audacity of C. Atinius forever went unpunished.

*In ipso tamen flore dignationis suae a C. Atinio Labeone... Macerioni, tribuno plebis, quem e senatu censor eiecerat, revertens e campo meridiano tempore, vacuo foro et Capitolio, ad Tarpeium raptus, ut praecipitaretur, convolante quidem tam numerosa illa cohorte quae patrem eum appellabat, sed, ut necesse erat in subito, tarde et tamquam in exsequias, cum resistendi sacroquesanctum repellendi ius non esset, virtutis suae opera et censurae periturus, aegre tribuno qui intercederet reperto a limine ipso mortis revocatus, alieno beneficio postea vixit, bonis inde etiam consecratis a damnato suo...*

*Quos hostis vicisse tanti fuit? Aut quos non honores currusque illa sua violentia fortuna retroegit, per mediam urbem censore tracto – etenim sola haec morandi ratio fuerat – tracto in Capitolium idem in quod triumphans ipse de eorum exuviis ne captivos quidem sic traxerat?*

*Maius hoc scelus felicitate consecuta factum est... Nulla est profecto solida felicitas quam contumelia ulla vitae rupit, nedum tanta. Quod superest, nescio morum gloriae an indignationis dolori accedat, inter tot Metellos tam sceleratam C. Atini audaciam semper fuisse inultam.*

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### T.11. Plutarch, *Marius* 5.1-4.

After his tribuneship, [Marius] became a candidate for the higher [curule] aedileship... When the superior aediles have been elected, the people cast a second vote for the others [the plebeian aediles]. Accordingly, when it was clear that Marius was losing his election to the higher office, he immediately changed his tactics and applied for the other. But men thought him bold and obstinate, and he was defeated; nevertheless, although he had met with two failures in one day, a thing which had never happened to any candidate before, he did not lower his assurance in the least, but not long afterwards [in the latter half of 116]

became a candidate for the praetorship and nearly missed defeat; he was returned last of all, and prosecuted for *ambitus*. Suspicion was chiefly aroused by the sight of a servant of Cassius Sabaco inside the palings among the voters; for Sabaco was an especial friend of Marius. Sabaco was therefore summoned before the *quaestio*, and testified that the heat had made him so thirsty that he had called for cold water, and that his servant had come in to him with a cup, and had then gone away after his master had drunk.

Sabaco, however, was expelled from the Senate by the censors of the next year [L. Metellus Diadematus and Cn. Ahenobarbus (*censs.* 115-114)], and it was thought that he deserved this punishment, either because he had given false testimony, or because of his intemperance.

Μετὰ δὲ τὴν δημαρχίαν ἀγορανομίαν τὴν μείζονα παρήγγειλε. Δύο γὰρ εἰσι τάξεις ἀγορανομίων, ἡ μὲν ἀπὸ τῶν δίφρων τῶν ἀγκυλοπόδων, ἐφ' ὧν καθεζόμενοι χρηματίζουσιν, ἔχουσα τοῦνομα τῆς ἀρχῆς, τὴν δ' ὑποδεεστέραν δημοτικὴν καλοῦσιν· ὅταν δὲ τοὺς ἐντιμοτέρους ἔλωνται, περὶ τῶν ἐτέρων πάλιν τὴν ψῆφον λαμβάνουσιν. Ὡς οὖν ὁ Μάριος φανερός ἦν λειπόμενος ἐν ἐκείνῃ, ταχὺ μεταστὰς αὐθις ἤτει τὴν ἐτέραν. Δόξας δὲ θρασὺς εἶναι καὶ αὐθάδης, ἀπέτυχεν· καὶ δυσὶν ἐν ἡμέρᾳ μιᾷ περιπεσὼν ἀποτεύξεσιν, ὃ μηδεὶς ἔπαθεν ἄλλος, οὐδὲ μικρὸν ὑφήκατο τοῦ φρονήματος, ὕστερον δ' οὐ πολλῶν στρατηγίαν μετελθὼν ὀλίγον ἐδέησεν ἐκπεσεῖν, ἔσχατος δὲ πάντων ἀναγορευθεὶς, δίκην ἔσχε δεκασμοῦ. Μάλιστα δ' ὑποψίαν παρέσχε Κασσίου Σαβάκωνος οἰκέτης ὄφθεις ἐντὸς τῶν δρυφάκτων ἀναμειγμένος τοῖς φέρουσι τὰς ψήφους· ὁ γὰρ Σαβάκων ἦν ἐταῖρος ἐν τοῖς μάλιστα Μαρίου. Κληθεὶς οὖν οὗτος ὑπὸ τῶν δικαστῶν, ἔφη διὰ τὸ καῦμα διψήσας ὕδωρ ψυχρὸν αἰτῆσαι καὶ τὸν οἰκέτην ἔχοντα ποτήριον εἰσελθεῖν πρὸς αὐτόν, εἴτ' εὐθύς οἴχεσθαι πτόντος.

Οὗτος μὲν οὖν ὑπὸ τῶν μετὰ ταῦτα τιμητῶν ἐξέπεσε τῆς βουλῆς, ἐπιτήδειος εἶναι παθεῖν τοῦτο δόξας ἢ διὰ τὴν ψευδομαρτυρίαν ἢ διὰ τὴν ἀκρασίαν.

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### T.12A. Cicero, *Oratio pro A. Cluentio Habito* 42.119.

Here I will first lay down the general proposition that our state has never assigned the same weight to a *nota censoria* as to a *iudicium*; and without wasting time over a matter of common knowledge, I will merely illustrate it with a single example. C. Geta was himself made censor after having been degraded from the Senate by the censors L. Metellus and Cn. Domitius; so that one whose morals had been stigmatised by the censors came to supervise the morals of the Roman people including those who stigmatised himself. But if the *nota* were regarded as a *iudicium* then no one who had been branded by the censors with *ignominia* could hope to obtain office or be restored to the Senate, just as men who have been condemned by a judicial decision involving *infamia* are debarred for all time from office and honours.

*Hic illud primum commune proponam, numquam animadversionibus censoriis hanc civitatem ita contentam ut rebus iudicatis fuisse. Neque in re nota consumam tempus. Exempli causa ponam unum illud: C. Getam, cum a L. Metello et Cn. Domitio censoribus ex senatu eiectus esset, censorem esse ipsum postea factum: et cuius mores erant a censoribus reprehensi, hunc postea et populi Romani et eorum, qui in ipsum animadverterant, moribus praefuisse. Quod si illud iudicium putaretur, ut ceteri turpi iudicio damnati in perpetuum omni honore ac dignitate privantur, sic hominibus ignominia notatis neque ad honorem aditus neque in curiam reditus esset.*

**T.12B. Valerius Maximus, *Facta et Dicta Memorabilia* II.9.9.**

C. Geta was elected censor after he had been expelled from the Senate by censors L. Metellus and Cn. Domitius. Likewise M. Valerius Messalla, after having been scraped by the *nota censoria*. Their *ignominia* whetted their energies. Urged by the shame of it, they strove with might and main to make their countrymen think them deserving to have the censorship bestowed upon them rather than brought up against them.

*C. Geta, cum a L. Metello et Cn. Domitio censoribus senatu motus esset, postea censor factus est. Item M. Valerius Messalla, censoria nota perstrictus, censoriam postmodum potestatem impetravit. Quorum ignominia virtutem acuit: rubore enim eius excitati omnibus viribus incubuerunt, ut digni civibus viderentur, quibus dari potius quam obici censura deberet.*

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**T.13. Valerius Maximus, *Facta et Dicta Memorabilia* II.9.5 (incorp. M. Duronius, fr.1 ap. ORF<sup>4</sup>).**

Censors M. Antonius and L. Flaccus expelled Duronius from the Senate because as plebeian tribune he had revoked a law passed to limit money spent on banquets. A remarkable reason for a *nota*! For how impudently does Duronius ascend the rostra to speak as follows: “A bridle has been laid upon you, citizens, quite intolerable. You have been bound and tied with a galling chain of slavery. A law has been passed commanding you to be frugal. Let us then revoke that regulation, overlaid as it is with the rust of rugged antiquity. For indeed, what use is liberty if we are not allowed to go to perdition with luxury as we want to?”

*M. autem Antonius et L. Flaccus censores Duronium senatu moverunt, quod legem de coercendis conviviorum sumptibus latam tribunus plebi abrogaverat. Mirifica notae causa: quam enim impudenter Duronius rostra conscendit illa dicturus! “Freni sunt iniecti vobis, Quirites, nullo modo perpetiendi. Alligati et constricti estis amaro vinculo servitutis: lex enim lata est quae vos esse frugi iubet. Abrogemus igitur istud horridae vetustatis rubigine obsitum imperium: etenim quid opus libertate, si volentibus luxu perire non licet?”*

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**T.14A. Quintus Cicero, *Commentariolum Petitionis* 8.**

Antonius and Catiline... Of these two, we have seen the one sold up by legal process; we have heard him declare on oath that he cannot compete in fair trial in Rome against a Greek; we know he was expelled from the Senate by the decision of admirable censors.

*Antonius et Catilina... Eorum alterius bona proscripta vidimus, vocem denique audivimus iurantem se Romae iudicio aequo cum homine Graeco certare non posse, ex senatu eiectum scimus optimorum censorum existimatione.*

**T.14B. Asconius, *Oratio in Toga Candida contra C. Antonium et L. Catilinam Competitores* 84.12-25 (Clark).**

He [Cicero, in his speech *In Toga Candida*, delivered in 64] declared it impossible for C. Antonius to have any clients [in his old province]. For he had robbed many persons in Achaëa on getting the use of cavalry squadrons from Sulla's army. Then the Greeks who had been robbed took Antonius to court before praetor M. [Terentius Varro] Lucullus, who had jurisdiction in cases involving aliens. The action for the Greeks was brought by C. Caesar, at the time only young... When Lucullus decided the case in accordance with what the Greeks were demanding, Antonius summoned the tribunes and swore an oath that he rejected the validity of the court for the reason that he was unable to enjoy an equality of rights. Six years before this speech was delivered, the censors Gellius and Lentulus removed this Antonius from the Senate and put their signatures to a public listing of their reasons – that he had plundered allies, rejected the judgement of a court, [and] that on account of his vast debts he had made over estates and held no property in his own name.

*Clientem autem negavit habere posse C. Antonium: nam is multos in Achaia spoliaverat nactus de exercitu Sullano equitum turmas. Deinde Graeci qui spoliati erant eduxerunt Antonium in ius ad M. Lucillum praetorem qui ius inter peregrinos dicebat. Egit pro Graecis C. Caesar etiam tum adulescentulus... et cum Lucillus id quod Graeci postulabant decrevisset, appellavit tribunos Antonius iuravitque se ideo eiurare quod aequo iure uti non posset. Hunc Antonium Gellius et Lentulus censores sexennio quo haec dicerentur senatu moverunt titulosque subscripserunt, quos socios diripuerit, quod iudicium recusarit, quod propter aeris alieni magnitudinem praedia manciparit bonaque sua in potestate non habeat.*

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**T.15A. Cicero, *Oratio pro A. Cluentio Habito* 42.119-120.**

The censors imposed their *nota* on certain of the jurors who served at the trial before Junius, endorsing it with the very reason alleged in the prosecution [that they had accepted bribes to return a verdict against Oppianicus]... yet those whom our two learned and distinguished censors, L. Gellius and Cn. Lentulus, themselves branded by name for theft and peculation were not only restored to the Senate but actually acquitted by the courts dealing with these very offences.

*Video igitur, iudices, animadvertisse censores in iudices quosdam illius consilii Iuniani, cum istam ipsam causam subscriberent... quos autem ipse L. Gellius et Cn. Lentulus, duo censores, clarissimi viri sapientissimique homines, furti et captarum pecuniarum nomine notaverunt, ei non modo in senatum redierunt, sed etiam illarum ipsarum rerum iudiciis absoluti sunt.*

**T.15B. Cicero, *Oratio pro A. Cluentio Habito* 45.126-47.131.**

What was it that influenced the censors? They themselves will not say – to put the case at its strongest – that it was anything more than common talk and rumour, or that they had learned anything from oral evidence or documents or any valid proof, or that their conclusion was in fact based on any hearing of the case. And even if it had been

otherwise, that conclusion still ought not to be so firmly planted as not to allow of its being uprooted...

And further as to this "corrupt judgement" mentioned in their *subscriptio*, who believes that their own was duly considered, or based on adequate investigation? I see that the *subscriptio* was made against M'. Aquilius and Ti. Gutta. What does that tell us? Supposing they say that two jurors only were bribed, then the others, I suppose, took no bribe for their verdict of 'guilty'. Then Oppianicus was not the victim of intrigue and bribery; nor are all those who voted for his conviction to be looked on, as Quinctius maintained at those meetings of his, with disapproval and suspicion; for I observe that two jurors only were held by the official pronouncement of the censors to be implicated in that scandal. Or else let them allege that they had discovered against those two something which they had not discovered against the others.

For it is utterly impossible to admit the plea that in the official imposition of the *nota* the censors followed the analogy of military usage [of exemplary punishment; punishing a few wrongdoers, chosen by lot, for the misbehaviour of a larger group]... But what justification is there for the censors doing the same, whether in elevating to high rank, or in passing judgement on a citizen or in punishing a wrongdoer?...

And do you propose to do the same when making up the *album senatorium* in your capacity as censor? Should there be several who have taken a bribe to condemn the innocent, will you, instead of visiting *ignominia* on all, choose at your pleasure and elect for degradation a few out of many? Shall the Senate then, to your knowledge and before your eyes, retain one single member, the Roman People a single juror, the state a single citizen who has compassed the ruin of the innocent by selling his honour and his oath, and who has not suffered *ignominia* for it? And shall the man who, for money's sake, robbed an innocent citizen of his country, his fortunes, and his children, shall he, I say, not be branded with the stigma of the censor's stern displeasure? Are you a prefect of morals, are you a master of ancient discipline and severity, if you either knowingly retain anyone in the Senate who is tainted with wickedness, or decide that it is not right to inflict the same punishment on all who are guilty of the same fault? Or shall the measure of punishment designed by our forefathers as a warning to the cowardice of a soldier in time of war, be equally applied by you to the dishonesty of a senator in time of peace? Had this precedent, drawn from military usage, been applicable to the infliction of the *nota censoria*, here too it should have been carried out by the drawing of lots. But if it is consistent with a censor's duty to ballot for punishment and to submit the conduct of criminals to the arbitrament of chance, surely it is wrong, where many have sinned, to pick and choose only a few for the infliction of *ignominia*.

In point of fact we all know that these *subscriptiones* amounted to an attempt to catch the breeze of popular favour. The case was taken up at *contiones*; and though it had never been heard, the same view of it was taken by the populace. No one had a chance to denounce that view; no one in fact exerted himself to urge the opposite side. Moreover, the courts of those days had fallen into great unpopularity... Seeing these men under the odium of other misdeeds and all manner of dishonour, they wished to brand them further by their *subscriptio*; and the fact that, at this very date and during their tenure in office, the judicial function had been extended to the equestrian order, made them the more anxious to let it appear that in degrading suitable persons, they were officially arraiging the courts as formerly constituted.

Yet had I or anyone else been permitted to plead the case before these very censors, judges as wise as they would certainly have given me the verdict. For the facts show that they knew nothing and had ascertained nothing for themselves: their whole action in making their *subscriptio* had been a bid for notoriety and popular applause.

*Quid igitur censores secuti sunt? Ne ipsi quidem, ut gravissime dicam, quicquam aliud dicent praeter sermonem atque famam. Nihil se testibus, nihil tabulis, nihil aliquo gravi argumento comperisse, nihil denique causa cognita statuisse dicent. Quod si ita fecissent, tamen id non ita fixum esse deberet, ut convelli non liceret...*

*Nam haec quidem, quae de iudicio corrupto subscripserunt, quis est qui ab illis satis cognita et diligenter iudicata arbitretur? In M'. Aquilium et in Ti. Guttam video esse subscriptum. Quid est hoc? Duos esse corruptos solos pecunia dicant: ceteri videlicet gratis condemnarunt. Non est igitur circumventus, non oppressus pecunia, non, ut illae Quinctianae contiones habebantur, omnes, qui Oppianicum condemnarunt, in culpa sunt ac suspicione ponendi: duos solos video auctoritate censorum adfines ei turpitudini iudicari. Aut illud adferant, aliquid sese, quod de his duobus habuerint compertum, de ceteris <non> comperisse.*

*Nam illud quidem minime probandum est, ad notationes auctoritatemque censoriam exemplum illos e consuetudine militari transtulisse. Statuerunt enim ita maiores nostril, ut, si a multis esset flagitium rei militaris admissum, sortito in quosdam animadverteretur, ut metus videlicet ad omnes, poena ad paucos perveniret. Quod idem facere censores in delectu dignitatis et in iudicio civium et in animadversione vitiorum qui convenit?...*

*Hoc tu idem facies censor in senatu legendo? Si erunt plures, qui ob innocentem condemnandum pecuniam acceperint, tu non animadvertes in omnes, sed carpes, ut velis, et paucos ex multis ad ignominiam sortiere? Habebit igitur te sciente et vidente curia senatorem, populus Romanus iudicem, res publica civem sine ignominia quemquam, qui ad perniciem innocentis fidem suam et religionem pecunia commutarit? Et, qui pretio adductus eripuerit patriam, fortunas, liberos civi innocenti, is censoriae severitatis nota non inuretur? Tu es praefectus moribus, tu magister veteris disciplinae ac severitatis, si aut retines quemquam sciens in senatu scelere tanto contaminatum aut statuis, qui in eadem culpa sit, non eadem poena adfici convenire? Aut quam condicionem supplicii maiores in bello timiditati militis propositam esse voluerunt, eandem tu in pace constitues improbitati senatoris? Quod si hoc exemplum ex re militari ad animadversionem censoriam transferendum fuit, sortitione id ipsum factum esse oportuit. Sin autem sortiri ad poenam et hominum delictum fortunae iudicio committere minime censorium est, certe in multorum peccato carpi paucos ad ignominiam non oportet.*

*Verum omnes intellegimus in istis subscriptionibus ventum quendam popularem esse quaesitum. lactata res erat in contione: incognita causa probatum erat illud multitudini: nemini licitum est contra dicere: nemo denique, ut defenderet contrariam partem, laborabat. In invidiam porro magnam illa iudicia venerant... Homines, quos ceteris vitiis atque omni dedecore infames videbant, eos hac quoque subscriptione notare voluerunt, et eo magis, quod illo ipso tempore illis censoribus erant iudicia cum equestri ordine communicata, ut viderentur per hominum idoneorum ignominiam sua auctoritate illa iudicia reprehendisse.*

*Quod si hanc apud eosdem ipsos censores mihi aut alii causam agere licuisset, hominibus tali prudentia praeditis certe probavissem: res enim indicat nihil ipsos habuisse cogniti, nihil comperti: ex tota ista subscriptione rumorem quendam et plausum popularem esse quaesitum.*

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#### **T.16A Plutarch, Cicero 17.1.**

The creatures of Catiline who had been left behind in the city were brought together and encouraged by Cornelius Lentulus, surnamed Sura, a man of illustrious birth, but one who had led a low life and for his licentiousness had formerly been expelled from the Senate,

though now he was serving as praetor for the second time, as is the custom with those who have recovered their senatorial dignity.

Τοὺς δ' ὑπολειφθέντας ἐν τῇ πόλει τῶν διεφθαρμένων ὑπὸ τοῦ Κατιλίνα συνῆγε καὶ παρεθάρρυνε Κορνήλιος Λέντιος Σούρας ἐπικλήσιν, ἀνὴρ γένους μὲν ἐνδόξου, βεβιωκῶς δὲ φαύλως καὶ δι' ἀσέλγειαν ἐξεληλαμένος τῆς βουλῆς πρότερον, τότε δὲ στρατηγῶν τὸ δεύτερον, ὡς ἔθος ἐστὶ τοῦ ἐξ ὑπαρχίης ἀνακτωμένοις τὸ βουλευτικὸν ἀξίωμα.

#### **T.16B. Dio, *Roman History* XXXVII.30.4.**

Those who cooperated with [Catiline] most closely were: in Rome, the consul and P. Lentulus, who, after his consulship, had been expelled from the Senate and was now serving as praetor, in order to gain senatorial rank again.

Συνέπραττον δὲ αὐτῷ τὰ μάλιστα τὰ μὲν ἐν τῇ Ῥώμῃ ὃ τε ὕπατος καὶ ὁ Λέντουλος ὁ Πούπλιος ὁ μετὰ τὴν ὑπατεάν ἐκ τῆς γερουσίας ἐκπεσῶν (ἐστρατήγει γὰρ ὅπως τὴν βουλεάν ἀναλάβῃ).

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#### **T.17A. Sallust, *Bellum Catilinae* 23.1-4.**

Now one of the members of the conspiracy [of Catiline] was Q. Curius, a man of no mean birth but guilty of many shameful crimes whom the censors had expelled from the Senate because of his immorality. This man was as untrustworthy as he was reckless; he could neither keep secret what he had heard nor conceal even his own misdeeds; he was utterly regardless of what he did or said. He had an intrigue of long standing with Fulvia, a woman of quality, and when he began to lose her favour because poverty compelled him to be less lavish, he suddenly fell to boasting, began to promise her seas and mountains, and sometimes to threaten his mistress with the steel if she did not bow to his will; in brief, to show much greater assurance than before. But Fulvia, when she learned the cause of her lover's overbearing conduct, had no thought of concealing such a peril to her country, but without mentioning the name of her informant she told a number of people what she had heard of Catiline's conspiracy from various sources.

*Sed in ea coniuratione fuit Q. Curius, natus haud obscuro loco, flagitiis atque facinoribus coopertus, quem censores senatu probri gratia moverant. Huic homini non minor vanitas inerat quam audacia; neque reticere quae audierat, neque suamet ipse scelera occultare; prorsus neque dicere neque facere quicquam pensi habebat. Erat ei cum Fulvia, muliere nobili, stupri vetus consuetudo; cui cum minus gratus esset, quia inopia minus largiri poterat, repente glorians maria montisque polliceri coepit et minari interdum ferro, ni sibi obnoxia foret; postremo ferocius agitare quam solitus erat. At Fulvia insolentiae Curi causa cognita tale periculum rei publicae haud occultum habuit, sed sublato auctore de Catilinae coniuratione quae quoque modo audierat compluribus narravit.*

#### **T.17B. Appian, *Bellum Civile* II.1.3.**

All these facts [of Catiline's conspiracy], while they were still secret, were communicated to Cicero by Fulvia, a woman of quality. Her lover, Q. Curius, who had been expelled from the Senate for many deeds of shame and was thought fit to share in this plot of Catiline's,



told his mistress in a vain and boastful way that he would soon be in a position of great power.

*Καὶ τὰδε πάντα ἔτι ἀγνοούμενα Φουλβία γύναιον οὐκ ἀφανὲς ἐμήνυε τῷ Κικέρωνι· ἧς ἐρῶν Κόιντος Κούριος, ἀνὴρ δι' ὀνειδῆ πολλὰ τῆς βουλῆς ἀπεωσμένος καὶ τῆσδε τῆς Κατιλίνα συνθήκης ἠξιωμένος, κούφως μάλα καὶ φιλοτίμως ἐξέφερεν οἶα πρὸς ἐρωμένην, ὡς αὐτίκα δυναστεύσων.*

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**T.18. Cicero, *Oratio pro A. Cluentio Habito* 48.135.**

[Cicero addresses the opposing counsel, Accius, at the trial of Cluentius, for murder, 66]... There is a further point which troubles me greatly, an argument to which I find myself scarcely able to reply; I mean the passage which you quote from the will of the elder Cn. Egnatius – the most honourable and intelligent of men, I need hardly say – stating that he disinherited his son for taking a bribe to secure Oppianicus' conviction. Of this man's [the son's] worthless and unreliable character I will not dilate: the very will which you quote has the effect of disinheriting the son whom the testator hated, and at the same time instituting absolute strangers as heirs conjointly with the son [another son] whom he loved. But as for you, Accius, I advise you to consider carefully whether you wish the judgement of the censors or that of Egnatius to carry weight. If that of Egnatius, then no weight can be attached to the censors' *subscriptiones* in other cases; for this very Cn. Egnatius, whose judgement you wish to carry weight, the censors expelled from the Senate. But if that of the censors, Egnatius the younger, whose father disinherited him in the style of a censor's *scriptio*, was retained in the Senate by the very censors who expelled his father!

*Unum etiam est, quod me maxime perturbat, cui loco respondere vix videor posse, quod elogium recitasti de testamento Cn. Egnati patris, hominis honestissimi videlicet et sapientissimi: idcirco se exheredasse filium, quod is ob Oppianici condemnationem pecuniam accepisset. De cuius hominis levitate et inconstantia plura non dicam: hoc testamentum ipsum, quod recitas, eius modi est, ut ille, cum eum filium exheredaret, quem oderat, ei filio coheredes homines alienissimos adiungeret, quem diligebat. Sed tu, Acci, consideres censeo diligenter, utrum censorium iudicium grave velis esse an Egnati. Si Egnati, leve est, quod censores de ceteris subscripserunt: ipsum enim Cn. Egnatium, quem tu gravem esse vis, ex senatu eiecerunt: sin autem censorum, hunc Egnatium, quem pater censoria subscriptione exheredavit, censores in senatu, cum patrem eicerent, retinuerunt.*

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**T.19A. Cicero, *Oratio pro A. Cluentio Habito* 42.119-120.**

See T.15A.

**T.19B. Cicero, *Oratio pro A. Cluentio Habito* 45.125-47.131.**

See T.15B.

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**T.20. Cicero, *Oratio pro A. Cluentio Habito* 47.131-132.**

[In censuring those jurors who had, at the trial of Oppianicus, for murder, in 74, been suspected of accepting bribe money to convict the defendant]... For the facts show that [the censors] knew nothing and had ascertained nothing for themselves: their whole action in making their *subscriptions* had been a bid for notoriety and popular applause. For in the case of P. Popilius [*sic*], who had voted for Oppianicus' condemnation, L. Gellius' *scriptio* was to the effect that he had taken a bribe to condemn the innocent. Now as for that, what a power of divination he must have had to know the innocence of a man whom he may never have seen, when men of great sagacity, jurors who have heard the case, gave a verdict of 'not proven' – to say nothing of those who voted 'guilty'.

But let that pass: Gellius finds Popilius guilty: his verdict is that he took a bribe from Cluentius. Lentulus says he did not. His reason for refusing to admit Popilius to the Senate [*sic* - senatorial order] was that his father was a freedman, though he allowed him to retain a senator's seat at the games together with his other insignia, besides freeing him from all *ignominia*. In doing this, he gave the verdict that Popilius had been disinterested in voting for Oppianicus' condemnation. Moreover, Lentulus afterwards singled out this same Popilius for praise when giving evidence at a trial *de ambitu*. Inasmuch, then, as Lentulus did not abide by the judgement of Gellius, nor was Gellius content with the opinion of Lentulus, and as neither censor thought it necessary to abide by his colleague's decision, what reason is there for any of us to suppose that censorial *scriptio* should in every case be unalterable and binding for all time?

*Res enim indicat nihil ipsos habuisse cogniti, nihil comperti: ex tota ista subscriptione rumorem quendam et plausum popularem esse quaesitum. Nam in P. Popilium, qui Oppianicum condemnarat, subscripsit L. Gellius, quod is pecuniam accepisset, quo innocentem condemnaret. Iam id ipsum quantae divinationis est scire innocentem fuisse reum, quem fortasse numquam viderat, cum homines sapientissimi, iudices, ut nihil dicam de eis, qui condemnarunt, causa cognita sibi dixerunt non liquere!*

*Verum esto: condemnat Popilium Gellius: iudicat accepisse a Cluentio pecuniam. Negat hoc Lentulus. Nam Popilium, quod erat libertini filius, in senatum non legit, locum quidem senatorium ludis et cetera ornamenta relinquit et eum omni ignominia liberat. Quod cum facit, iudicat eius sententia gratis esse Oppianicum condemnatum. Et eundem Popilium postea Lentulus in ambitus iudicio pro testimonio diligentissime laudat. Quare si neque L. Gelli iudicio stetit Lentulus neque Lentuli existimatione contentus fuit Gellius, et si uterque censor censoris opinione standum non putavit, quid est quam ob rem quisquam nostrum censorias subscriptiones omnes fixas et in perpetuum ratas putet esse oportere?*

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**T.21. Valerius Maximus, *Facta et Dicta Memorabilia* II.9.9.**

See T.12B.

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## T.22. Cicero, *De Divinatione* I.16.29-30.

We see what happened to M. Crassus when [in 55] he ignored the announcement of *dirae*. It was on the charge of having on this occasion falsified the auspices that C. Ateius, an honourable man and a distinguished citizen, was, on insufficient evidence, stigmatized by the then censor Appius, who was your associate in the augural college, and an able one too, as I have often heard you say. I grant you that in pursuing the course he did Appius was within his rights as a censor, if, in his judgement, Ateius had announced a fraudulent augury. But he showed no capacity whatever as an augur in holding Ateius responsible for that awful disaster which befell the Roman people [at Carrhae]. Had this been the cause then the fault would not have been in Ateius, who made the announcement that the augury was unfavourable, but in Crassus, who disobeyed it; for the issue proved that the announcement was true, as this same augur and censor admits. But even if the augury had been false it could not have been the cause of the disaster; for *dirae* – and the same may be said of auspices, omens, and all other signs – are not the causes of what follows: they merely foretell what will occur unless precautions are taken. Therefore Ateius, by his announcement, did not create the cause of the disaster; but having observed the sign he simply advised Crassus what the result would be if the warning was ignored. It follows, then, that the announcement by Ateius of the unfavourable augury had no effect; or if it did, as Appius thinks, then the fault not in him who gave the warning, but in him who disregarded it.

*M. Crasso quid acciderit, videmus, dirarum obnuntiatione neglecta. In quo Appius, collega tuus, bonus augur, ut ex te audire soleo, non satis scienter virum bonum et civem egregium censor C. Ateium notavit, quod ementitum auspicia subscriberet. Esto; fuerit hoc censoris, si iudicabat ementitum; at illud minime auguris, quod adscripsit ob eam causam populum Romanum calamitatem maximam cepisse. Si enim ea causa calamitatis fuit, non est in eo culpa, qui obnuntiavit, sed in eo, qui non paruit. Veram enim fuisse obnuntiationem, ut ait idem augur et censor, exitus approbavit; quae si falsa fuisset, nullam afferre potuisset causam calamitatis. Etenim dirae, sicut cetera auspicia, ut omina, ut signa, non causas afferunt, cur quid eveniat, sed nuntiant eventura, nisi provideris. Non igitur obnuntiatio Atei causam finxit calamitatis, sed signo obiecto monuit Crassum, quid eventurum esset, nisi cavisset. Ita aut illa obnuntiatio nihil valuit, aut si, ut Appius iudicat, valuit, id valuit ut peccatum haereat non in eo qui monuerit, sed in eo qui non obtemperavit.*

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## T.23A [Cicero], *Invectiva in C. Sallustium Crispum* 16-17.

Suppose I had not chosen to answer you myself but recited that censorial pronouncement of Ap. Claudius and L. Piso, gentlemen of the highest character, openly and to all citizens, a pronouncement which each one of them has treated as a law, don't you think I would have branded you for all time with marks that the remainder of your life could not wash away? After that *lectio senatus* we saw no more of you – unless perhaps you flung yourself into that army into which all the bilge water of the Republic had flowed. But that same Sallustius who in peacetime had not even kept his place as a senator, that same was brought back into the Senate by way of a quaestorship after the Republic had been crushed by arms, by a conqueror who restored exiles.

*Quod si tibi per me nihil respondere voluissem, sed illum censorium eloquium Appii Claudii et L. Pisonis, integerrimorum virorum, quo usus est quisque eorum pro lege, palam*

*universis recitarem, nonne tibi viderer aeternas inurere maculas, quas reliqua vita tua eluere non posset? Neque post illum dilectum senatus umquam te videmus; nisi forte in ea te castra coniecisti quo omnis sentina rei publicae confluxerat. At idem Sallustius, qui in pace ne senator quidem manserat, postea quam res publica armis oppressa est, [et] idem a victore qui exules reduxit in senatum per quaesturam est reductus.*

**T.23B. [Acro], Scholion in Q. Horatium Sermones I.2.49.**<sup>739</sup>

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<sup>739</sup> Cf Porphyrio, *Hor. Ser. I.2.49*:

He said it is much safer to pursue freedwomen; yet if he grasps too eagerly, as did Sallustius Crispus, then he falls into the same infamy of corrupt behaviour.

*Ait multo quidem tutius esse libertinae conditionis mulieres sectari; quas tamen si cupidius quis adpetat, ut Sallustius Crispus, in eandem infamiam corruptorum morum incidere.*

Both are commenting on Hor., *Ser. I.2.47-54*:

But how much safer is trafficking in the second class. With freedwomen, I mean; after whom Sallustius runs just as wild as an adulterer. Yet if he wished to be good and generous, so far as his means and reasons would direct, and so far as one might be liberal in moderation, would give him sum sufficient, not such as would mean for him shame and ruin. But no; because of this one thing he hugs himself, admires himself, and plumes himself, because he says "I meddle with no matron".

*Tutior at quanto merx est in classe secunda, libertinarum dico, Sallustius in quas non minus insanit quam qui moechatur. At hic si, qua res, qua ratio suaderet, quaque modeste munifico esse licet, vellet bonus atque benignus esse, daret quantum satis esset, nec sibi damno dedecorique foret. Verum hoc se amplectitur uno, hoc amat et laudat: "matronam nullam ego tango".*

Cf Varro, *Pius aut De Pace* fr.1 (Riese) ap. Gell., XVII.18:

M. Varro, a man of great trustworthiness and authority in his writings and his life, in the work which he entitled *Pius, aut De Pace*, says that C. Sallustius, the author of those austere and dignified works, whom we see in his *Historiae* writing and acting like a censor, was taken in adultery by Annius Milo, soundly beaten with thongs, and allowed to escape only after paying a sum of money.

*M. Varro, in litteris atque vita fide homo multa et gravis, in libro, quem scripsit Pius, aut De Pace, C. Sallustium scriptorem seriae illius et severae orationis, in cuius Historia notiones censorias fieri atque exerceri videmus, in adulterio deprehensum ab Annio Milone loris bene caesum dicit et, cum dedisset pecuniam, dimissum.*

This is restated in Ascon., *De Vita Sallusti Crispi* fr.1 (Peter) ap. [Acro], *Hor. Ser. I.2.41* (cf Porphyrio, *Hor. Ser. I.2.41*), although Asconius' appraisal of its historicity or otherwise is not preserved. Some moderns, notably G.Funaioli, 'C.Sallustius Crispus(10)', *RE.IA*<sub>2</sub> (1920), 1916-1917; F.Münzer, 'L.Octavius(26)', *RE.XVII*<sub>2</sub> (1937), 1820; R.Syme, *Sallust*, 278-280, dismiss the anecdote on the grounds that Horace presents Sallust as a chaser of freedwomen and a strict eschewer of *matrones*, and that he admits likewise. However it does not follow that Sallust did not succumb to temptation with an older woman just the once. Other grounds for

Sallust was the object of the censors in the Senate. He affirmed himself to be a pursuer not of matrons but of freedwomen, and for this reason was removed from the Senate.

*Ipsē enim Sallustio in senatu a censoribus hoc obiectum est. Tum ille se non esse matronarum, sed libertinarum sectatorem esse testatus est, et ideo senatu pulsus est.*

#### **T.23C. Dio, *Roman History* XL.63.4.**

Piso, who was in any case disposed to avoid trouble, and for the sake of maintaining friendship with his son-in-law [Caesar] paid court to many people, was himself responsible for none of the above acts [of censor Ap. Claudius Pulcher], but he did not resist Claudius when he drove from the Senate all the freedmen and numbers even of the exclusive nobility, among them Sallustius Crispus, who wrote the history.

Ὁ γὰρ Πίσων οὔτ' ἄλλως πράγματ' ἔχειν ἐθέλων καὶ πρὸς τὴν τοῦ γαμβροῦ φιλίαν πολλοὺς θεραπεύων, αὐτὸς μὲν οὐδὲν τοιοῦτον ἐποίησεν, ἐκείνῳ δὲ οὐκ ἀντέπραξε πάντας μὲν τοὺς ἐκ τῶν ἀπελευθέρων συχνοὺς δὲ καὶ τῶν πάνυ γενναίων, ἄλλους τε καὶ τὸν Κρίσπον τὸν Σαλούστιον τὸν τὴν ἱστορίαν γράψαντα, ἀπελάσαντι ἐκ τοῦ συνεδρίου.

#### **T.23D. Dio, *Roman History* XLII.52.2.**

These [mutinous legionaries] nearly killed Sallust, who had been appointed praetor [was *praetor designatus*] in order to recover his senatorial rank.

Οὔτοι οὖν τὸν τε Σαλούστιον παρ' ὀλίγον ἀπέκτειναν (στρατηγὸς γὰρ ἐπίτῳ τὴν βουλεῖαν ἀναλαβεῖν ἀπεδέδεικτο).

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#### **T.24. Marcus Aurelius *ap. Fronto, Epistulae ad M. Caesarem* V.26.**

Let me have the name of the people's tribune against whom Acilius the censor, of whom I wrote, set a mark.

*Nomen tribuni plebis, cui imposuit notam Acilius censor, quem scripsi, mitte mihi.*

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accepting the anecdote as valid are given by J.E.G.Whitehorne, *CW*68 (1975), 425-430. In an episode placed prior to his being expelled. [Cic.], *In Sall.* 15 has Sallust admit before the Senate an accusation of adultery. This seems to be an allusion to the confrontation mentioned in T.23B.

**T.25. Fronto, *Epistulae ad M. Caesarem* V.27.**

M. Lucilius, a plebeian tribune, against the decision of his colleagues and with his own hand cast into prison by force a Roman citizen, though they ordered his discharge. For that action he was marked by the censors. First divide the case, then try your hand on either side both as accuser and defender.

*M. Lucilius tribunus plebis hominem liberum civem Romanum, quom collegae mitti iuberent, adversus eorum sententiam ipsusque vi in carcerem compegit. Ob eam rem a censoribus notatur. Divide primum causam, εἴτα εἰς ἑκάτερα τὰ μέρη ἐπιχεῖρσον καὶ κατηγορῶν καὶ ἀπολογούμενος.*

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