

A HISTORY OF EXILE IN THE ROMAN REPUBLIC

GORDON P. KELLY



CAMBRIDGE

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Roman senators and equestrians were always vulnerable to prosecution for their official conduct, especially because politically motivated accusations were common. When charged with a crime in Republican Rome, such men had a choice concerning their fate. They could either remain in Rome and face possible conviction and punishment or go into voluntary exile and avoid legal sentence. For the majority of the Republican period, exile was not a formal legal penalty contained in statutes, although it was the practical outcome of most capital convictions. Despite its importance in the political arena, Roman exile has been a neglected topic in modern scholarship. This study examines all facets of exile in the Roman Republic: its historical development, technical legal issues, the possibility of restoration, as well as the effects of exile on the lives and families of banished men.

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TO MY PARENTS, SHIRLEY AND JAMES KELLY,
AND TO MY WIFE,
MOLLY ROBINSON KELLY

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PREFACE

SCHOLARS HAVE ATTEMPTED TO RECONSTRUCT AND INTERPRET THE HISTORY OF Greco-Roman antiquity for centuries. As a graduate student at Bryn Mawr College investigating several potential dissertation topics, I was pleased to discover that there are still areas of the ancient world that have received very little attention from previous generations of academics. The practice of exile in the Roman Republic is one such topic that has largely escaped detailed examination. In this work, which is a revised and expanded version of my 1999 dissertation, I have tried to look at the major features of exile and, as much as possible, put them into the context of the wider world of the Roman Republic. Even so, this study is not intended to be an all-inclusive treatment of the topic, but rather as a beginning for further investigations of Roman exile.

I would like to acknowledge the support of others that made this book possible. T. Corey Brennan first suggested the topic of Roman Republican exile to me, and has provided guidance and support well above and beyond what is expected of a good dissertation advisor. His tireless dedication to his students is truly remarkable. Indeed, his advice and constant support on the dissertation and other professional matters have been invaluable to me over the years. In short, he is an exemplary scholar and mentor. Equally as important has been the guidance of R. T. Scott, the co-director of my dissertation. At numerous points in the drafting of the dissertation, his vast expertise steered me toward areas of research that have greatly improved the quality of the finished product. I am very much indebted to the contributions of both Professor Brennan and Professor Scott, but any shortcomings of this work are solely my responsibility.

In addition to my dissertation advisors, I benefited much from the other faculty members in the Department of Greek, Latin, and Classical Studies at Bryn Mawr College during my time as a graduate student: Julia H. Gaisser, Mabel Lang, Richard Hamilton, and Gregory Dickerson. I would also like to thank my fellow graduate students at Bryn Mawr, especially Gary Farney, Pamela Lackie, Marshall Johnston, and David Pollio. I have greatly profited from discussions with them (often at late hours in Canaday Library or over beers at a local watering hole). Their insights and suggestions have helped me tremendously. My colleagues at other

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On a more personal level, I would like to acknowledge the support of my brother, Kevin. I cannot adequately express my appreciation for my parents, Shirley and James Kelly, who filled me with their love of literature and history from a young age. Unfortunately, they did not live to see the publication of this volume, but their influence is on every page. And finally, I owe my deepest gratitude to my wife, Molly Robinson Kelly, whose constant love and support never wavered as I spent long hours on this project.

G. P. K.
Portland, Oregon
April 2006

I INTRODUCTION

1.1 OVERVIEW

In March 58 BC, the great orator and statesman M. Tullius Cicero left the city of Rome and went into exile. A few weeks after his departure, a distraught Cicero wrote to his friend Atticus of his remorse for having chosen exile instead of death: “The fact that you encourage me to live prevents me from harming myself, but you are not able to stop me from lamenting my decision and my life.”¹ Cicero’s letters during his eighteen-month exile are peppered with similar expressions of grief concerning his situation, as well as reports of his efforts to attain a recall from exile. Not all Roman exiles reacted in such distraught fashion, however. T. Albucius, an exile of a previous generation, seemed to flourish as a banished man. With his public career cut short by exile, Albucius did not lament the loss of his homeland and political aspirations, but reveled in his freedom from work and indulged his passion for philosophical study.²

Although Cicero and Albucius had dissimilar reactions to their banishment, both had voluntarily chosen exile when faced with the potential of criminal prosecution. In this action, they were not unique: elite Romans pursuing public careers were always vulnerable to prosecution for their official conduct. When charged with a crime in Republican Rome, such men had a choice concerning their fate. They could either remain in Rome and face possible conviction and punishment or go into voluntary exile and avoid legal sentence. Thus exile was not a formal legal penalty contained in statutes, although it was the practical outcome of most capital convictions. Indeed, due to the custom of allowing voluntary *exilium*, there are relatively few recorded instances of death sentences actually being carried out against Roman citizens during the Republican period. Once a citizen had fled Roman territory, a decree of *aquae et ignis interdictio* (interdiction

¹ Cic. Att. 3.7.2: *quod me ad vitam vocas, unum efficis ut a me manus abstineam, alterum non potes ut me non nostri consili vitaeque paeniteat*. Cf. Att. 3.3. All dates in this work are BC unless indicated otherwise. Note that the translations in this book are adapted from the most recent editions of the Loeb Classical Library.

² Cic. *Tusc.* 5.108.

from fire and water) was generally enacted by the *concilium plebis* (plebeian citizen assembly) to bar the exile from ever returning to his homeland. Once he was outside of Roman jurisdiction, the exile was free to settle where he wished and live out the remainder of his life without interference from Rome. Exile was not always permanent: beginning in the late second century, there are examples of Roman citizen assemblies granting restoration from exile to specific individuals.³

This study examines the phenomenon of voluntary exile to avoid legal penalties or proceedings, in particular its historical development and effects on the political and social life of the upper classes from 220 to 44. The focus on the highest levels of Roman society is due to the nature of the surviving evidence: only banished men of senatorial and equestrian status are mentioned in the extant sources.⁴ As regards the chronological limits of this work, I have followed the historian Polybius in choosing the year 220 as a starting point, since the sources for earlier eras of Roman history often are “hearsay taken from hearsay.”⁵ The period beginning around 220 is within the lifetime of the first Roman historians and thus is more accurately attested. Material concerning the Regal Period and Early Republic, on the contrary, is replete with annalistic fictions, embellishments, and anachronisms, making it nearly impossible to glean any meaningful legal or historical details concerning exile for these early periods.⁶ The late third century is a propitious starting point for an additional reason: following the highly suspect account of the banishment of Camillus in 392, there is no significant mention of *exilium* in the ancient sources until the advent of the Second Punic War. As regards the terminus of this study, the assassination of Julius Caesar and the emergence of the future emperor Augustus onto the political stage makes 44 a natural place to conclude any examination of the Roman Republic.

³ A few cases of restoration from exile in the Early Roman Republic are reported by ancient authors. See Appendix II for a discussion of the anachronistic nature of these accounts.

⁴ See Chapter 6, number 1 for a unique reference to the exile of women in the Republican period. Most women suspected of wrongdoing were subjected to trial and punishment by their own families: cf. J. Gardner, *Women in Roman Law and Society* (Bloomington, 1986), 6–7; B. Rawson, “The Roman Family” in B. Rawson, ed., *The Family in Ancient Rome: New Perspectives* (Ithaca, 1986), 16.

⁵ Plb. 4.2.3. For the problematic source material for Early Roman history, see A. J. Woodman, *Rhetoric in Classical Historiography* (London, 1988), 77–78 and 90–93; E. Badian, “The Early Historians,” in T. Dorey, ed., *The Latin Historians* (London, 1966), 11–23; T. Cornell, “The Value of the Literary Tradition Concerning Early Rome,” in K. A. Raafaub, ed., *Social Struggles in Archaic Rome* (Berkeley, 1988), 58.

⁶ The danger of incautiously using sources for Early Rome in this type of study is aptly demonstrated by M. Fuhrman, Review of G. Crifo, *Ricerche sull’ “exilium” nel periodo repubblicano*, ZRG 80 (1963), 451–457.

In addition to voluntary exile, two other forms of exclusion from the state will receive attention in this book. The mid-first century saw the emergence of exile as an actual penalty in some criminal statutes, although voluntary exile still existed side by side with this new criminalized form of banishment. While this use of exile as a statutory punishment occurred only in the waning days of the Republic, another form of involuntary expulsion existed throughout the period of this study. Roman magistrates possessed the authority to impose certain coercive measures to ensure that they were unhindered in their ability to carry out official tasks. One such power was *relegatio* (relegation), which allowed them to expel any disruptive persons from a given area. While *relegatio* was used occasionally to remove troublesome foreigners from Rome, it was very rarely used against Roman citizens. Both exile as a legal penalty and relegation are discussed fully in Chapter Two. The proscriptions of the late 80s as employed by Sulla, however, are not considered, since they are a separate phenomenon.⁷ Several important differences mark proscription as distinct from both exile (voluntary and statutory) and *relegatio*. Once an exile had quit Roman territory and taken up a new residence abroad, he was effectively beyond the reach of Roman authorities. However, a proscribed man was considered a public enemy (*hostis*), and though he may flee from Roman territory, he was never afforded a safe resting place. Sanctions were also taken against the children of the proscribed, who were made ineligible to hold political office. The flight of Marius and his followers in 88 is not discussed in detail either, since these men were also declared enemies of state and allowed no refuge.⁸

Despite its importance in the Roman political arena during the Republican era, *exilium* has been a neglected topic in modern scholarship. Most research concerning Roman exile is contained in general surveys of the Roman legal system. The few works that have explored Republican-era exile in depth share a limitation: they have not systematically treated the examples of exile in the ancient sources, but have narrowly focused on topical discussions of legal issues and the technical

⁷ And as such have received detailed treatment by F. Hinard, *Les Proscriptions de la Rome républicaine* (Rome, 1985).

⁸ Marius and his associates in 88 as *hostes*: App. *BC* 1.60; cf. R. A. Bauman, "The Hostis Declarations of 88 and 87 BC," *Athenaeum* 51 (1973), 270–293. The lack of refuge for the proscribed is demonstrated by the case of C. Norbanus in 82. He sought sanctuary at Rhodes, an independent state and traditional place of exile. Sulla nonetheless demanded that the Rhodians surrender him, and Norbanus committed suicide to avoid returning to Rome: App. *BC* 1.91. Sanctions against the children of *proscripti*: Sal. *Hist.* 55.6M; Vell. 2.28.3; Plut. *Sul.* 31.

mechanisms of *exilium*.⁹ This legalistic approach has ignored the experiences of the exiles themselves, and the impact of banishment on the careers and families of the banished. Many details and facets of *exilium* have thus gone unnoticed in scholarship – particularly the historical development of its actual practice. It is my hope that this book will provide a fuller understanding of the phenomenon of exile and its significance in Republican-era Rome.

The second chapter of this work covers the basic features and the legal background of *exilium*. This chapter contains topical discussions of technical details such as the relationship between exile and Roman citizenship, the use of *aquae et ignis interdictio*, and the development of banishment as a statutory punishment in the late Republic. Chapter Three deals with the historical development of the practice of Roman exile from the Second Punic War to the beginning of the Social War, and the fourth chapter continues this inquiry down to the death of Julius Caesar in 44. Two particular features receive special attention in Chapters Three and Four: the sites exiles tended to choose for relocation and the possibility of official restoration from banishment. Chapter Five features a discussion of miscellaneous topics of *exilium*, including economic and familial aspects, as well as the stories of exiles found in political propaganda. The sixth chapter is a prosopography of Republican-era exiles, arranged chronologically. Although we can assume that nearly all elite Romans who faced a capital sentence avoided the death penalty by self-banishment, I have not included all such Republican *condemnati* (convicts) in this section. Only those Romans for whom there is evidence (either direct or indirect) in ancient sources as having sought *exilium* are featured in this chapter. “Assumed” exiles would contribute nothing to this study, since their inclusion would add no relevant information concerning the practice of banishment. Indeed, for such convicts, no further ancient evidence exists of any activities after conviction: they simply disappear from the historical record. While one can assume that such convicts escaped capital punishment by going into exile, there is no information about them to examine.

A word must be said about the sources for this work. No ancient source provides a detailed treatment of the practice or development of *exilium*. As a result, brief

⁹ G. Crifò, *Ricerche sull’ “exilium” nel periodo repubblicano* (1961) explores Republican era exile to 100 BC, and E. L. Grasmück, *Exilium: Untersuchungen zur Verbannung in der Antike* (1978) devotes a chapter to Roman Republican banishment.

descriptions, summary remarks, and other scraps of information from disparate sources must be collected, interpreted, and fitted together to form a coherent picture of this phenomenon. Meager evidence makes such procedure standard for most areas of classical studies, as the researcher is obliged to make certain inferences to fill in missing pieces. The case of Roman Republican exile is no exception. It has been my aim in this work to fully explain my interpretation of the ancient evidence and subsequent conclusions to give the reader ample information to evaluate my reconstruction of the practice of *exilium*.

Before proceeding, it is useful to explain some terminology. In English, the word *exile* can describe a wide variety of situations and is often inconsistently used by modern authors. The ancient sources are no different: *exilium* and its cognates are employed very broadly to describe almost any act of withdrawal or flight. Thus, *exilium* can be used to indicate traditional voluntary exile, flight from proscription, magisterial *relegatio*, retirement from Rome for personal reasons, extended military service, and even emigration or travel.¹⁰ Fortunately, context generally always makes clear the specific meaning in each case. For the purposes of this study, *exilium* refers to the voluntary act of exile to avoid legal penalty. I use the English words *exile* and *banishment* in a similar fashion. Reference to another form of withdrawal from the state (such as a formal penalty or by magisterial *relegatio*) will be made clear in the text. *Aquae et ignis interdictio* will be translated as either “interdiction” or “outlawry.”

The term *voluntary exile* is similarly ambiguous and needs further clarification, as not all Romans who willingly withdrew from their homeland in response to judicial proceedings were banished men. There are two criteria in this study for determining voluntary exile: that the person’s flight allowed him to avoid potential legal penalties and that the fugitive was recognized as an exile by Roman authorities (and thus was prevented from returning home). To illustrate these criteria, the cases of three men who are often called “exiles” in ancient and modern sources merit examination. M. Livius Salinator (cos. 219 and 207) was accused of malfeasance in his deposition of the spoils from his victory in Illyria. Convicted and fined

¹⁰ Cf. TLL s.v. “Exilium,” col. 1484: *privatio soli patrii . . . qualis sive alicuius discessu voluntario efficitur . . . sive lege et damnatione infertur* (separation from one’s native soil, . . . as is caused by someone’s voluntary departure, . . . or is inflicted by law or condemnation). Examples of the broad meaning of *exilium* and its cognates include Cicero’s use of *exulare* to describe travel in general (*Rep.* 2.7.9), the survivors of Cannae calling their prolonged military service *exilium* (*Liv.* 25.6.16 and 18), and Ovid’s characterization of the withdrawal of Roman flute-players to Tibur to protest an unfair law as exile (*Fast.* 6.663–667).

for his actions, Livius left Rome due to the disgrace of his condemnation and remained away for seven years until the consuls of 210 persuaded him to return.¹¹ Similarly, P. Cornelius Sulla departed from Rome after his conviction for electoral bribery (*ambitus*) in 66 and lived in Neapolis.¹² While Livius and P. Sulla had left Rome due to their convictions, their departures were not an attempt to escape punishment for their crimes. Rather, they elected to leave Rome to avoid the humiliation and loss of stature they felt as convicted criminals. Their “flight” was truly self-imposed, as they were free to return to Rome whenever they wished. (Both eventually did return.) Scipio Africanus’ relocation to the town of Liternum in 187 or 184 to prevent the completion of his trial was also not banishment, since he was not officially declared an exile by the Roman state. Indeed, Scipio’s excuse that he was unable to attend court proceedings due to illness was accepted by the college of tribunes and his trial was adjourned.¹³

Ancient authors often employed a sort of shorthand to describe the complex process of exile. Since voluntary exile was the outcome of nearly every capital conviction in the Republic, some sources will state that someone was “driven into exile.” Although the option of banishment was chosen by the fugitive, an incautious reading of the sources makes it seem as if exile was actually imposed by the law as a penalty. In most cases, the sources are more concerned with the practical outcome of legal matters rather than their process.¹⁴ Thus Cicero can describe in some detail in one speech how *exilium* is a voluntary act that no Roman law inflicts as a punishment, but in another can briefly mention that exile results from judicial condemnation.¹⁵ In the second instance, the orator was merely relating what would inevitably happen if the defendant was convicted: he would avoid capital punishment by seeking exile.¹⁶

¹¹ Liv. 27.34.3–7; 29.37.4 and 13–15; Liv. *Per.* 29; V. Max. 4.2.2; Suet. *Tib.* 3; cf. H. H. Scullard, *Roman Politics, 220–150 BC.* (Oxford, 1973), 65–68.

¹² Cic. *Sul.* 17 and 53; cf. Crifó, *Ricerche*, 258–259; D. H. Berry, *Cicero: Pro Sulla Oratio* (Cambridge, 1996), 167.

¹³ Liv. 38.52–53; 39.52.9. See *MRR* 1.369 for complete sources. For the problems of reconstructing the events of Scipio’s trial, see H. H. Scullard, *Roman Politics*, 290–303; *Scipio Africanus: Soldier and Politician* (Ithaca, 1970), 222–224.

¹⁴ Cf. App. BC 1.37; Cic. *Dom.* 87; *Brut.* 128; Asc. 17C; Gran. Licin. 13 Fl; Strab. 4.1.13; Sen. *Ben.* 5.17.2; Liv. 25.2.9.

¹⁵ Exile as voluntary: Cic. *Caec.* 100; abbreviated references to the process of exile: *Clu.* 29; *Dom.* 72 and 83.

¹⁶ T. Mommsen, *Römisches Strafrecht* (Leipzig, 1899), 966 n. 2; J. L. Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford, 1912), 2.40.

1.2 THE CULTURAL AND POLITICAL BACKGROUND OF ROMAN EXILE

In his analysis of Roman government and law, the Greek historian Polybius saw the practice of Roman exile as unique. Nearly a century later, Cicero also asserted the distinctiveness of this Roman custom as he contrasted the voluntary nature of Roman *exilium* with the penal character of exile in the laws of other nations.¹⁷ While Polybius and Cicero remarked on the unusual nature of Roman exile, neither writer explained the cultural and political underpinnings that shaped it. Given the fragmentary nature of our sources for Roman exile, any modern attempt to discover its cultural background will be highly speculative. A few modern scholars have attempted to reconstruct how the unique aspects of *exilium* reflect the norms of Roman society. R. A. Bauman theorizes that the Roman ideal of *humanitas* was seminal to the development of voluntary exile.¹⁸ While Bauman concedes that the Roman concept of *humanitas* was flexible and took on new meanings at different times, he believes that it represents a consistent thread in Roman legal thought. Despite the changing nature of the concept, Bauman considers that the essential element of *humanitas Romana* was a civilized behavior and attitude that avoided acts of brutality toward other members of the human race.¹⁹

Although the term *humanitas* first appears in the latter half of the second century, its fundamental tenets such as *aequitas*, *clementia*, and *iustitia* (fairness, mercy, and justice) were long active in Roman thought and culture.²⁰ Bauman asserts that *humanitas* and its related concepts affected the application of Roman penal law, giving rise to the custom of allowing criminals to avoid punishment by going into voluntary banishment. This convention of permitting exile resulted in the *de facto* abolition of the death penalty in criminal trials. Bauman points out that we have no record of any legal proceedings that result in executions during the last fifty

¹⁷ Plb. 6.14.6–8; Cic. *Caec.* 100.

¹⁸ R. A. Bauman, *Crime and Punishment in Ancient Rome* (New York, 1996), 13–14; *Human Rights in Ancient Rome* (New York, 2000), 44–46.

¹⁹ Bauman, *Crime and Punishment*, 13–14; *Human Rights*, 2 and 20–21.

²⁰ Bauman, *Crime and Punishment*, 14; *Human Rights*, 24–35; W. Schadewaldt, “*Humanitas Romana*,” *ANRW* 1.4 (1973), 52–56. Schadewaldt (followed with reservations by Bauman) believes that the word *humanitas* first came into use when Scipio Aemilianus and his circle were influenced by the Greek philosopher Panaetius and the historian Polybius.

years of the Roman Republic. Accordingly, he sees the practice of voluntary exile as “one of Rome’s greatest contributions to human rights.”²¹

Roman actions often seemed to contradict the tenets of *humanitas*, however. For instance, Scipio Aemilianus may have been among those who first articulated the concept of *humanitas Romana* in the mid-second century, but he nonetheless meted out brutal punishment to Roman enemies at Carthage and Numantia. While Bauman explains how Scipio’s actions against foreign enemies could be justified in the Roman view, he does not account for the widespread use of death sentences as both judicial and extrajudicial penalties in Roman society.²² For example, although exile allowed convicted Roman citizens in all known cases to escape capital punishment in the Late Republic, slaves and foreigners were not similarly protected from execution. The selective protection of only Roman citizens from judicial death penalties undermines the idea that a universal concept of human rights shaped the custom of Roman exile. Furthermore, even citizens of Rome were not safe from execution. All our evidence for the use of exile to avoid capital punishment concerns offenders of high social rank: senators and equestrians. Exile may not have commonly been available for lower-class criminals, who were thus still subject to the death penalty. Low-ranking magistrates called *triumviri capitales* appear to have held capital jurisdiction over slaves and common criminals.²³ Even the upper classes were not immune from state-sanctioned execution. Paradoxically, as the application of the death penalty by the law courts against *cives Romani* (Roman citizens) became almost unknown in the last century of the Republic, victorious factions in internal political strife freely used execution in extrajudicial proceedings. Beginning with the massacre of Tiberius Gracchus and his supporters in 133, widespread killings of citizens by the state periodically broke out. The civil strife of the Late Republic made slaughter and proscriptions a feature of the domestic landscape. While the concept of *humanitas* may have been discussed in literary and philosophic contexts, its practical effect on the behavior of the Roman Republican state was limited. Given the frequent violence of the Romans toward slaves, foreigners, and even fellow citizens, the concept of *humanitas* fails to provide an adequate explanation for the development and practice of Roman exile.

Rather than looking to philosophic concepts, another modern scholar sees the origins of exile in the peculiarities of Roman social structure. G. Crifò concluded

²¹ Bauman, *Human Rights*, 44–46; *Crime and Punishment*, 13–16.

²² Bauman, *Human Rights*, 23–24; Schadewaldt, “*Humanitas*,” 52–58.

²³ The access of lower-class citizens to the legal procedures afforded to senators and *equites* is a controversial issue for modern scholars. See Chapter 2, n.11 for sources and discussion.

that exile was a manifestation of Roman citizen rights that had its beginnings in the gentile structure of Early Rome. When faced with a criminal charge, the accused from a particular *gens* was allowed to remove himself and resettle with another clan. In the Early Republic, this gentile right was later expanded to include all Roman citizens.²⁴ While Crifò's theories rely heavily on the anachronistic sources for Early Roman history, I believe he has raised an important factor in the composition of *exilium*; namely that the practice of voluntary banishment is inextricably bound with the privileges of Roman citizenship.²⁵ However, Crifò did not explore one important political dimension of Roman exile.

The key to understanding the cultural background of Roman banishment, I believe, lies in the ethos of the governing classes in the Republic. Voluntary exile as it developed at Rome reflected the political ideal of *concordia*. *Concordia* stressed political harmony among individuals and social classes to ensure the smooth governance of the state and was generally expressed in terms of cooperation between patricians and plebeians or senators and equestrians. Writing in the first century BC, the antiquarian Dionysius of Halicarnassus succinctly captured the main elements of *concordia* (albeit in a highly idealized fashion) as he described the legendary accomplishments of Romulus:

οὕτω δὲ ἄρα βέβαιος ἦν ἡ Ῥωμαίων ὁμόνοια τὴν ἀρχὴν ἐκ τῶν ὑπὸ Ῥωμύλου κατασκευασθέντων λαβοῦσα ἐθῶν, ὥστε οὐδέποτε δι' αἵματος καὶ φόνου τοῦ κατ' ἀλλήλων ἐχώρησαν ἐντὸς ἐξακοσίων καὶ τριάκοντα ἔτῶν, πολλῶν καὶ μεγάλων ἀμφισβητημάτων γενομένων τῷ δήμῳ πρὸς τοὺς ἐν τέλει περὶ τῶν κοινῶν, ὡς ἐν ἀπάσαις φιλεῖ γίγνεσθαι μικραῖς τε καὶ μεγάλας πόλεσιν· ἀλλὰ πείθοντες καὶ διδάσκοντες ἀλλήλους καὶ τὰ μὲν εἰκόντες, τὰ δὲ παρ' εἰκόντων λαμβάνοντες, πολιτικὰς ἐποιοῦντο τὰς τῶν ἐγκλημάτων διαλύσεις.

Therefore, the harmony of the Romans, which originated with the practices of Romulus, was so firm that in six hundred and thirty years they never came to communal bloodshed and slaughter, although many great disputes arose between the people and the magistrates concerning public affairs, as is bound to occur in all cities, both large and small. Yet the Romans settled their quarrels in a civil manner, persuading and instructing one another, conceding some things and gaining others in turn.²⁶

²⁴ Crifò, *Ricerche*, 77–107 and 125–191.

²⁵ Cf. Fuhrman, *Review of Crifò*, 451–457.

²⁶ D. H. 2.11.2–3; cf. 2.62.

Cicero's conception of *concordia ordinum* (harmony between the senate and equestrians) was the fullest and most articulate expression of this paradigm of political unity.²⁷ Writing in the waning days of the Republic, Cicero refined the traditional concept of *concordia*, which was deeply ingrained in Roman political thought.²⁸ A brief survey of the importance of *concordia* in Republican Roman ideology will help us to understand how this ideal served to shape the practice of Roman exile.

Ancient authors writing about Roman history recognized the fundamental nature of *concordia* in Roman political ideology and highlighted examples of this concept in their descriptions (however fanciful) of the early history of Rome.²⁹ As we have seen, Dionysius of Halicarnassus considered political harmony at Rome a key ingredient to the success of the Roman state. Additionally, the historian Livy often stressed the importance of policies promoting political concord in his descriptions of the development of Rome, particularly in the relationship between the patrician and plebeian orders. For example, in his narrative of the First Secession of the Plebs in 494, Livy depicts the institution of the plebeian tribunate as helping to restore *concordia* in Roman politics.³⁰ Similarly, his version of the settlement of 367 between patricians and plebs highlights the ideal of civic concord. In Livy's account, reforms favorable to the plebeians that had been proposed by the tribunes C. Licinius Stolo and L. Sextius Lateranus were delayed for ten years by the patricians. Finally, in 367 this internal dissension came to a head when the dictator M. Furius Camillus returned to Rome after conducting a successful war against the Gauls.

vixdum perfunctum eum bello atrocior domi seditio excepit, et per ingentia certamina dictator senatusque victus, ut rogationes tribuniciae acciperentur; et comitia consulum adversa nobilitate habita, quibus L. Sextius de plebe primus consul factus. et ne is quidem finis certaminum fuit. quia patricii se auctores futuros negabant, prope secessionem plebis res terribilesque alias

²⁷ Cf. Cic. *Att.* 1.18.3; H. Strasburger, *Concordia Ordinum, eine Untersuchung zur Politik Ciceros* (Amsterdam, 1956), 15–70; H. Boren, "Cicero's Concordia in Historical Perspective," in M. F. Gyles and E. W. Davis, eds., *Laudatores Temporis Acti: Studies in Memory of Wallace Everett Caldwell* (Chapel Hill, 1964), 59–62.

²⁸ Cic. *Rep.* 3.41; Boren, "Concordia," 52; F. Farnoux, "Fabius Pictor et les origines du thème de la *concordia ordinum* dans l'historiographie romaine," *AFL Nice* 11 (1970), 77. For the relation of the Greek concept of *ἁμόνοια* with Roman *concordia*, see Strasburger, *Concordia Ordinum*, 2–3; A. Momigliano, "Camillus and Concord," *CQ* 36 (1942), 117–120.

²⁹ Boren, "Concordia," 52.

³⁰ Liv. 2.32–33.

minas civilium certaminum venit, cum tandem per dictatorem condicionibus sedatae discordiae sunt concessumque ab nobilitate plebi de consule plebeio, a plebe nobilitati de praetore uno qui ius in urbe diceret ex patribus creando. ita ab diutina ira tandem in concordiam redactis ordinibus . . .

Scarcely had he concluded the hostilities when civil discord more savage than war broke out, and after tremendous political struggles the dictator and the senate were overcome and the proposals of the tribunes were approved. Although men of rank opposed it, consular elections were held in which L. Sextius was elected consul, the first time a plebeian had attained this office. The conflict did not end here, as the patricians refused to recognize the election, and a secession of the plebs and other frightening manifestations of civil conflict nearly came to be, but the dictator calmed the discord by making compromises. The nobles conceded in the matter of the plebeian consul, and the plebs in return yielded to them on the appointment of a praetor, chosen from the patricians, to administer the law in the city. Thus the orders were brought into concord after such long hostility. . . .³¹

While Livy and Dionysius wrote in the late first century BC, similar views extolling *concordia* as a cohesive factor in Roman governance had been long standing in the works of Roman authors. This theme of *concordia* as an important element in domestic politics seems to go back to the first known Roman historian, Q. Fabius Pictor, whose ideas on this subject subsequently became mainstream in the annalistic tradition.³² While Fabius Pictor's writings of the late third/early second century influenced the works of later historians, he did not invent the concept of political concord, but incorporated a preexisting ideal into his work.³³ Indeed, as early as the fourth century, Concordia as a deified abstraction was worshipped in Rome. Both Ovid and Plutarch state that M. Furius Camillus, the dictator of 367 who brokered the compromise between patricians and plebeians, vowed to build a temple of Concordia to commemorate the end of the discord between

³¹ Liv. 6.42.9–12. For the motif of *concordia* in the early books of Livy's history, see A. Vasaly, "The Quintii in Livy's First Pentad: The Rhetoric of Anti-Rhetoric," *CW* 92 (1999), 513–530; R. Brown, "Livy's Sabine Women and the Ideal of Concord," *TAPA* 125 (1995), 291–319; R. Seager, "Populares in Livy and the Livian Tradition," *CQ* 27 (1977) 377–390.

³² Farnoux, "Fabius Pictor," 80–87 and 89–91.

³³ For an alternate view that the concept of *concordia* only had political significance beginning in the mid-second century, see E. Skard, "Concordia," in H. Oppermann, ed., *Römische Wertbegriffe* (Darmstadt, 1967), 192–197 and 203–207; Brown, "Livy's Sabine Women," 317.

these two orders. Both sources imply that Camillus' temple was located in the *Forum Romanum* at the foot of the Capitolium and was later restored by the future emperor Tiberius in 7.³⁴ Interestingly, in his narrative on the compromise of 367, Livy makes no mention of Camillus' temple, nor do any other sources that discuss the political discord of that year. The silence of the other literary sources has led many scholars to view Ovid and Plutarch's accounts as anachronistic by attributing a later temple built by L. Opimius in 121 to Camillus.³⁵

Whether or not we can ascribe a temple to Concordia in 367, there is firm evidence that a bronze shrine to this goddess was erected in 304 by Cn. Flavius, the first freedman to attain the office of curule aedile.³⁶ Since Concordia as a deified abstraction received cult status in the fourth century, the ideal of concord likely had already been an important one in Roman society. Nor would Flavius' shrine be the last religious edifice devoted to Concordia. In 218, the praetor L. Manlius vowed a temple to Concord after he had put down a mutiny of his troops while campaigning in Cisalpine Gaul. The building was formally dedicated on the Capitolium two years later. An infamous episode of civil strife was the impetus for another structure dedicated to the goddess of internal harmony. After the consul L. Opimius had presided over the slaughter of the followers of C. Gracchus in 121, he built a temple to Concord between the Volcanal and the Capitoline Hill.³⁷

The building of a temple to Concordia, who personified internal harmony in the state, by a consul who orchestrated the massacre of political opponents may seem like an act of brazen hypocrisy. As St. Augustine later sarcastically remarked, it would have been more appropriate to erect a temple to Discordia after such an atrocity. After all, wouldn't the goddess of Discord be enraged to see

³⁴ Ovid, *Fasti* 1.641–644; Plut. *Cam.* 42.

³⁵ For a discussion of the evidence concerning the construction of the temple of Concordia in 367, see Momigliano, "Camillus and Concord," 114–117; B. Levick, "Concordia at Rome," in R. A. G. Carson and C. M. Kraay, eds., *Scripta Nummaria Romana: Essays Presented to Humphrey Sutherland* (London, 1978), 219–220; H. H. Scullard, *Festivals and Ceremonies of the Roman Republic* (Ithaca, 1981), 167–168.

³⁶ Pliny, *N. H.* 33.19; Livy 9.46.6. In Livy's account, Flavius dedicated the altar of Concord during his year in office which was marked by mutual antagonism with the *nobiles*. For the view that the shrine was not built to extol Roman civic Concordia, but rather harmony among nations, see Levick "Concordia," 221. See MRR 1.168 and S. Treggiari, *Roman Freedmen During the Late Republic* (Oxford, 1969), 56ff for Flavius' political career.

³⁷ Manlius' temple: Liv. 22.33.7; 23.21.7. Opimius' temple: App. *BC* 1.26; Plut. *CG* 17; Cic. *Sest.* 140; August. *C.D.* 3.25. According to Appian and Augustine, the senate ordered the temple to be built. For a critique of the theory that Opimius' temple was a restoration of Camillus' earlier one, see Momigliano, "Camillus and Concord," 115–117; cf. Scullard, *Festivals*, 168–169.

a temple to her adversary Concordia built on the scene of a massacre that was her own handiwork?³⁸ Augustine's irony misses the point that internal harmony was such a potent ideal to Roman sensibilities that political factions strove to depict themselves as the protectors of Concordia and their opponents as the purveyors of strife and chaos. In other words, there was great propaganda value in associating one's group with Concordia, especially in times of civil conflict. Opimius and his supporters likely claimed that the Gracchans were threatening the internal peace and harmony that Rome had enjoyed for generations and thus were eliminated for the good of society as a whole. Even Sulla professed to be promoting *concordia* as he had multitudes of political opponents killed during the proscriptions of the late 80s.³⁹ *Concordia* was a most useful political slogan – even when its basic tenets seemed to be violated – because it was such an esteemed ideal for the Romans.

I believe that Roman exile was an outgrowth of the civic ideal of *concordia*, in that it served to promote the stability of the state. To this end, *exilium* performed a very specific function: it acted as a “safety valve” to prevent public disputes among elite citizens from turning into armed civil conflict. The possibility of facing politically motivated charges in the law courts was an occupational hazard of a public career at Rome. As a response to this danger, aristocratic Romans confronted with capital accusations could preserve their lives by going into voluntary exile. Exile allowed the losers in political struggles to be permanently removed from the state without disturbing the overall social fabric. Without the safety of exile, politically active Romans who were faced with capital punishment would have been disposed to “fight to the finish” and to turn to open violence to save their lives. The custom of voluntary banishment was a sort of “gentlemen's agreement” among the ruling classes, as it set limits on the consequences of political defeat. With this means of avoiding judicial penalty available to them, senators and equestrians need never lose their lives as the result of politically motivated charges. Thus *exilium* lowered the stakes in political disputes. While exile may have developed from the ideal of *concordia*, it was inadequate to stop the escalation of civic strife in the mid- to late second century. Indeed, the practice of Roman exile would become another

³⁸ August. *CD* 3.25.

³⁹ Levick, “Concordia,” 217–221; G. Sumi, “Spectacles and Sulla's Public Image,” *Historia* 51 (2002), 425–428. Levick's article provides an excellent analysis of the use of *concordia* in political propaganda in both the Republican and Imperial periods. Cf. Skard, “Concordia,” 173–208; M. Amit, “Concordia, Idéal politique et instrument de propagande,” *Iura* 13 (1962), 133–169.

point of contention in the political violence of the Late Republic, as is shown in Chapter Three.

1.3 SUMMARY OF THE RELATIONSHIP OF EXILE TO ROMAN REPUBLICAN POLITICS

Exile was not a static phenomenon but rather closely connected with the larger world of politics and governance. This study hopes to highlight the inextricable link that existed between the development of Roman exile and the political evolution of Rome throughout the Republican era. As Rome developed from a small city-state in the Early Republic to a world empire on the cusp of becoming a monarchy in the Late Republic, the practice of exile evolved and changed along with other political institutions. In this way, the study of exile illuminates the transformations in the political scene of the Republic. As I have argued, until the mid-second century, voluntary exile acted as a stabilizing force in the conduct of Roman politics and helped to promote the ideal of *concordia*. Capital convictions resulting from political wrangling were final (the offender went into exile), but not fatal. Political disputes could be resolved without the use of widespread violence. This relative peace in the political scene would unravel, however, in the mid-second century as Rome's rapid territorial expansion in the Mediterranean world exacerbated social tensions at home.

The murder of the plebeian tribune Ti. Gracchus by conservative senators in 133 was a watershed event in Roman history. Not only did this incident initiate the open use of public violence in Roman politics, it also dramatically increased the frequency of politically motivated prosecutions. While this political turmoil caused many citizens to go into exile, it also provided opportunities for others to return home. Such a return was accomplished by an official vote of the Roman people or plebs in one of their voting assemblies. The first certain case of restoration from exile in our sources is that of P. Popillius Laenas in 120. His return highlights the fact that banishment had lost much of its effectiveness as a guard against civil violence, and the potential return of exiles became another area for factional conflict. Henceforth, exiles were no longer permanently removed from the political scene but rather remained partisan figures.

As *exilium* declined as a reliable method of permanently and peaceably expelling political opponents, other more extreme measures such as massacres, *hostis* declarations, and proscriptions arose to eliminate rival factions. It is probably no accident

that L. Cornelius Sulla, the author of the bloody proscriptions of the late 80s, had previously used exiled senators to bolster his ranks in civil war. Rather than allow his adversaries to go into exile after his victory, Sulla no doubt deemed it necessary to slaughter them lest they be left as potential recruits for a challenger to his authority. Thus the emergence of restoration from exile served to escalate the violence and partisanship in Roman politics of the Late Republic.

The internal chaos of the Late Roman Republic caused further changes in the practice of *exilium*. As domestic tensions pushed the state toward open civil war, the scope of restoration from exile greatly expanded in response. Previous attempts to recall banished men had focused on a particular individual, but mass restoration of exiles became a reality in the early first century. Ambitious leaders began to look to the growing ranks of exiled men as a potential source of supporters in civil conflict. In 88, the tribune of the plebs Sulpicius Rufus proposed to restore a large number of banished men, although his plan never came to fruition. Sulla, however, effectively included exiled notables in his forces during the civil wars of the 80s. Following this successful example, Julius Caesar and Marc Antony would both recruit restored exiles into their ranks during the violence of the 40s.

Caesar's dictatorship in the 40s presaged the establishment of the Principate and the end of the Republic. Further changes to Roman exile at this time were also a harbinger of the rule of the emperors. Once victorious in civil war, Caesar discontinued mass restorations of exiles, but allowed the return of select individuals. Significantly, an exile's chance of restoration no longer depended on a vote of the Roman people, but rested entirely on the decision of Caesar. As a result, supporters of exiled men focused their efforts on swaying Caesar's opinion to gain a recall for their absent comrade rather than influencing the general population. In this way, the reduced role of the Roman people in political matters at the end of the Republic was mirrored in the practice of *exilium*.

2 *EXILIUM*: LEGAL AND HISTORICAL ISSUES

2.1 THE BASICS OF EXILE

In his description of the Roman constitution, the historian Polybius reports an unusual feature of the judicial system:

κρίνει μὲν οὖν ὁ δῆμος καὶ διαφόρου πολλὰκις, ὅταν ἀξιόχρεων ᾖ τὸ τίμημα τῆς ἀδικίας, καὶ μάλιστα τοὺς τὰς ἐπιφανεῖς ἐσχηκότας ἀρχάς. θανάτου δὲ κρίνει μόνος. καὶ γίνεται τι περὶ ταύτην τὴν χρεῖαν παρ' αὐτοῖς ἄξιον ἐπαίνου καὶ μνήμης. τοῖς γὰρ θανάτου κρινόμενοις, ἐπὶ ἀν καταδικάζονται, δίδωσι τὴν ἐξουσίαν τὸ παρ' αὐτοῖς ἔθος ἀπαλλάττεσθαι φανερώς, καὶ ἔτι μία λείπηται φυλὴ τῶν ἐπικυρουσῶν τὴν κρίσιν ἀψηφοφόρητος, ἐκούσιον ἑαυτοῦ καταγνόντα φυγαδεῖαν. ἔστι δ' ἀσφάλεια τοῖς φεύγουσιν ἐν τε τῇ Νεαπολιτῶν καὶ Πραϊνεστίνων, ἔτι δὲ Τιβουρίνων πόλει, καὶ ταῖς ἄλλαις, πρὸς ἃς ἔχουσιν ὅρκια.¹

Therefore, the people often judge crimes punishable by a fine when the defendants have held the highest office, and the people alone judge capital cases. Concerning the latter, they have a practice which is notable and deserves mention. Their custom allows those on trial for capital offenses the freedom to depart openly when found guilty, thus sentencing themselves to voluntary exile, even if only one of the “tribes” has not yet given their verdict. There is safe refuge for these exiles in Neapolis, Praeneste, Tibur, and other states which have treaties with the Romans.

In the Roman Republic, *exilium* was a voluntary act through which a citizen could avoid legal penalty by quitting the community. The punishment that the

¹ Plb. 6.14.6–8. Polybius' reference to the “tribes” is to the *comitia centuriata* acting as a *iudicium populi*, the only body with capital jurisdiction (Cic. *Leg.* 3.4.11, 19.44). Either Polybius has erred in calling them “tribes” and not “centuries” (A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* [Oxford, 1972], 14; E. G. Hardy, *Some Problems in Roman History* [Oxford, 1924], 16 n. 1), or the voting units of the *comitia centuriata* were identified as tribes following a reform in the late third or early second century BC (F. W. Walbank, *A Historical Commentary on Polybius* [Oxford, 1957], 1.683–687).

accused wished to flee could be either capital or pecuniary, although a potential fine would have to be extraordinarily steep to warrant leaving one's homeland.² It has been argued that no Roman would go into exile to avoid a financial penalty since his property would be vulnerable to forfeiture after his departure.³ This view ignores a few important points. First, there are at least two cases in which the accused chose exile when faced with a non capital procedure.⁴ Also, conviction on a non-capital accusation may have caused the defendant to fear fresh prosecution on more serious charges. Thus his flight could pre-empt any new accusations.⁵ Furthermore, it was one of the basic strategies of potential exiles to convert as much of their wealth as possible into a portable form before self-banishment.⁶ Consequently, an exile might be able to preserve more of his fortune by fleeing his homeland than if he had remained in Rome to face a large fine. Even so, the majority of cases of *exilium* were in response to capital accusations.

The normal order of events in a case involving exile was consistent throughout Roman Republican history. When accused of a crime, a defendant could quit Roman jurisdiction and seek the safety of exile. He could flee before trial commenced or wait until the completion of legal proceedings before departing. Based on Polybius' statement, the accused could leave a *iudicium populi* (trial before the *comitia centuriata*, a citizen-assembly) anytime before the last "tribe" had cast its vote. In other words, he was free to seek *exilium* before he was formally convicted. If the trial was before a *iudicium publicum* (jury court), however, the defendant could even wait until after conviction before deciding on flight.⁷ The city of Rome was off-limits to all exiles. Italy was added to this restricted territory sometime after

² As Levy has convincingly demonstrated, a capital penalty in the Republican period was a death sentence. The association of the term *caput* with civic rights belongs to the Imperial age: E. Levy, *Die römische Kapitalstrafe* (Heidelberg, 1930/1931), 14ff., 30, and 35ff.

³ M. I. Henderson, "The Process *de repetundis*," *JRS* 41 (1951), 71–73; Jones, *Criminal Courts*, 14. Forfeiture of property was accomplished by the *aquae et ignis interdictio*.

⁴ The exile of the corrupt governors P. Furius Philus and C. Matienus in 171 to avoid the assessments of senatorial arbiters are two certain examples (see Chapter 6, numbers 6 and 7 for sources and discussion). Cases involving extortion (*de repetundis*) may fall into this category as well, although it is controversial whether this offense was capital. See Henderson, "Repetundis," 71–87 (capital) and A. N. Sherwin-White, "The Extortion Procedure Again," *JRS* 42 (1952), 43–55 (noncapital) for the essential issues.

⁵ J. L. Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford, 1912), 2.4; Sherwin-White, "Extortion," 43–44.

⁶ See Chapter 5.2, "The Economics of Exile." Cf. Sherwin-White, "Extortion," 44.

⁷ For a clear summary of the development of the Roman criminal law system in the Republic, see A. W. Lintott, *The Constitution of the Roman Republic* (Oxford, 1999), 146–162.

the Social War in the first century. Any community holding the Roman citizenship probably could not be entered legally by exiles, although no source specifically states this.⁸ After he had left proscribed territory, the fugitive could go where he wished. Once a Roman quit his homeland and went into exile, the *concilium plebis* (plebeian citizen assembly) generally passed a decree of *aquae et ignis interdictio*. This plebiscite formally prohibited the fugitive from returning to the Roman state. Thus many banished Romans chose to become citizens of a new community. Interdiction from fire and water also imposed some quasi-legal penalties on the fugitive, most notably the forfeiture of property.

As Cicero points out in the *Pro Caecina*, unlike other states, the Romans had no laws employing banishment as a penalty. For a Roman citizen, exile was a method of avoiding punishment.⁹ Due to this practice of allowing the accused to flee Roman jurisdiction, there are very few cases in our extant sources of the death penalty being carried out against a condemned criminal. Thus, as I have previously mentioned, *exilium* was the practical outcome of nearly all capital trials in the Republican period.¹⁰ Since the extant sources only mention the use of exile by elite Romans (senators and *equites*) charged with public crimes, it is unclear whether this practice was generally afforded to the humbler classes accused of ordinary, nonpolitical offenses. The evidence seems to suggest that it was not.¹¹

⁸ For the geographic limits of exile, see Chapter 4.2, “*Exules in Italia: The Cases of Oppianicus and Q. Pompeius.*”

⁹ Cic., *Caec.* 100: *exsilium enim non supplicium est sed perfugium portusque supplicii . . . itaque nulla in lege nostra reperietur, ut apud ceteras civitates, maleficium ullum exsilio esse multatum* (Exile is not a punishment, but a sanctuary and refuge from punishment. Thus in no law of ours is exile found as punishment for any offense, as it is among other nations). Cicero delivered this speech in 69; six years later his own *lex Tullia de ambitu* would initiate the use of exile as a penalty, albeit for a period of ten years. See below, “Exile and Interdiction as a Legal Penalty” for the development of *exilium* as a punishment in the mid-first century.

¹⁰ For the infliction of the death penalty, see Strachan-Davidson, *Problems*, 1.162–163; R. A. Bauman, *Crime and Punishment in Ancient Rome* (New York, 1996), 16–19, and *Human Rights in Ancient Rome* (New York, 2000), 41–44.

¹¹ E. L. Grasmück, *Exilium: Untersuchungen zur Verbannung in der Antike* (Munich, 1978), 70–71; T. Mommsen, *Römisches Strafrecht* (Leipzig, 1899), 328 and 979. Cf. A. W. Lintott, “*Provocatio* from the Struggle of the Orders to the Principate,” *ANRW* 1.2 (1972), 238–246, and *Constitution of the Roman Republic*, 155. Strachan-Davidson (*Problems*, 1.163 and 167–168), states that common criminals were customarily executed, but adds that this practice must have disappeared by Polybius’ day, since he represents voluntary exile as universal. But this is stretching Polybius’ brief description too far and ignores the presence of the *triumviri capitales*, officials in charge of carrying out sentences of death, among other duties. Cf. H. Strasburger, *RE* VII A.1, s.v. “*Triumviri* (4),” col. 518–519 and A. H. J. Greenidge, *The Legal*

2.2 EXILIUM AS A CITIZEN RIGHT

An important thesis of G. Crifò's *Ricerche sull' "exilium" nel periodo repubblicano* is that the ability to seek exile was a legal right possessed by Roman citizens and represented an expression of civic freedom.¹² However, a significant amount of ancient evidence seems to contradict Crifò's view. Polybius significantly uses the word ἔθος to describe the Roman practice of exile, suggesting that *exilium* was a custom or convention, but not a legal right.¹³ While Polybius' description does not explicitly rule out the possibility that exile was guaranteed by law, other sources indicate that self-banishment was not a statutory right.

To ensure appearance at trial, magistrates possessed the power to imprison criminal suspects.¹⁴ Such incarceration had the effect of putting the safety of *exilium* outside the reach of a defendant. The offer of *vades*, sureties consisting of money or property, normally freed the citizen from the threat of pretrial imprisonment, but not in every case.¹⁵ Livy reports that a group of publicans accused of capital crimes in 212 were thrown into prison despite their ability to provide the requested *vades*.¹⁶ Pretrial imprisonment could easily prevent a

Procedure of Cicero's Time (Oxford, 1901), 343–344 for sources and discussion. The *triumviri capitales* may have dispensed summary justice to lower class citizens: D. Cloud, "The Constitution and Roman Public Criminal Law," *CAH*², 9 (1994), 500–501; W. Nippel, *Public Order in Ancient Rome* (Cambridge, 1995), 22–26. See also W. Kunkel's theories on the prosecution and punishment of common, nonpolitical crimes: *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit* (Munich, 1962), 34–36, 51–79, and 91–130. An excellent summary and critique of Mommsen and Kunkel's views on this issue can be found in H. F. Jolowicz and B. Nichols, *Historical Introduction to the Study of Roman Law*³ (Cambridge, 1972), 305–317.

¹² G. Crifò, *Ricerche sull' "exilium" nel periodo repubblicano* (Milan, 1961), esp. 77–107 and 311–312. Crifò refers to this right as the *ius exilii*. I will avoid using this Latin phrase in this context, because many scholars use this same expression to describe a mutual right established by treaty between Rome and her allies (*civitates foederatae*) that granted refuge to each other's citizens. See Chapter 2.7, "The *ius exulare*" for a discussion of this treaty right.

¹³ Grasmück, *Exilium*, 96–97.

¹⁴ Imprisonment was one of the powers of magisterial coercion (*coercitio*): Strachan-Davidson, *Problems*, 109–110; Greenidge, *Legal Procedure*, 331–334; Grasmück, *Exilium*, 81–83; Nippel, *Public Order*, 7 and 52; Lintott, *Constitution of the Roman Republic*, 99. This power could also be used to hold condemned criminals for execution.

¹⁵ In the annalistic tradition, *vades* were first allowed in the case of Caeso Quinctius: Liv. 3.13.5. Cf. Strachan-Davidson, *Problems*, 1.160–161; Mommsen, *Strafrecht*, 327–328; Greenidge, *Legal Procedure*, 334; R. A. Bauman, *Crime and Punishment*, 15.

¹⁶ Liv. 25.4.11. Livy's narrative does not describe the ultimate fate of the imprisoned *publicani*.

defendant from seeking exile, but this power of incarceration was not unlimited. The intercession of a magistrate of higher authority or a tribune of the plebs using his power of *auxilium* (the ability to protect citizens against magisterial action) could nullify the threat of imprisonment.¹⁷ This point is highlighted by the case of Q. Servilius Caepio (cos. 106), who in 103 was indicted for his role in the defeat at Arausio two years earlier. Imprisoned prior to his trial, only the intercession of the plebeian tribune L. Antistius Reginus freed him and made possible his subsequent exile.¹⁸ Although not a capital case, the imprisonment of L. Cornelius Scipio in the 180s was prevented in a similar manner by the tribune Ti. Sempronius Gracchus when none of his colleagues were willing to intercede.¹⁹ The arrest of the publicans in 212 doubtlessly occurred because no tribune was disposed to help them.²⁰ The existence of tribunician *auxilium* made the practice of pretrial arrest ineffective and thus probably rarely attempted (against upper-class defendants, in any event).²¹

The only explicit evidence for a “right to exile” comes from Julius Caesar’s speech in Sallust’s *Bellum Catilinae*. While arguing that the lives of the captured Catilinarian conspirators should be spared, he twice refers to laws that allow *exilium* for condemned criminals:

sed, per deos immortalis, quam ob rem in sententiam non addidisti, uti prius verberibus in eos animadvorteretur? an quia lex Porcia vetat? at aliae leges item condemnatis civibus non animam eripi sed exilium permitti iubent.

... lex Porcia aliaeque leges paratae sunt, quibus legibus exilium damnatis permissum est.²²

¹⁷ See Lintott, *Constitution of the Roman Republic*, 124–128 for the features of tribunician *auxilium*.

¹⁸ V. Max. 4.73.

¹⁹ Gell. 6.18.9; Liv. 38.57.4. For further sources and a discussion of their discrepancies (especially on the date of this incident), see MRR 1.376 and 378.

²⁰ Indeed, the prosecution of the *publicani* and their subsequent imprisonment was initiated by members of the tribunician college: Liv. 25.4.9–11.

²¹ Mommsen, *Strafrecht*, 327; Strachan-Davidson, *Problems*, 1.163. The role of the tribunate in making exile possible has been effectively demonstrated by Grasmück, *Exilium*, 81–88 and 96–97. The execution of common criminals may have occurred routinely because the tribunes of the plebs customarily allowed the pretrial incarceration of such offenders: T. Mommsen, *Römisches Staatsrecht* (Leipzig, 1887), 3.1242; *Strafrecht*, 328 and 979.

²² Sal. *Cat.* 51.21–22 and 51.40.

But, by the immortal gods, why did you not add in your speech, that first they should be punished by flogging? Perhaps because the Porcian law forbids it? Similarly, other laws command that condemned criminals not lose their lives, but be allowed exile.

... the *lex Porcia* and other laws were established, by which exile is permitted for those found guilty.

Based on these passages, some authorities have stated that a *lex Porcia* allowed the judicially condemned to flee their sentences.²³ Assigning Sallust's "right to exile" to the *leges Porciae* of the early second century, however, apparently conflicts with the information given by Polybius, who wrote in the middle of the same century.²⁴ In Caesar's speech, Sallust states that escape by exile is allowed for those condemned of a crime (*condemnatis, damnatis*). In contrast, Polybius clearly depicts a Roman system that ensures exile only before formal condemnation.²⁵ Furthermore, Sallust's wording in the first passage cited makes a clear distinction between the *lex Porcia*, which forbids the scourging of Roman citizens, and "other laws" that allow *exilium*.²⁶ The question turns to what exactly were these "other laws" that Sallust mentions.

In this discussion of a possible codified right to exile, we must take into consideration the cases where voluntary banishment was not allowed for offenders. Many people were put to death by the special commission (*quaestio extraordinaria*) empowered by the Roman senate to investigate the cult of Bacchus in 186.²⁷ The widespread executions demonstrate that those condemned by the commission were not allowed voluntary exile. Nor was banishment a sanctuary for Q. Pleminius in 204 or L. Hostilius Tubulus in 141, both of whom were taken back to Rome after

²³ J. Blieden, *RE* XIII.2, s.v. "Provocatio," col. 2449; *MRR* 2.472.

²⁴ For the *leges Porciae*, see Blieden, *op. cit.*; Lintott, "Provocatio," 246–253; J. Martin, "Die Provokation in der klassischen und späten Republik," *Hermes* 98 (1970), 87–91; G. W. Botsford, *The Roman Assemblies* (New York, 1909), 250–251; Greenidge, *Legal Procedure*, 320–323.

²⁵ Note Strachan-Davidson, *Problems*, 2.63–64, who sees no contradiction between the presentations of Polybius and Sallust.

²⁶ Lintott, "Provocatio," 252–253; Martin, "Provokation," 87–88; A. Drummond, *Law, Politics, and Power: Sallust and the Execution of the Catilinarian Conspirators* (Stuttgart, 1995), 115–116.

²⁷ Liv. 39.8–19; V. Max. 6.3.7 and 1.3.1; Cic. *Lg.* 2.37; *CIL* I².2.581=ILS 18. Cf. R. A. Bauman, "The Suppression of the Bacchanals: Five Questions," *Historia* 39 (1990), 334–348; *Crime and Punishment*, 17. See Jones, *Criminal Courts*, 27–28 for other *quaestiones extraordinariae* of the second century that may have executed condemned persons.

they had departed for exile to avoid capital charges. They subsequently committed suicide when incarcerated.²⁸ The abortive flight of Pleminius and Tubulus seems to contradict any pre-existing legal “right to exile.” Furthermore, about eight years before Tubulus’ debacle, the centurion C. Cornelius was imprisoned by the *triumvir capitalis* C. Pescennius for homosexual relations with a freeborn adolescent. Although he appealed to the tribunes of plebs, they refused to intervene and Cornelius committed suicide in prison.²⁹ If a right to exile existed, these cases demonstrate either that it was frequently violated or that we must look for its inception after the mid-second century.

Some scholars believe that Sallust’s *aliae leges* refer to a *lex Sempronia* from the tribunate of C. Gracchus. This seems unlikely, since none of the known Sempronian laws deal with the rights of condemned criminals. Furthermore, the imprisonment of Caepio in 103 and the execution of the parricide Publicius Malleolus in 101 appear to preclude a statutory right to exile dating to the period of the Gracchi.³⁰

The most likely explanation for these “other laws” is that Sallust was making a broad and indirect reference to the weight of custom and tradition that generally allowed an accused citizen to flee a sentence. That Sallust used such a vague reference to the statutes permitting exile (*aliae leges*) after specifically naming the *leges Porciae* supports this idea. Perhaps Sallust also alluded to the custom of permitting a brief delay between the judgment of standing jury courts (*quaestiones perpetuae*) and the execution of the sentence. Such a respite was not allowed under the trials before the centuriate assembly (*iudicia populi*) described by Polybius, but appears to have been tolerated (or even mandated) under the system of jury courts established by Sulla.³¹ There are several cases of convicted criminals remaining in Rome for a short

²⁸ See below, “The Attempted Exile of L. Hostilius Tubulus and Q. Pleminius.”

²⁹ C. Cornelius: V. Max. 6.1.10; Liv. *Per.* 50. Cf. Bauman, *Crime and Punishment*, 17–18.

³⁰ Malleolus: *Rhet. Her.* 1.23; Liv. *Per.* 68; Oros. 5.16.23. Both Cicero *Inv.* 2.149 and the *Ad Herenium* discuss the testamentary issues involved in a case of parricide. Both works appear to refer to the same case, although Cicero does not specifically name Malleolus as the murderer. Cicero adds an important detail, however, in describing the fate of the unnamed parricide: *quidam iudicatus est parentem occidisse et statim, quod effugiendi potestas non fuit, lignae soleae in pedes inditae sunt . . . deinde est in carcerem deductus* (A certain man was convicted of parricide and because there was no way to escape, the wooden fetters were immediately placed on his feet, then he was led away to prison). This statement clearly challenges the notion of a legal right to exile.

³¹ L. M. Hartmann, *De exilio apud romanos inde ab initio bellorum civilium usque ad Severi Alexandri principatum* (Berlin, 1887), 2–3; Strachan-Davidson, *Problems*, 2.62–63; Greenidge, *Legal Procedure*, 513; B. M. Levick, “Poena Legis Maiestatis,” *Historia* 28 (1979), 364–365.

time after their trials before a *quaestio perpetua*. Milo remained in the city for a few days following his conviction *de vi* (for the use of violence) in 52 before departing for exile.³² Subsequent to a guilty verdict for poisoning in 74, Oppianicus lingered in Rome for a while.³³ A certain “Mummius” seems to have taken some time before departing into exile after his condemnation by the Varian Commission in 90.³⁴ The historian Appian depicts Mummius confident of acquittal, but he received a guilty verdict contrary to his expectations. He must have remained in Rome for a short time to prepare for his unexpected *exilium* to Delos. This delay before the execution of the verdict was continued in Imperial times. The jurist Marcianus notes the punishment for those who take longer “than is customary” to depart for banishment.³⁵

We thus have substantial evidence to contradict the information found in the *Bellum Catilinae*. At this point, we must consider the nature of Sallust’s report. The fidelity of Sallust’s version of the speech with regard to Julius Caesar’s original oration is irrelevant to our current discussion. Even if the speech in the *Bellum Catilinae* was an exact copy of the original, we still have to question its accuracy. Like any forensic oration, Caesar’s speech was partisan discourse – it was designed to persuade the senate to adopt his opinion. It is a standard rhetorical strategy to manipulate the facts in such speeches to achieve one’s goal, provided that the deception is not obvious to the intended audience. In Caesar’s speech in the *Bellum Catilinae*, we see him make at least one such distortion of the truth for rhetorical

³² Asc. 54C.

³³ Cic. *Clu.* 77–78. Indeed, Oppianicus remained in Italy – then enfranchised Roman territory – despite his capital conviction. See Chapter 4.2, “*Exules in Italia*: The Cases of Oppianicus and Q. Pompeius,” for a discussion.

³⁴ App. *BC* 1.37: Μούμμιος δ’ ὁ τὴν Ἑλλάδα ἐλὼν, αἰσχροῶς ἐνεδρευθεὶς ὑπὸ τῶν ἱππέων ὑποσχομένων αὐτὸν ἀπολύσειν κατεκρίθη φεύγειν καὶ ἐν Δήλῳ διεβίωσεν. (Mummius, the conqueror of Greece, was shamefully deceived by the equestrians, who had promised to acquit him, but condemned him to exile. He spent the rest of his life on the island of Delos). There is some confusion about the identity of Appian’s “Mummius.” He is often identified with L. Memmius, a tribune of the plebs of the late 90s. See Chapter 6, number 26 for a discussion. Cf. M. C. Alexander, *Trials in the Late Roman Republic 149 BC to 50 BC* (Toronto, 1990), 54–55.

³⁵ Dig. 48.19.4. Based on Tac. *Ann.* 3.51.3, Levick (“Poena Legis,” 364–365) adds that ten days may have been the prescribed interval. This passage, however, deals with a *senatus consultum* of AD 21 that established a ten-day “waiting period” before all decrees of the senate were deposited in the *aerarium* and became official. Thus this act would have only affected trials before the senate. The ten-day interval may have reflected the practice of the criminal courts, but there is insufficient evidence to make that assumption.

effect. In praising the clemency practiced by previous generations of Roman statesmen, Caesar mentions that the senate allowed the island of Rhodes to go unpunished, although it had betrayed Rome during the Third Macedonian War. In reality, the Romans were not so mild in their treatment of Rhodes: while they did not declare war, they severely punished the Rhodians by stripping them of their mainland provinces and making the island of Delos a duty-free port to compete with Rhodian commerce. This latter act dealt the economy of Rhodes a blow from which it never fully recovered.³⁶ Similarly, Caesar's statement that "there are laws which command that exile be permitted" could be a subtle bending of the truth to strengthen his argument that the conspirators should not be put to death. After all, criminals had been traditionally allowed to avoid capital sentences by exile in the vast majority of instances. I would argue that just such a subtle distortion is present in the speech, given the aforementioned examples contradicting a statutory "right to exile." Ultimately, tribunician intercession (either implied or actual) enabled the practice of self-banishment to be effective on almost all occasions. That the ability to seek exile was based on custom rather than statute is not surprising given the importance of *mos maiorum* (ancestral custom) to the Romans. Indeed, many basic tenets of the Roman constitution, such as the role of the senate, the yearly election of two consuls, and the accepted duties of the various voting assemblies, were not rooted in any laws, but rather in tradition and custom.³⁷ While *exilium* was nearly always allowed for elite Roman citizens, there is ample evidence to demonstrate that it was not assured by statute. If some codified right to exile did exist in Republican Rome, it was not always effective and was ignored on several occasions.

2.3 *AQUAE ET IGNIS INTERDICTIO*

Once a citizen had avoided judicial peril by going abroad, the Romans normally enacted an administrative measure to ensure that the exile would not attempt to return to the state. Livy records such a measure in the case of the corrupt publican Postumius of Pyrgi. Facing a capital trial before the people (*iudicium populi*) in 212

³⁶ Sal. *Cat.* 51.5; P. McGushin, *C. Sallustius Crispus, Bellum Catilinae: A Commentary* (Leiden, 1977), 242; J. T. Ramsey, ed., *Sallust's Bellum Catilinae* (Atlanta, 1984), 200.

³⁷ On the importance of tradition in Roman governance, see A. W. Lintott's excellent discussion in *Constitution of the Roman Republic*, 3–7.

for profiteering from state contracts, Postumius was compelled to provide sureties (*vades*) to escape imprisonment prior to his trial:

Postumius vadibus datis non adfuit. tribuni plebem rogaverunt plebesque ita scivit, si M. Postumius ante kal. Maías non prodisset citatusque eo die non respondisset neque excusatus esset, videri eum in exilio esse, bonaque eius venire, ipsi aqua et igni placere interdicti.³⁸

Although he had provided sureties, Postumius was not present [at his trial]. Therefore, the plebeian tribunes made a proposal, and the plebs approved it, that if M. Postumius had not come forward before the first of May and had not responded when summoned and had not been excused, he was deemed to be in exile and his possessions were to be sold and he was interdicted from fire and water.

This case illustrates how the *aquae et ignis interdictio* was used until the second half of the first century. Proposed by a plebeian tribune and taking the form of a plebiscite, the measure deprived a fugitive of the necessities of life in enfranchised Roman territory.³⁹ It is interesting that Polybius did not mention this sanction in his description of *exilium*, because it was certainly in use when he wrote in the middle of the second century. Since Polybius was engaged in explaining the Roman constitution as a whole in Book Six of his *Histories*, perhaps we should not be surprised if he neglected some specific details, such as the *aquae et ignis interdictio*.

Interdiction effectively prohibited the reentry of the banished Roman to his former homeland. Without the obstacle of *interdictio*, an exile who had fled before

³⁸ Liv. 25.4.9–10. The brevity of Livy's account has led some to believe that Postumius was to be tried before the *concilium plebis* (plebeian citizen assembly): R. Feig Vishnia, *State, Society, and Popular Leaders in Mid-Republican Rome 214–167 BC* (New York, 1996), 74–75; Greenidge, *Legal Procedure*, 328–329. However, only the centuriate assembly was competent to hear capital cases. Hardy's treatment of this case (*Problems*, 9–10) convincingly shows that a *iudicium populi* would have been employed in the trial, but Postumius' exile pre-empted its establishment.

³⁹ The full formula seems to have been *tecti et aquae et ignis interdictio* (Cic. *Dom.* 78; Plut. *Mar.* 29; App. *BC* 1.31), although "shelter" is generally omitted in the sources; cf. Grasmück, *Exilium*, 65 n.18. Fire and water were the symbolic material needs of life (Var. *L.* 5.62), and modern scholars generally view interdiction as removing these symbolic needs from the outcast: cf. L. M. Hartmann, *RE* II, s.v. "Aquae et Ignis Interdictio," col. 308; Grasmück, *Exilium*, 65. Another interpretation attaches a religious meaning to the interdiction of fire and water. Since fire and water symbolized purity, their use was denied the exile lest he defile them for the rest of the community: J. B. Moyle, in W. Smith, W. Wayte, and G. E. Marindin, eds., *A Dictionary of Greek and Roman Antiquities*, 3rd ed. (London, 1890). s.v. "Exsilium," 820.

formal condemnation could theoretically return to Rome after the legal issues of his trial had faded from memory. He could then attempt to regain his Roman citizenship by *postliminium*.⁴⁰ As in the case of Postumius, the failure of the accused to appear at trial after a certain lapse of time could result in the assumption that he had taken flight and removed himself from Roman jurisdiction. The trial then appears to have progressed no further.⁴¹ The interdiction of fire and water could then be applied to prevent the return of the presumed exile. Since the Romans were reluctant to convict *in absentia*, this presumption of exile also served to prevent the accused from obstructing legal proceedings by absenting himself from Rome.

P. Cornelius Scipio Africanus' ability to indefinitely postpone his trial in 187 or 184 provides a rare exception to the pattern we have observed in Postumius' case. Charged with criminal conduct in his dealings with King Antiochus III, Scipio left the city in the midst of his trial and went to the town of Liternum. When his trial resumed, his brother Lucius claimed that Africanus could not attend due to illness. This excuse was rejected by the tribunes of the plebs prosecuting the case, but L. Scipio successfully appealed this decision to the college of tribunes. Thus the trial was adjourned due to Africanus' alleged illness. The postponement proved to be permanent, as the defendant never returned to Rome and died shortly thereafter.⁴² The sources make it clear that Scipio's unique stature as the savior of the Roman state enabled him to absent himself and successfully obstruct the continuation of his trial. Had Africanus not accomplished unprecedented services

⁴⁰ Strachan-Davidson, *Problems*, 2.29–30; Crifò, *Ricerche*, 173–174; Grasmück, *Exilium*, 65–66; Greenidge, *Legal Procedure*, 512. *Postliminium* was the legal device by which a Roman who had assumed the citizenship of a new state (and thus ceased to be a Roman citizen) could recover his old citizenship by returning to Rome: Cic. *Balb.* 28 and 30; cf. H. Kreller, *RE* XXII.1, s.v. "Postliminium," col. 863–873.

⁴¹ There was a strong convention in Roman law against trying absent defendants. Indeed, even being charged in one's absence was a justification for seeking restoration from exile: Cic. *Phil.* 2.56. Perhaps the accused could claim that he was not given enough time to present himself for trial before he was considered an exile. Excuses for nonappearance seem to have been frequently used by defendants to delay and obstruct their trials. Cicero mentions that severe penalties were proposed in his *lex Tullia de ambitu* of 63 for defendants who used illness as an excuse for nonattendance: Cic. *Mur.* 47. While Greenidge (*Legal Procedure*, 473) believes that jury trials routinely continued even in the absence of the defendant, the examples of convictions *in absentia* all come from the tumultuous years of 52 (under Pompey's special courts: App. *BC* 2.24; Asc. *Mil.* 55–56C) and 43 (under the *lex Pedia* for Caesar's assassins: Plut. *Brut.* 27; App. *BC* 3.95; Dio 46.48). The course of these trials most likely reflects the political circumstances of their times rather than the normal Republican procedure.

⁴² Liv. 38.52–53; see *MRR*, 1.369 for complete sources. For the issues of reconstructing Scipio's trial from the problematic ancient evidence, see H. H. Scullard, *Roman Politics, 220–150 BC.* (Oxford, 1973), 290–303, and *Scipio Africanus: Soldier and Politician* (Ithaca, 1970), 222–224.

to Rome, he certainly would have been declared an exile like Postumius when he failed to appear in court, and his ability to return to Rome would have been barred by interdiction from fire and water.

Aquae et ignis interdictio appears to have derived from the religious penalty of *sacratio*, by which an offender's life and property were forfeited to the gods for serious infractions of sacred law.⁴³ Someone punished by this measure was designated a *sacer homo* and could be killed without any legal consequences, although it was considered irreligious to do so.⁴⁴ This religious sanction may have found its way into secular law as a method of denying a criminal any protection of the community. That this measure was applied to exiles is confirmed by Cato the Elder in Book Four of his *Origines*: *duo exules lege publica execrari*.⁴⁵ Since the fourth book of Cato's history covered the era of the First Punic War, we can assume that the practice of employing *sacratio* against exiles was in effect by the mid-third century.⁴⁶ Livy's account of Postumius' flight in 212 uses the term *aquae et ignis interdictio*, suggesting that the historian applied anachronistic terminology or that the religious expression had been replaced by the more secular *interdictio* by the time of Postumius' predicament. There is no reason to view Livy's entire account of the interdiction of Postumius as anachronistic, however. The fragment from Cato's *Origines* demonstrates that there was some sanction in existence to formally exclude exiles from the community prior to 212.⁴⁷

The initiative to impose the *aquae et ignis interdictio* traditionally rested with the tribunes of the plebs. Festus demonstrates the connection of *sacratio* with the

⁴³ For a detailed discussion of *sacratio*, see C. Crifò, "Exilica Causa, Quae Adversus Exulem Agitur," in *Du Châtiment Dans La Cité* (Rome, 1984), 456–480.

⁴⁴ Festus 424L: *at homo sacer est, quem populus iudicavit ob maleficcium; neque fas est eum immolari, sed, qui occidit, parricidi non damnatur; nam lege tribunicia prima cavetur, "si quis eum, qui eo plebei scito sacer sit, occiderit, parricida ne sit"* (And the *sacer homo* is one whom the people condemned for wrongdoing, and it is not proper that he be killed, but whoever kills him is not guilty of murder. For it is provided by the first tribunician law, "If anyone kills him, who is considered *sacer* by a vote of the plebs, let him not be guilty of murder"). The assumption that an *aquae et ignis interdictus* could be killed with impunity in Roman territory is partially based on this passage (see below, "*Aquae et ignis interdictio*").

⁴⁵ Apud Prisc. *Inst. Gramm.* 8.4.16. Cf. Crifò, "Exilica Causa," 477–479.

⁴⁶ Nep. *Cat.* 3.

⁴⁷ Thus Henderson, "Repetundis," 72 n. 11, who views Livy's account as "illogical and suspicious" and states that there was no reason for such a measure: "Major trials were rare, the community small, and the *reus* known: he could not return *incognito*." This statement is not only very subjective, but also ignores the evidence of Cato, as well as the need within the framework of the Roman legal system to provide some means of preventing the later return of an uncondemned *exul*. M. Fuhrmann, in his review of Crifò, *ZRG* 80 (1963), 455 n. 11, also sees Livy's account as anachronistic, and states that the Cato fragment is corrupt.

judgment of the *plebs*.⁴⁸ Furthermore, in Postumius' case, as well as all others recorded in any detail, a tribunician proposal (*rogatio*) began the process of interdiction. The employment of the *interdictio* by the *plebs* is no surprise, since the bulk of routine legislation in Republican Rome was accomplished by plebiscite. Once approved by the *concilium plebis*, the measure seems to have been referred to a senior magistrate for proclamation and enforcement. This last phase of the process is attested only in Appian's description of Metellus Numidicus' banishment in 100. According to Appian, the tribune Saturninus' *rogatio* instructed the consuls to interdict Metellus from fire, water, and shelter after he had refused to uphold Saturninus' agrarian law.⁴⁹

Several theories have arisen to account for Appian's unique report of consular involvement in such proceedings, most of them contending that this intervention of the consuls was irregular and particular to this situation. One scholar even characterized this apparently unusual interdiction as "a proscription clothed in legal form."⁵⁰ Another interpretation of this event asserts that Metellus had not been formally charged with any crime. Although the *interdictio* was normally only employed against exiles fleeing justice, it was still a plebiscite and theoretically could be employed as the *plebs* saw fit.⁵¹ E. S. Gruen has convincingly refuted such

⁴⁸ Festus 424L. *Sacratio* was also threatened for violating the sacrosanctity of a tribune of the *plebs*: Liv. 3.55.6–7; G. Niccolini, *Il tribunato della plebe* (Milan, 1932), 68ff.

⁴⁹ App. BC 1.31: Ψήφισμά τε φυγῆς ἐπέγραφον αὐτῷ καὶ τοὺς ὑπάτους ἐπικηρῦσαι προσετίθεσαν μηδὲνα Μετέλλῳ κοινωνεῖν πυρὸς ἢ ὕδατος ἢ στέγης· ἔς τε τὴν δοκιμασίαν τοῦδε τοῦ ψηφίσματος ἡμέραν προύγραφον . . . καὶ τὸ ψήφισμα ὁ Ἀπουλῆσιος ἐκύρου, καὶ τὰ ἐν τῷ ψηφίσματι Μόριος ἐπεκήρυττεν. (They proposed a decree of exile against him and directed that the consuls interdict him from fire, water, and shelter and designated a day for the approval of this proposal. Saturninus had the measure ratified, and Marius [the consul] announced the decree by proclamation). The Livian tradition assigns Marius a similar role in the proceedings (Liv. Per. 69): [Metellus] *in exilium voluntarium Rhodum profectus est . . . profecto C. Marius, seditionis auctor . . . aqua et igni interdixit* (Metellus went into voluntary exile at Rhodes. C. Marius, the originator of the discord, actually interdicted him from fire and water).

⁵⁰ Crifò, *Ricerche*, 280–288. Although Hardy (*Problems*, 26) believes that Metellus had been charged with *perduellio*, he still finds the involvement of the consuls as "an exceptional step, to be explained by the nature of the coalition between Marius and the popular leaders." Greenidge (*Legal Procedure*, 351) also sees the provision that the consuls pronounce the *interdictio* as unusual.

⁵¹ C. Mackay, *The Judicial Legislation of Gaius Sempronius Gracchus* (Harvard Dissertation, 1994), 139. Mackay is correct in asserting that as a plebiscite, the *aquae et ignis interdictio* could be used as the *concilium plebis* wished. But there is sufficient evidence to believe that the measure was not used in this novel (albeit legal) way. Custom and tradition certainly weighed against such a use of the *interdictio*. Cf. Cicero's characterization of interdiction as *crudele, nefarium, ne in sceleratissimo quidem civi sine iudicio ferendum* (Dom. 47: cruel, heinous and not to be used without a trial even against the most wicked man).

arguments by demonstrating that Metellus had been charged before the people by Saturninus, perhaps with *perduellio* (treason) for flouting the sanctions of the *lex Appuleia agraria*.⁵² His subsequent interdiction was not anomalous – it was due to his flight from trial.

If Metellus' interdiction thus fits into the established pattern of a sanction following exile, what role did the consuls play in the normal application of this measure? One theory is that the consuls independently possessed the power to impose the *interdictio*, and a plebiscite merely directed them to use this power. Levick supports this idea with the following two examples. During his proconsulship in Gaul, Julius Caesar pronounced an *aquae et ignis interdictio* against the associates of the rebel leader Acco. Furthermore, a law of C. Gracchus in 123 prevented magistrates from outlawing uncondemned citizens, indicating that they had previously possessed that ability.⁵³ These examples cited by Levick are not conclusive, however. The interdiction of rebellious foreigners in a province, such as that instituted by Caesar against Acco, has little to do with administrative procedure in Rome concerning Roman citizens. Because they were foreigners, Caesar was free to deal with the Gauls as he wished. He merely used Roman terminology in framing a measure to prevent the return of some troublesome rebels who had fled his ability to punish them. There is no corollary between a promagistrate's unlimited power over foreign enemies and a magistrate's authority over Roman citizens at home, which was circumscribed by law and custom.

We now need to consider Levick's second example, the *lex Sempronia* described by Plutarch as threatening prosecution against any magistrate who had banished a citizen without a trial (ἐἰ τις ἄρχων ἄκριτον ἐκεκηρύχοι πολίτην κατ' αὐτοῦ διδόντα κρίσιν τῷ δήμῳ). Although Levick translates ἐκεκηρύχοι as "outlawed," a standard English rendering of the Latin *interdictus*, the verb as used by Greek authors does not have this meaning.⁵⁴ Plutarch's narrative illustrates

⁵² E. S. Gruen, "The Exile of Metellus Numidicus," *Latomus* 24 (1965), 576–580. The use of the phrase *diem dicere* in the Livian tradition (Oros. 5.17.4; Liv. Per. 69) indicates the initiation of a *iudicium populi*. The prominence of both Saturninus and Glaucia in Appian's version of this incident also suggests an indictment before the people: Gruen, "Metellus," 578 n. 6; Greenidge, *Legal Procedure*, 351. Saturninus would have needed the support of the praetor Glaucia to initiate a *iudicium populi*. The penalty for senators failing to swear to uphold Saturninus' law was a fine of twenty talents and expulsion from the senate. Despite his refusal to swear, Metellus attended a meeting of the senate notwithstanding Saturninus' attempts to expel him: App. BC 1.29, 31.

⁵³ Levick, "Poena Legis," 360; Caes. BG 6.44.3; Plut. CG 4.1.

⁵⁴ Mackay, C. Gracchus, 138. ἐπικηρύσσειν is generally used in this context.

that C. Gracchus' law was directed against the consuls who had presided over the persecution of his brother Tiberius' adherents in 132.⁵⁵ C. Mackay has convincingly demonstrated that the banishment inflicted against the Gracchans by the special commission (*quaestio extraordinaria*) headed by P. Popillius Laenas and P. Rupilius during their consulship was effected by a novel use of the magisterial power of *relegatio* and not the interdiction of fire and water.⁵⁶ Additionally, Cicero described the proceedings against Tiberius' followers as new and unusual.⁵⁷ Thus it is difficult to see the *lex Sempronia de provocatione* as restricting a customary and well-established power of the magistrates.

According to another interpretation of the events of 100, the *rogatio* of Saturninus requested that the consuls use their power of *relegatio* to expel an unindicted Metellus. As we have seen above, the evidence indicates that Metellus was indeed accused before the people. Had Saturninus attempted to interdict Metellus before he had been charged with a crime, the situation would have been very similar to Clodius' bill of outlawry against Cicero in 58.⁵⁸ If this was the case, it is most likely that Cicero would have directly and forcefully invoked the precedent of Metellus' restoration to demonstrate that his own interdiction was illegal. In fact, Cicero specifically contrasted his own supposed illegal outlawry with the legal (albeit unjust) *interdictio* enacted against Metellus.⁵⁹

There seems then to be little reason to view the invocation of the consuls in Saturninus' *rogatio* as unusual. It is only the brevity of the other descriptions of the process of interdiction that makes the case of Metellus seem irregular. Despite their lack of detail, the paraphrase of two plebiscites in the ancient sources suggests that the senior magistrates in the city were routinely called upon to enact the *aquae et ignis interdictio*. As we have seen in the case of the corrupt publican Postumius, Livy reports that the tribunes of the plebs proposed that Postumius be interdicted from

⁵⁵ Plut. *CG* 4.2. For a discussion of the so-called *lex Sempronia de provocatione*, see D. Stockton, *The Gracchi* (Oxford, 1979), 117–126; Mackay, *C. Gracchus*, 126–174.

⁵⁶ Mackay, *C. Gracchus*, 138–143. For this magisterial power, see “Relegatio,” below. A. Lintott, *Violence in Republican Rome* (Oxford, 1968), 163–164, believes that the consuls of 132 declared Gracchus' followers enemies of the state (*hostes*) following their trials by a special commission empowered by the senate. Cf. Stockton, *Gracchi*, 90–91.

⁵⁷ Cic. *Lael.* 37.

⁵⁸ Mackay, *C. Gracchus*, 139 n. 66, acknowledges the similarities between his version of Metellus' exile and Cicero's experience in 58. For Cicero's exile, see Chapter 4.4, “The Exile of M. Tullius Cicero.”

⁵⁹ Cic., *Dom.* 87 (in regards to both Popillius Laenas and Metellus Numidicus): *qui expulsi sunt inique, sed tamen legibus* (They were expelled unjustly, but nevertheless according to the laws).

fire and water, and the plebs ratified the measure (*tribuni plebem rogaverunt plebesque ita scivit . . . ipsi aqua et igni placere interdicti*). Similarly, Cicero claimed that the proper wording for the *rogatio* proposing his own interdiction should have been “That you [the plebs] desire and order that M. Tullius be interdicted from fire and water” (*velitis iubeatis ut M. Tullio aqua et igni interdicatur*).⁶⁰ The use of the passive voice is significant. It suggests that the plebs are not performing the act of interdiction, but are requesting that the appropriate officials do so. Certainly, as with any law, the actual execution is left for the pertinent magistrates to accomplish. This appears to be the case with the *aquae et ignis interdictio* as well.⁶¹

Although the actual enforcement of the decree of outlawry was accomplished by the consuls (or presumably the *praetor urbanus* in their absence), the initiative to interdict customarily rested with the plebs. Thus Mommsen’s theory that the *aquae et ignis interdictio* evolved from a magisterial act to expel foreigners from Roman territory does not seem likely.⁶² The expulsion of foreigners (and other undesirables such as philosophers and astrologers) is attested several times in the historical record. However, the sources never state or even hint that the *interdictio* is the instrument of removal. It seems that such deportations were accomplished by *relegatio*, one of the magistrates’ normal powers of coercion.

The *aquae et ignis interdictio* was thus used by the plebs to prevent the subsequent return of a fugitive from Roman justice. But how frequently was such an act employed? Was every exile barred from fire and water? The ancient sources specifically attest to the use of this measure only a few times in the Republican era.⁶³ We should not conclude from this lack of explicit reference that the *interdictio* was rarely employed. Yet again, the chief problem is the lack of precise terminology in the sources. To the instances where interdiction is mentioned by name, we can add a case where it is strongly suggested: the exile of the two commanders defeated at Arausio in 105; *Cn. Mallius ob eandem causam quam et Caepio L. Saturnini rogatione e*

⁶⁰ Cic. *Dom.* 47.

⁶¹ This view is held by Levick (“Poena Legis,” 360), although she sees the consuls as possessing the power to interdict independently of the plebs. Cf. Greenidge, *Legal Procedure*, 577: “. . . it seems as though some formal resolution must have been elicited from the plebs; for the magistrate, although he can declare interdiction, cannot interdict.”

⁶² Mommsen, *Strafrecht*, 72, 964, and 978. Contra: Grasmück, *Exilium*, 98–99; Crifò, *Ricerche*, 175.

⁶³ The *aquae et ignis interdictio* is mentioned by name in the following cases: Postumius Pyrgensis in 212 (Liv. 25.4.9), P. Popillius Laenas in 123 (Cic. *Dom.* 82), Metellus Numidicus in 100 (App. *BC* 1.31; Plut. *Mar.* 29; Liv. *Per.* 69), and Cicero in 58 (Plut., *Cic.* 32; Cic. *Dom.* 47).

civitate plebiscito eiectus (for the same charge as Caepio, Cn. Mallius was ejected from the state by a plebiscite proposed by L. Saturninus).⁶⁴ Clearly, this reference to a *rogatio* of the tribune Saturninus and the ensuing plebiscite demonstrates that these men were outlawed.

For the majority of cases of *exilium* in the Roman Republic, the sources are silent about the *aquae et ignis interdictio*. Several scholars have thus concluded that banishment without subsequent interdiction occurred frequently.⁶⁵ On a practical level, however, it seems very unlikely that the Romans would take no steps to hinder the return of an exile. Without any sanctions, those who fled prior to trial or before the verdict was delivered (which was customary for *exilium* under the *iudicia populi*) could wait until the threat of renewed prosecution had passed and then return to Rome.⁶⁶ With no unexecuted verdict pending against them, the only real danger to such a returned exile would be the possibility of a new trial. While the references to the use of *aquae et ignis interdictio* are infrequent, there is no evidence suggesting the return of uninterdicted exiles to Rome in this fashion. The only exiles to return to Rome – whether interdicted or not – were those who had secured an official recall.

There are several explicit indications that interdiction was generally applied against exiles. In his *De domo sua*, Cicero states that no Roman can have his citizenship taken away unwillingly. Cicero's discussion of this legal point is one of the most important pieces of evidence concerning the effect of *exilium* on the civic status of the banished. This aspect of exile is discussed below. What is important here is Cicero's assertion that Roman citizenship is not lost by the exile until he voluntarily takes up the franchise of his new domicile. To encourage this assumption of new citizenship by fugitives, Cicero notes that the Romans established *aquae et ignis interdictio*.⁶⁷ This statement certainly implies

⁶⁴ Gran. Licin. 13 Fl. To these examples of interdiction, I would also add that of Cn. Fulvius Flaccus, who went into exile in 211. Livy's report (26.3.12) implies that he was interdicted. See Chapter 6, number 3 for a discussion of Fulvius' exile.

⁶⁵ Mommsen, *Staatsrecht*, 2.139 n.2; Grasmück, *Exilium*, 98; Crifò, *Ricerche*, 175.

⁶⁶ Thus Grasmück, *Exilium*, 99–100, who sees *exilium* without interdiction as a form of political emigration. However, his use of Hannibal's flight from Carthage to illustrate his point is not a convincing analogy to Roman custom.

⁶⁷ Cic. Dom. 78: *qui erant rerum capitalium condemnati, non prius banc civitatem amittebant, quam erant in eam recepti, quo vertendi, hoc est mutandi, soli causa venerant. id autem ut esset faciundum, non ademptione civitatis, sed tecti et aquae et ignis interdictione faciebant* (Those who had been convicted of capital charges did not lose the citizenship of this state until they had been accepted as citizens into the state where they had come for turning, that

that interdiction was normally applied to voluntary exiles to remove any hope of returning to Rome and thereby induce them to seek citizenship elsewhere. Cicero's statement would make little sense unless the sanction was frequently employed. The author of the *Rhetorica ad Herennium* also depicts interdiction as a common feature of exile. He uses the actions of the tribune Sulpicius in 88 as an example of poor oratorical practice due to his reliance on thinly disguised sophistry. Although Sulpicius had vetoed a proposed recall of exiles who had been denied trial (*exules quibus causam dicere non licuisset*), he himself later put forth a similar measure substituting the word *exules* with *vi eiectos* (those driven out by force). The author of the treatise rejects such linguistic hairsplitting: *proinde quasi id fuisset in controversia, quo illi nomine appellarentur, aut proinde quasi non omnes quibus aqua et igni interdictum est exules appellantur* (as if the question depended upon what name to call these men, or as though all those who are interdicted from fire and water are not called exiles).⁶⁸ This statement strongly associates interdiction with exile, which would be difficult if the former was not a frequent act.

Thus far, all of our examples of *aquae et ignis interdictio* have been directed by the plebs against specific individuals who fled trial. In addition to this individual application of interdiction, there is evidence that some form of outlawry was also accomplished through official lists containing several names. The primary source for this form of exclusion from the state comes from Cicero's second Verrine oration. The author maintains that Sthenius, a prominent citizen of Thermae, was illegally tried and convicted by the corrupt Roman governor Verres in Sicily. Sthenius was an important client of Pompey, and Cicero took the man's case before the tribunes of the plebs:

nuntiabatur . . . me ipsum apud hoc collegium tribunorum plebis, cum eorum omnium edicto non liceret Romae quemquam esse qui rei capitalis condemnatus esset, egisse causam Sthenii, et cum rem ita exposuissem quem ad modum nunc apud vos, docuissemque hanc damnationem duci non oportere, x tribunos plebis hoc statuisset, idque de omnium sententia pronuntiatum esse,

is to say "changing," their native soil. Moreover, they were induced to do this not by being stripped of their citizenship, but by interdiction from fire, water, and shelter).

⁶⁸ *Rhet. Her.* 2.45. See Chapter 4.1, "The Mass Recall of Exiles in the 80s," for Sulpicius' proposal.

NON VIDERI STHENIUM IMPEDIRI EDICTO QUO MINUS EILICERET ROMAE ESSE.⁶⁹

It was reported . . . that I myself had argued the case of Sthenius before the college of the tribunes of the plebs, since by their edict anyone who had been condemned of capital charges was forbidden to be in Rome. After I had explained the matter as I just now have explained it to you, and demonstrated that his conviction should not be considered valid, the ten tribunes decided the following, and decreed unanimously, "Sthenius is not subject to the edict excluding him from Rome."

Many scholars have assumed that this edict of the tribunes was a traditional act without placing it in a historical context.⁷⁰ Although the tribunician exclusion of capital convicts from Rome is sometimes considered an application of *aquae et ignis interdictio*, I believe that it is a separate (albeit related) act. From Polybius we know that the accused before *iudicia populi* had to take flight before condemnation. The plebs would normally pass an *aquae et ignis interdictio* to prevent the subsequent return of the banished man. This method of interdicting individuals certainly would have functioned adequately for cases tried before the people as well as the occasional *quaestio extraordinaria*. Those convicted of capital crimes in the provinces (such as Sthenius), however, would have been too numerous to deal with by individual plebiscites. The tribunes' edict (probably annual) mentioned in the *Verrines* may have originated to keep such men out of Rome.⁷¹ This tribunician edict would also have been effective against the increased number of capital convicts under Sulla's new system of standing jury courts.⁷² It is interesting to note that all of the cases of interdiction mentioned in the sources – except for that of

⁶⁹ Cic. *Vér.* 2.100. For Sthenius' connection to Pompey, see E. Badian, *Foreign Clientelae* (Oxford, 1958), 282–283.

⁷⁰ Strachan-Davidson, *Problems*, 2.35; Levick, "Poena Legis," 360; Greenidge, *Legal Procedure*, 512.

⁷¹ Note that Sthenius was not a Roman citizen. The prohibition of non-Roman *condemnati* from entering the capital probably stemmed from the concept that Rome was the common homeland to all those living under the *imperium Romanum* (Roman rule): *Dig.* 38.22.18; cf. 38.22.7.15. A capital conviction in one's actual provincial homeland thus *de facto* counted as a capital conviction in Rome. Roman citizens living in the provinces were apparently not immune to criminal prosecution by Roman governors, although they were customarily sent to Rome for trial: A. W. Lintott, *Imperium Romanum* (London, 1993), 68; Cloud, "The Constitution and Criminal Law," 493–494; Greenidge, *Legal Procedure*, 411–414.

⁷² Strachan-Davidson, *Problems*, 2.35; Greenidge, *Legal Procedure*, 363 and 577.

Cicero – date to the period before Sulla’s reformation of the Roman legal system. Even Cicero’s outlawry was unrelated to the Sullan courts. His interdiction, despite its other irregularities, was due to a traditional method – a plebiscite initiated by a tribune.⁷³ Perhaps the edict of the tribunes, originally intended to prevent provincial convicts from entering Rome, made the plebiscite of *aquae et ignis interdictio* largely fall into desuetude after Sulla’s institution of the standing court system in the capital.⁷⁴

While similar to the *aquae et ignis interdictio*, the tribunician edict referred to in Cicero’s Verrine oration was different in nature. Interdiction was an expedient to remove a particular offender from Roman territory and induce him to lay down his Roman citizenship. The wording of the tribunician edict is odd if it was intended to impose the *interdictio*. First of all, the edict never uses the phrase *aquae et ignis interdictio* or any similar words. It thereby seems removed from the religious connotations that surrounded interdiction from fire and water. Furthermore, the edict imposes no administrative penalties such as forfeiture of property, which was a standard feature of interdiction. Indeed, the tribunician edict reported by Cicero only seems to list those men who are already banned from Rome. It seems unlikely, then, that this decree of the tribunician college enacted the *aquae et ignis interdictio*.⁷⁵

The interdiction of fire and water was accomplished by a plebiscite, and as such contained provisions beyond the banishment of the offender. The exact provisions of each measure could vary from case to case. Unfortunately, only brief references to the *aquae et ignis interdictio* have come down to us. What additional provisions a plebiscite of interdiction might contain are only hinted at in the ancient sources. In speaking of his own outlawry, Cicero claims that Clodius’ bill failed to contain a customary clause excluding him from the senate. He also states that this provision is included in all interdictions, even those affecting condemned criminals.⁷⁶ From

⁷³ See Appendix I, “The *leges Clodiae* Concerning Cicero’s Exile.”

⁷⁴ The *Lex Iulia municipalis* of 45 prohibits those condemned by *iudicia publica* at Rome from holding municipal offices: C. G. Bruns, *Fontes Iuris Romani Antiqui* (Tübingen, 1909), 108, lines 118–119. The language of this law echoes the tribunician edict reported by Cicero: . . . *queive iudicio publico Romae condemnatus est erit, quo circa eum in Italia esse non liceat* . . . (He who has been or will have been condemned by a public court in Rome, on which account he is not permitted to be in Italy). For the expansion of the restricted area to all Italy, see Chapter 4.2, “*Exiles in Italia*: The Cases of Oppianicus and Q. Pompeius.”

⁷⁵ Contra Greenidge, *Legal Procedure*, 577 and Levick, “*Poena Legis*,” 360, who see the tribunician bill as a form of *interdictio*.

⁷⁶ Cic. *Dom.* 82.

this passage, we can assume that the outlawry of a convicted lawbreaker may have differed in its particulars from one imposed on a citizen who fled before trial. Clodius' bill suggests other types of unique provisions that could be included in a proposal to apply the *aquae et ignis interdictio*. It seems the plebiscite of interdiction against Cicero – the so-called *lex de exilio Ciceronis* – provided for the construction of an altar to *Libertas* on the site of Cicero's house. By the building and consecration of a religious structure on Cicero's property, Clodius hoped that his enemy would never be able to reoccupy this site even if he should be formally recalled from exile. In *De domo sua*, however, Cicero claims that Clodius violated Roman law by consecrating this shrine without proper sanction. The orator points out that there was no explicit authorization to formally dedicate such a structure in the plebiscite proposed by Clodius – thus implying that the consecration would have been legal had it been included in the bill.⁷⁷ We also know that the *lex de exilio Ciceronis* was amended shortly after it was proposed, and additional sanctions were added.⁷⁸ Thus the legislation associated with Cicero's exile suggests that all interdictions were not alike, but could be tailored to each individual case.

Most scholars have ignored potential differences in bills of outlawry and have viewed the *interdictio* as having fixed sanctions. The two elements that are often stated as being constant are the confiscation of the offender's property and penalties for aiding the outlaw.⁷⁹ The forfeiture of the goods of an *interdictus* does seem to have been customarily included in a bill of interdiction. The ancient evidence for the cases of M. Postumius, Q. Servilius Caepio, Cn. Mallius Maximus, and Cicero indicate that they suffered loss of property along with their interdiction from fire and water.⁸⁰ The other examples of *aquae et ignis interdictio* do not provide any other details aside from the mere fact of outlawry. Since the loss of property occurs in half of our certain cases of interdiction, I am inclined to agree that it was usually included in a plebiscite of interdiction.

⁷⁷ Cic. *Dom.* 128 and 129; cf. 127–128, where Cicero mentions a *lex Papiria* that forbade consecration without the approval of the plebs. See W. J. Tatum, "The *Lex Papiria De Dedicacionibus*," *CPb* 88 (1993), 326–328; P. Moreau, "La Lex Clodia sur le bannissement de Cicéron," *Athenaeum* 75 (1987), 478–480.

⁷⁸ Cic. *Att.* 3.2–4.

⁷⁹ Confiscation of property: G. Kleinfeller, *RE* VI, s.v. "Exilium," col. 1684; Hartmann, *RE* II, s.v. "Aquae et Ignis Interdictio," col. 308–309; Greenidge, *Legal Procedure*, 396; Bauman, *Crime and Punishment*, 12. Both sanctions against helping the *interdictus* and confiscation: Grasmück, *Exilium*, 66 and 94 n. 205; Strachan-Davidson, *Problems*, 36; Zumpt, *Criminal Process*, 452.

⁸⁰ See the individual entries in Chapter 6 for sources and discussion of these cases.

Penalties for those who aided an *interdictus*, however, are only attested in Cicero's case. In both his letters from exile and his later speeches, the orator claims that the *lex de exilio Ciceronis* threatened his benefactors with loss of property, death, and exile. Dio states that the law allowed people who sheltered Cicero to be killed with impunity.⁸¹ Below I argue that Dio's statement is based on a misinterpretation of his source material and that the actual law interdicting Cicero did not authorize such an extreme action.⁸² Nevertheless, many scholars who have commented on the phenomenon of *aquae et ignis interdictio* maintain that anyone who helped an *interdictus* was automatically considered an outlaw himself and made subject to the same sanctions.⁸³ It seems highly unlikely that someone who allegedly aided an outlaw could be summarily punished without the benefit of trial or some legal hearing. Rather, it is far more likely that such an infraction would subject the offender to criminal proceedings for having broken a law (namely the plebiscite of interdiction). The suspect would still have to be formally accused and tried in a court of law. Cicero's statement that his supporters risked their lives and property is technically correct, but somewhat overdramatic. It would have been more accurate for him to say that they were subject to prosecution for their actions, which could result in the loss of their lives or property. Aiding an *interdictus* did become liable to prosecution by the later *lex Iulia de vi privata*.⁸⁴ If bills of interdiction had routinely imposed penalties on those who sheltered the outlaw, this provision in the Julian law on violence would have been unnecessary. The sanctions contained in Clodius' measure of interdiction against Cicero were probably unique, as the orator's later works imply.⁸⁵

That an *interdictus* himself could be killed with impunity by anyone who caught him in forbidden territory is unlikely, despite prevalent scholarly opinion.⁸⁶ There

⁸¹ Cic. *Planc.* 97; *Fam.* 14.4.2 mentions only *caput* and *bona*; cf. *Att.* 3.4; Dio 38.17.7.

⁸² See Appendix I, "The *leges Clodiae* Concerning Cicero's Exile."

⁸³ Strachan-Davidson, *Cicero* (London, 1894), 235; Mommsen, *Strafrecht*, 936; Moreau, "Lex Clodia," 476; Shackleton Bailey, *Epistulae Ad Atticum* (Cambridge, 1965), 141; M. H. Crawford, ed. *Roman Statutes* (London, 1996), 2.773.

⁸⁴ Paulus, *Sententiae*, 5.26.3; cf. Strachan-Davidson, *Problems*, 36; O. F. Robinson, *The Criminal Law of Ancient Rome* (London, 1995), 80. The Julian laws on violence date to the dictatorship of Caesar, and were revised under the Emperor Augustus. See Lintott, *Violence*, 107–109.

⁸⁵ See Appendix I, "The *leges Clodiae* Concerning Cicero's Exile."

⁸⁶ Mommsen, *Strafrecht*, 623 and 936; Greenidge, *Legal Procedure*, 301 and 512; Strachan-Davidson, *Problems*, 33–34; Grasmück, *Exilium*, 66.

are no known cases of outlaws who violated their interdiction being put to death in this fashion. After all, the application of the *aquae et ignis interdictio* was not a proscription. Even in the second century AD, when Roman criminal law meted out far harsher punishments, a standard subject for rhetorical exercises was whether it was defensible for a private citizen to automatically slay an exile found inside interdicted territory. This appears to have been a very controversial subject which was open to interpretation.⁸⁷ While the killing of an *interdictus* with impunity may have been allowable by the strict letter of the law, such an act would probably have been considered backward and barbaric. An analogy can be drawn with *patria potestas*, which gave a Roman *paterfamilias* the power of life and death over his family. A father who actually exercised this right could still be prosecuted and convicted for this act, as was Q. Fabius Maximus Eburnus in 103.⁸⁸ It should also be noted that while Cicero was still inside interdicted territory during his exile, none of his enemies assailed him. Given Clodius' penchant for violent tactics, it would seem unusual that he did not direct any attacks against his enemy if he could truly be slain with impunity. While Cicero did fear violence from his enemies while in exile, it was banished Catilinarian conspirators who caused him this concern. Such men – already in exile – had nothing to lose by striking a blow against their old adversary. Even these desperate men never actually threatened Cicero, and the orator's fear of them was probably more imagined than real.⁸⁹ The actual danger to an *interdictus* who flouted the terms of his banishment was that he would be arrested and taken to the appropriate magistrate for punishment.

2.4 EXILE AND INTERDICTION AS A LEGAL PENALTY

As we have seen, the *aquae et ignis interdictio* was a measure to hinder an exile's return to Roman territory and contained some quasi-penal elements. At some point in the late Republic, this postexilic sanction became an actual legal penalty for

⁸⁷ (Quint.) *Decl. Min.* 305 deals with this matter.

⁸⁸ See Chapter 6, number 16 for the case of Q. Fabius Maximus Eburnus. For the restrictions on a father's power of life and death over family members, see W. V. Harris, "The Roman Father's Power of Life and Death," in R. S. Bagnall and W. V. Harris, eds., *Studies in Roman Law in Memory of A. Arthur Schiller* (Leiden, 1986), 81–89; R. P. Saller, *Patriarchy, Property, and Death in the Roman Family* (Cambridge, 1994), 115–117.

⁸⁹ Cic. *Att.* 3.7.1, 3.8.1; *Planc.* 98; cf. *Fam.* 14.3.4; *Q. Fr.* 1.3.4; *Planc.* 100.

certain crimes. Scholarly opinion is divided on when this change took place. The prevailing view is that Sulla's *leges Corneliae* and the establishment of a permanent system of *quaestiones* (jury courts) in 82/81 mark the beginning of interdiction as a legal penalty.⁹⁰ The chief evidence for this view comes from the extracts of Imperial jurists. Ulpian states that the *lex Cornelia de incendiariis* (Cornelian law on arson) carried the penalty of *aqua et ignis interdictio*; and Modestinus similarly comments that Sulla's *lex de falsis* (law on forgery) punished transgressors with interdiction.⁹¹ The reason for this sudden shift to outlawry as a penalty in the Cornelian laws is sometimes attributed to the establishment of standing *quaestiones*. Since C. Gracchus' law mandated that a capital sentence could only be inflicted by the Roman people (at *iudicia populi*), Sulla's jury courts could not pass sentences of death against convicts. Thus Sulla's laws resorted to the interdiction of fire and water as the severest penalty. Such a change in penalties was not that dramatic, since *exilium* followed by interdiction was previously the usual outcome of all capital convictions.⁹²

Ascribing interdiction as a penalty under Sulla's laws raises two major objections, however. First, the evidence of the Imperial jurists must be used with great caution for reconstructing earlier laws. As new punishments were developed under the Principate, the previous penalties found in older laws were replaced. For example, in Justinian's *Digest*, the jurist Marcian is cited as stating that the penalty for Sulla's *lex de sicariis et veneficiis* (law on murder and poisoning) was deportation to an island (*deportatio insulae*).⁹³ But deportation was an innovation of the emperor Tiberius, so Marcian's quotation clearly reports the penalty that was effective at a later time and not the original Sullan punishment.⁹⁴ Since the works of classical jurists were excerpted, altered, and "updated" by subsequent editors and scholars in late antiquity, it is difficult to determine the original, unaltered text. For evidence found in the *Digest*, this problem is compounded: the compilers of the

⁹⁰ Mommsen, *Strafrecht*, 73, 966, 972–979; Strachan-Davidson, *Problems*, 2.22–24; Greenidge, *Legal Procedure*, 512–513; A. Keaveney, *Sulla: The Last Republican* (London, 1982), 176; Grasmück, *Exilium*, 104–108; Crifò, "Exilica Causa," 490–491; R. A. Bauman, *Crime and Punishment*, 26–28. Note that Mommsen believes that interdiction under Sulla's law was a modified form of *relegatio*. For a critique of this view, see Strachan-Davidson, *Problems*, 51–74.

⁹¹ Ulpian, *Collatio*, 12.5.1; Modestinus, *Digest*, 48.10.33.

⁹² Hartmann, *RE* II, s.v. "Aquae et Ignis Interdictio," col. 309; Grasmück, *Exilium*, 107–108.

⁹³ Marcian, *Digest*, 48.8.3.5.

⁹⁴ Cf. G. Kleinfeller, *RE* V, s.v. "Deportatio in Insulam," col. 231–233.

Digest further interpolated these already altered juristic writings to revise obsolete material and reconcile contradictory sources.⁹⁵ Due to this tradition of editing and adapting juristic works, the evidence of Ulpian and Modestinus that *aquae et ignis interdictio* was originally featured in Sulla's laws is highly problematic.⁹⁶ It is quite likely that interdiction was substituted for the original penalty at some later date, as was the case with Marcian's anachronistic reference to deportation.

An even more decisive piece of evidence against assigning interdiction as a penalty under Sullan law comes from Cicero's *Pro Caecina*, delivered in 69. In this speech, the orator speaks of one of the fundamental characteristics of Roman exile: *exsilium enim non supplicium est sed perfugium portusque supplicii . . . itaque nulla in lege nostra reperitur, ut apud ceteras civitates, maleficum ullum exsilio esse mulctatum* (Exile is not a punishment, but a sanctuary and refuge from punishment. Thus in no law of ours is exile found as punishment for any offense, as it is among other nations).⁹⁷ Since the Sullan system of *quaestiones* had been in operation for over a decade when Cicero made this claim, it is difficult to reconcile this statement with the idea that interdiction was a penalty under the Cornelian laws. Proponents of this latter view maintain that Cicero stated that *exilium* was not a punishment under Roman law, but said nothing about *aquae et ignis interdictio*. Thus the orator, while technically correct in his choice of words, was very deceptive in the substance of his argument. While Cicero (like any good lawyer) will bend facts to win his case, his distortions have to be plausible to his audience: a transparent lie will not persuade a jury. Yet, had Cicero tried to draw such a fine distinction between *exilium* and *interdictio*, his argument would have amounted to little more than unconvincing sophistry. Cicero's point in the *Pro Caecina* was that no citizen could be ejected from the state unwillingly. If interdiction was indeed a penalty under the *leges Corneliae*, the orator's statement would have been readily apparent to the jury as a gross distortion. There was little or no practical difference between an *interdictus*

⁹⁵ J. A. Crook, *The Law and Life of Rome* (Ithaca, 1967), 14–15; W. Kunkel, *An Introduction to Roman Legal and Constitutional History*, trans. J. M. Kelly (Oxford, 1966), 147–148 and 172–174; M. Kaser, "Zum heutigen Stand der Interpolationenforschung," *ZRG* 59 (1952), 60–101; H. J. Wolff, *Roman Law: An Historical Introduction* (Norman, 1951), 166–168. For a very detailed account of the alteration and transmission of juristic texts, see F. Wieacker, *Textstufen klassischer Juristen* (Göttingen, 1960), esp. 9–92.

⁹⁶ Contra R. A. Bauman, *Crime and Punishment*, 27–28, who believes that Ulpian's citation in the *Digest* preserves the penalty of the *lex Cornelia de sicariis et veneficiis* from the text of Sulla's original law. While exact documentation may have been a feature of Ulpian's texts as Bauman claims, it is impossible to determine how far his extant works have been altered and interpolated by later editors.

⁹⁷ *Cic. Caec.* 100.

and an *exul*, as the *auctor ad Herennium* clearly indicates: *quasi non omnes quibus aqua et igni interdictum est exules appellantur* (as if all are not called exiles who are interdicted from fire and water).⁹⁸ When considered in contrast to the anachronistic tendencies of the Imperial jurists, Cicero's contemporary evidence convincingly rules out the introduction of *aquae et ignis interdictio* as a penalty under Sulla's laws.⁹⁹

Within this perspective, it is useful to revisit Hartmann and Grasmück's opinion that interdiction was a substitute penalty for capital punishment under Sulla's *quaestiones perpetuae*, since these jury courts were unable to sentence defendants to death. Their view rests on a misinterpretation of C. Gracchus' law preventing the execution of a citizen without a judgment of the Roman people (the so-called *lex Sempronia ne de capite civium iniussu populi indicaretur*). This legislation was specifically intended to prevent either magistrates or senatorial *quaestiones extraordinariae* from meting out capital sentences. The permanent courts established under Sulla's dictatorship were authorized by a vote of the people, and thus did not transgress the *lex Sempronia* by having the power to impose the death penalty. Since the Roman people had approved the *leges Corneliae* and their statutory punishments, all capital sentences given out by the Sullan *quaestiones* were technically according to the will of the people.¹⁰⁰

A. H. M. Jones and B. M. Levick both place the origin of interdiction as a *poena legis* (penalty of law) later than Sulla's dictatorship. Jones states that Clodius' law of 58 forbidding the execution of citizens without trial was the first to employ interdiction as a punishment.¹⁰¹ This law was designed to punish the extralegal actions of magistrates such as Cicero's execution of captured Catilinarian conspirators in 63. The orator ultimately fled Rome to avoid trial under this new legislation. In his brief narrative concerning the exile of Cicero, Velleius reports that the *lex Clodia* punished transgressors with interdiction from fire and water. This account,

⁹⁸ *Rhet. Her.* 2.45. The jurist Paulus also stresses that *exilium* is synonymous with *aquae et ignis interdictio* (*Dig.* 48.1.2).

⁹⁹ See also Levick, "Poena Legis," 363–364 for additional argument against interdiction as a Sullan penalty. Note W. Kunkel's suggestion that the Cornelian laws had death as their official penalty, but the presiding magistrate at a *quaestio* would release the convict and issue the *aquae et ignis interdictio* against him instead: *Kleine Schriften* (Weimar, 1974), 87–90. This theory seems unlikely since there is no evidence that a magistrate had the authority to declare interdiction, a measure that was accomplished by plebiscite.

¹⁰⁰ Strachan-Davidson, *Problems*, 1.238 and 244.

¹⁰¹ Jones, *Criminal Courts*, 74.

however, is very compressed and I believe that Velleius conflated Clodius' two laws: first, the law prohibiting the execution of citizens without due process and, second, the bill of interdiction against the fugitive Cicero. Indeed, Velleius is the only source to make this claim, and additional evidence also suggests his error.¹⁰² Levick assigns the introduction of outlawry as a penalty to the Early Principate.¹⁰³ However, there are indications that interdiction was used in the waning days of the Republic.

The first certain use of expulsion as a penalty (as opposed to a voluntary method of avoiding punishment) did not involve *aquae et ignis interdictio*. The *lex Tullia de ambitu* of 63 established ten-year exile as the punishment for electoral bribery. Since the term of expulsion (probably from Italy, but not stated) was limited and not permanent, the actual penalty was probably *relegatio*.¹⁰⁴ Cicero's law against *ambitus* may not have been the first statute to employ the penalty of banishment. Sometime between 78 and 63, the *lex Plautia de vi* was enacted to counter violent acts which threatened the safety of the state.¹⁰⁵ While defending P. Sulla from an accusation under this law, Cicero implored the jury not to expel his client from his native land. In his defense of P. Sestius, also charged under the *lex Plautia*, Cicero proclaimed that the world would never see Sestius an exile without himself as the man's companion.¹⁰⁶ Based on Cicero's remarks, it is difficult to determine if banishment was the actual statutory penalty of the *lex Plautia*, or if the punishment was capital and Cicero was stating the obvious: his clients would go into exile if convicted. Since *exilium* was the actual outcome of nearly all capital convictions, the orator could have been relating the practical outcome of a guilty verdict. If some form of exile was the statutory penalty for the *lex Plautia de vi*, the law must have originated after the year 69 (but before 63), since Cicero asserted

¹⁰² I discuss this issue in detail in Appendix I, "The *leges Clodiae* Concerning Cicero's Exile."

¹⁰³ Levick, "Poena Legis," 375–379.

¹⁰⁴ Cic. *Mur.* 47 and 89; cf. 3, 67; *Planc.* 83; Dio 37.29.1; Jones, *Criminal Courts*, 57 and 74; Crifò, "Exilica Causa," 483–484. Dio is the only source that mentions the exile was only for ten years. Cicero's silence on the length of the banishment is understandable – in defending his clients Murena and Plancius and evoking pathos for them should they be convicted, it was not in the orator's best interests to mention that the exile they faced was of limited term. *Relegatio* as penalty: Levick, "Poena Legis," 371; Greenidge, *Legal Procedure*, 425 and 508.

¹⁰⁵ For the details of the *lex Plautia de vi*, see the discussion of Lintott, *Violence*, 109–122; Robinson, *The Criminal Law of Ancient Rome*, 78–79; A. Riggsby, *Crime and Community in Ciceronian Rome* (Austin, 1999), 79–84.

¹⁰⁶ Cic. *Sul.* 89–90; *Sest.* 90.

that no Roman law had exile as a penalty during his defense of A. Caecina in that year.¹⁰⁷

The turbulent politics of the 50s produced some laws that may have mandated some form of banishment as a penalty. The *lex Licinia de sodaliciis* of 55 apparently had *exilium* as its punishment. Whether the banishment lasted only for a period of time, as Cicero's law *de ambitu*, or was permanent is impossible to determine.¹⁰⁸ Asconius states that Pompey's law *de vi* of 52 included "a more serious penalty" (*poena gravior*). In a capital offense, the more serious penalty was probably *aquae et ignis interdictio*, which would have added confiscation of property to the customary exile when the convict fled Rome. Indeed, when Milo was convicted under this law in 52, he lost his property.¹⁰⁹ There is still no firm evidence that interdiction was employed as a penalty by any of these laws, although it is a strong possibility in the case of the *lex Pompeia de vi*. Some of the *leges Iuliae* enacted during Caesar's dictatorship, however, certainly included the *aquae et ignis interdictio*. Suetonius mentions that Caesar increased the penalty for murder with confiscation of property since wrongdoers previously had merely gone into exile and suffered no further penalties. For other crimes Caesar instituted the seizure of half the offender's goods.¹¹⁰ Caesar's innovation seems to have been the addition of interdiction (which had traditionally included confiscation of property) for capital offenses. In his first *Philippic*, as Cicero criticizes Antony for allowing an appeal by those found guilty of violence or treason, he makes it clear that Caesar's laws included interdiction from fire and water as a penalty: *quid, quod obrogatur legibus Caesaris, quae iubent ei qui de vi itemque ei qui maiestatis damnatus sit aqua et igni interdici? quibus cum provocatio datur, nonne acta Caesaris rescinduntur?* (Furthermore, does this not annul Caesar's laws that bid that

¹⁰⁷ *Aquae et ignis interdictio* as the penalty for the *lex Plautia de vi*: D. H. Berry, *Cicero: Pro Sulla Oratio* (Cambridge, 1996), 312. Since Asconius reports that the penalty for the later *lex Pompeia de vi* was more serious (see below), it is likely that the *lex Plautia* was a traditional capital offense and did not have interdiction as its punishment.

¹⁰⁸ Cic. *Planc.* 8 and 79; cf. Dio 39.37.1, which states that the consuls of 55 increased the penalties for bribery. Greenidge (*Legal Procedure*, 425) speculates that interdiction was the new punishment.

¹⁰⁹ Asc. 36.9C. Paradoxically, a statutory penalty of interdiction was "more serious" than one of death, since voluntary exile was allowed in the later case. Cf. Greenidge, *Legal Procedure*, 391; A. W. Lintott, "Cicero and Milo," *JRS* 64 (1974), 77; B. A. Marshall, *A Historical Commentary on Asconius* (Columbia, 1985), 209. Milo's loss of property: Cic. *Att.* 5.8.2. For Milo's case, see Chapter 6, number 44.

¹¹⁰ Suet. *Jul.* 42: *poenas facinorum auxit et cum locupletes eo facilius scelere se obligarent, quod integris patrimoniis exsultabant, parricidas, ut Cicero scribit, bonis omnibus, reliquos dimidia parte multavit* (He increased the punishments for crimes, and since the rich were liable to commit crimes more frequently because they went into exile with their fortunes intact, he punished murderers with the loss of all their property, and others by the loss of half, as Cicero writes).

those convicted of violence or treason be interdicted from fire and water? When an appeal is allowed for these men, are not the acts of Caesar revoked?).¹¹¹ In the final years of Republic, therefore, permanent exile (effected by interdiction) had become a legal penalty for certain crimes.¹¹² Alongside this new penal use of banishment, voluntary exile to escape traditional criminal penalties continued to exist.

2.5 EXILE AND CITIZENSHIP

When a Roman citizen fled his homeland to avoid a legal penalty, he did not cease to be a *civis Romanus*. Even when the interdiction from fire and water was applied against him, he was still a citizen of Rome. A Roman could only voluntarily dispose of his citizenship – the state could not take it away. Cicero's statement on this subject clearly indicates this unique tenet of Roman law:

qui si in civitate legis vim subire vellent, non prius civitatem quam vitam amitterant: quia nolunt, non adimitur iis civitas, sed ab iis relinquitur atque deponitur. nam quum ex nostro iure duarum civitatum nemo esse possit, tum amittitur haec civitas denique, quum is qui profugit receptus est in exilium, hoc est, in aliam civitatem.¹¹³

¹¹¹ Cic. *Phil.* 1.23. Cf. Suet. *Iul.* 42.3; *poenas facinorum auxit*. Cf. Cloud, "The Constitution and Criminal Law," 524; Jones, *Criminal Courts*, 74. Levick's assertion ("Poena Legis," 365–366) that Caesar's law did not impose interdiction as a statutory penalty, but made it obligatory for the tribunes to pass a bill of interdiction upon condemnation, is unconvincing.

¹¹² The use of interdiction as a legal penalty continued into the Principate, but often under a different procedure. The inscription of the *SC de Cn. Pisone patre* illustrates the changes: in AD 20, the senate ordered the interdiction of fire and water for Visellius Karo and Sempronius Bassus, two henchmen of the villainous governor Cn. Piso (lines 120–123). Under the early Principate, it appears that the senate acquired a judicial function that was unknown in the Republic. Visellius and Sempronius were tried for treason, a charge that would have been heard by the *quaestio maiestatis* in Republican times. The senate found them guilty, and directed the praetor in charge of the *quaestio maiestatis* to enforce the statutory punishment of interdiction from fire and water. The senate further instructed the praetors in charge of the treasury to sell the convicts' property. For a discussion of the senate's new judicial role under the early Principate as reflected in the Piso inscription, see J. S. Richardson, "The Senate, the Courts, and the *SC de Cn. Pisone patre*," *CQ* 47 (1997), 514–518; W. Eck, A. Caballos, and F. Fernandez, *Das senatus consultum de Cn. Pisone patre* (Munich, 1996), 137–138 and 230–232; O. F. Robinson, "The Role of the Senate in Roman Criminal Law during the Principate," *Journal of Legal History* 17 (1996), 130. For the text of the inscription and an English translation, see D. S. Potter, ed., *The Senatus Consultum de Cn. Pisone Patre*, trans. C. Damon, *AJPb* 120 (1999), 13–41.

¹¹³ Cic. *Caec.* 100.

If any citizens wish to suffer the execution of the law, they would not lose their citizenship before they lose their lives. Because they do not so wish, their citizenship is not taken away from them, but they abandon it and put it aside. Since no one can be a citizen of two states under our law, Roman citizenship is finally lost at that point when a fugitive has been received into exile, that is, into the citizenship of another state.

In another speech, Cicero repeats this assertion, adding that the *aquae et ignis interdictio* was a measure designed to encourage exiles to cast off their Roman citizenship and take up the franchise of a new state.¹¹⁴ Despite these rather explicit statements, the issue of whether an exile retained Roman citizenship is a source of controversy for modern scholars. Various theories have arisen to explain the relationship of banishment and citizenship.¹¹⁵ In many ways, the citizenship question is one of semantics. There is no reason to doubt Cicero that a Roman could not have his citizenship taken away. His assertion is corroborated by a passage in Dio that shows that not even the application of the *aquae et ignis interdictio* extinguished Roman citizenship. In AD 23, the Emperor Tiberius forbade those interdicted from fire and water from making a will. Since the ability to make a valid Roman will was an important test of citizenship, it stands to reason that an *interdictus* did not automatically lose his Roman civic status. Tiberius' decree would make no sense if interdiction already removed the offender from the Roman franchise.¹¹⁶ But once a man had fled a capital sentence and left Roman jurisdiction, his old citizenship was of little benefit to him. While he technically was still a Roman citizen, he could exercise few of his civic rights, since he was forbidden to physically enter any community of Roman citizens. Thus most exiles would take up the franchise of a new state, thereby renouncing their Roman citizenship in the process.

Strachan-Davidson's explanation of the relationship between exile and Roman citizenship is convincing: when a man availed himself of exile, it was assumed that

¹¹⁴ Cic. *Dom.* 78.

¹¹⁵ Mommsen, *Strafrecht*, 68 and 972–979 (maintaining that citizenship was lost by exiles until Sulla's reforms); Levy, *Kapitalstrafe*, 20 n. 4; Fuhrmann, "Review," 456–457 (both following Mommsen); Greenidge, *Legal Procedure*, 512; Shackleton Bailey, *Ad Atticum*, 2.160 (both claiming citizenship is lost); Grasmück, *Exilium*, 98 (stating that interdiction resulted in loss of citizen rights, but not *status civitatis*, in contrast to exile without interdiction, which entailed no such loss); Crifò, *Ricerche*, 259–260 and 289–312 (no loss of civic identity under any circumstances).

¹¹⁶ Dio 57.22.5; cf. Mommsen, *Strafrecht*, 957 n. 2; Strachan-Davidson, *Problems*, 55.

he would become a citizen of a new state. In most cases, fugitives from Roman justice certainly did attach themselves to another *civitas*, thus gaining the rights and protection of their new homeland. In taking on a new citizenship, the exile lost little in a practical sense, as his Roman citizenship was almost useless to him.¹¹⁷ He had much to gain by his new status as a foreigner: he was now permanently outside Roman jurisdiction and could live out his days without fear of punishment for the charges he had fled.

In some cases, an exile might hesitate to renounce his Roman citizenship for symbolic reasons. For example, Cicero claims that he never ceased to be a *civis Romanus* during his exile.¹¹⁸ Such retention of citizenship certainly had public-relations value in the campaign to secure official restoration from banishment, as the exile could claim to be an unjustly banished man stubbornly holding onto his beloved *patria*. The maintenance of Roman citizenship could also be used to show that the exile did not accept his situation as permanent and was confident that his innocence would be proven in the end. No matter the reason, however, holding onto Roman citizenship could entail some risks, as the cases of two Roman exiles aptly demonstrate.

2.6 THE ATTEMPTED EXILE OF L. HOSTILIUS TUBULUS AND Q. PLEMINIUS¹¹⁹

In the *Pro Scauro*, Cicero attempts to illustrate that even the most villainous man would not commit a crime without motive. To highlight this idea, the orator invoked a figure that evidently personified wickedness and depravity for his audience:

si mehercule, iudices, pro L. Tubulo dicerem, quem unum ex omni memoria sceleratissimum et audacissimum fuisse accepimus: tamen non timerem, venenum hospiti aut convivae si diceretur cenanti ab illo datum, cui neque heres neque iratus fuisset.¹²⁰

¹¹⁷ Strachan-Davidson, *Problems*, 2.39.

¹¹⁸ Cic. *Dom.* 85; *Har. Resp.* 17, in which Cicero replies to Clodius' question *cuius civitatis es?* (Of what citizenship are you?) Cf. Strachan-Davidson, *Problems*, 53–54.

¹¹⁹ This section is an abridged version of "The Attempted Exile of L. Hostilius Tubulus," *Athenaeum* 89 (2001), 229–235.

¹²⁰ Cic. *Scaur.* frag. K.

Members of the jury, even if I were defending L. Tubulus, whom we acknowledge was the most wicked and reckless man in history, I would not fear if it was alleged that he gave poison to a guest or dinner companion, if he was not an heir or enemy of that person.

With so many prominent evil-doers to choose from throughout Roman history, it may surprise us that Cicero selected such a seemingly obscure figure as L. Hostilius Tubulus for his rhetorical purpose. By chance, we know that even Cicero himself was unaware of the exact circumstances of Tubulus' crimes and had to seek Atticus' help for this information when he was gathering material for a later work.¹²¹ It may have required Atticus' expertise to reveal the precise details of Tubulus' misdeeds, but his general reputation for corruption and immorality was well known. By the time of the satirist Lucilius in the late second century BC, Tubulus had become a proverbial scoundrel. He would continue to be vilified into the second century AD, when Gellius listed him as an equal of Catiline and Clodius in infamy.¹²²

Aside from his enduring notoriety as a criminal, only a few bare facts concerning Tubulus' life survive. He was the scion of a senatorial family that could boast neither consulships nor remarkable achievements. When he was elected to the praetorship for 142, he appears to have been the first member of his family in over fifty years to achieve such a high position.¹²³ During his term of office, he presided over a *quaestio inter sicarios* (murder court). His conduct in this capacity was deemed scandalous, as he is said to have openly accepted bribes to influence the verdicts of the court. Following his year in office, a tribune of the plebs, P. Mucius Scaevola, sponsored a plebiscite calling for an investigation of Tubulus' actions. In response, the senate authorized the consul Cn. Servilius Caepio to establish a *quaestio* for this purpose. Caepio's investigation did not have an opportunity to progress very far, since Tubulus quickly fled Rome for the safety of exile.¹²⁴

¹²¹ Cic. *Att.* 12.5b.

¹²² Lucil. 1312M apud Cic. *N. D.* 1.63; Cic. *Fin.* 2.54, 4.77, 5.62; *N. D.* 3.74; Gel. 2.7.20. The Lucilius fragment concerning Tubulus was probably written sometime between 119 and 112: C. Cichorius, *Untersuchungen zu Lucilius* (Berlin, 1908), 346–347.

¹²³ C. Hostilius Tubulus was *praetor urbanus* in 209: *MRR*, 1.285 with 289 n. 1. This man was probably a grandfather of the praetor of 142: F. Münzer, *RE* VIII, s.v. "Hostilius (25)," col. 2514.

¹²⁴ Cic. *Fin.* 2.54; cf. Cic. *Att.* 12.5b. The *quaestio inter sicarios* of 142 was most likely a special court. See E. S. Gruen, *Roman Politics and the Criminal Courts* (Cambridge, 1968), 30 n. 47 for a review of the scholarship on this issue.

Tubulus' self-banishment was not an unusual action. As we have seen, voluntary exile was an accepted method of escaping judicial punishment in Republican Rome. Thus one might assume that the corrupt ex-praetor's self-banishment assured his safety. Yet in his commentary on Cicero's *Pro Scauro*, Asconius records that Tubulus did not find salvation in exile: *L. hic Tubulus praetorius fuit aetate patrum Ciceronis. is propter multa flagitia cum de exilio accersitus esset, ne in carcere necaretur, venenum bibit* (This L. Tubulus was a man of praetorian standing in the generation before Cicero. After he had been brought back from exile because of his many crimes, he took poison to avoid execution in prison).¹²⁵

Asconius' brief statement has caused difficulties for modern scholars, since it appears to contradict the normal practice of Roman exile. E. S. Gruen's skepticism concerning the scholiast's evidence is representative of modern views: "Asconius' statement incorporates too great a legal anomaly to be accepted at face value."¹²⁶ There have been two main explanations to account for this "legal anomaly." The first suggests that Tubulus did something illegal to warrant being taken back to Rome for punishment. The other posits that the Romans violated jurisdiction by retrieving the exile from his new domicile. A brief examination of both theories will show that neither presents a satisfactory answer to the problem of interpreting Asconius' report.

Many scholars blame Tubulus himself for his interrupted exile. Mommsen suggested that the ex-praetor committed further crimes while in exile, for which he was taken back to Rome to answer.¹²⁷ This idea seems unlikely. In seeking *exilium*, Tubulus had to leave Roman territory. Short of conspiring against the republic or injuring Roman citizens, any new criminal acts he perpetrated on foreign soil would probably be of no concern to Rome. G. Crifò speculated that Tubulus' misdeeds in Rome prior to his exile caused his seizure by Roman authorities, since *exilium* protected an exile only from the specific charge he had fled. In Tubulus' case, this was receiving judicial bribes (*pecunia capta ob rem iudicandam*). As a result, he was still vulnerable to additional accusations concerning his prior official misconduct, even once he had left Roman territory. This view is unsubstantiated by ancient sources. The two examples that Crifò cites to support his theory do not involve

¹²⁵ Asc. 23C.

¹²⁶ Gruen, *Politics and Courts*, 30.

¹²⁷ Mommsen, *Strafrecht*, 71 n. 1, 197 n. 2, and 633 n. 4; also mentioned as a possible solution by F. Münzer, "Die Todestrafe Politischer Verbrecher in der Späteren Römischen Republik," *Hermes* 47 (1912), 167–168.

exile.¹²⁸ H. Siber also proposed that additional criminal acts precipitated the ex-praetor's incarceration. He suggested that the exiled Tubulus illegally returned to Rome contrary to the *aquae et ignis interdictio* – the plebiscite normally enacted to prevent the return of an exile – and was punished for this act.¹²⁹ Both E. S. Gruen and B. A. Marshall, in recent works revisiting Tubulus' case, have put forward a similar theory.¹³⁰ Yet this view involves a misinterpretation of Asconius' report. The scholiast's commentary nowhere implies that Tubulus traveled into Roman territory. Rather, it clearly states that he was taken from exile to be punished.¹³¹ Therefore, further misdeeds following his withdrawal from Rome do not appear to account for Tubulus' arrest.

Both Mommsen and Münzer advance an alternate explanation to reconcile the ex-praetor's seizure with the normal practice of Roman exile. They suggest that the Roman government may have acted unlawfully by removing Tubulus from *exilium* and taking him back to Rome. As an exile, he would have sought refuge in a *civitas libera*, a state independent of Roman jurisdiction. Normally, this would have been enough to ensure a fugitive's safety. But Tubulus' numerous crimes (*multa flagitia*) were so offensive to the Roman people that even his self-banishment was not a satisfactory outcome. Thus the Romans infringed upon the sovereignty of Tubulus'

¹²⁸ Crifò, *Ricerche*, 258–259. His examples are P. Sulla (cos. des. 65) and T. Annius Milo (cos. cand. for 52). Cicero's narrative clearly demonstrates that Sulla's relocation to Neapolis after his conviction for electoral bribery in 66 was not *exilium*: *Sul.* 74, cf. 17. Furthermore, Neapolis was then Roman territory and would have afforded Sulla no protection from Roman jurisdiction. Therefore Sulla had not been summoned from exile for his trial *de vi* in 62. Milo's convictions on additional charges following his condemnation for the murder of Clodius in 52 occurred prior to his departure for exile and thus does not support Crifò's assertion: *Asc.* 54C. For a similar view to Crifò, see Münzer "Todestrafe," 168 n. 1.

¹²⁹ H. Siber, "Analogie, Amtsrecht und Rückwirkung im Strafrechte des Römischen Freistaates," *ASAW* 43.3 (1936), 50.

¹³⁰ Gruen, *Politics and Courts*, 30; Marshall, *Commentary*, 139–140. Both scholars offer this explanation with reservation and express doubts concerning the veracity of Asconius' statement.

¹³¹ Asconius' use of the phrase *de exilio accersitus esset* is unusual. In legal contexts, *arcessere* normally means "to summon to trial" or "to accuse" (*TLL*, s.v. "arcesso" col. 452). Gruen uses this definition to cast doubt on the value of Asconius' report: once in exile, Tubulus certainly would not have answered a legal summons from Rome (*Politics and Courts*, 30; followed by Marshall, *Commentary*, 140). Yet the verb *arcessere* in early Latin can also mean "to go and bring someone back" and is sometimes used interchangeably with *adducere* or *ducere*. *Pl. Per.* 439 and 530; *Men.* 875 and 887; cf. *Capt.* 949; *Ter. And.* 299. This usage is not unknown to Imperial Latin: *Sen. Ep.* 117.30; *Suet. Orto* 3. Cf. *Gloss.* 4.20.5. I argue below that this second definition is more appropriate for Asconius' statement, especially given a Roman magistrate's ability to seize and imprison criminal suspects.

new homeland and abducted him to make him pay for his wicked deeds.¹³² That Rome would intervene in the internal affairs of one of her Italian allies for political expediency is certainly plausible.¹³³ It seems unlikely, however, that the political class in Rome would set a precedent that would effectively remove *exilium* as a means to avoid legal punishment. If Tubulus could be seized from his newly adopted domicile, then any subsequent exile could be as well. Since politically active Roman elites were always vulnerable to prosecution for their official conduct (or rather misconduct), they were the very ones most likely to need the salvation provided by self-banishment. With his exile, Tubulus had no hope of continuing his public career or even of setting foot within the city of Rome without peril to his life. He had permanently removed himself from any future involvement in Roman affairs. Under these circumstances, it seems doubtful that senators and magistrates would endanger the custom of exile simply to punish this villainous ex-praetor.

Mommsen and Münzer make the tacit assumption that Tubulus had been accepted into the citizen body of an independent state, hence his removal by Roman authorities was a violation of the sovereignty of his new homeland. The sources (such as they are) do not mention that Tubulus had adopted a new citizenship, and we should not automatically assume that he accomplished this act. Unless he took up the franchise of a new *civitas*, an exile still retained his Roman citizenship and was theoretically still subject to Roman law.¹³⁴ There is an earlier example of the arrest and prosecution of an exile who had not yet shed his Roman citizenship: that of Q. Pleminius in 204. A. H. J. Greenidge first suggested that these two cases both involved citizenship issues. J. L. Strachan-Davidson later voiced this same opinion, but only as one possible explanation for Tubulus' recall. Unfortunately, their ideas have been ignored or rejected by most subsequent writers, perhaps because both scholars offered their views in summary footnotes with no supporting arguments.¹³⁵ A brief examination of Pleminius'

¹³² Mommsen, *Staatsrecht*, 3:52 n.1; Münzer, "Todestrafe," 167–168.

¹³³ See Plb. 6.4–5 for the Roman senate's power to intervene in the affairs of allies. Cf. Walbank, *Commentary*, 1.679–680.

¹³⁴ Cic. *Caec.* 100; *Dom.* 77–78; *Ballb.* 28; Crifò, *Ricerche*, 259–260, 289–312.

¹³⁵ Greenidge, *Legal Procedure*, 512 n. 1: "In both these cases it is probable that the admission to the new citizenship had not been accomplished." Strachan-Davidson, *Problems*, 1.228 n. 2: "I should be inclined to believe that Tubulus, like Pleminius, was seized when he was on his way to his intended refuge." Cf. Bauman, *Crime and Punishment*, 15. Crifò, *Ricerche*, 258 rejects Strachan-Davidson's observation on the relationship of these two cases. Although he attributes Tubulus' continued Roman citizenship as the enabling factor in his arrest, Crifò believes that fresh charges triggered this act.

case and its implications for Tubulus' arrest will demonstrate that the tentative suggestions of Greenidge and Strachan-Davidson lead to the most satisfactory interpretation of Asconius' report.

A *legatus* of the consul P. Cornelius Scipio in 205, Pleminius was delegated *imperium* and placed in charge of Locri. His conduct as commander was scandalous. The highlights of his tenure included plundering the temple of Proserpina, inciting unrest among Roman troops, and the murder of two military tribunes. Due to these occurrences and other concerns, the following year the senate dispatched emissaries to investigate the conduct of Pleminius and Scipio.¹³⁶ Livy reports two traditions of the ensuing events:

alii auditis quae Romae acta essent, in exilium Neapolim euntem forte in Q. Metellum unum ex legatis incidisse et ab eo Regium vi retractum tradunt: alii ab ipso Scipione legatum cum triginta nobilissimis equitum missum qui Pleminium in catenas et cum eo seditionis principes conicerent. ii omnes seu ante Scipionis seu tum praetoris iussu traditi in custodiam Reginis sunt.¹³⁷

Some sources report that after he [Pleminius] had heard what had happened at Rome, he was going into exile at Naples when by chance he encountered Q. Metellus, one of the legates, who took him back to Rhegium by force. Others say that a legate with thirty of the foremost equestrians was sent by Scipio himself to put Pleminius and the leaders of the sedition in chains. All of them, whether earlier at the order of Scipio or at this time by that of the praetor, were handed over to the custody of the Rhegians.

Pleminius was later transported to Rome and incarcerated, but died before the completion of his trial.¹³⁸ Despite the differences in the two versions Livy recounts, both variants maintain that Pleminius was arrested before he arrived at his

¹³⁶ Livy records the embassy as consisting of ten *legati*, a praetor, two tribunes of the plebs, and an aedile (29.20.4–11). For the problems associated with this composition, see E. Badian, "Tribuni Plebis and Res Publica" in J. Linderski, ed., *Imperium Sine Fine: T. Robert S. Broughton and the Roman Republic* (Stuttgart, 1996), 195–196.

¹³⁷ Liv. 29.21.1–3; Diod. 27.4 gives only the second variant.

¹³⁸ Liv. 29.22.7–9. Livy also cites the version of the historian Clodius Licinus, in which Pleminius languishes in prison for ten years before his death: 29.22.10; 34.44.7–8. V. Max. 1.1.21 puts the death of Pleminius soon after his incarceration. For a discussion of these variants, see J. Briscoe, *A Commentary on Livy Books XXXI–XXXIII* (Oxford, 1973), 87.

destination. I believe this detail provides the key for interpreting the circumstances of Tubulus' abortive attempt at exile. Pleminius was captured traveling to his intended sanctuary. Therefore he could not yet have assumed the citizenship of a new state and was still subject to the authority of Rome. Acceptance into the citizen body of another state finally put the exile outside the reach of Roman jurisdiction. Without the protection of this new status, such a fugitive was merely a Roman citizen living abroad. This seems the most plausible circumstance behind Asconius' notice. Tubulus' flight from Rome was allegedly precipitous, and it is quite possible that he had not yet chosen a new homeland or had not been formally accepted into another state before he was forcibly returned to Rome.¹³⁹ Like Pleminius, he had no refuge when the law caught up with him.

An important difference between the circumstances of Pleminius and Tubulus still must be addressed. According to one tradition, Pleminius' flight was ruined by bad luck: he had a chance encounter with one of the senatorial legates investigating his crimes. No such accidental meeting figures in Tubulus' fate, however. Asconius' report (*de exilio accersitus*) implies that the authorities in Rome were actively seeking to retrieve him from exile. The impetus for this action is not difficult to reconstruct, since the sources indicate that he blatantly committed his crimes. Furthermore, Tubulus' corruption went beyond simple malfeasance – he had taken bribes to influence the verdicts of a murder court. His open dishonesty in such serious proceedings must have seemed especially heinous to the Roman people. The resulting public outrage against him may have been strong enough to support the unusual action of fetching him from exile before he could become a citizen of another state. If Tubulus had not yet cast off his Roman citizenship, his incarceration differed little from the practice of pretrial arrest.

We have already seen how Roman magistrates possessed the authority to imprison criminal offenders or suspects, but that it was rarely utilized effectively due to tribunician *auxilium*. Presumably Tubulus' arrest and confinement was effected by this magisterial *coercitio*. Perhaps this power was exercised by the consul Cn. Caepio, who presided over the *quaestio* in 141. Unfortunately for Tubulus, no tribunes were inclined to make any exertions on his behalf, probably

¹³⁹ Cic. *Fin.* 2.54: *profectus in exsilium Tubulus statim* (Tubulus went immediately into exile); cf. Strachan-Davidson, *Problems*, 1.228 n. 2.

due to the popular hatred of him.¹⁴⁰ With no way to avoid execution for his crimes, Tubulus chose to take his own life.

In conclusion, we should accept Asconius' brief and enigmatic remark concerning the fate of the infamous Tubulus. The information that the scholiast provides is consonant with the practice of *exilium* generally reflected in the ancient sources. As suggested by Greenidge and Strachan-Davidson, the case of Q. Pleminius provides the context for understanding Tubulus' predicament. The arrest of these two men supports Cicero's statements that an exile retained his Roman citizenship unless he became a member of a new state – and it underscores the advantages of accomplishing this act. Thus the capture of a fugitive while he was still a Roman citizen was a logical extension of magisterial *coercitio*. While there was nothing illegal or unprecedented about the seizure of Tubulus, the apprehension of an exile to pre-empt his acceptance into a new *civitas* was a most uncommon occurrence. In fact, Pleminius' capture is the only other recorded example. Most fugitives were simply allowed to go into exile unhindered, never to return.¹⁴¹ The sensational crimes of both Pleminius and Tubulus and their political ramifications apparently caused enough of a stir in Rome to warrant such extraordinary (albeit lawful) action. Perhaps it should be no surprise that the Romans made a special effort to apprehend "the most wicked man in history."

2.7 THE *IUS EXULARE*

When faced with the necessity of departing Roman territory to avoid judicial punishment, a fugitive had to make the important decision of selecting a new domicile. Many factors played a role in the choice of a place of exile, and these varied greatly from person to person. There were some general factors that influenced

¹⁴⁰ Similarly, Pleminius' imprisonment demonstrates that no tribunes came to his aid. A. W. Zumpt, *Der Criminal Process der römischen Republik* (Leipzig, 1871), 1.2.280 speculated about whether Pleminius could have attempted exile a second time after his capture. He concluded that the seriousness of Pleminius' crimes precluded such an option. Cf. Siber, "Analogie," 50 n. 7. On a practical level, however, Pleminius' confinement and lack of tribunician support prevented any possibility of flight. For the political factors influencing Tubulus' fate, see E. S. Gruen, "The Political Allegiance of P. Mucius Scaevola," *Athenaeum* 43 (1965), 322–323; *Politics and Courts*, 29–31.

¹⁴¹ Official restoration from exile was a later phenomenon and did not exist at the time of Pleminius or Tubulus. For the origin of recall from exile, see Chapter 3.3, "Politics, Demonstrations, and the Hope of Recall."

this process, however. For the exile to escape his legal troubles, the new residence had to be in a *civitas libera*, an independent state outside of Roman jurisdiction. Even Latin colonies were able to receive Roman exiles, as they were governed by their own laws and had separate citizenship.¹⁴² Many scholars believe that there was an additional restriction placed on the selection of a new homeland: exile was recognized as legal only if the fugitive resettled in a state which had treaty relations with Rome, a *civitas foederata*. This idea is based on the premise that a reciprocal right existed between Rome and her treaty partners which automatically allowed them to receive exiles from each other's citizen bodies. The existence of this right – often called *ius exilii* or *ius exulandi* by modern authors – is widely accepted and repeated in most scholarly works pertaining to *exilium*. These terms, however, never appear in the ancient sources.¹⁴³ And indeed, the actual evidence for this view rests on only a few brief and ambiguous reports in primary texts. A thorough examination of these sources will determine if the prevalent scholarly views about the existence and nature of the *ius exulare* are justified.

Polybius' description of *exilium* mentions some independent cities that were common destinations for contemporary exiles: ἔστι δ' ἀσφάλεια τοῖς φεύγουσιν ἐν τε τῇ Νεαπολιτῶν καὶ Πραϊνεστίνων, ἔτι δὲ Τιβουρίνων πόλει, καὶ ταῖς ἄλλαις, πρὸς ἃς ἔχουσιν ὄρκια.¹⁴⁴ This passage provides the foundation for the idea that a *ius exulare* was one of the treaty rights that Rome shared with her allied states. This right, like *ius migrationis* (right to immigrate), may have been a feature of Rome's early relations with other Latin communities and was later extended to states outside of Latium with which Rome struck treaties.¹⁴⁵ Polybius' statement further implies that this right of exile was not common to all states under treaty with Rome, or else there would be little need for him to name specific cities.¹⁴⁶ Indeed, there is no reason to believe that the *ius exulare* differed from other privileges, such as *ius migrationis*, *commercium* (the ability to conduct trade)

¹⁴² Cic. *Caec.* 98.

¹⁴³ The closest match is *ius exulare*, which is used only once. Note that Criffo uses *ius exilii* in his *Ricerche* to denote the legal right of individual Romans to evade judicial punishment by self-banishment. To avoid any confusion of terminology, the treaty right will be called *ius exulare* in this work.

¹⁴⁴ Plb. 6.14.8: "There is safe refuge for these exiles in Neapolis, Praeneste, Tibur, and other states which have treaties with the Romans."

¹⁴⁵ A. N. Sherwin-White, *The Roman Citizenship*² (Oxford, 1973), 33–34.

¹⁴⁶ Walbank, *Commentary*, 1.683; Sherwin-White, *Citizenship*, 126.

or *conubium* (the right to intermarriage), which were not automatically granted to every treated state.¹⁴⁷

Aside from Polybius' statement, there is only one other direct reference to the existence of this treaty right. In his dialogue *De oratore*, Cicero has P. Licinius Crassus explain the importance of a thorough knowledge of the law for the successful orator:

quid? quod item in centumvirali iudicio certatum esse accepimus, qui Romam in exilium venisset, cui Romae exulare ius esset, si se ad aliquem quasi patronum applicuisset, intestatoque esset mortuus: nonne in ea causa ius applicationis, obscurum sane et ignotum, patefactum in iudicio atque illustratum est a patrono?¹⁴⁸

Furthermore, we have also heard about a case that was contested in the centumviral court, in which a man died intestate who had come to Rome as an exile. He had the right to seek exile at Rome if he had attached himself to someone as if to a patron. Surely in this case, was not the "right of application," a very obscure and unknown subject, explained and clarified by the patron in court?

The circumstances of this case are difficult to reconstruct from such sparse details. Furthermore, for the purposes of understanding the *ius exulare*, we are limited by the fact that this passage focuses on an issue of inheritance. Thus, any information about *exilium* contained in it is incidental. In order to come to Rome as an exile, it appears that a foreigner attached himself to a certain Roman citizen who acted as his patron (*quasi patronus*). That the exile died intestate is the last fact given – the remaining situation must be inferred.

No doubt someone wished to profit from the exile's intestate death, because the lack of a will is mentioned by Crassus. In such a brief account, it is unlikely that there are any details superfluous to the main issue of inheritance. The requirement for the exile to find a sponsor must somehow be germane to the legal case. Perhaps the refugee's guardian was attempting to use his standing with the deceased exile to claim some portion of his estate. The patronus who argued the case before the

¹⁴⁷ Sherwin-White, *Citizenship*, 126.

¹⁴⁸ Cic. *de Orat.* 1.177.

centumviral court is likely this same man. To press his claim, he illuminated the vagaries of *ius applicationis* (the right of “application”) to the judges.

Although the outcome of the case is not explicitly revealed, the claimant’s masterful elucidation of an obscure and unfamiliar area of law was considered exemplary and remembered for a long time to come. Crassus’ preface to this case – *quod item in centumvirali iudicio certatum esse accepimus* – indicates that the event in question occurred some time before 91, the dramatic date of *De oratore*. Since Crassus and his interlocutors only knew of the facts second-hand, this feat of jurisprudence apparently happened before they began their public careers.¹⁴⁹ Thus to the generation of jurists before Crassus, the so-called *ius applicationis* was esoteric and somewhat cryptic.

Despite the fact that the specifics of *applicatio* were positively obscure to the Romans of the late second century, it is often used by modern scholars as the basis for theories about patron – client relations.¹⁵⁰ Most often *applicatio* is seen as legally establishing clientship, usually through solemn ritual. While a critique of these views is beyond the scope of this work, the very obscurity of “application” suggests some possible interpretations with regard to the *ius exulare*. Badian’s observation is important, that the Cicero passage is the only instance in extant Latin literature in which *applicatio* and *applicare* appear to be used as technical legal terms. The rarity of such jargon is surprising if “application” was integral to initiating a legal relationship between a patron and client. Given that *applicare* generally means to “join” or “attach oneself to” in the context of human relationships, it is certainly the natural word to describe the act of choosing a patron.¹⁵¹ Thus, there is no reason to posit that *applicatio* was an established *ius* or a recognized category of law. Cicero probably used the phrase *ius applicationis* not in a narrow sense to refer to a specific law or definite right, but rather in a wide sense to denote unwritten

¹⁴⁹ The first legal case handled by Crassus was his prosecution of C. Papirius Carbo (cos. 120) in 119; Cic. *Brut.* 103.

¹⁵⁰ Mommsen believed that “application” was required of foreigners settling in Rome, giving the Roman patron almost complete power over them: *Römische Forschungen* (Berlin, 1864), 1.360–361; *Staatsrecht*, 3.57–58, 64; cf. A. Manigk, *RE* X, s.v. “Ius applicationis,” col. 1204–1205; A. Premerstein, *RE* IV, s.v. “Clientes” col. 32, equates *applicatio* with *deditio*, and assigns it a ritual and legal character; cf. Berger, *Dictionary*, 526. For a discussion of these theories, see A. Drummond, “Early Roman Clientes,” in A. Wallace-Hadrill, ed., *Patronage in Ancient Society* (New York, 1989), 100–108.

¹⁵¹ Badian, *Clientelae*, 8; cf. *TLL*, s.v. “applicare,” col. 298 II. *Applicare* sometimes also denotes the act of finding a refuge for exiles or similar homeless persons: Ter. *Andr.* 924; Enn. *trag.* 77; Liv. 34.49.10.

customs and conventions, just as one might refer to *ius amicitiae* (right of friendship) or similar obligations involving social relationships.¹⁵²

If there was no legally defined *ius applicationis* involving clients and patrons, but rather a web of obligations based on custom and tradition, then the issues involved in the inheritance case become clearer. Cicero's description of the exile's need to find "someone like a patron" (*aliquem quasi patronum*) indicates that such a sponsor was not identical to a usual *patronus*, but was analogous in some aspects.¹⁵³ In the case found in *De oratore*, the sponsor of the deceased exile most likely exploited the ill-defined and extralegal nature of the client–patron bond to claim an inheritance. The *patronus* seems to have offered a brilliant (if tendentious) interpretation of an unclear situation, perhaps based on the association between freedmen and their patrons, which was much more clearly defined by law.¹⁵⁴ Since a manumitter possessed intestate inheritance rights over his freedmen, the exile's sponsor very likely made a successful analogy between his situation and that of a slave's former master.

Certainly the mere circumstances of the case were not memorable enough to be discussed by the great jurists of a later generation. If banished men needed to find sponsors to receive refuge, then the situation of a "client" exile dying intestate would not have been uncommon. Since the patron–client association represented an indeterminate tangle of custom and usage, the arguments presented in this case were so noteworthy because they provided a novel and compelling interpretation of such a legally ambiguous relationship. Nor should the sponsor's contentions be seen as resting on reviving an old law that had fallen into desuetude, as Cicero's description implies that the patron made an innovative explanation of

¹⁵² For similar examples, see *TLL*, s.v. "ius," col. 685, ll. 59–col 686, ll. 21; *OLD* (1982), s.v. "ius²," 985.9; Badian, *Clientelae*, 9 renders Cicero's use of *ius* in this instance as "the legal position with regard to . . ." He notes that Cicero used the word in this fashion in the preceding section when discussing *ius stirpis et gentilitatis* (1.176).

¹⁵³ Badian, *Clientelae*, 9. The phrase *quasi patronus* appears only three times in ancient sources – all in the *Digest*. It cannot be identified as a technical term in these instances, however. Twice the phrase refers to coming into an inheritance *quasi patronus* – "as patron": *Dig.* 29.5.15.2; 38.2.42. The final example is germane to this study. The jurist Marcian wrote that a slave freed in accordance with a *fideicommissum* becomes the freedman of the manumitter. The latter was entitled to inherit the freedman's property *quasi patronus* should he die intestate, but Marcian indicates that the manumitter did not have the full right of a patron (*plenum ius patroni*): *Dig.* 38.2.29.

¹⁵⁴ The right of a patron to come into the property of his freedman in the case of intestate death was established by the XII Tables and later regulated by praetorian edicts: Gaius *Inst.* 3.40–41; S. Treggiari, *Roman Freedmen During the Late Republic* (Oxford, 1969), 78–79.

a difficult subject rather than an appeal to obsolete statutes.¹⁵⁵ Furthermore, had the arguments in this case merely been grounded in the resurrection of an old law, it is unlikely that it would be numbered among the greatest instances of jurisprudence before the centumviral court. Unfortunately, the decision of the court is not included in the passage. It very well may have established a precedent for testamentary issues between exiles and their patrons.

This case of the intestate exile also offers some interesting information on the practical operation of the *ius exulare*. Although there is little specific information in this example about the national origin of the banished man, presumably he had come from a *civitas foederata*, since he had the right to go into exile at Rome. However, his ability to exercise this privilege was not unrestricted. For the fugitive to take up residence in his new domicile, it appears he needed someone in his new homeland to act as a sponsor or *patronus*. This requirement has some important implications to our understanding of the *ius exulare*. One possible effect of this requirement was to restrict the practical use of this right to the upper classes. Poorer citizens would probably be less likely to know potential *patroni* in neighboring states and their low status would be a detriment in attracting someone to sponsor them.

More significantly, this need to be sponsored by a citizen in one's new homeland suggests that the *ius exulare* did not guarantee that an exile would be accepted into a treated state. Cicero's language implies that "application" to a sponsor was a requirement to the exercise of *ius exulare*. If no one would act as *patronus*, the refugee probably would not be taken into the community. This interpretation of the evidence contradicts the common conception that the *ius exulare* operated automatically upon the exile's entry into his new domicile and even provided for the exchange of citizenship.¹⁵⁶

Mommsen offers a unique view of the operation of the *ius exulare*. He believes that treaty rights only guaranteed a fugitive reception and refuge in a federate

¹⁵⁵ Badian, *Clientelae*, p. 9 n. 3.

¹⁵⁶ Automatic operation of the *ius exulare*: Sherwin-White, *Citizenship*, 34; Strachan-Davidson, *Problems*, 1.77, 2.28; Crifò, *Ricerche*, 290–291. Strachan-Davidson (1.77) states that "application" to a sponsor was not required of an exile. He believes that the foreigner in Cicero's *De oratore*, who "was qualified to take up the citizenship on his own account, and stood in no need of a *patronus*, had nevertheless 'applied himself' to a citizen." Only B. G. Niebuhr, *History of Rome*, trans. J. C. Hare (Cambridge, 1821), 1.318 suggests that attachment to a *patronus* may have been an obligation for the exile. Nevertheless, Cicero's language clearly demonstrates that application to a Roman citizen *quasi patronus* was necessary for the exile to reside in Rome: *cui Romae exulare ius esset, si se ad aliquem quasi patronum applicuisset*.

state. Citizenship was a separate issue and would not customarily be extended to fugitives. Thus an exile would live as a resident alien in his new homeland, although citizenship could be attained through other means.¹⁵⁷ While Mommsen does not refer to the *ius migrationis* to corroborate his theory, some examples of the use of this related privilege in the second century appear to support it. Latins taking advantage of the *ius migrationis* and settling in Rome were not citizens in principle, although they did enjoy some civic rights. Those resident in Rome were not enrolled in a specific tribe, but could vote with a tribe selected by lot whenever voting took place.¹⁵⁸

An incident in 187 clearly demonstrates that Latins domiciled in Rome did not possess Roman citizenship. Legates from the Latin states came to the Roman senate to complain about the great numbers of their citizens living in Rome and assessed there. A determination was made that any person or their father who had been counted as a resident of an allied state in the censorship of C. Claudius Nero and M. Livius Salinator (204 BC) was to leave Rome and return to his country of origin. The senate entrusted the praetor Q. Terentius Culleo to find all such foreign residents. As a result, twelve thousand Latins returned home.¹⁵⁹ A subsequent law granted Roman citizenship to Latins who emigrated to Rome, on condition that they leave their children in their former domicile, but this law seems to have been superseded in 177.¹⁶⁰ The new law, proposed by C. Claudius, provided that any Latins living in Rome whose ancestors had been registered among the allies in the censorship of M. Claudius Marcellus and T. Quinctius Flamininus (189 BC) or thereafter should return to his own state.¹⁶¹ These examples demonstrate that the exercise of the *ius migrationis* did not automatically incorporate the immigrant into the citizen body of the host community. There is no reason to suppose that the *ius exulare* provided a privilege to exiles that was otherwise denied to other migrants.

While the evidence for the *ius exulare* is meager, information provided by Polybius and Cicero indicates that this right existed. These sources, however, do not support the considerable powers that most scholars ascribe to this *ius*. There was at least one restriction on its use; namely the requirement for the exile to have a sponsor in his new community. Perhaps there were other limitations

¹⁵⁷ Mommsen, *Staatsrecht*, 3,50; cf. *Strafrecht*, 69 n. 1.

¹⁵⁸ Liv. 25,3,16, for the year 212.

¹⁵⁹ *Ibid.* 39,3,4–6.

¹⁶⁰ *Ibid.* 41,8,9.

¹⁶¹ *Ibid.* 41,9,9.

that are not reflected in our extant sources. That citizenship was not automatically granted to the exile resettling in a *civitas foederata* seems certain. While all the examples discussed above involve foreigners coming to live in Rome, presumably these same or similar limitations were in effect for Romans relocating to federate states, since such treaties were reciprocal.¹⁶²

According to what is perhaps the most widely accepted theory about the *ius exulare*, exile for a Roman citizen was recognized as legal only if he took refuge in a state possessing this mutual right with Rome.¹⁶³ This is an overly legalistic view of the situation, based on a few incautious interpretations of source material. The first problem concerns Polybius' description of *exilium*, in which he mentions only *civitates foederatae* as being refuges for the banished. However, Polybius' language does not exclude that nonfederate states could provide legal shelter to banished Romans. The historian is probably just relating the general tendency of most exiles to relocate to treated states.¹⁶⁴

Another key source cited to prove that only states with the *ius exulare* could legitimately provide sanctuary to Roman exiles is Livy's account of Cn. Fulvius Flaccus' exile in 211. Charged with *perduellio*, Fulvius failed to appear at his trial before the centuriate assembly. It was reported to the people that Fulvius had gone into exile at Tarquinii, and a plebiscite was subsequently enacted concerning the defendant's flight: *id ei iustum exsilium esse scivit plebs* (the plebs judged that it was lawful exile for him).¹⁶⁵ This legislation seems to provide confirmation that Fulvius' exile was legally accomplished. Unfortunately, Livy's condensed account does not give the reason why this bill was passed in this case. Many scholars have surmised that Fulvius' exile to Tarquinii made the plebiscite necessary: with the *ius exulare* possessed originally by Latin states alone, special legislation was needed to grant this privilege to a nation outside of the *nomen Latinum*. According to this theory,

¹⁶² It certainly appears that Romans in Latin towns faced similar restrictions. For example, in imperial times, the municipal charter of the Latin colony of Malaca required resident Romans to vote in a single *curia* determined by lot: *CIL* II 1964; C. Nicolet, *The World of the Citizen in Republican Rome*, trans. P. S. Falla (London, 1980), 36.

¹⁶³ Hartmann, *De exilio*, 4–6; Niebuhr, *History*, 2.63; Kleinfeller, *RE* VI, s.v. "Exilium," col. 1683; Greenidge, *Legal Procedure*, 510–511; Siber, "Analogie," 60; W. V. Harris, *Rome in Etruria and Umbria* (Oxford, 1971) 92–93; Grasmück, *Exilium*, 100–101; Bauman, *Crime and Punishment*, 15.

¹⁶⁴ Indeed, Polybius uses the term ἔθνος to preface his discussion of Roman exile, strengthening the idea he is describing common practice and not binding laws.

¹⁶⁵ Liv. 26.3.12. Note that this is the only occurrence of *iustum exilium* or any such similar phrase in the ancient sources.

Livy's narrative records the occasion on which Tarquinius received the *ius exulare*, and possibly even the moment when this right was recognized as a separate *ius*.¹⁶⁶

There are several problems with this line of reasoning. It is unlikely that the *concilium plebis* would independently bestow treaty rights on a foreign state; *mos maiorum* (ancestral custom) placed such initiative in the senate's hands.¹⁶⁷ Normally, the establishment of a mutual *ius* would have been accomplished by a negotiated treaty that a popular voting assembly (on advice of the senate) would ratify. Even if the Roman plebs had the desire to unilaterally declare *ius exulare* with Tarquinius, would they have made this surprising foreign policy decision just to validate Fulvius' selection of a place of exile? That the plebs would grant treaty rights to neighboring states merely to make a particular refugee's exile "legal" seems implausible. It is even more unlikely that they would do so for Fulvius, a very unpopular figure in Rome whose poor generalship and cowardice was responsible for the deaths of many Roman soldiers. The obvious flaws inherent in this traditional interpretation of Fulvius' case indicate that the plebiscite must have had a different function.

The circumstances preceding the vote of the plebs provide a clue: because Fulvius had quit Rome before his trial commenced, it was necessary to establish legally that his absence was intended to avoid trial and seek exile. A similar situation occurred the previous year when the publican M. Postumius did not appear at his trial to face charges of defrauding the state:

tribuni plebem rogaverunt plebesque ita scivit, si M. Postumius ante kal. Maías non prodisset citatusque eo die non respondisset neque excusatus esset, videri eum in exilio esse bonaque eius venire, ipsi aqua et igni placere interdicti.¹⁶⁸

The plebeian tribunes made a proposal, and the plebs approved it, that if M. Postumius had not come forward before the first of May and had not responded when summoned and had not been excused, he was deemed to be in exile and his possessions were to be sold and he was interdicted from fire and water.

¹⁶⁶ Mommsen, *Staatsrecht*, 3.49 n. 3; Sherwin-White, *Citizenship*, 34–35; Walbank, *Commentary*, 1.683. Sherwin-White (126) advances the idea that this occasion marked the moment when *exilium* was first recognized as a distinct treaty right.

¹⁶⁷ Cf. Harris, *Etruria*, 92–93; Lintott, *Imperium Romanum*, 16–18 and 43–44; *Constitution of the Roman Republic*, 63–64 and 86–87.

¹⁶⁸ Liv. 25.4.9.

The plebiscite following Fulvius' flight was no doubt of an identical nature. Livy's report of the proclamation in Fulvius' case is very brief and probably a shortened account of the fuller description given for the earlier case. Since no verdict was reached against either man due to their pre-emptive departures, these resolutions acted as a sort of condemnation *in absentia*. In other words, the plebiscites announced that the absent defendants had forfeited the right to trial by pursuing exile.¹⁶⁹

No evidence supports the contention that only cities possessing the *ius exulare* could legally harbor exiles. Furthermore, no ancient source ever declares an exile's choice of domicile as "illegal." On the contrary, there are indications in the ancient sources that any free state constituted a legitimate refuge. The reported exile of Coriolanus in 491 – although it falls outside the chronological scope of this work and is of dubious historical value – merits comment. The veracity of this tale is not important to the present discussion, but rather the manner in which Livy describes Coriolanus' departure from Rome: *damnatus absens in Volscos exsulatum abiit* (convicted *in absentia*, he went into exile among the Volscians).¹⁷⁰ Nowhere does Livy suggest that his exile was in violation of Roman law, even though he fled to an enemy nation. It would seem that the historian's annalistic sources did not represent Coriolanus' choice of domicile as unlawful. In a more concrete example, Cicero in his *Pro Balbo* mentions several Roman exiles and their domiciles: Q. Maximus, C. Laenas, and Q. Philippus became citizens of Nuceria and C. Cato settled at Tarraco, whereas Q. Caepio and P. Rutilius resided at Smyrna.¹⁷¹ Both Nuceria and Tarraco were *civitates foederatae*, but Smyrna does not seem to have possessed a treaty with Rome.¹⁷² Cicero, however, mentions all these cities without distinction and gives no hint that exile in Smyrna was "illegal." Dyrrachium was also a very popular destination for Roman exiles of the late second and early first centuries, yet it was not a federate state.¹⁷³ The case of Statius Albius Oppianicus also

¹⁶⁹ Strachan-Davidson, *Problems*, 2.29; Harris, *Etruria*, 92–93. For the view that the plebiscite attached guilt to the exile, see H. Legras, "Le *Privilegium* en droit publique à la fin de la république romaine," *NRD* 32 (1908), 598–601; J. Bleicken, *Das Völkstribunat der klassischen Republik* (Munich, 1955), 111 n. 7.

¹⁷⁰ Liv. 2.35.6. Hartmann, *De exilio*, 5 uses Coriolanus' case to prove that exile outside of the "legal" sanctuaries of the *civitates foederatae* displayed the animosity and hostile intention of the refugee toward Rome. Taking refuge in an enemy nation certainly demonstrates hostility, but does not imply that such an action was unlawful.

¹⁷¹ Cic. *Balb.* 28.

¹⁷² C. J. Cadoux, *Ancient Smyrna* (Oxford 1938), 146.

¹⁷³ E. Badian, "Notes on Roman Policy in Illyria (230–201 BC)," *PBSR* 10 (1952), 72–73 convincingly demonstrates that Dyrrachium had no treaty with Rome.

provides some support. Oppianicus left Rome in 74 following his conviction *de veneficiis* (for poisoning) and remained in Italy, where following the Social War there were no longer any independent states – federate or not – to receive him.¹⁷⁴ Although Cicero makes every sort of accusation to blacken Oppianicus' name in his *Pro Cluentio*, he nowhere depicts his exile as being illegal. Admittedly, this is not conclusive evidence, but it suggests that so far as the Romans were concerned, any exile was "legal" so long as the offender removed himself from Rome (or Italy after 70) and did not return. Finally, to limit an exile's choice of a new home would serve no practical effect. Once the fugitive removed himself from Roman jurisdiction, his old homeland could hardly have any power over his actions.

The prevalent modern views mentioned above stretch the meager ancient evidence too far in reconstructing the nature of the *ius exulare*. If these long-standing theories are incorrect, then one must ask the question: what was the purpose of this treaty right, if it did not provide automatic citizenship or even assured refuge? While the *ius exulare* had restrictions, it still provided a reasonably certain chance of reception for upper-class exiles. The requirement for a sponsor would pose little hindrance to a Roman senator or equestrian wishing to seek sanctuary at a federate state, where he may even have had an established body of clients. The aristocracy of allied states would certainly also be desirable additions to the Roman community, since such exiles were placed in a position of obligation to their sponsors. Although the *ius exulare* imposed at least one requirement (and likely more) on potential exiles, nonfederated states probably had more burdensome limitations on granting refuge and eventual citizenship. Residence in a *civitas foederata* also allowed the exile to maintain closer ties to his former country through other mutual treaty rights, such as *conubium* and *commercium*. Perhaps the *ius exulare* provided certain privileges for the exile regarding his erstwhile homeland, although this is speculation. Some sort of legal mechanism must have existed for facilitating relations between an exile and his family, since relatives rarely accompanied fugitives abroad.¹⁷⁵

The *ius exulare* provided benefits for the individual exile, but its most useful function may have been to serve as a safeguard to the state. The Roman annalistic tradition preserves several tales of former exiles joining with foreign enemies to

¹⁷⁴ See Chapter 4.2, "Exiles in Italia: The Cases of Oppianicus and Q. Pompeius."

¹⁷⁵ For example, issues concerning inheritance must have been frequent.

endanger their old *patria*.¹⁷⁶ Coriolanus' return to Rome at the head of an enemy host is the most well-known of these legendary accounts. While they cannot be trusted for precise historical details, these stories illustrate the Roman perception of exiles as a potential threat. The *ius exulare* encouraged fugitives to relocate to areas that were on friendly terms with Rome by facilitating their resettlement and providing them selected privileges.

2.8 RELEGATIO

Even before the introduction of banishment (in any form) as a punishment of law, some citizens did not withdraw from Rome as voluntarily exiles, but were specifically ordered to leave. To enforce compliance with their edicts and ensure the smooth operation of the state, Roman magistrates had several methods of coercion open to them. One of these powers was that of *relegatio*, which allowed the expulsion of a citizen from Rome by magisterial decree.¹⁷⁷ All examples of relegation were accomplished by magistrates with *imperium*, and lesser magistrates probably did not possess this power. Any number of individuals could be relegated under a single decree, and they could even be directed to relocate to a specific area. This act was generally used to remove undesirable foreigners from Rome, as when Greek philosophers were expelled from Rome in 161 and two Epicureans, Philiscus and Alcaeus, were banished seven years later. *Relegatio* was also employed in 139, when the praetor Cn. Cornelius Scipio Hispanus issued an edict expelling Chaldeans and Jews from Rome.¹⁷⁸

The use of *relegatio* against Roman citizens was rare, as demonstrated by Cicero's reaction to A. Gabinus' (cos. 58) expulsion of the equestrian L. Aelius Lamia from

¹⁷⁶ The Tarquins persuaded Lars Porsenna to attack Rome: Liv. 2.9.2. Exiled Romans almost turned the tide of the Battle of Lake Regilius: *Ibid.* 2.19.10, 20.3.4 and 4.7. After the exile of Caeso Quinctius, there were rumors that he was collaborating with the Aequians and Volscians to capture Rome: D. H. 10.9.6–7, 10.5–6. The Sabine Appius Herdonius had the help of exiles in his seizure of the Capitolium: Liv. 3.15.9.

¹⁷⁷ Fest. 348L. Cf. Mommsen, *Strafrecht*, 48 n. 1; 967; Strachan-Davidson, *Problems*, 1.109; Greenidge, *Legal Procedure*, 334; G. Kleinfeller, *RE* 1 A.1, s.v. "Relegatio," col. 564.

¹⁷⁸ Greek philosophers expelled in 161: Gell. 15.11.1; Suet. *Gramm.* 1.1. Epicureans: Athen. 12.547A. Expulsion of 139: Val. Max. 1.3.2; cf. Liv. *Per.* 54. See D. Noy, *Foreigners at Rome* (London, 2000), 37–47, and J. P. V. D. Balsdon, *Romans and Aliens* (Chapel Hill, 1979), 98–102, for further discussion of such expulsions.

a two-hundred mile area outside the city of Rome.¹⁷⁹ While Cicero states that this was the first instance of the use of relegation against a Roman citizen, his own partisan zeal no doubt led him to a bit of hyperbole to highlight the supposed illegality of Gabinus' action.¹⁸⁰ Lamia after all had been relegated due to his vocal support of Cicero when the orator was threatened by Clodius' legislation. Cicero certainly was fully aware that relegation could be lawfully applied to Roman citizens, since as consul in 63 he had threatened Catiline with this form of expulsion in a speech before the senate.¹⁸¹ We know of a few other Romans relegated by magistrates before the experience of the unfortunate Lamia. M. Fulvius, a military tribune in 180, was relegated to Spain beyond Carthago Nova by the consul A. Postumius in conjunction with a decree of the senate. Fulvius was sanctioned for dismissing troops entrusted to him without proper authorization.¹⁸² As we have seen earlier, the banishment of Tiberius Gracchus' followers in 132 was probably accomplished by a modified form of this magisterial power.¹⁸³ A late example of *relegatio* occurred under the dictatorship of Caesar, when he expelled outside Italy a man posing as C. Marius' grandson. When this false Marius returned after the death of Caesar, he was executed by order of the consul Antony.¹⁸⁴

The length of relegation for Roman citizens is difficult to determine, as there is no direct ancient evidence concerning this issue. Mommsen speculated that in Republican times *relegatio* was of limited duration and lapsed when the magistrate

¹⁷⁹ Cic. *Dom.* 55, 96; *Sest.* 28–29; *Red. Pop.* 12, 31, 32; *Pis.* 23; *Fam.* 11.16.2, 12.29.1; Asc. 10C; Dio 38.16.4; Schol. Bob. 168St.

¹⁸⁰ Cic. *Sest.* 29; *Ad Fam.* 11.16.2. Cf. Greenidge, *Legal Procedure*, 334, who accepts Cicero's statement at face value.

¹⁸¹ Cic. *Cat.* 1.13 and 20; Diod. 50 frag 5a; cf. Strachan-Davidson, *Problems*, 1.109 n. 2. Note that Cicero uses the word *exilium* to describe his threatened relegation of his enemy. This again demonstrates that the word *exilium* is often used in a very broad and general sense by the ancient sources.

¹⁸² Liv. 40.41.8–10. The identity of this military tribune is difficult to determine: see *MRR* 1.389 with 391 n. 3 for a discussion. Magistrates using *relegatio* against Roman citizens may have customarily sought a *senatus consultum* to reduce their vulnerability to later criticism of abusing their powers. Cicero's referral to the senate of his threatened relegation of Catiline may be an example of this precaution: Diod. 50 frag 5a. Note that in Cicero's published version of his First Catilinarian, Cicero refuses Catiline's demand that the issue of his expulsion be put before the senate: *Cat.* 20. For an explanation of the contradictions between Cicero and Diodorus on this incident, see M. Cary, "Rome in the Absence of Pompey," *CAH* (1962), 9.499, n. 1.

¹⁸³ The use of relegation in 132 was novel in that it was used as a quasi-judicial punishment rather than an *ad hoc* measure to deal with unruly elements of society.

¹⁸⁴ V. Max. 9.15.1 (calling the impostor Herophilus); App. *BC* 3.2.3 (naming him as Amatius); Liv. *Per.* 116 (identifying him as Chamates). Cf. F. Münzer, *RE* XIV.2, s.v. "Marius (16)," col. 1815–1817.

employing it left office. Although relegation was used very rarely against citizens in the Republican era, it became a frequent criminal punishment in the early Empire. As an Imperial penalty it was often inflicted for a specific period of time, but sometimes was a life sentence. In the Republic as a form of *coercitio*, I am inclined to agree with C. Mackay that it could last beyond the tenure of the magistrate who imposed it if the relegation was enforcing a specific law. Subsequent magistrates would thus be disposed to observe the edict of their predecessors.¹⁸⁵ Perhaps a list of *relegati* was reviewed and updated each year by the new magistrates.

¹⁸⁵ Mommsen, *Strafrecht*, 968–971 and 976; Mackay, *C. Gracchus*, 146 n. 68. Note that Aelius Lamia returned from relegation, possibly at the time Cicero was recalled from exile. He attained the praetorship in 44; E. Klebs, *RE* I, s.v. “Aelius (75),” col. 522.

3 THE JOURNEY INTO EXILE: THE EARLY REPUBLIC TO THE SOCIAL WAR

3.1 CHOOSING A SITE FOR EXILE: AN INTRODUCTION

As we have seen from the discussion of the *ius exulare* in Chapter Two, once an exile left Roman territory, he was free to resettle wherever he pleased, although there were some advantages to choosing a *civitas foederata*. While there were no legal constraints on the selection of a new domicile as far as we know, historical and political factors did strongly shape this decision. One factor that remained fairly constant in the selection of a new domicile throughout the Republican period was the presence of *clientelae* and family connections. Such connections to a locality offered many advantages and certainly facilitated the exile's acceptance into the citizen body of his new state. For example, it seems to have been common for Romans going into banishment to return to provinces where they had held their magistracies. In his defense of L. Licinius Murena, Cicero took this fact for granted when he played upon the pathetic image of a former governor returning as an exile to an area he had recently proudly governed:

ibit igitur in exilium miser? quo? ad Orientisne partis in quibus annos multos legatus fuit, exercitus duxit, res maximas gessit? at habet magnum dolorem, unde cum honore decesseris, eodem cum ignominia reverti. an se in contrariam partem terrarum abdet, ut Gallia Transalpina, quem nuper summo cum imperio libentissime viderit, eundem lugentem, maerentem, exsulem videat?¹

Therefore, will this wretched man go into exile? Where? To the East, where he served as legate for many years, led armies and accomplished great deeds? But to return in dishonor where you had departed with honor causes great anguish. Or will he remove himself to the opposite side of the world, so that Transalpine Gaul may see the same man as a grieving and sorrowful exile, whom she had recently seen with such gladness possessing the greatest authority?

¹ Cic. *Mur.* 89.

The examples of exiles seeking out locations where they had *clientelae* will be noted in each section below. Aside from this consistent element, an examination of the refuges known to us demonstrates that Roman exiles tended to choose particular areas during certain historical eras. The general trends in the selection of domiciles reveal three main chronological divisions, each marked by major historical change. These three periods are from the early Republic down to the time of Tiberius and Gaius Gracchus; the late second century until the Social War and finally from the 80s until the assassination of Julius Caesar in 44. Each epoch is discussed in detail below.

3.2 BRIEF JOURNEY INTO EXILE: THE EARLY REPUBLIC TO 123

The annalistic history of early Rome records the places of exile for some legendary figures of the early Republic. While the exact historicity of these examples remains dubious, they still preserve some useful details about the resettlement of exiles. L. Tarquinius Collatinus, banished due to his regal name following the expulsion of King Tarquinius Superbus, relocated to Lavinium. Coriolanus fled prosecution in Rome and sought exile among the hostile Volsci. Caeso Quinctius went to the Etruscans for refuge, and shortly afterward M. Volscius, a false witness in Caeso's case, withdrew to Lanuvium to avoid punishment. M. Claudius, the client of Appius Claudius who had claimed Verginia as his slave, went into exile at Tibur following the fall of the *decemviri*. Accused of corruption in his distribution of the spoils of Veii, M. Furius Camillus departed Rome for Ardea, where he became a citizen, albeit temporarily.² The sites reported by the annalistic tradition as receiving banished Romans share a trait with those chosen by subsequent generations of exiles in the late third and second centuries: they were all relatively close to Rome. Since there were many independent states in Italy until the Social War in the early first century, Romans faced with the prospect of exile did not have to look far in their search for a new domicile. It is logical that these nearby cities would be popular destinations and there is no reason to doubt that the exile sites mentioned by the annalists reflect the actual practice of the early Romans.

² L. Tarquinius Collatinus in 509: Liv. 2.2.10; D.H. 8.49.6. Coriolanus in 491: Liv. 2.35.6; Gell. 17.21.11; D.H. 8.1.6. Caeso Quinctius in 461: Liv. 3.13.8; D. H. 10.8.4. M. Volscius in 458: Liv. 3. 29.7. M. Claudius in 449: Liv. 3.58.11; cf. D. H. 11.46.5. M. Furius Camillus in 390: Liv. 5.32.9, 44.1; D. H. 14.5.3.

By the late third century, neighboring cities remained the most frequent destinations for banished Romans. With so many potential refuges close to Rome, there was no need to go far away from one's homeland. Although the sources do not specify many places of exile in this era, the ones reported are similar to the sites mentioned for early Rome. We have already discussed the relocation of the defeated commander Cn. Fulvius Flaccus to Tarquinii in 211. Writing in the middle of the second century, Polybius named Tibur, Praeneste, and Neapolis as customary refuges. Livy also reports all three of these cities as destinations for various exiles around this time. Q. Pleminius' intended exile to Neapolis in 205 was blocked by his seizure en route. C. Matienus and P. Furius Philus, both corrupt ex-governors of Spain, sought exile at Tibur and Praeneste respectively in 171 when their official conduct was investigated by the senate.³

From these few examples, it seems that exiles of this era sought sites relatively close to Rome. The advantages of such a choice are easy to see. For many of these states, such as Tibur and Praeneste, the journey into banishment may have comprised as little as a day's travel. Thus Roman expatriates could enjoy their retirement in familiar surroundings close to their family and friends and stay well informed about happenings in the city. This would certainly facilitate the exile's ability to remain active in family and business matters due to the ease of correspondence. Furthermore, most exiles probably already had clients and acquaintances in such nearby places. Indeed, many expatriate Romans may have simply relocated to their pre-existing estates in these neighboring communities.⁴ While *exilium* entailed removal from Rome and *de facto* loss of most citizen rights, the ability of Roman exiles to relocate only a few miles from home eased this difficult transition considerably. Later generations of fugitives would not be so fortunate.

3.3 POLITICS, DEMONSTRATIONS, AND THE HOPE OF RECALL

So far as we can tell from the surviving ancient sources, the case of P. Popillius Laenas marks a dramatic change in the history of Roman exile. As consul in 132, he led the persecution of those who had supported the slain tribune Tiberius

³ Pleminius: Liv. 29.21.1–3; Matienus and Philus: *Ibid.* 43.2.10.

⁴ I. Shatzman, *Senatorial Wealth and Roman Politics* (Brussels, 1975), 252 and 255.

Gracchus. Given the turbulent political situation, Popillius eventually faced retaliation for his actions. Gaius Gracchus proposed a law during his first tribunate in 123 making it a crime for any magistrate to pass capital sentence on a citizen without the consent of the Roman people. This legislation made Popillius liable for his treatment of the *Gracchani* during his consulship. Resigned to his inevitable conviction, Popillius took the customary step of flight before trial.⁵ Gaius Gracchus himself sponsored the plebiscite that interdicted Popillius from fire and water.⁶

To this point, nothing unusual appears in Popillius' case; however, there would soon be some unprecedented developments. The exact location of Popillius' exile is not recorded, but Plutarch mentions that he sought exile outside Italy.⁷ This is the first known case of a Roman traveling outside Italy for his banishment.⁸ Popillius' reasons for choosing a distant refuge are not difficult to reconstruct. Given the potential for violence in the political situation and the strong Gracchan support among the Italians, Popillius no doubt was concerned about his personal safety should he select a traditional site in Italy. It is possible that Popillius went into exile somewhere in Roman Macedonia, where his family had a record of recent assignments. While serving as a legate in 170 during the Third Macedonian War, his father, C. Popillius, frustrated Macedonian attempts to capture the Aetolian city of Stratus. The elder Popillius was then sent to various Greek states by the consul Hostilius Mancinus to foster support for Rome in the war with King Perseus. Later he was placed in command of Ambracia.⁹ A legate identified only as "the

⁵ Plut. CG 4.2. It is unclear if P. Rupilius, the other consul of 132, was affected by C. Gracchus' legislation. Only Velleius Paterculus (2.7) briefly remarks that Rupilius fell victim to prosecution under the new law, while other more detailed sources omit any mention of him. Given Velleius' occasional unreliability on specific details, he may be in error about Rupilius' fate. Due to his absence in the other sources, it is possible that Rupilius had died before the events of 123. Cf. D. Stockton, *The Gracchi* (Oxford, 1979), 91; H. C. Boren, *The Gracchi* (New York, 1968), 93.

⁶ Cic. *Dom.* 82; *Brut.* 128.

⁷ Plut. CG 4.2. For the erroneous view that he resettled in Nuceria, see Chapter 6, number 10.

⁸ The flight of Blossius of Cumae to Asia in 132 antedates Popillius' case. But his exit from Italy was not *exilium*, as he did not leave to seek refuge, but to take up arms against Rome. Joining up with the rebellion of Aristonicus, Blossius died when the insurrection failed: Plut. *TG* 20; Cic. *Lael.* 37; cf. D. R. Dudley, "Blossius of Cumae," *JRS* 31 (1941), 97–99; T. Africa, "Aristonicus, Blossius, and the City of the Sun," *International Review of Social History* 6 (1961), 110–124; A. H. Silverstein, *Tiberius Sempronius Gracchus: Tradition and Apostasy* (Ithaca, 1978), 45–47.

⁹ Plb. 28.3–5; Liv. 43.22.2–3; 17.2–10. Popillius' activities in Greece occurred during 170/69, although there are some problems on the precise dating of these events: see *MRR* 3.150 and 168.

younger Popillius Laenas" served on the staff of Q. Metellus (pr. 148) in 146 and was among the delegation sent to the Achaean Assembly to prevent a declaration of war against Rome. This officer may have been M. Popillius, the consul of 139 and uncle of the future exile, but the epithet "the younger" suggests P. Popillius himself in one of his early military posts.¹⁰ These duties in Greece certainly gained the Popillii valuable clients and acquaintances, making this area a likely refuge for P. Popillius, particularly if he had earlier served there himself.

Aside from his unusual choice of domicile, P. Popillius' exile was novel in another important manner: he was the first banished Roman in our sources for the historic period to be recalled and allowed back into his former homeland.¹¹ His restoration did not occur without planning and effort on the part of Popillius and his associates in Rome, however. Cicero reports that a great number of Popillius' relatives – even those related only by marriage – appeared in public and entreated the Roman people to cancel their kinsman's banishment. The exile's adolescent sons are mentioned foremost among those pleading for his return.¹² Not only did Popillius enjoy the support of the men of his family, but his kinswomen were also very active. Their exertions on his behalf were serious enough to warrant a public reply from Popillius' chief antagonist: Festus records a fragment of speech by C. Gracchus entitled *In P. Po[m]piliū et Matronas* ("Against Popillius and the Women").¹³ Gracchus' criticism no doubt reflected the novelty of female involvement in such state matters, since women were normally barred from political life.

One of the Popillian women may have been prominent in these demonstrations: the mother of Q. Lutatius Catulus (cos. 102). Cicero reports that this Popillia

¹⁰ Plb. 38.12–13; H. Volkmann, *RE* XXII.1, s.v. "Popillius (22)," col. 60, assigns this legateship to the future consul of 139 with no discussion. *MRR* 1.469 lists both Popillii as possibilities with no preference.

¹¹ See Appendix II, "The Restoration of Legendary Figures in the Early Republic," for alleged cases of recall prior to Popillius.

¹² Cic. *Red. Sen.* 37: *pro me non, ut pro P. Popilio, nobilissimo homine, adolescentes filii, non propinquorum multitudo populum Romanum est deprecata* (I did not have adolescent sons or a multitude of relatives to supplicate the Roman people on my behalf, as did P. Popillius, a most distinguished man); *Red. Pop.* 6: *non enim pro meo reditu, ut pro P. Popilio, nobilissimi hominis, adolescentes filii et multi praeterea cognati atque adfines deprecati sunt* (I did not have, like the very noble P. Popillius did, youthful sons, in addition to many relatives and relations, to plead for my return).

¹³ Fest. 136M; *ORF*⁴ 185.38. The fragment unfortunately does not suggest the content of the speech: *eo exemplo instituto dignus fuit, qui malo cruce periret* (he who died in torment was worthy of that established example). Note that two other speeches by Gracchus against Popillius Laenas are known: *ORF*⁴ 184.32–34.

was the first woman ever accorded the distinction of a public funeral eulogy (*laudatio funebris*).¹⁴ The panegyric was eloquently delivered by her distinguished son. Unfortunately, Cicero does not explain why she was granted this singular honor. It has been speculated that Popillia was eulogized for her fecundity, a traditionally praiseworthy attribute for Roman women.¹⁵ However, the three or four children Popillia had do not make her *fecunditas* so unusual as to be given such unprecedented public praise.¹⁶ Rather, it seems reasonable to attribute such a remarkable honor to some extraordinary accomplishment. C. Gracchus' aforementioned speech suggests the possibility that Popillia may have distinguished herself in the efforts to recall P. Popillius Laenas, her exiled kinsman. It is plausible that she was praised in the eulogy for her outstanding *pietas*.

While it was most unusual for women to take such an open role in politics, the example of the *Popillianae* seems to have encouraged the inclusion of women in subsequent campaigns to restore exiles. Following the flight of Marius and his associates from Rome in 88, his supporters in the capitol began to take actions to ensure their recall. Women are prominent in these efforts: οἱ δὲ τῶν ἐξελαθέντων στασιῶται, ὅσοι τῶν πλουσίων, καὶ γυναῖα πολλὰ πολυχρήματα, τοῦ δέους τῶν ὀπλων ἀναπνεύσαντες ἡρεθίζοντο ὑπὲρ καθόδου τῶνδε τῶν ἀνδρῶν καὶ οὐδὲν σπουδῆς ἢ δαπάνης ἐς τοῦτο ἀπέλειπον . . . (Having recovered from the fear of open warfare, wealthy men and many rich women among the supporters of the fugitives began to agitate for their return and spared no effort or expense to accomplish this goal . . .).¹⁷

Although no specific references to the exact measures undertaken by the *Popilliani* survive, their actions can be reconstructed to a certain degree. Popillius' supporters may have been the first to mount a large-scale public campaign for the recall of an exile, but they had a related precedent to follow. It was the custom for Romans

¹⁴ Cic. *de Orat.* 2.11.44.

¹⁵ R. E. Evans, "Popillia, *mater vestra*: A Note on Cicero, *de Orat.* 2.11.44," *LCM* 17:3 (1992), 35.

¹⁶ See Evans, "Popillia," 35, for sources on Popillia's children.

¹⁷ App. *BC* 1.63. The banishment of the *Mariani* – the flight of the losing side in civil war – resembles proscription more than *exilium* as defined by this study. Note that Sulla had the fugitives declared *hostes* and no refuge or safety was allowed them: *Ibid.* 1.60. Both of these features were in direct opposition to the normal practice of Roman exile, which did not strip the refugee of his citizen rights and allowed him to relocate safely outside Roman territory. Despite these differences, the families of the Marian fugitives most likely followed the same types of actions to get their kinsmen recalled as had been previously used on behalf of "legal" exiles such as Popillius. That women joined in these efforts from the onset demonstrates that their participation in such matters was routine by this time.

accused of a capital offense to assume the guise of a mourner. This normally entailed donning mourning attire (*vestis sordida*) and, for men, allowing both beard and hair to grow unkempt. Often family, friends, and sympathizers of the accused would follow suit.¹⁸ This traditional device of eliciting support for the accused is attested in the efforts to restore later exiles; it was most likely used by Popillius' associates as well.¹⁹ Cicero mentions that Popillius' relatives supplicated (*deprecari*) the Roman people to restore their banished kinsman. To ensure a large audience, these entreaties most likely occurred in public places when a large portion of the *populus Romanus* was present, such as assemblies, *ludi*, and festival days. Thus we can imagine groups of Popillius' supporters – both male and female – garbed as mourners, begging crowds of citizens to restore such an unjustly banished man. No doubt these “mourners” were also present at or nearby C. Gracchus' various public speeches and were a visible symbol of opposition to his agenda. Such tearful theatrics seem to have been displayed from the very beginning of Popillius' banishment, as Diodorus Siculus reports that the exile departed from Rome amidst weeping crowds of well-wishers.²⁰

There are many other displays that the *Popilliani* may have employed to sway public opinion. The histrionics successfully used by Ser. Sulpicius Galba (pr. 151) in 149 demonstrate just how far such dramatics could proceed. Accused for his scandalous conduct as praetorian commander in Further Spain, Galba tearfully entrusted the guardianship of his young sons to the Roman people in a speech before the *concilium plebis*. His performance caused the defeat of a proposal calling

¹⁸ This practice of wearing mourning garb when accused was commonplace by 140, when Scipio Aemilianus eschewed such a display after being accused by the tribune of the plebs Claudius Asellus. Gell. 3.4.1: *cum esset reus, neque barbam desisse radi neque candida veste uti neque fuisse cultu solito reorum* (although he was accused, he did not cease shaving or wearing white garments, nor did he adopt the usual garb of defendants). See E. Klebs, *RE* XIII.2, s.v. “Luctus,” col. 1698–1699 for numerous examples of this custom.

¹⁹ Mourning garb used by the supporters of Metellus Numidicus: Cic. *Red. Sen.* 37; *Red. Pop.* 6. In 58, such a large number of senators and *equites* dressed as mourners to protest Cicero's exile that the consuls Piso and Gabinius forbade them to continue their display: Cic. *Red. Sen.* 31; *Red. Pop.* 13; *Dom.* 99; *Sest.* 26, 27, 32, 53; *Pis.* 18; *Planc.* 87; Plut. *Cic.* 31; Dio 38.16.3.

²⁰ Diod. 34–35.26: ὅτι ὁ Ποπίλιος μετὰ δακρύων ὑπὸ τῶν δχλων προεπέμφθη ἐκβολλόμενος ἐκ τῆς πόλεως. οὐ γὰρ ἡγνόμενὸς τὸ πλῆθος τὸ τῆς ἐκβολῆς ἄδικον . . . (Popillius was accompanied by crowds of mourners as he left the city. For the people knew well that his exile was unjust . . .). This passage has been used to demonstrate that Popillius enjoyed widespread popularity at Rome: D. F. Epstein, *Personal Enmity in Roman Politics* 218–43 BC (New York, 1987), 116. Cf. Volkmann, *RE* XXII.1, s.v. “Popillius (28),” col. 63. However, Diodorus' account of the political strife in 120s is very hostile to C. Gracchus and his agenda, and he (or his source – probably Posidonius) quite likely exaggerated Popillius' popularity.

for an official investigation into his actions in Spain.²¹ If Popillius' supporters followed the customary forensic tactics of the day, such emotional scenes were likely included in their campaign as well.

However vocal or well-organized the crusade to recall Popillius, other factors also played a part in its success. Ultimately it was the massacre of C. Gracchus and many of his supporters in late 121 that paved the way for Popillius' return. The following year, a plebiscite sponsored by the tribune of the plebs L. Calpurnius Bestia formally recalled him from exile.²² Although the demonstrations on Popillius' behalf were insufficient to effect his restoration without the help of this dramatic political reversal for his opponents, their significance should not be underestimated. The sight of Popillius' relatives clothed as mourners and making entreaties certainly assured that his case was not forgotten by the public. Just such an effect was mentioned by Cicero when he praised the efforts of his brother Quintus during his own exile: "by his mourning attire, tears and daily prayers, he renewed the longing for my name and kept alive the memory of my achievements."²³ Keeping Popillius' case fresh in the collective mind of the Roman people facilitated his chances of restoration when the political conditions became more favorable. Indeed, the emotional public displays of the *Popilliani* may have helped to turn political momentum against Gracchus. While the exact effects of these actions on Popillius' behalf are difficult to gauge precisely, they seem to have established a pattern that influenced the actions of subsequent Roman exiles.

L. Opimius (cos. 121) led the massacre of C. Gracchus and his associates that set the stage for Popillius' recall. Although in 120 Opimius was exonerated for his actions in a trial before the *comitia centuriata*, he would eventually fall victim to later prosecution and be obliged to seek exile. Convicted in 109 by the court established under the *lex Mamilia* to investigate the treasonous activities of various Roman senators with the Numidian king Jugurtha, Opimius followed the example of fellow anti-Gracchan Popillius Laenas and relocated outside Italy. His reasons for avoiding customary locations in Italy were even more compelling than those of Popillius. As the praetor who had utterly destroyed the rebellious Latin

²¹ Cato the Elder reportedly commented *nisi pueris et lacrimis usus esset, poenas eum daturum fuisse* (If he hadn't used the boys and tears, he would have paid the penalty): Cic. *de Orat.* 1.228. See MRR 2.459 for a complete listing of the sources for this case.

²² Cic. *Brut.* 128; cf. *Red. Pop.* 10; *Red. Sen.* 38; *Dom.* 87.

²³ Cic. *Red. Sen.* 37: *squalore et lacrimis et cotidianis precibus desiderium mei nominis renovari et rerum gestarum memoriam usurpari coëgit*. Cf. *Red. Pop.* 8.

colony of Fregellae in 125 and the consul who had presided over the slaughter of the Gracchans four years later, Opimius would have been an unwelcome, if not endangered, resident in Italy. Thus he chose Dyrrachium – a free state on the Western coast of Greece – as his place of exile.²⁴ Although he was never recalled and died a banished man, his choice of Dyrrachium as a new domicile anticipated a trend in the following century.

3.4 THE ADVANTAGES OF DYRRACHIUM AND WESTERN GREECE FOR EXILES

But why had Opimius chosen Dyrrachium to resettle, when the more attractive cities of the Greek East, such as Athens and Rhodes, were available? In the West, the free city of Massilia – a great center of culture and learning – was certainly well-disposed to the Opimii: during his consulate of 154, Opimius' father Quintus had decisively defeated the Transalpine Ligurians on behalf of Massilia.²⁵ Despite his association with this famed city, Opimius did not seek refuge there. What advantages did Dyrrachium hold that was absent in these more illustrious sites? It is unknown if the Opimii had *clientelae* or other connections to Western Greece that may have attracted an exiled member of their family. However, many subsequent banished men also chose this area, which suggests that whatever reasons drew Opimius there may not have been unique to him. Clearly, the site possessed some intrinsic merit to become so frequented by Roman exiles. The ancient sources say little about the banishment of Opimius and offer no clues concerning his motivation for moving to Dyrrachium. Another case, however, offers insight into the reasons for his choice: the restoration of Popillius Laenas.

Once the possibility of recall from exile was demonstrated, a new criterion for the selection of a site for banishment emerged. Areas that offered quick and reliable communication routes with Rome became desirable, as these sites enabled fugitives to monitor political affairs closely and to issue timely instructions to supporters at home. Campaigns at Rome for the restoration of banished men (such as the one undertaken by the *Popilliani*) could be organized and coordinated by exiles abroad through frequent correspondence. Naturally, cities close to Rome were best suited to providing easy contact. At the time of Opimius' exile in the

²⁴ Cic. *Sest.* 140.

²⁵ Plb. 33.8–11.1; Liv. *Per.* 47.

late second century, there were numerous independent states in Italy that fit this criterion. However, the turbulent politics of the era often made Italy an undesirable area in which to seek a new domicile, as demonstrated by the cases of Popillius and Opimius. For men such as these, an area outside Italy that still allowed messengers a fast journey to Rome was ideal. Dyrrachium and other cities in Western Greece thus became frequent destinations for Roman exiles taking active steps to gain official permission to return home.

The letters and speeches of Cicero provide numerous references concerning the choice of a suitable place for exile, and Dyrrachium is featured prominently in these passages. Although Cicero's writings postdate the late-second-century world of Popillius and Opimius, his observations reveal why Dyrrachium and similar areas developed as premier locations for earlier generations of Roman fugitives. Cicero's advice to his exiled Pompeian associates following Caesar's victory illustrates the advantages of areas affording swift contact with Rome. In 45, for example, Cicero warned the banished C. Toranius not to move from his current residence on Corcyra and praised the island's superb location:

quid multa? loco opportuniore in his malis nullo esse potuisti, ex quo te, quocumque opus erit, facillime et expeditissime conferas. quod si recipiet ille se ad tempus, aderis; sin (quoniam multa accidere possunt) aliqua res eum vel impedit vel morabitur, tu ibi eris, ubi omnia scire possis. hoc mihi prorsus valde placet.²⁶

To be brief, in these troubles you can be in no more convenient location from where you can move most easily and quickly to wherever there is need. If he [Caesar] returns on time, you will be nearby; but if some matter should either hinder or delay him (for many things can happen), you will be situated where you are able to find out about everything. In short, this really seems best to me.

Earlier, Cicero had given similar advice to Aulus Caecina, another banished ex-Pompeian contemplating relocation. Caecina was considering leaving Sicily for the province of Asia to oversee his business interests personally, but Cicero urged him to remain in his current location: *sed ego . . . in Sicilia censeo commorandum. propinquitat locorum vel ad impetrandum adiuuabit crebris litteris et nuntiis, vel ad reditus celeritatem, re aut*

²⁶ Cic. *Fam.* 6.20.2.

impetrata, quod spero, aut aliqua ratione confecta. quamobrem censeo magno opere commorandum. (I believe that you must remain in Sicily. Its proximity will aid you either in obtaining your goal by frequent letters and messengers, or in a swift return, when the matter is either settled as requested, which I hope it will be, or is accomplished by some other means. Therefore, I believe wholeheartedly that you ought to stay.)²⁷

Cicero's recommendations to these two men were not based on idle speculation, but were firmly grounded in his own practical experience. As a former exile himself, Cicero had faced the need to choose a location for his banishment that would facilitate his hoped-for recall. Dyrrachium and the Adriatic coast of Greece appear frequently in his deliberations on this issue.²⁸ Of course, Cicero was not the first to see the advantages that Western Greece offered to the exile hopeful of return. This innovation must be credited to Opimius, or perhaps P. Popillius Laenas, if indeed he relocated to the province of Macedonia as suggested above. His father's command of Ambracia during the Third Macedonian War may have prompted him to choose this site on the Western Coast of Greece. Wherever Popillius served his exile, however, it is clear that after the banishment of Opimius the choice of location was inextricably linked to the hope of recall.

There is no record that Opimius' relatives embarked on a similar campaign for his recall as had the *Popilliani* a decade earlier. His choice of Dyrrachium as his new residence, however, suggests that Opimius and his sympathizers in Rome were attempting to reverse his situation. Several banished men roughly coeval with Opimius still chose sites in Italy in which to live. Unlike Opimius, none were ardent anti-Gracchans or had a history of political hostility toward the Italians, so for them life in Italy did not hold the same dangers. Very interestingly, three of these exiles relocated to the same city: Nuceria in Campania. Q. Fabius Maximus Eburnus, C. Popillius Laenas (son of the former exile P. Popillius), and Q. Marcius Philippus all were received into the citizen body of Nuceria in roughly the same time frame, giving credence to E. Gruen's statement that some political tie must have existed between these three men.²⁹

²⁷ *Ibid.* 6.8.2. *aliqua ratione confecta* probably refers to a Pompeian victory in the civil war, which would ensure recall for men such as Caecina: D. R. Shackleton Bailey, *Epistulae Ad Familiares* (Cambridge, 1977), 2.403.

²⁸ For Cicero's journey into exile, see Chapter 4.4, "The Exile of M. Tullius Cicero."

²⁹ Cic. *Balb.* 28. Cf. E. Gruen, "Political Prosecutions in the 90s BC," *Historia* 15 (1966), 62–63. Gruen's characterization of this group of banished Romans in Nuceria as an "exile colony" is both evocative and accurate.

While Philippus' exile cannot be precisely dated, C. Popillius left Rome in 107 or 106, and Fabius departed in 105.³⁰ C. Popillius' presence at Nuceria has been attributed to his father's activities in Campania.³¹ In addition to persecuting the followers of Tiberius Gracchus, P. Popillius is often credited with the construction of the extension of the *Via Appia* from Capua to Rhegium during his consulship in 132. That Popillius was in charge of this project is controversial and far from certain.³² The course of this road runs through Nuceria, and the elder Popillius probably would have gained clients among the population in this area, if indeed he was in charge of this project. Even assuming that P. Popillius did build this extension, he was apparently unwilling to settle in Nuceria during his own banishment in spite of his connections there. As stated above, his actions as one of the anti-Gracchan standard-bearers made Italy an undesirable location in such volatile times. His son Gaius, however, later found himself in exile for his actions as a legate in Gaul, and not for the kind of factional political violence that resulted in his father's banishment. Thus he was free to avail himself of any family connections in Nuceria. Because the identification of the road's builder is uncertain, however, such considerations remain speculative.

There is insufficient evidence to ascertain why Nuceria in particular was chosen as a place of exile by these three men. That they all chose this location within a few years of each other does suggest that they were on friendly terms before banishment. Indeed, their case may not have been unique. Exiles may have routinely settled in cities where former banished associates were living. Such a relocation offered an advantage in addition to the comradeship of fellow expatriates. Communication with Rome would have been easier and more frequent with

³⁰ See Chapter 6, number 12 for the problems of dating Phillipus' exile.

³¹ Note Crifò, *Ricerche*, 264, who erroneously believes that P. Popillius himself went into exile at Nuceria rather than his son Gaius. See Chapter 6, numbers 10 and 15, for a full discussion of this issue.

³² Popillius' involvement in the construction of the road has been inferred from an anonymous inscription at Polla set up by the road's builder: *ILLRP* 454 and 454a. The builder's name apparently was included on another stone which is missing (*ILLRP* 454 n.1). Those who support the position that Popillius built the road include T. Mommsen, *CIL* I, 154–155; V, 935; A. Degrassi, "Un nuovo militario calabro della *Via Popillia* e la *Via Annia* del Veneto," *Philologus* 99 (1955), 263; contra T. P. Wiseman, "Via Anniae," *PBSR* 19 (1964), 30–37; "Viae Anniae Again," *PBSR* 24 (1969), 88–91; "Roman Republican Road Building," *PBSR* 25 (1970), 128–129, who associates the road with T. Rufus Annius, *propraetor* in 131. Crifò, *Ricerche*, 264 suggests that the presence of P. (sic) Popillius as an exile at Nuceria makes it likely that he was the road's builder. The use of Nuceria as a refuge by a Popillius, however, does not decide this issue by any means, as this city could have been selected as a refuge for numerous other reasons.

the resources of several exiles pooled together. With several sets of messengers at their disposal, exiles living in the same area would have rarely experienced a delay in sending or receiving correspondence. Cicero's letters record an example of two exiles living on Corcyra who shared messengers in this fashion.³³ A group of exiles would also have a larger network of information sources about developments back in Rome than any one man on his own, and thus they could coordinate efforts at attempting to gain recall. In addition to the old cliché "misery loves company" there were several advantages for exiles in seeking out areas with other Romans in the same situation. There might have been several such "exile colonies" in addition to Nuceria that the extant sources do not mention. However, Cicero's report of a group of former Catilinarian conspirators led by Autronius Paetus living together in Epirus at the time of his own exile in 58 is the only firm evidence of a group of banished men banding together.

3.5 LOCATIONS DISTANT FROM ROME AND THE PERMANENCE OF EXILE

A Roman about to go into exile faced a basic dilemma: should he treat his banishment as a temporary misfortune or accept it as a permanent situation? The answer to this question often dictated the selection of a new residence. Thus far, we have examined the cases of men who actively sought to return to Rome. But not all exiles of this era appear to have attempted to secure restoration from exile. For those who had no hope or desire for recall, proximity to Rome and ease of communication with the capital were far less important. Such banished men were free to choose their new domiciles based on the amenities of the site. While L. Opimius appears to have chosen Dyrrachium for its nearness to Italy, a fellow victim of the *lex Mamilia* chose a place of exile with different attributes. C. Porcius Cato (cos. 114) moved to the remote location of Tarraco in Nearer Spain, where he became a citizen. While Tarraco is located on a beautiful site on the Mediterranean Iberian coast, it is distant from the political life of Rome. Clearly Cato did not choose this city to stay in close contact with the political situation or his former associates back home. His decision to move so far from Rome is partially attributable to his political position. Although he was numbered among the friends of Ti. Gracchus in 133, Cato appears to have abandoned this

³³ Cic. *Fam.* 6.20.1: The exiles on Corcyra were Cn. Plancius and C. Toranius in 45.

association when it became a political liability.³⁴ Thus like other exiles hostile to the *Gracchani*, Cato may have considered serving his banishment in Italy unwise. Certainly his long-standing family connections to Spain attracted him to remote site of Tarraco.³⁵ His relocation there indicates that he was not interested in keeping his finger on the pulse of current events at Rome and suggests that he did not take great pains, if any, to seek restoration.

Among those who apparently did not desire recall from exile, C. Cato was unusual in that he did not resettle in one of the great cultural meccas of the Hellenic world. The intellectual pursuits and diversions available in many Greek cities made them popular destinations for exiles who turned their backs on their former homeland. Athens in particular often became the new home of banished Romans. T. Albucius, convicted for extortion around 105, is the first exile noted in our sources to go to Athens. He had every reason to embrace this city as his adopted homeland – Albucius had studied there as a young man and became such a notorious philhellene that he was maligned by the satirist Lucilius for his Greek affectations. He was also a well-known disciple of Epicurean philosophy. Athens was the perfect location for him to indulge this pursuit, which he happily did until the end of his days.³⁶

In 103, another Roman exile chose to live in a city in the Greek East. Q. Servilius Caepio, one of the commanders responsible for the terrible Roman defeat at Arausio, became a citizen of Smyrna, a city in Asia, following his flight from Rome.³⁷ Having served as a legate in Asia under M.' Aquillius in 129, Caepio may have had some connections that drew him to this province.³⁸ Again, his new domicile's distance from Rome is significant. Caepio had been the focus

³⁴ On Cato's early association with the Gracchans: Cic. *Amic.* 39. His abandonment of the Gracchan faction can be inferred from his uninterrupted career after the fall of Ti. Gracchus (E. S. Gruen, *Roman Politics and the Criminal Courts* [Cambridge, 1968], 146), and Cicero's statement that "pro-Gracchan jurors" (*Gracchani iudices*) were responsible for Cato's conviction (*Brut.* 128; cf. E. Badian, "The Legend of the Legate Who Lost His Luggage," *Historia* 42 [1993], 208).

³⁵ E. Badian, *Foreign Clientelae* (Oxford, 1958), 161 and 318. Cato the Censor began the family's connection to Spain during his consular and proconsular command in 195–194. His advocacy for Hispania Citerior in 171 against the corrupt governors C. Matienus and P. Furius demonstrates his strong ties to the province (see Chapter 6, number 6, for sources and discussion).

³⁶ Albucius' philhellenism: Lucil. 2.89–95M; Cic. *Fin.* 1.3.9; his Epicureanism: Cic. *Tusc.* 5.108; *Pis.* 92.

³⁷ Cic. *Balb.* 28.

³⁸ See *MRR*, 3.194 for sources. Cf. F. Münzer, *Roman Aristocratic Parties and Factions*, trans. T. Ridley (Baltimore, 1999), 261–262 and 266.

of popular odium for the disaster at Arausio, and his trial had been marked by violence. Incarceration nearly prevented him from seeking exile, and he was saved only by the intercession of a friendly tribune of the plebs.³⁹ Like other banished optimates of this turbulent era, Caepio went outside Italy to find a new home. That he chose Smyrna, a city far from Rome, implies that he was not particularly hopeful of recall. Indeed, Caepio died in exile probably sometime after 90.⁴⁰

At roughly the same time Caepio came to grief over his military debacle, another failed Roman commander faced prosecution for his actions. In 103, L. Licinius Lucullus was a praetorian commander in the Sicilian slave war. His martial shortcomings were not the direct cause of his downfall, however, since he was convicted either of extortion or peculation upon his return to Rome. Although no ancient source mentions the location of his exile, it has been speculated that he moved to Lucanian Heraclea.⁴¹ This conjecture is far from certain, but has some merit because Lucullus had spent part of his praetorship in 104 putting down a slave revolt in Southern Italy.⁴² His recent contact with this area may have recommended it as a new domicile. As the magistrate who had recently cleared the region of marauding slaves, he probably would have enjoyed a warm reception.

If Lucullus did take up residence in Heraclea, he is the last known Roman exile to resettle in the Italian peninsula. The Social War and the subsequent enfranchisement of Italy made permanent resettlement in this region impossible for exiles after 90. However, Italy had been declining in popularity as a refuge for banished Romans starting with the exile of Popillius Laenas in 123 due to its political instability and potential for violence. Italy, however, still appears to have attracted its share of exiles into the last decade of the second century, as witnessed by the “exile colony” at Nuceria. After Lucullus’ case, the ancient sources report four instances of banishment before the start of the Social War in 91 for which the site of exile is mentioned.⁴³ Despite the many advantages that Italy provided for Roman expatriates, all four men went to the East to find new homes. Perhaps the growing unrest of the Italian allies was noticeable as the first century began,

³⁹ Two tribunes attempting to veto proceedings against Caepio were prevented by violence: Cic. *Orat.* 2.197. His abortive incarceration: V. Max. 4.7.3.

⁴⁰ Str. 4.1.13; T. Mommsen, *Römisches Geschichte* (Berlin, 1903), 2.203 n. 1.

⁴¹ See Chapter 6, number 20, for a discussion.

⁴² Diod. 36.2.6–2a.

⁴³ Q. Caecilius Metellus Numidicus in 100; C. Appuleius Decianus in 98; P. Rutilius Rufus in 92; Mummius Achaicus in 90. These cases are discussed below.

making exiles wary of resettling in a region that appeared to be on the brink of widespread violence. It is possible that other exiles whose cases or destinations have not been preserved in the historical record continued to use Italy as a refuge in the years before the Social War. Although the avoidance of Italy by banished Romans at this time may not have been absolute, it is undeniable that political conditions had caused it to wane and virtually disappear as a destination for exiled Romans.

The exile of Q. Caecilius Metellus Numidicus fits into this trend of seeking banishment abroad. Metellus left Rome in 100 prior to being put on trial for refusing to abide by the agrarian law sponsored by his political foe Saturninus. As the owner of a villa at Tibur, Metellus certainly could have settled in this traditional place of relocation and been in familiar surroundings close to Rome. Like most optimates of this period, however, Metellus did not wish to be so close to the capital. The extreme tactics of Saturninus and his associates probably influenced him to seek a more distant refuge. Close proximity to Rome during his exile may have left Metellus vulnerable to the violence of his political enemies in the capital. Perhaps for this reason Metellus put some distance between himself and his foes in Rome and went to the island of Rhodes. Because Metellus moved to such a distant site, one could conjecture that Metellus was not interested in attempting to reverse his situation and eventually return to Rome. After all, as we have seen, exiles who desired to be restored tended to stay close to the capital. It is then paradoxical that one of the largest and most famous campaigns to secure a recall for an exile was undertaken by Metellus and his family. Presumably, an exile at the center of such a massive effort would relocate to Dyrrachium or some other location close to Italy. However, several unique features of Metellus' situation explain why the campaign to restore him was not hampered by his exile to distant Rhodes.

At the time of Metellus Numidicus' banishment, the Caecilii Metelli were at the zenith of their political power and were perhaps the dominant family in Roman politics.⁴⁴ When one of the leading lights of such a powerful *gens* had to seek exile, an enormous amount of support and influence was available to agitate

⁴⁴ Recent consulars in the *gens Caecilia* included the following: Q. Caecilius Metellus Balericus (cos. 123, cens. 120), L. Caecilius Metellus Delmaticus (cos. 119, pont. max. before 114–103), L. Caecilius Metellus Diadematus (cos. 117, cens. 115), M. Caecilius Metellus (cos. 115); C. Caecilius Metellus Caprarius (cos. 113, cens. 102), Q. Caecilius Metellus Numidicus (cos. 109, cens. 102). Cf. E. Badian, "The Death of Saturninus: Studies in Chronology and Prosopography," *Chiron* 14 (1984), 130–140.

for an official recall. Metellus' family and friends initiated a campaign similar to the one accomplished by the *Popilliani* two decades earlier. The efforts of Metellus' young son feature prominently in the accounts of the demonstrations to bring his banished father home. His exertions were so tireless and went beyond normal expectations of filial devotion that he gained the agnomen *Pius*. Following the death of Saturninus, the younger Metellus made his most dramatic appeal on his father's behalf. After the tribune of the plebs P. Furius blocked a proposal for Metellus Numidicus' restoration, the youth threw himself at Furius' feet as a suppliant and begged him to reconsider, albeit in vain.⁴⁵

While Metellus Pius' efforts were notable for their theatricality and sensational nature, his actions were only a small part of what must have been a massive undertaking. Cicero mentions some of the prominent citizens who took part in these efforts: the ex-censor L. Metellus Diadematus, the consular C. Metellus Caprarius, and their respective children; Q. Metellus Nepos, the consular candidate for the year 98, and many members from the *gentes* of the Licinii Luculli, Servilii Caepiones, and Cornelii Scipiones who were related by blood to the Metelli.⁴⁶ The sight of such distinguished men and their families dressed in mourning garb and begging for the restoration of Numidicus must have been an impressive sight, not to mention all the supporters of lesser status who doubtlessly participated as well. Few, if any other exiles could muster such extraordinary support in their attempt to secure a recall.

A few pieces of evidence suggest that Metellus Numidicus came up with an innovation to directly contribute to this campaign. He was accompanied into exile by L. Aelius Stilo, a famous grammarian who had written speeches for him during the course of his political career.⁴⁷ While Numidicus no doubt enjoyed such erudite company during his dislocation from Roman society, he perhaps had a more practical reason in mind for including Stilo as a travel companion. Aulus Gellius, praising Metellus' prose style, quotes from a letter that he wrote to Cn. and L. Domitius during his exile: *illi vero omni iure atque honestate interdicti, ego neque aqua neque igni careo et summa gloria fruniscor* (truly those men were interdicted from all law and respectability, but I lack neither fire nor water, and enjoy the highest glory).

⁴⁵ App. *BC* 1.33. Appian's statement that this incident happened ἐν ὄψει τοῦ δήμου (in view of the people) implies that it occurred before the *concilium plebis* or perhaps a *contio*. The younger Metellus' agnomen: App. *Ibid.*; V. Max. 5.2.7; Vell. 2.15.4; cf. Cic. *Red. Sen.* 37; *Red. Pop.* 6.

⁴⁶ Cic. *Red. Sen.* 37; *Red. Pop.* 6.

⁴⁷ Suet. *Gramm.* 3.3; Cic. *Brut.* 206.

In another section of his work, Gellius preserves another passage from a letter to the Domitii: *at cum animum vestrum erga me video, vehementer consolor et fides virtusque vestra mihi ante oculos versatur* (but when I see your affection towards me, I am comforted very much, and your loyalty and courage remain before my eyes).⁴⁸

These fragments are very significant. First, they allow us to add the two brothers Domitii to the list of prominent persons supporting Metellus Numidicus.⁴⁹ Cn. and L. Domitius were not undistinguished men – the former became consul in 96, and the latter in 94. Their absence from Cicero's roster of famous men who rallied to Metellus suggests that his catalogue represents only "the tip of the iceberg." More important, however, are the letters themselves. Since they were still extant in the second century AD for Gellius to read and admire, these epistles must have been published at some point. Therefore they are one of the earliest examples of published letters in Latin literature. There is no evidence in Gellius or the fragments themselves to indicate whether they were made public during Numidicus' exile or sometime after his return.

The fact that Metellus took his speechwriter Aelius Stilo with him strongly suggests that these letters were not intended as simple correspondence for private consumption. The rhetorical nature of the first fragment quoted above seems perfectly suited for public dissemination as a broadside against Metellus' political enemies. It is logical that such material written by the exile would be used in the campaign for his restoration. The published letters could function as a sort of "speech" by the banished man. In this way, although absent, Metellus would still have a voice in affairs at Rome. Gellius attributes each quotation to a letter written to the Domitii, but does not state if the fragments are from the same or separate documents. Whether all of these "public" letters were sent to the two brothers for circulation or if other men were also recipients is beyond recovery. It is also unknown if Metellus was the first exile to write letters for distribution as part of the campaign for restoration. He may have borrowed this practice from the previous generation of banished men aiming at recall, such as P. Popillius and L. Opimius. If he did not make this innovation, then it would seem that Metellus

⁴⁸ Gell. 17.2.7; 15.13.6. For a full discussion of the fragments, see R. Degli' Innocenti Pierini, "Orgoglio in Esule: Su Due Frammenti Di Un' Epistola Di Q. Caecilio Metello Numidico," *Maia*, 52 (2000), 249–256; P. Cugusi, *Studi sull' epistolografia latina. L'età preciceroniana* (Cagliari, 1970), 1.1.8. For Metellus' literary endeavors, see H. Bardon, *La littérature latine inconnue* (Paris, 1952), 1.100–101.

⁴⁹ Cn. and L. Domitius Ahenobarbus were also among those who took up arms against Saturninus in 100: Cic. *Rab. Perd.* 21.

improved upon this practice and eclipsed the efforts of his predecessors. The literary value of his epistles (perhaps thanks to the help of Stilo) assured that they were still read over two centuries later. Their quality probably also enhanced their impact and effectiveness on contemporary audiences.

The unusual circumstances of Metellus Numidicus' exile allowed him to select a distant (and pleasant) site for his place of exile without apparent hindrance to his chances of recall. With the tremendous support of the Metellan faction working on his behalf at Rome, it was not so vital for him to be as close to the capital as safely possible. There were plenty of family members with enough political stature to oversee and coordinate the plans for his recall. Despite his physical distance, the circulation of his memorable letters from exile provided him a degree of "presence" in the capital. His choice of Rhodes may have had a certain propaganda value as well. Such a far away location demonstrated that he personally was not overly eager for restoration. All the demonstrations on his behalf by his family and friends were "spontaneous." Indeed, a tradition developed about Metellus' banishment that stressed his equanimity while enduring his unjust exile. He quit the capital to avoid starting a civil war and returned from *exilium* only because the people recalled him by decree.

Metellus himself may have been the initial source for this depiction of his own circumstances. The fragment of his epistle preserved in Gellius 17.2.7 presents this image of Numidicus as a blameless exile whose dignity is undimmed by his situation. It is certainly likely that he chose this "spin" at the outset of his exile. Thus Rhodes perfectly suited his circumstances. It kept him well out of harm's way at a particularly violent time in Roman politics and also enhanced the appearance that he was bearing his exile with grace and dignity, unconcerned about recall. Had he chosen Dyrrachium or some other site close to Rome, he would have appeared to be actively seeking to reverse his banishment. His use of a place of exile as a political statement would find several imitators in subsequent years. Furthermore, Rhodes offered many cultural and intellectual diversions, of which Metellus availed himself during his stay.⁵⁰

In the final analysis, it was his powerful political connections in Rome that allowed him the luxury of going into exile so far away. Besides, although Rhodes was distant, it was not remote. While certainly not ideal for staying in close contact with Rome, Rhodes was a major maritime center. Although sea travel was

⁵⁰ Liv. *Per.* 69; V. Max. 4.1.13; Auct. *Vir. Ill.* 62.3; Plut. *Mar.* 29.

seasonal and always somewhat risky, the ability of finding transport for dispatching and receiving messengers would be somewhat easier than for comparably distant locations. Many influential Romans traveling in the East for commercial or state reasons would certainly pass through such an important port city. Since nearby Cilicia was established as a Roman province in 100, an increased number of Roman officials must have transited Rhodes at this time on their way to organizing this new region.⁵¹ Metellus would have had occasion to meet with these important men to gain valuable and detailed information about the situation at home. He also could have used his political skills and stature to “recruit” some of them to help in the efforts to secure his recall. Although Rhodes was far away from Rome, it provided Metellus with several avenues to keep in close contact with the capital.

The year after Metellus Numidicus’ restoration in 98, an exile emigrated to an area even farther removed from Rome than Rhodes or Smyrna.⁵² C. Appuleius Decianus was a tribune of the plebs in 98 and prosecutor of P. Furius, a tribune of the previous year who had obstructed the bill calling for Numidicus’ recall. During the course of his speech at the trial, Decianus made the politically dangerous move of expressing regret over the death of Saturninus.⁵³ Convicted in 97 on some charge in connection with this incident (probably *maiestas*), he took the usual step of departing into exile. He relocated to Asia and seems to have taken his son with him – a most unusual action.⁵⁴ Other family members may have accompanied him, although there is no evidence. The character of this son is attacked by Cicero in his defense speech for L. Valerius Flaccus in 60. The younger Decianus had been one of the joint-signers (*subscriptores*) of the accusation against Flaccus, a former

⁵¹ Cilicia’s establishment as a province is mentioned in the Cnidus Law, col. III, lines 34–37. For the text of this inscription, as well as a detailed commentary and bibliography, see M. H. Crawford, ed., *Roman Statues* (London, 1996), 1.231–270.

⁵² Note that Badian assigns M. Calidius’ bill that restored Metellus to the year 99: “Death of Saturninus,” 133–139. I have followed Broughton’s dating of Calidius’ tribunate to 98 (*MRR* 2.5–6).

⁵³ Given his *nomen*, Decianus may have been an adoptive kinsman of Saturninus, perhaps accounting for his die-hard support of the slain and dishonored tribune. The charge against Furius dealt with his role in Saturninus’ downfall, for which he was acquitted: Dio fr. 95; V. Max. 8.1. damn. 2; E. Badian, “P. Decius P. F. Subulo,” *JRS* 46 (1956), 95–96.

⁵⁴ Except for a scholiast (see note 55 below), no source directly states that Decianus went to Asia for his banishment. Cicero, however, mentions that the people of Apollonis (a city in Roman Asia) suffered the depredations of both Mithridates and the elder Decianus, implying that he took his exile somewhere in the region: *Flac.* 71. On the younger Decianus and his father, see Chapter 5.1, “Accompaniment into Exile.”

governor of Asia. Scholia on the *Pro Flacco* mention that the elder Decianus took his exile in the kingdom of Pontus and lived at the court of Mithridates.⁵⁵ The value of this evidence has been questioned by some scholars as mere speculation on the part of the scholiast.⁵⁶ The scholia should not be dismissed so quickly, however. While Decianus' relocation outside of the *imperium Romanum* is exceptional in our extant evidence, the trend among Roman exiles had been to relocate farther away from Rome. This was particularly true for those who did not desire to take steps to gain permission to return to their former home. Furthermore, a later Roman exile is attested as being received by Mithridates. Sometime before the Third Mithridatic War, Appian records that an unnamed banished senator came to Pontus and become a close friend of the king. Given the expansionist ambitions of Mithridates, perhaps he invited banished Roman senators to his court to serve as advisors for his dealings with Rome. Life as a counselor to a wealthy and powerful king might have been an attractive option for an upper-class Roman exile, particularly one with financial difficulties. The fact that Decianus took his son along – effectively removing the young man from any chance of a senatorial career – suggests that his situation was unusual in some fashion. Perhaps financial or political circumstances influenced him to leave the sphere of Roman influence and take refuge with a foreign king.

Roman Asia was the destination for one of the most renowned exiles of the Republican period: P. Rutilius Rufus. Although ancient sources are unanimous about his innocence, in 92 Rutilius was convicted of extortion for his actions as a *legatus* in Asia up to five years earlier.⁵⁷ Rutilius initially withdrew to Mytilene on the Aegean island of Lesbos, at a distance from Rome that seems to demonstrate his lack of interest in pursuing a recall. Indeed, sometime in the mid-80s he rejected Sulla's offer of restoration and remained in exile for the rest of his life.⁵⁸ It is unclear, however, if this rejection was due to his distaste for Sulla or his desire to stay in banishment. That Rutilius was accompanied into exile by the grammarian Aurelius Opilius suggests that he may have initially sought restoration from exile.⁵⁹ Opilius could have served as an advisor in a

⁵⁵ Schol. Bob. 95St.

⁵⁶ Badian, "Decius Subulo," 96; E. Klebs, *RE* II, s.v. "Appuleius (21)," col. 259–260.

⁵⁷ See *MRR* 2.9 n. 6 for sources. Note that R. Kallet-Marx, "The Trial of Rutilius Rufus," *Phoenix* 44 (1990), 122–139 argues for a slightly earlier date (ca. 94) for Rutilius' exile.

⁵⁸ Sen. *Ep.* 24.4; Quint. *Inst.* 11.1.13; cf. Sen. *Ben.* 6.37.2.

⁵⁹ Suet. *Gramm.* 6

campaign for recall, just as Aelius Stilo had possibly done for Metellus Numidicus. Rutilius' actions do not seem consistent with this suggestion, however. He never took any extraordinary measures to contest the charges that led to his exile and even spurned the use of traditional court theatrics in his own defense.⁶⁰ Furthermore, his choice of a distant domicile strongly suggests that he did not take an active interest in returning to Rome once exiled. Thus, his rejection of Sulla's offer is consistent with his overall behavior in regard to his own *exilium*. Aurelius Opilius' presence was likely due to reasons other than helping to reverse Rutilius' banishment.

It has been suggested that Opilius may have been a victim of the so-called expulsion of Latin rhetoricians from Rome by the censors in 92.⁶¹ There was no expulsion associated with this censorial edict, however. The document merely proclaimed the censors' displeasure at the activities of the rhetoricians.⁶² An erudite man, Aurelius had taught philosophy in addition to rhetoric and grammar. He continued these varied academic interests while he accompanied the exiled Rutilius and wrote several books on diverse topics.⁶³ Perhaps his scholarly expertise explains why he joined Rutilius, who also had the reputation of being a learned man and wrote extensively during his exile.⁶⁴ They had probably been well acquainted before the exile – Rutilius' sister had married into the Aurelii Cottae, and the grammarian was quite likely a freedman of that same *gens*, as his nomenclature suggests. Opilius may have gone with Rutilius Rufus as a companion and friend who shared similar interests and a long association.⁶⁵

Whether or not Rutilius contemplated recall, Mytilene would only be his home for a short time. He was living there at the outbreak of the First Mithridatic War in 88, but left the city soon thereafter and relocated to Smyrna, where he became

⁶⁰ Cic. *De Orat.* 1.227–230.

⁶¹ F. Münzer, *RE I* A.1, s.v. "Rutilius (34)," col. 1275; Grasmück, *Exilium*, 95, n. 213.

⁶² Suet. *Gramm.* 25; Gell. 15.11.2; E. Badian, "*Quaestiones Variae*," *Historia* 18 (1969), 489.

⁶³ Suet. *Ibid.*

⁶⁴ Cic. *N.D.* 3.80; *Brut.* 113; Oros. 5.17.12–13; Posidonius in Athen. 4.66, 168DE = FGGrH 2A.27, 233; cf. Peter, *HRF*, 120–124.

⁶⁵ Although the exiled Rutilius supposedly treated Opilius badly: Symmachus, *Epp.* 1.20.2. Cf. E. Rawson, *Intellectual Life in the Late Roman Republic* (Baltimore, 1985), 4 n. 6; 67. Rawson postulates that Opilius' prestige may have been declining at Rome, and he was in need of a new sponsor, perhaps after the death of his original patron. Thus the unfortunate grammarian may have had little choice but to accompany his new *patronus* Rutilius rather than face diminishing prospects for livelihood at Rome.

a citizen.⁶⁶ Smyrna was an interesting choice of domicile for Rutilius, since it was a major city of the very province he had supposedly victimized. Moving to this site had some advantages for him. His enthusiastic reception into Smyrna's citizen body served as a statement of his own innocence. Perhaps this was part of the appeal of this location for him. His alleged depredations against the Asian province were shown to be false in another way: the banished Rutilius was very popular in the region and received financial support from the inhabitants.⁶⁷ Like many ex-magistrates, Rutilius enjoyed the support of the *clientes* and connections he had made during his provincial service.

While Rutilius began his new life as an exile, long-standing tensions between Rome and her Italian allies broke out into the Social War. In late 91 or early 90, the *lex Varia* established a court to investigate accusations that prominent Romans had incited the Italians to rebel. Subsequently, several senators were convicted of this charge and sought exile. While the refuge of only one of the Varian exiles is recorded, presumably all these men followed the trend of the preceding years and left Italy. A certain Mummius Achaiacus went into banishment following his condemnation under the Varian law and lived the remainder of his life on the island of Delos.⁶⁸ There is some controversy among scholars whether this man really was a Mummius or actually a Memmius. Both families had a record of administrative posts in Greece, so either way it seems certain that the presence of *clientelae* drew the exile to the island.⁶⁹

The factors influencing the selection of a place of exile had changed much by the beginning of the first century. Before the period of political violence inaugurated by the murder of Ti. Gracchus in 133, Roman exiles needed only to be

⁶⁶ Mytilene: Cic. *Rab. Post.* 27; Dio 24, frag. 97.3–4. Smyrna: Cic. *Balb.* 28; Tac. *Ann.* 4.43; Suet. *Gramm.* 6; Oros. 5.17.12–13. Cf. T. F. Carney, "Was Rutilius' Exile Voluntary or Compulsory?" *Acta Juridica* (1958), 243–245, who mistakenly asserts that Cicero's report of two different locations for Rutilius' exile is an error. Carney's assumption that exile was a statutory penalty in the late second and early first century is also inaccurate.

⁶⁷ Dio 28, frag. 97.4

⁶⁸ App. *BC* 1.37. Whether the *lex Varia* was enacted before or after the outbreak of the Social War is controversial, and the ancient evidence is contradictory. Appian states that the law was passed before hostilities began and represents it as one of the causes of the war. Asconius, however, states that the war had already begun when Varius proposed the measure (22C). Badian is probably correct that hostilities predated the law: "Quaestiones Variae," 459–460.

⁶⁹ L. Mummius was the famed conqueror of Greece in 146 and had begun the organization of the region into a Roman province: For sources, see *MRR* 1.465–466 and 3.146. C. Memmius was a governor of Macedonia ca. 103; *MRR*, 1.564, 566 nos. 9 and 3.141.

concerned with finding a close and comfortable location in which to live out their lives. The turbulence of the late second century, however, induced many banished men to quit Italy altogether to seek safe refuges. This same increasingly partisan nature of Roman politics also made recall from exile possible, making sites with good communication routes to Rome desirable. By law, however, an exile was still unfettered in his choice of a new homeland, and traditional sites in Italy were still legitimate refuges. The Social War and its aftermath would change this situation, however.

4 EXILIUM FROM THE SOCIAL WAR TO THE DEATH OF JULIUS CAESAR

4.1 THE MASS RECALL OF EXILES IN THE 80s

Following the Social War, the Roman franchise was extended to include all Italy. Although no ancient source comments directly, it has been assumed that Romans could no longer legally seek exile in Italy due to this event.¹ Indeed, of the fifteen post-Social War exiles whose place of banishment is known, only two are mentioned as remaining in Italy. These two examples are exceptional and are discussed below.² Scattered comments from Cicero's speeches clearly indicate that by the late 60s, *exilium* excluded the refugee from Italian soil.³ This development makes perfect sense, as the enfranchisement of Italy would have placed all the previously independent states under the administrative control of Rome. All subsequent fugitives would have to seek new homes elsewhere. In this regard, the anti-Gracchan exiles of the previous generation were forerunners, as they pioneered the process of relocating outside Italy.

The prospect of recall was one of the major changes in the practice of Roman exile. Immediately after the Social War, the manner by which restoration from banishment was conducted would itself be radically transformed. In the cases of both P. Popillius and Metellus Numidicus, political and social instability was the impetus that enabled their return to Rome. With the increased partisan violence of the early first century, the possibility of recall from banishment became greater. Restoration ceased to be employed on an individual basis, and mass recalls of exiles were used to gain supporters in the political struggles of the times. The first attested large-scale recall of exiles was proposed in the tumultuous year of 88. As he explains the various pitfalls a good orator should avoid, the *auctor ad Herennium* preserves some details concerning this legislation:

item vitiosum est de nomine et vocabulo controversiam struere quam rem consuetudo optime potest iudicare; velut Sulpicius, qui intercesserat ne exules

¹ J. L. Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford, 1912), 2.27 and 37–38.

² The cases are those of Statius Albius Oppianicus in 74 and Q. Pompeius in 52.

³ Cic. *Mil.* 104; cf. *Sul.* 89; *Rab. Per.* 37; cf. Strachan-Davidson, *Problems*, 2.35.

quibus causam dicere non licuisset reducerentur, idem posterius, immutata voluntate, cum eandem legem ferret, aliam se ferre dicebat propter nominum commutationem; nam non exules, sed vi eiectos se reducere aiebat. proinde quasi id fuisset in controversia, quo illi nomine appellarentur, aut proinde quasi non omnes quibus aqua et igni interdictum est exules appellentur.⁴

Similarly, it is poor practice to construct an argument on the meaning of a name or term which accustomed usage is best able to determine. For instance, Sulpicius had vetoed a law to recall exiles who had not been given the opportunity to answer the charges against themselves. When this same man later changed his mind and proposed the same law, he said that he was proposing a different measure, because he had changed the terminology. For he said that he was not restoring “exiles,” but “men driven out by force,” as if the question depended upon what name to call these men, or as though all those who are interdicted from fire and water are not called exiles.

Two main questions emerge from this passage. First, one wonders why the tribune of plebs Sulpicius vetoed a proposed recall of exiles, but later himself sponsored legislation that was virtually identical. Sulpicius’ flip-flop on this issue is generally seen as a part of his abandonment of an *optimatus* approach to politics in favor of a *popularis* stance.⁵ The reasons for Sulpicius’ defection from the *boni* have been the source of great controversy and are beyond the scope of this study, but that he did change his colors is beyond dispute.⁶ Therefore, his veto of the original restoration proposal would seem to indicate that he was acting on behalf of the *optimates*, while his later resurrection of the bill shows his new position as a

⁴ *Rhet. Her.* 2.45, cf. *Liv. Per.* 127: *cum P. Sulpicius tribunus plebis auctore C. Mario perniciosas leges promulgasset, ut exules revocarentur . . .* (When the tribune of the plebs P. Sulpicius, at the instigation of Marius, had promulgated ruinous laws to recall exiles . . .).

⁵ As has been frequently repeated by scholars, we should avoid viewing the *populares* or *optimates* as anything like modern political parties, or even unified factions. For a recent discussion of this issue, see W. J. Tatum, *The Patrician Tribune* (Chapel Hill, 1999), 1–16.

⁶ For the sources concerning Sulpicius’ early political associations and his *volte face*, see A. H. J. Greenidge and A. M. Clay, *Sources for Roman History 133–70 BC*, rev. E. W. Gray (Oxford, 1960), 160–162. On the various theories for his political realignment, see R. Seager, “Sulla,” *CAH*², 9.165–169; E. S. Gruen, *Roman Politics and the Criminal Courts* (Cambridge, 1968), 225–228; E. Badian, “Quaestiones Variarum,” *Historia* 18 (1969), 481–487; A. W. Lintott, “The Tribunate of P. Sulpicius Rufus,” *CQ* 21 (1971), 450–451; T. N. Mitchell, “The *Volte-Face* of P. Sulpicius Rufus in 88 BC,” *CPh* 70 (1975), 197–204.

popularis. The return of the exiles must have been somehow favorable to Sulpicius' new allies, who now included C. Marius.

This leads to the second major problem posed by the *Ad Herennium* passage: who were the men that the proposals intended to restore? Unfortunately, the author of the treatise was concerned with rhetorical matters and does not provide much specific information about the exiles. The justification for the recall of these men provides a clue: the fugitives had not been allowed to plead their cases in court (*exules quibus causam dicere non licuisset*). The banished men in question are generally assumed to have been victims of the *lex Varia*.⁷ But, as both Gruen and Badian have pointed out, the men accused under this law appeared before a properly established court and thus they could not be characterized as having been denied trial.⁸ Furthermore, it is well attested that men accused under the Varian

⁷ H. Last, "The Enfranchisement of Italy," *CAH*, 9.202; Seager, "Sulla," 167; G. Bloch and J. Carcopino, *Histoire Romaine Vol. II: La République Romaine de 133 à 44 av. J.C.* (Paris, 1940), 2.404; H. Hill, *The Roman Middle Class in the Republican Period* (Oxford, 1952), 142; L. Pareti, *Storia di Roma e del mondo romano* (Turin, 1952), 3.556; H. Caplan, ed. and trans., *Ad Herennium* (Cambridge, MA, 1954), 140–141, note b; Greenidge and Clay, *Sources*, 162; H. H. Scullard, *From the Gracchi to Nero* (New York, 1963), 71; A. Keaveney, "Sulla, Sulpicius and Caesar Strabo," *Latomus* 38 (1979), 455–457; R. G. Lewis, "P. Sulpicius' Law to Recall Exiles, 88 BC," *CQ* 48 (1998), 195–199. This view offers another problem. If the exiles in question were those convicted under the *lex Varia*, Sulpicius' change of mind with regard to these men seems inconsistent with his political shift from conservative to *popularis*. Since the majority of the victims of the Varian law were Sulpicius' former optimate allies (including C. Cotta), his reversal on this issue would have contradicted his new political stance. Cf. E. S. Gruen, "The *Lex Varia*," *JRS* 55 (1965), 73; Badian, "Quaestiones Variae," 487–488. The sources cited above propose various theories to account for this discrepancy, but none of them are entirely convincing.

⁸ Gruen, "Lex Varia," 71–73; Badian, "Quaestiones Variae," 476–490. In his defense of the idea that the exiles in question were those of the *lex Varia*, Keaveney claims that Gruen and Badian have failed to properly understand the *ad Herennium* passage ("Sulpicius," 455–457). He states that the author of the treatise clearly indicates that phrases such as *quibus causam dicere non licuisset* and *vi eictos* are mere partisan slogans and unnecessary substitutions for the simpler and more accurate term *exules*. Thus we should not take *quibus causam dicere non licuisset* and *vi eictos* as factual statements, but as party propaganda designed to justify the recall proposal. Unfortunately, I believe that Keaveney himself has misinterpreted this passage. The *autor ad Herennium* cites Sulpicius' substitution of the accurate term *exules* with *vi eictos* as an example of faulty oratory, but there is no hint of criticism on the use of *quibus causam dicere non licuisset*. The Romans were reluctant to set aside legal judgments (for this, see T. Mommsen, *Römisches Strafrecht* [Leipzig, 1899], 478ff; A. H. J. Greenidge, *The Legal Procedure in Cicero's Time* [Oxford, 1901], 519–520), so there had to be a claim of some procedural defect to justify the restoration of exiles. The reason put forward in the bill – that the banished men had not been given a hearing – should not be dismissed as mere linguistic subterfuge. While it may have been only a pretext for recalling exiled political allies, the grounds for the restoration had to be plausible. The exiles in question must have been able to be reasonably depicted as having been denied trial, or else some other justification would have been used in

law made speeches before the court in their own defense.⁹ The recall measure, however, covered only those who had been denied their “day in court.” Therefore, the men convicted under the *lex Varia* do not seem to be the intended beneficiaries of Sulpicius’ law.

Badian’s suggestion that this recall of exiles focused on those affected by the *lex Licinia Mucia* is intriguing.¹⁰ This law was enacted in 95 to investigate foreigners illegally posing as Roman citizens and caused a great deal of discontent among the Italian allies. It is counted as one of the causes of the Social War. This law was not a mere expulsion act, however, as it defined a crime and established a court to try cases brought before it. Since many Italians fled Rome for fear of prosecution, the *lex Licinia Mucia* must have included a penalty beyond simple removal from the citizen rolls for the offender (which would not have been a punishment at all since those convicted were supposedly not citizens in the first place).¹¹ By 88, with the grant of Roman citizenship to the Italians in effect, a strong case could be made to enact an amnesty for those who had left Rome due to the *lex Licinia Mucia*. Thus Badian argues that this law was the likely source of the exiles that Sulpicius sought to recall and fits in with the tribune’s program of gaining the political support of the newly enfranchised Italians.¹²

Badian’s view, although well argued, shares the same problem as the theory that associates the exiles with the *lex Varia*: those accused under the Licinian-Mucian law were tried before a court.¹³ Again, the men affected by the *lex Licinia Mucia* do not fit the description given by the author of the *Ad Herennium* (*exules quibus causam dicere non licuisset*). Additionally, it seems difficult to characterize any Italians who fled Rome and returned to their proper *civitates* as exiles. For those who had been displaced by this measure, by 88 there would have been no impediment to

the legislation. Thus Gruen and Badian’s objection to the *lex Varia* as the source of these *exules* is valid. For other reasons commonly given to justify the return of exiles, see Cic. *Phil.* 2.56.

⁹ Cicero claims to have heard many of the defense speeches at trials of the Varian court, including Q. Pompeius and L. Memmius (*Brut.* 304). Other speeches are attested: for C. Cotta, see App. *BC* 1.37; Cic. *Brut.* 205, 207; *ORF*² 80.2 (note that Cicero states that Cotta’s oration was written by Aelius Stilo); for M. Antonius (whose speech Cicero also claims to have witnessed), see *Tusc.* 2.57.

¹⁰ Badian, “Quaestiones Variae,” 487–490.

¹¹ The *lex Licinia Mucia* and its effects: Diod. 37.13; Badian, “Quaestiones Variae,” 489. Gruen believes that the law only removed aliens posing as Romans from the citizen rolls with no further penalty (“The *Lex Varia*,” 73), a position effectively refuted by Badian (*Ibid.*).

¹² Sulpicius sponsored a plebiscite proposing that new citizens and freedmen should be distributed among all the tribes: Liv. *Per.* 127; App. *BC* 1.55; Plut. *Sul.* 8; cf. Badian, “Quaestiones Variae,” 486–487.

¹³ The trial of T. Matrinius of Spolegium is mentioned by Cicero. He also alludes to other cases under this law: *Balb.* 48.

gaining actual Roman citizenship through the Julian and Plautian-Papirian laws.¹⁴ The exile legislation of 88 would therefore not have been necessary to redress the victims of the *lex Licinia Mucia*.

As we have seen, it was common for defendants to leave Rome before their trial commenced, and such men were subsequently declared by official proclamation to have gone into exile. Since this was a Roman custom of long standing, it does not seem likely that a case could be made to consider such fugitives as having been deprived of their right to trial. Other extenuating circumstances, however, could make the claim plausible that men who abandoned their legal defense for exile had been denied due legal process. Sulpicius' emendation of the proposal to read *vi eiectos* (those driven out by force) suggests just such a condition. If it could be claimed that the exiles had been driven out of Rome by force before any trial was conducted, subsequent legal proceedings against them while they were absent could be depicted as illegal. Seen in this light, Lintott's tentative suggestion that supporters of Saturninus were the exiles in question thus becomes more attractive.¹⁵ Had some of Saturninus' associates escaped the violence of their leader's suppression in 100, their absence could have been construed as voluntary exile if they were later charged with any crimes for their earlier actions. The paucity of evidence does not allow any firm conclusions, however. There are many gaps in our knowledge of the events of the 90s, and it is certainly reasonable that the legislation of 88 was targeting banished men who are otherwise unrecorded in the extant sources.

Leaving aside the identity of the exiles, a few issues need to be considered concerning Sulpicius' proposed legislation. The law must have included some sort of mechanism to evaluate whether a particular banished man was qualified for restoration. Including the names of specific men to be recalled in the proposal would be one method, but Sulpicius' bill does not appear to have done this. The *auctor ad Herennium* criticized Sulpicius for later proposing the same law that he had previously vetoed and representing it as a different measure, when in reality he had made only a superficial change to the law. Had the names of specific exiles been a part of the legislation, it would have been totally implausible for Sulpicius to claim that his proposal – which only differed in his substitution of the term *exules* for *vi eiectos* – was new or different in any way. The tribune's explanation for his initial veto would only make sense if he could represent his subsequent motion as being substantively different in some manner, even if the

¹⁴ Lintott, "Sulpicius Rufus," 453; cf. Mitchell, "Volte-Face," 198 n. 2.

¹⁵ Lintott, "Sulpicius Rufus," 453.

wording was almost identical. This would be impossible if the same men were listed in both documents. The legislation, therefore, must have included some method to evaluate whether a particular exile met the criteria for restoration or not. An exile hopeful of recall could have been required to submit his claim to some magistrate – perhaps the *praetor urbanus* – for judgment.

Whomever Sulpicius' law was designed to benefit, it is the earliest example in our sources of a mass recall of exiles. All prior instances of reversal of banishment had been accomplished on an individual basis, and there are only two known cases.¹⁶ The political ramifications of a large-scale restoration of "select" aristocratic exiles could be significant. Returning exiles would be very grateful – and beholden – to the sponsors of their new lease on life as active Roman citizens. Sulpicius most assuredly was expecting the support of the *restituti* (restored exiles) in his upcoming political travails. Unfortunately for him, he would not reap any tangible benefits from his recall of exiles. The tribune was killed during Sulla's occupation of Rome in 88 and his legislation was annulled. Presumably his restoration law was revived under the aegis of the consul Cinna in 87 along with the rest of Sulpicius' measures.¹⁷ Although some of the banished men eligible to return to Rome under the law probably took advantage of the opportunity, there is no mention in the ancient sources that this occurred. This first attempt at a large-scale recall of exiles was not entirely successful, but the potential for political gain inherent in such measures was not lost on other ambitious men. The year after Sulpicius' demise, Cinna proposed the recall of Marius and his associates who had been driven out of Rome and declared public enemies by Sulla.¹⁸ The ensuing alliance between Cinna and the *Mariani* eventually proved decisive in the civil conflict of 87.

¹⁶ Those of P. Popillius Laenas in 120 and Metellus Numidicus in 98.

¹⁷ The annulment of Sulpicius' laws: Cic. *Phil.* 8.7; App. *BC* 1.59. Their reenactment under Cinna: Vell. 2.20.2.

¹⁸ Ancient accounts are divided on the circumstances of Cinna's measure. Some represent the proposal for the restoration of the *Mariani* as Cinna's first act of defiance against Sulla, for which he was driven out of Rome: Flor. 2.9.9; Auct. *Vir. Ill.* 69.2; cf. Dio frag. 31.102.8. Other sources depict Cinna's expulsion from Rome as due to his support of redistributing new Italian citizens to all tribes. Only then did he turn to Marius and his followers for help: Vell. 2.20; App. *BC* 1.64; Liv. *Per.* 79; Schol. Gronov. 286St. For a discussion of this issue, see C. M. Bulst, "Cinnanum Tempus," *Historia* 13 (1964), 308–309. Whenever it was initially proposed, the restoration was officially affected by a plebiscite after Marius and Cinna captured Rome: Vell. 2.21; App. *BC* 1.70; Dio, frag. 31.102.8. Contra Bulst, "Cinnanum Tempus," 309 and Keaveney, "Sulpicius," 457, this particular law covered only those who had fled Rome under Sulla's consulship and did not apply to exiles of the *lex Varia*: App. *BC* 1.64; cf. Flor. 2.9.9. While it is reasonable to assume that Cinna accepted the support of various exiles during the conflict and later saw to their restoration, this is pure speculation.

Sulla was not idle in this method of gaining support. While he was in the East concluding the war against Mithridates and preparing for his return to Italy, Sulla added many exiles to the ranks of his followers with offers of restoration. The ancient authorities mention that Sulla gained numerous banished aristocrats in this fashion, although only two individuals are specifically named. As discussed above, Rutilius Rufus declined Sulla's offer of recall, since he did not wish to owe his return from banishment to civil war. Rutilius' nephew Aurelius Cotta, however, was not as particular about the manner of his recall. In exile due to the *lex Varia*, Cotta joined Sulla's forces and was granted full restoration following the final defeat of the Marians in 82.¹⁹ No other individuals are known who returned from banishment in this way, but there is a hint about the source of some of Sulla's *restituti*. When Julius Caesar proposed restoring exiles during a later civil war in 49, a supporter of this measure claimed that Caesar's mass recall differed from the one conducted by Sulla, who had restored "the betrayers of the fatherland" (*patriae proditores*).²⁰ This description implies that exiles recalled by Sulla had committed some sort of treason against Rome. Those convicted by the *lex Varia* for inciting the Italian allies to rebellion – such as Cotta – certainly could be characterized as traitors, as could victims of Mamilian inquisition of 109, which investigated treasonous activities by senators in connection with the Numidian king Jugurtha.²¹ Surviving convicts from the earlier *quaestio* would have been in banishment for some 20 years before civil strife presented this opportunity to return home. Since the Mamilian law was largely aimed against optimate senators, Sulla may have been eager to seek out these long-suffering exiles who shared his general political views. Certainly those in exile for a wide variety of causes rallied around Sulla in hope of restoration. Perhaps only men of principle like Rutilius or those content with their lot as exiles were left out of this mass recall, since Sulla did not hesitate to receive former enemies, if they were useful to him.²²

The number of exiles who returned with Sulla was large, and the dictator made a great display of the *restituti*. At his triumph for the Mithridatic War,

¹⁹ Rutilius' scruples about restoration in civil war: Sen. *Ben.* 6.37.2. Cotta's recall: Cic. *Brut.* 311; Sen. *Hel.* 16.7.

²⁰ Cic. *Att.* 9.14.2. Cicero reports the statement of the tribune Curio who was defending Caesar's recall policy in 49.

²¹ D. R. Shackleton Bailey, *Epistulae Ad Atticum* (Cambridge, 1965), 4.388.

²² Sulla took in Cethegus even though he had been a bitter political enemy and had been declared a public enemy along with Marius: App. *BC* 1.80.

Sulla displayed not only the spoils of Asia, but also included the exiles who had returned with him in the procession. The sight of so many of Rome's leading citizens restored to their *patria*, wreathed with garlands and proclaiming Sulla as their savior, is said to have overshadowed the array of captured royal treasure.²³ The inclusion of the exiles in the triumph is significant. Clearly Sulla was depicting the restoration of these "unjustly" banished men as the fruit of his victory in the civil war, just as tangible and important as the booty taken from Pontus in his defeat of a foreign enemy. While many of the men in this parade were fugitives from the Marian and Cinnan *dominatio*, no doubt there were former exiles such as Aurelius Cotta present as well.²⁴

The official restoration of the exiles was most likely not accomplished by plebiscite, the method that had been used in previous cases of recall. Given his strong optimate stance and suppression of many tribunician powers, it is most improbable that Sulla would resort to legislation in the plebeian assembly to accomplish this act. After his election as dictator by the *comitia centuriata* following his victory over the Marians, Sulla had no need to rely on traditional avenues of lawmaking to pursue his designs. With the granted power to enact whatever measures he saw fit, Sulla could have proclaimed the exiles fully restored using his authority as dictator. Sulla's concern for propriety, however, makes it likely that he had a law passed in the centuriate assembly to effect the exiles' recall. Furthermore, it seems that the restored exiles were officially absolved of their prior convictions. Our one known case of a Sullan *restitutus* provides an example. C. Aurelius Cotta's resumption of his public career, culminating with his election as consul in 75, suggests that he had been exonerated of his former crimes and was free of any infamy. It is reasonable to assume that Cotta's recovery of his previous status was not unique but was shared by all the returned exiles.

4.2 EXULES IN ITALIA: THE CASES OF OPPIANICUS AND Q. POMPEIUS

As stated earlier, the enfranchisement of Italy made this area Roman territory and forbidden ground for exiles. Although no source specifically marks this

²³ Plut. *Sul.* 34.1.

²⁴ A significant number of senators had left Rome and joined up with Sulla's forces in the East: Plut. *Sul.* 22.1.

development, scholars have generally assumed that the incorporation of all Italy into the Roman state had this impact.²⁵ This assumption appears correct, since banished men thereafter avoided Italy and traveled outside the peninsula to find a place of refuge. Two cases are known that appear to violate this general rule, however, and their existence has been largely ignored. The cases of Statius Albius Oppianicus and Q. Pompeius merit close examination: many details can be reconstructed from their examples that significantly flesh out our understanding of post-Social War *exilium*.

All information concerning the first case comes from Cicero's *Pro Cluentio*, in which the orator defended his client from the charge of having murdered his stepfather Oppianicus. Although Cluentius' trial occurred in 66, the complex web of events leading up to his accusation began in 74, when the young man alleged that he himself had been the target of a murder plot. Cluentius successfully prosecuted two men for attempting to poison him, but maintained that his stepfather was at the center of the scheme. Oppianicus, an *equus Romanus* from Larinum, was brought to trial later that same year and convicted, although there were allegations that the verdict was reached with the help of bribery.²⁶ Facing a capital sentence, Oppianicus took the usual step of voluntary banishment to escape execution. Although he was in exile for about four years before his death, he never left Italy. Living with friends and relatives for brief periods, Oppianicus did not settle down in one location for very long. He even rented a house within the shadow of Rome's walls.²⁷ Despite this prolonged presence in Italy, there is no indication in Cicero's speech that Oppianicus' actions were illegal or in violation of the Roman practice of *exilium*. Had there been any impropriety in his residence, the orator certainly would have mentioned it. Since he was defending Cluentius on the charge that he had murdered Oppianicus, it was in Cicero's interest to depict the deceased as villainously as possible. Although he levels many accusation about the immoral and illegal conduct of Oppianicus, Cicero never makes any allegations about an improper exile. Furthermore, had the banished man been in territory forbidden to him, Cicero could have claimed that his death – even by

²⁵ Mommsen, *Strafrecht*, 969–972; Strachan-Davidson, *Problems*, 2.27; E. L. Grasmück, *Exilium: Untersuchungen zur Verbannung in der Antike* (Paderborn, 1978), 100–101.

²⁶ The convictions of Oppianicus' alleged accomplices: Cic. *Chu.* 20, 46–61, 105, 189; of Oppianicus himself: *Ibid.* 73–78.

²⁷ Oppianicus' movements as an exile: *Ibid.* 170 and 175.

murder – was immune to criminal charges and legal.²⁸ Indeed, the issue of whether the murder of an exile returning illegally to his former homeland was subject to punishment was fodder for rhetorical exercises over 150 years later and therefore represented a controversial issue.²⁹ Nowhere in the oration does Cicero make or even allude to such an argument. The evidence, although limited to one source, does not support the idea that Oppianicus' residence in Italy was contrary to the law.

An exile's unhindered presence in post-Social War Italy would seem to contradict the position that the enfranchisement of the peninsula forced Roman exiles to go abroad. However, there is direct evidence that exiles were forbidden to reside in Italy in the late Republic. A review of the evidence, paying close attention to the chronology, will help us to solve the problem of Oppianicus' banishment. In his speech in defense of Rabirius delivered in 63, Cicero mentions the consequences of a guilty verdict for his client. Should he be condemned, Cicero claims that Rabirius will not be able to be buried with his ancestors. The orator is alluding to the fact that if his client is convicted of the capital offense of treason, he will be forced to go into banishment to preserve his life. Cicero's words show that Rabirius' exile would exclude him from more than just the city of Rome. Since Romans did not lay the dead to rest within the *pomerium* (city limits), but buried them outside Rome, the implication is that Rabirius will be unable to re-enter Italy, even in death.³⁰ This point is made explicitly in a later speech. Cicero's revised version of his *Pro Milone*, written shortly after Milo's condemnation in 52, attempts to evoke sympathy for the defendant in a similar fashion as in the case of Rabirius. After recounting Milo's services to the state, the orator asks the jury if they can allow such a patriot to go into exile and have no tomb in Italy.³¹ While defending the exiled Q. Ligarius from further charges in 45, Cicero described the banished man's situation as *Italia prohibetur, exsulat* (he is exiled and forbidden from Italy).³²

²⁸ Strachan-Davidson, *Problems*, 2.34. Strachan-Davidson's final explanation for Oppianicus' untroubled residence in Italy does not take this point into account, however. He notes that public opinion held Oppianicus to have been an innocent man convicted by a bribed jury and thus believes that he could remain within sight of Rome in relative safety (2.35–36). Even if he was commonly believed to be innocent, however, his presence in Italy as a *condemnatus* would still be illegal.

²⁹ [Quint.] *Decl. Min.* 305 deals with this matter.

³⁰ Cic. *Rab. Per.* 37; cf. Strachan-Davidson, *Problems*, 2.35.

³¹ Cic. *Mil.* 104.

³² Cic. *Lig.* 11; cf. Suet. *Iul.* 74.5.

These speeches positively depict Italy as off-limits to Roman exiles. However, we need not rely on the evidence of Cicero alone, as there is epigraphic evidence corroborating his testimony. The *Lex Iulia municipalis* of 45 established the standards for municipal office holders. Among those ineligible to hold local magistracies, the law includes "he who has been or will have been condemned by a public court in Rome, on which account he is not permitted to be in Italy."³³ Looking at this body of evidence as a whole, we can say with some certainty that by the year 63, the law did not allow Roman exiles to remain in Italy.

The situation at the time of Oppianicus' conviction is still unclear, however. Once again, a Ciceronian oration provides us with another piece of the puzzle. In 72, Cicero petitioned the tribunician college to exempt Sthenius (a prominent Sicilian of Thermae) from its yearly edict banning those convicted of capital offenses from Rome.³⁴ Cicero convinced the tribunes that Sthenius had been illegally convicted in Sicily by the corrupt governor Verres, and they issued a decree stating that Sthenius was not subject to the earlier edict excluding him from Rome.³⁵ In his speech, Cicero appears to have closely reproduced the actual language of the proclamation, and he reports that only the city of Rome was off-limits to condemned criminals. This is in contrast to the sources cited above, which show that exiles were excluded from Italy. Since all of the evidence appears sound, there must have been some development between 74 and 63 that extended the territory forbidden to Roman exiles. There are two events in the year 70 that may account for this difference.

The consulship of Pompey and Crassus marked the first election of censors in fifteen years. Although the enfranchisement of the formerly independent Italian states was largely complete by 84, the new citizens had not been effectively counted and included in their tribes and centuries.³⁶ The censors of 86–85 had recorded only a moderate increase in the citizen body and clearly had not registered many of the recently enfranchised Italians. The census of 70–69 appears to have finally rectified this problem, as it nearly doubled the previous count of Roman citizens. The Italians were assimilated into the Roman state not as

³³ *Lex Iulia municipalis*, line 118 (C. G. Bruns, *Fontes Iuris Romani Antiqui* [Tübingen, 1909], 108): *queive iudicio publico Romae condemnatus est erit, quo circa eum in Italia esse non liceat*.

³⁴ See Chapter 2.3, "*Aquae et ignis interdictio*," for the nature of this edict.

³⁵ *Cic. Ver.* 2.100.

³⁶ A. N. Sherwin-White, *The Roman Citizenship*² (Oxford, 1973), 155; L. R. Taylor, *Voting Districts of the Roman Republic* (Rome, 1960), 118–120.

individuals, but as members of their former communities.³⁷ Thus it is possible that the territory forbidden to the banished was not officially extended outside the city of Rome until all the Italian states were fully registered and incorporated into the political fabric of the republic. If the census of 70–69 caused such a modification in the practice of *exilium*, perhaps this change was effected by a censorial edict.

Another event of the year 70 may have led to the expansion of “off-limits” territory. As we have seen, the *aquae et ignis interdictio* was the customary means of closing off any avenue for the return for exiles. In every recorded case, this measure was the result of tribunician legislation. As part of his reform of the Roman state in 81–80, the dictator Sulla severely curtailed the power of the tribunes to propose legislation before the *concilium plebis*. This *ius agendi cum plebe* was not fully restored until the consulship of Pompey and Crassus in 70.³⁸ The nature and effect of this restriction of the tribunate has been widely discussed by scholars, with no conclusive arguments.³⁹ While it is outside the scope of this work to tackle this controversial issue, a few inferences can be made.

It is almost assured that Sulla eliminated the tribunes’ ability to propose any revolutionary measures or reforms, as he had personally experienced the upheaval that an obstinate tribune of the plebs could cause through *rogationes*. Certainly his restructuring of the government removed the possibility of another Sulpicius Rufus. The judicial powers of the tribunate had also been a source of grief for the optimates in general and Sulla’s supporters in particular. Both C. Gracchus and Saturninus had each made use of their ability to invoke *iudicia populi* in their particular struggles against the conservative elements of the senate. And

³⁷ The census of 86–85 recorded 463,000 citizens, only a small increase over the last extant figures for a previous census, 394,336 for 115–114. In 70–69 some 910,000 citizens were registered. For sources, see Sherwin-White, *Citizenship*, 156 no. 2.

³⁸ See *MRR*, 2.75 for the sources of Sulla’s restriction of tribunician powers, and 2.126 for their restoration.

³⁹ Three main theories have emerged concerning the restriction of tribunician power. One maintains that the tribunes needed the approval of the senate before making any *rogationes* (T. Mommsen, *Römisches Staatsrecht* [Leipzig, 1887], 2.372; 3.158; J. Bleicken, *Das Volkstribunat der Klassischen Republik*, [1955], 12 n. 1; 14). The second view holds that the tribunes were altogether banned from proposing legislation (H. Last, *CAH*, 9.292–293 and 896). A third position is that the exact restrictions on the tribunate are irrelevant. The important point is their effect: the tribunate was rendered ineffective in the political struggles of the 70s: Bloch and Carcopino, *Histoire Romaine*, 2.464 n. 49; D. H. Kelly, “Evidence for Legislation by Tribunes 81–70 BC,” in B. F. Harris, ed., *Auckland Classical Essays* (Dunedin, 1970), 133.

they employed this power to good effect, since Popillius Laenas fled Gracchus' threatened prosecution in 122 and Metellus Numidicus left Rome in 100 on account of Saturninus' actions. In each case, the victorious tribunes proposed the interdiction of fire and water on their absent foes to make their exile official. These judicial powers of the tribunate saw more widespread use in the civil conflict of the 80s. Following the capture of Rome by Marius and Cinna, *iudicia populi* were employed against their enemies. These tribunician prosecutions claimed the lives of at least two distinguished senators and forced others to flee for their lives. Those who managed to escape from Rome, thus avoiding trial and inevitable conviction, had the *aquae et ignis interdictio* pronounced against them.⁴⁰ Clearly, this judicial authority was another weapon that ambitious tribunes could use to upset the smooth operation of Sulla's constitution. The establishment of a system of standing jury courts made the *iudicia populi* largely obsolete anyway, so it is reasonable to assume that this area of tribunician power was removed. Stripped by Sulla of their judicial authority, the tribunes had no ability to bring a proposal of *interdictio* – or any similar measure – into existence. Thus, the college of tribunes could only issue an edict warning *condemnati* away from the city of Rome – the traditional limits of their authority.⁴¹ Perhaps this explains Statius Albius Oppianicus' presence in Italy after his condemnation for poisoning in 74. With the tribunes able to ban exiles only from the city, Oppianicus was free to remain in Italy and even take up residence just outside the walls of Rome.⁴² Following the full restoration of their traditional powers in 70, the tribunes were able to frame their edict as a *rogatio* that, once passed by the *plebs*, would have the force of law and would be enforced by magistrates with *imperium* to include all Italy.

⁴⁰ L. Cornelius Merula and Q. Lutatus Catulus were prosecuted by tribunes, but chose suicide before condemnation: Cic. *Tusc.* 5.56; *N. D.* 3.80; Diod. 38.4; Plut. *Mar.* 44.5; App. *BC* 1.74; Florus, 2.9.16; August. *C.D.* 3.27; Schol. Bern on Lucan 2.173. Catulus reportedly was prevented from seeking exile and thus took his own life before the completion of his trial: Cic. *de Orat.* 3.9. Several senators fleeing the Cinnan *dominatio* were interdicted from fire and water: Vell. Pat. 2.24.2; Dio fr. 102.12; see also Gruen, *Criminal Courts*, 34–35 and Chapter 6, numbers 30–32.

⁴¹ For the limits of tribunician authority, see Liv. 3.20.8 and possibly also Dio 54.6.6, cited by B. Levick, "Poena Legis Maiestatis," *Historia* 28 (1979), 360 n. 12. To my knowledge, Levick is the only scholar to link the geographic limits mentioned in the Second Verrine with the boundaries of tribunician authority.

⁴² Cic. *Clu.* 175: *et huc ad urbem profectus esset – solebat enim extra portam aliquid habere conducti* (and he came up to the city, for he was accustomed to have a rented house outside the gate).

Either of the two explanations offered above could account for Oppianicus' presence in Italy. The case of Q. Pompeius Rufus, however, seems to contradict the premise that the year 70 finally closed off Italy to Roman exiles. Pompeius was convicted *de vi* in 51 for his role in the burning of the curia at the funeral of Clodius. No source explicitly mentions that he went into exile, but as the charges against him were capital, Pompeius must have sought *exilium* following his condemnation. Our knowledge of Pompeius' whereabouts and activities is due to an unusually sympathetic source: M. Caelius Rufus, who had successfully prosecuted him *de vi*. While Cicero was traveling to his proconsular province in mid-51, Caelius informed him of an unusual rumor that had swept through the forum. On 24 May, the "forum-gossips" (*subrostrani*) were abuzz with the "news" that Cicero had been murdered during his itinerary by Pompeius. Caelius recognized that this piece of gossip was false, since he knew that Pompeius was living a poor and wretched existence in Campanian Bauli. Indeed, Pompeius was in such a pathetic state that Caelius confessed that he felt sorry for his former judicial opponent.⁴³

Strachan-Davidson has tried to demonstrate that Pompeius' presence in Italy was illegal and that he was in hiding. He deduces that since the *subrostrani* thought Pompeius had killed Cicero – whose journey took him nowhere near Bauli – the exile's location was not generally known.⁴⁴ While his precise location may have not have been common knowledge, the forum gossips certainly knew that Pompeius was in Italy. Cicero did not depart the peninsula until about 5 June, so the rumor that Pompeius had murdered the orator in May would make little sense unless it was generally known that the "killer" lived in Italy.⁴⁵ Finally, since Caelius knew of his former opponent's domicile and communicated this to Cicero, there is no reason to suppose that the exile's location was secret. From this information, we must conclude that Pompeius openly resided at Bauli at the time that Caelius wrote to Cicero, and it does not appear that he was subject to any penalties for remaining in Italy (at least Caelius gives us no indications that Pompeius' stay in Bauli was prohibited).

Caelius' pity for the situation of his one-time *inimicus* took an interesting turn and suggests the circumstances for Pompeius' unusual residence in Italy. An anecdote in Valerius Maximus has the impoverished Pompeius seek the help

⁴³ Cael. *Fam.* 8.1.5.

⁴⁴ Strachan-Davidson, *Problems*, 2.35–37.

⁴⁵ D. R. Shackleton Bailey, *Epistulae Ad Familiares* (Cambridge, 1977), 1.382–384.

of his former prosecutor to claim property held in trust (*fidei commissa praedia*) that was owed to him by his mother Cornelia. Caelius agreed to help Pompeius and pleaded his absent client's case in court and received a positive verdict.⁴⁶ Pompeius' mother Cornelia was a daughter of the dictator Sulla and owned significant properties on the Bay of Naples, some of which she obtained during the proscriptions.⁴⁷ The estates mentioned by Valerius Maximus that Cornelia withheld from her son may have been near Bauli. Thus Pompeius might have been in that vicinity to persuade his mother to turn over the properties owed to him in accordance with the *fideicommissum*. Failing to gain them by persuasion, he may have remained in the area to gather evidence for his lawsuit. Both Caelius and Valerius Maximus note Pompeius' destitution, implying that he was getting no financial support from his estranged mother. As discussed in Chapter Two, the Romans customarily allowed those condemned by jury courts some time to make arrangements before going into exile. Pompeius' indigence and his impending lawsuit against his mother may be the cause of his extended stay in Italy. While he was still embroiled in the civil case against Cornelia, his presence in Italy may have been tolerated by the government. Perhaps he even received official permission to remain until his legal affairs were concluded. He was not allowed in Rome for the civil trial, however, as Valerius specifically notes that he was absent and that his testimony was in the form of a letter. Following his successful lawsuit, Pompeius probably sold his newly gained property to provide funds for his exile and settled somewhere outside Italy.

The cases of Oppianicus and Pompeius do not contradict the theory that the enfranchisement of the Italians following the Social War made all Italy forbidden territory for Roman exiles. Due to the political conditions of the 80s and 70s, an exile could still remain in Italy, although there were no longer any free states to receive them permanently. Someone like Oppianicus was apparently free to wander the peninsula if he wished, but no community could take him into their civic body. This practice probably changed in 70, or at any rate sometime before Cicero's delivery of the *Pro Rabirio* in 63. From then on, exiles had to leave Italy altogether. Q. Pompeius' stay at Bauli should not be viewed as an exception to this prohibition. Rather it is consonant with the Roman custom of allowing exiles time to prepare for their difficult journey into banishment.

⁴⁶ V. Max. 4.2.7. See Chapter 6, number 51 for a full discussion of this case.

⁴⁷ Plut. *Mar.* 34.2; J. H. D'Arms, *Romans on the Bay of Naples* (Cambridge, 1970), 27–28 and 194.

4.3 THE 60s AND THE EXILE “BOOM” IN WESTERN GREECE

Exiles of the late second century such as P. Popillius Laenas and L. Opimius demonstrated the advantages of choosing Western Greece as a new domicile. The trend that these men started came into full flower in the 60s and 50s, when this area became the most popular location for Roman exiles, almost to the exclusion of other regions. P. Autronius Paetus, for example, went into exile and resettled somewhere in Epirus following his conviction in 62 for his part in the conspiracy of Catiline. He did not go into exile alone: other former Catilinarians fleeing Roman justice relocated in the same area.⁴⁸ Their choice of Epirus has some interesting implications and suggests that these former revolutionaries were seeking restoration from exile. They may have been taking active steps to this end or perhaps were waiting for some civil discord to present a chance for their return. The violence of the 80s provided ample evidence of the opportunities that domestic strife provided for exiles. The hopes of the banished Catilinarians for restoration must have been buoyed in 58 when Cicero was persecuted by the radical plebeian tribune Clodius for his execution of their fellow conspirators back in 63.

The surviving Catilinarians do not appear to have individually selected Epirus as a site for exile, but made this decision as a group. In a letter to Atticus, Cicero's language strongly implies that many of these men lived together in a community.⁴⁹ They may have banded together in a kind of “exile colony” as an earlier generation of banished men had done in Nuceria. Unfortunately, we have no further information concerning the activities of Autronius and his associates. Their choice of a spot close to Italy suggests that they were interested in keeping close watch on political developments in Rome. Perhaps they even attempted to influence events in the capital through their supporters there. Their presence in

⁴⁸ Cic. *Att.* 3.7.1, 3.8.1; *Planc.* 98; cf. *Fam.* 14.3.4; *Q. Fr.* 1.3.4; *Planc.* 100. In *Planc.* 98, Cicero implies (perhaps with a bit of hyperbole) that these former conspirators were numerous in Epirus: *quo cum venissem, cognovi, id quod audieram, refertam esse Graeciam sceleratissimorum hominum ac nefariorum, quorum impium ferrum ignisque pestiferos meus ille consulatus e manibus extorserat* (When I had come there, that which I had previously heard, I found out – that Greece was full of the most criminal and wicked men, from whose hands I had torn away the accursed sword and baneful torches during my famous consulship).

⁴⁹ Cic. *Att.* 3.7.1. Cicero explains to Atticus why he will not divert his journey into exile in early 58 to stop at Atticus' villa in Epirus: *sed itineris causa ut deverterer, primum est devium, deinde ab Autronio et ceteris quadridui, deinde sine te* (However, that I lodge there on my journey, in the first place it is out of my way, and then it is just four days away from Autronius and the rest, and finally you will not be there). Elsewhere, Cicero implies that Autronius' companions in exile were other Catilinarians: *Planc.* 98.

Epirus did have one certain effect: it was a constant source of worry to Cicero during his own flight from Rome in 58.

Although Western Greece was popular with his henchmen, it is interesting to note that Catiline himself claimed to have considered Massilia as a new domicile. His professed intention to withdraw into exile to this city when his conspiracy was revealed by Cicero in 63 was certainly calculated to show that he was no threat to the Roman state. Since Massilia lacked reliable year-round communication routes to Rome, his designation of this city implied that he was removing himself from the political scene and was not contemplating an immediate return. Had he proclaimed Dyrrachium or some other nearby site as his destination, the implications would have been quite the opposite.⁵⁰

The defeated conspirators were not the only prominent men of the year 63 that would be forced into self-banishment. Both consuls of that year were also eventually obliged to seek exile. Following his tenure as governor of Macedonia, C. Antonius was prosecuted and convicted on an unspecified charge. He left Italy and settled on the island of Cephallenia off the coast of Acarnania. The motives for his choice of this location are unclear. It is possible that he had clients on the island from his governorship of Macedonia. Perhaps his elder brother M. Antonius Creticus established a family connection to this location during his extraordinary command (he was given *imperium infinitum*) against the Cretan pirates from 74 to 71. There is no direct evidence, however, to support either possibility.

If, like many other exiles of this period, Antonius chose to remain close to Italy to enhance his chances of recall, his efforts were ineffective. He would remain in exile almost fifteen years until his nephew M. Antony engineered his restoration shortly before 44. As we have seen, Roman exiles of the late second and early first centuries faced the choice of relocating to sites close to Italy but lacking cultural attractions or going to remote but more pleasant surroundings. Antonius, in opting for a nearby site, had a unique solution for the area's lack of sophistication: he developed and improved the existing real estate. Antonius founded his own city on the island of Cephallenia, a project that he promptly abandoned when recalled.⁵¹ Since he allegedly treated the entire island as if it were his own private estate, it

⁵⁰ Cic. *Cat.* 2.14–15; Sal. *Cat.* 34.2. Massilia was relatively close to Rome, but the reliability of communication routes between these two cities was seasonal. The coastal road to Massilia, the *Via Aurelia Scauri*, was difficult to travel in the winter and spring due to floods: Str. 5.187. Massilia could also be reached by ship, but sea travel was always unpredictable and vulnerable to the weather.

⁵¹ Str. 10.2.13.

is probable that he had clients on Cephallenia. If this is the case, he appears to have exploited his relationship with them when he settled on the island. Antonius may have had an additional motive in undertaking his building project. Since the Antonii traced their lineage back to Hercules, perhaps he was imitating one of the aspects of his divine forebearer, namely as a founder of cities.⁵²

4.4 THE EXILE OF M. TULLIUS CICERO

Repercussions from the execution of captured Catilinarian conspirators without trial during his consulship eventually forced Cicero to flee Rome and (temporarily) suffer exile just like many of Catiline's surviving associates. A precise detailing of the circumstances that led to this outcome is beyond the scope of this work.⁵³ The precipitating incident was a *rogatio* by Cicero's bitter political enemy, P. Clodius Pulcher. As a tribune of the plebs, Clodius proposed a law in February 58 against anyone who had ever put a Roman citizen to death without trial. This *lex de capite civis* seems to have served two purposes for the ambitious tribune. First, it represented a challenge to the use of the *senatus consultum ultimum* (ultimate decree of the senate) to execute citizens during times of civil unrest. This aspect fit perfectly with Clodius' *popularis* stance. The second benefit was that Clodius' proposal was a direct attack against Cicero, who had executed judicially uncondemned citizens in 63 utilizing the *SCU* as justification. This second aspect was clear to all concerned. The *equites* perceived the potential threat to Cicero, and many of them wore mourning attire to show their allegiance to him. The senate followed suit with a decree that urged its members to wear mourning garb to show their solidarity with the beleaguered Cicero. Additionally, many associations of publicans as well as Italian *municipia* passed decrees of support. The ability of these groups to thwart Clodius' plans was ineffective in the face of the tribune's armed gangs, the cooperation of the consuls, and the apparent tacit support of Caesar, Pompey, and Crassus. The consul Gabinius used his authority to prevent any demonstrations on Cicero's

⁵² Hercules as an ancestor of the Antonii: Plut. *Ant.* 36 and 60. Marc Antony actively cultivated the image as a descendant of Hercules in dress and demeanor: *Ibid.* 4. Perhaps this association was strong among the members of the *gens Antonia* in the mid-first century. I am indebted to Gary Farney for this suggestion.

⁵³ For the sources of the events leading up to Cicero's exile see Drumann, *Geschichte Roms*, 5,624–630; for a discussion, see M. Gelzer, *Cicero* (Wiesbaden, 1969), 135–139; T. N. Mitchell, *Cicero the Senior Statesman* (London, 1991), 98–138.

behalf from gaining momentum. At a public meeting (*contio*), he admonished the senate and equestrians for their use of mourning attire and later followed with a decree supported by his consular colleague, L. Piso, that directed the senate to wear normal clothing. Gabinius even used *relegatio* to expel one of Cicero's most ardent equestrian supporters from Rome and its environs.⁵⁴ Thus the customary tactics used by exiles and criminal defendants to cultivate public sympathy for themselves failed to aid Cicero in averting his impending troubles.

With the passage of Clodius' proposed law by the *concilium plebis* appearing certain, Cicero wavered on his next course of action. Although after he returned from banishment Cicero claimed that he had left Rome to prevent civil strife, Dio states that the orator had decided to let the issue be resolved by armed conflict with Clodius' adherents. He was dissuaded from this course of action only by Cato and Hortensius.⁵⁵ Whether he had contemplated violence or not, the advice of his friends and associates did help shape Cicero's subsequent actions. Most all his supporters recommended that he leave the city, and some voiced the hope that Cicero would be able to return in triumph within three days.⁵⁶ Uncertain and despondent about his lack of support from Pompey and the consul Piso (who was a relative), Cicero heeded this counsel. During his time in exile, he would grow resentful of those who gave him this advice, believing that they had done so out of envy.⁵⁷ The day the vote on Clodius' proposal was scheduled (sometime in late March), Cicero placed a statue of Minerva he had kept in his house in the temple of Jupiter Optimus Maximus on the Capitoline and dedicated it to the goddess as *custos urbis*. The orator then left the city that he believed he had saved during his consulship.⁵⁸

⁵⁴ See Chapter 6, number 39 for sources. Clodius seems to have secured the aid of the consuls Piso and Gabinius by a bill assigning them choice provinces to govern. This *rogatio* was promulgated simultaneously with the proposed *lex de capite civis*; see MRR 2.193.

⁵⁵ Dio 38.17.4.

⁵⁶ Cic. *Q. Fr.* 1.4.4; cf. *Att.* 1.7.2; Dio 38.17.4; Plut. *Cic.* 31.4; *Cat. Min.* 35.1.

⁵⁷ Cic. *Q. Fr.* 1.3.10; *Att.* 3.7.2; 3.9.2; 3.15.2; *Fam.* 1.9.13–14; *Red. Pop.* 13. For the view that Cicero was duped by his advisors during his struggles with Clodius, see W. J. Tatum, "Cicero's Opposition to the *Lex Clodia de Collegiis*," *CQ* 40 (1990), 192–194; cf. R. Seager, "Clodius, Pompeius, and the Exile of Cicero," *Latomus* 24 (1965), 519–531.

⁵⁸ Dedication of the statue of Athena: Cic. *Sest.* 49; *Vat.* 7; *Dom.* 76, 92, 99, 144; *Leg.* 2.42; Plut. *Cic.* 31.5; Dio 38.17.5; Quint. 11.1.24. In early 43, this statue was destroyed in a wind storm, which was seen as an omen of Cicero's death: Dio 45.17.3. His departure into exile: see M. Gelzer, *RE* VII A.1, s.v. "Tullius (29)," col. 917. Scholars disagree on the chronology of Clodius' laws and the flight of Cicero from Rome. For a discussion of this controversy, see P. Moreau, "La lex Clodia sur le bannissement du Ciceron," *Athenaeum* 65 (1987), 469–472.

The vote on the proposed *lex de capite civis* proceeded as anticipated and the measure became law. Cicero's precise itinerary during the first days of his journey is unclear, aside from the fact that he traveled in a southern direction.⁵⁹ He soon must have realized that any hope of a speedy and glorious return to Rome was illusory. His later letters from exile display regret that he did not remain in Rome and lobby against the passage of the law or even support it or just ignore it. The orator also claimed to have contemplated suicide.⁶⁰ Cicero would place the blame for his hasty departure on the advice he received from his friends. In his private correspondence he denounced Hortensius in particular, claiming that he had advised him to go into exile on account of jealousy. Even Atticus was censured by Cicero for not forcefully dissuading him from leaving Rome.⁶¹

Soon after his departure (Cicero claims it was the same day), his Palatine house was looted and burned by Clodius' gangs. His wife, Terentia, reportedly fled to the Temple of Vesta for safety during the arson. Cicero's estates at Tusculum and Formiae were also put to the torch.⁶² Clodius wasted no time in assuring that his adversary would not enjoy a quick return home, if indeed he ever saw his beloved Rome again. As soon as it was apparent that Cicero had gone into exile, the tribune proposed that the *aquae et ignis interdictio* be applied against the orator. The bill included the confiscation of Cicero's property, as well as a provision that his restoration could never be discussed in the senate or any other assembly. Clodius was also directed by the measure to dispose of the forfeited goods. He would later use this office to extend the Portico of Catulus on the Palatine onto the site of Cicero's house. He also had a shrine to *Libertas* constructed where Cicero's house had stood – implying that the exile had been a tyrant from whom the state was now liberated. To ensure that these two building projects could not later be removed, Clodius had them both consecrated.⁶³

⁵⁹ For detailed (but highly speculative) reconstructions of Cicero's itinerary during his first weeks in exile, see C. L. Smith, "Cicero's Journey into Exile," *HSCP* 7 (1896), 65–84; W. Sternkopf, "Ueber die 'Verbesserung' des Clodianischen Gesetzentwurfes de exilio Ciceronis," *Philologus* 59 (1900), 272–304. See Shackleton Bailey, *Ad Atticum*, 2.227–232, for a thorough review of these articles.

⁶⁰ Cic. *Fam.* 14.3.1; *Att.* 3.15.5. Thoughts of suicide: see Mitchell, *Cicero*, 138.

⁶¹ Cic. *Att.* 3.7.2; 8.4; 15.2 and 4; *Q. Fr.* 1.3.8.

⁶² Cic. *Sest.* 53–54; *Red. Sen.* 18; *Dom.* 59, 62; *Pis.* 26; *Att.* 4.2.5 and 7; *Fam.* 14.2.2; *Asc.* 10C; *Plut. Cic.* 31.5; *Dio* 38.17.6.

⁶³ Cic. *Dom.* 102–122; *Att.* 4.2.2–5; *Par. St.* 30; *Legg.* 2, 42; *Dio* 38.17.6; *Plut. Cic.* 33.1. For the political and symbolic importance of Cicero's property, see F. Millar, *The Crowd in Rome in the Late Republic* (Ann Arbor, 1998), 140–141; W. J. Tatum, *The Patrician Tribune: Publius Clodius Pulcher* (Chapel Hill, 1999), 159–162.

Soon after the bill for Cicero's interdiction was promulgated, an amendment was added that forbade the exile from being anywhere within four hundred miles of Rome. There does not appear to have ever been any formal accusation against Cicero for violation of the *lex Clodia de capite civis*, nor was any day ever designated for him to answer such a charge.⁶⁴ After a vote of the *concilium plebis*, Cicero's interdiction became law sometime in early April.

The exact chronology of Cicero's movements during his exile are difficult to determine. Once he received a copy of the *rogatio* concerning his interdiction, he seems to have decided to make for Brundisium and leave Italy. He exhorted Atticus to catch up with him on his journey, so he could have his friend's protection when he passed through Epirus.⁶⁵ At this point, Cicero perhaps intended to pass through Greece and seek refuge in Cyzicus, a city in Asia that he later considered for this purpose. His brother Quintus was completing his tenure as governor of Asia, so this area was certainly attractive as a sanctuary. If this was Cicero's plan, he would soon change it. Claiming that "many reasons" caused him to alter his itinerary, the fugitive made for Vibo in southwest Italy and begged Atticus to meet him there.⁶⁶ A subsequent letter gives only one reason for this change of itinerary: he did not feel safe to remain anywhere in Italy for an extended period of time other than at his friend Sicca's estate in Vibo. Sicca had been Cicero's *praefectus fabrum* during his consulship in 63.⁶⁷ This second letter is dated 27 March and was sent from Nares Lucanae. It contains another important piece of evidence: Clodius' bill had not yet been made law, nor had it been amended. Cicero was evidently waiting to see what the amendment might be before he made any

⁶⁴ For references and a full discussion of Cicero's interdiction, see Appendix I, "The *leges Clodiae* Concerning Cicero's Exile."

⁶⁵ Cic. *Att.* 3.1. Shackleton Bailey estimates that the letter was written around 22 March. Atticus had an estate in Epirus, an area that Cicero feared due to the presence of his political enemies.

⁶⁶ Cic. *Att.* 3.3.

⁶⁷ Cic. *Att.* 3.2. Plutarch mentions that in the town of Vibo, a Sicilian named "Vibius" declined to receive Cicero in his home, but instead allowed him to stay in his nearby country house (32.2). He cites this as one of few examples of bad treatment that Cicero suffered during his exile. Plutarch or his source probably mistakenly identified "Sicca of Vibo" as "Vibius." This alleged mistreatment was probably Plutarch's interpretation, as Cicero makes no mention of substandard treatment by Sicca. Cf. J. L. Moles, ed., *Plutarch: Cicero* (Warminster, 1988), 179; Shackleton Bailey, *Ad Atticum*, 140. On the contrary, he considered Sicca's estate as one of the few places he could feel safe (*Att.* 3.2). The fact that Sicca accompanied his friend to Brundisium after the law interdicting Cicero came into effect demonstrates his devotion (*Fam.* 14.4.6). Sicca would continue to be a trusted associate of Cicero long after the events of 58: *Fam.* 14.15; *Att.* 16.11.

further plans. Perhaps he still entertained hope that the measure would not be voted into law. While at Vibo, Cicero probably wrote to his friend C. Vergilius, who was then governor of Sicily. Cicero was contemplating entering Sicily, and Vibo in the “toe” of the Italian peninsula was a good spot for a quick journey to the island if the news from Rome was bad.

Sicily was an excellent location for Cicero to seek refuge. It was close to Italy and would provide relatively rapid correspondence with Rome. The orator also had many friends and clients in the province. He had served his quaestorship there in 75 and had later championed the Sicilian people with his prosecution of the corrupt governor C. Verres. Due to his many connections with Sicily, Cicero described the island as a sort of second home. Dio reports that Cicero hoped for a triumphant entry into the province, receiving honors from both the people and the governor Vergilius.⁶⁸ If this was his expectation, Cicero would be sorely disappointed by the events that followed.

By early April, Cicero had received an amended copy of Clodius’ legislation and discovered that he was not allowed to live anywhere within four hundred miles of Italy. At about the same time, a message from C. Vergilius arrived. Rather than a warm reception in his old province, Cicero was informed by its current governor that he was barred from entering the island altogether. Sicily was within the area interdicted by the amendment to Clodius’ bill, but it is unclear whether Vergilius had learned of this new territorial restriction before he rejected his former friend. By declaring Sicily off-limits, Vergilius was taking an active role against Cicero. No other Roman provincial magistrate would issue such a decree barring Cicero from his province. On the contrary, the exile would later even receive long-term shelter in the official residence of a Roman quaestor. Given Vergilius’ former good relations with the Tullii, his conduct seems particularly ungenerous. With his Sicilian plans ruined, Cicero seems to have entertained the idea of traveling to Malta for his exile. Even this plan was short lived, as Malta fell within the expanded area of interdicted territory according to the amended law. Cicero thus returned to his original strategy and made for Brundisium to travel further east.⁶⁹

⁶⁸ Cic. *Planc.* 95; Plut. *Cic.* 32.2; Dio 38.17.5.

⁶⁹ Sicily and Vergilius: Cic. *Planc.* 95–96; Plut. 32.2; Dio 38.17.7. Malta: Cic. *Att.* 3.4. The order of events is unclear, but Mitchell’s idea that Malta entered into Cicero’s plans only after he was rejected by Vergilius makes sense: *Cicero*, 140. Otherwise, it is difficult to account for Cicero’s sudden desire to travel to Malta. Note that Clodius had served in Sicily as a quaestor in 61 during Vergilius’ tenure as governor:

Cicero left the town of Vibo shortly before his interdiction from fire and water became law. He feared for Sicca's safety (as well as his own, of course) when the measure should come into effect, since it contained penalties for those who protected him. He was also afraid that this provision would dissuade anyone from giving him shelter as he traveled to leave Italy. Fortunately for Cicero, few seemed to heed the *lex Clodia* in this respect. In two letters written during his journey to Brundisium, Cicero still entreated Atticus to meet him on the road and escort him through Epirus. He also made clear his ultimate destination to his friend: "My planned route heads into Asia, to Cyzicus in particular." When Cicero arrived at Brundisium on 17 April, he received letters from Atticus inviting him to stay at his villa in Epirus. Cicero declined this invitation, since the estate was not on his intended route and Atticus was not there. Furthermore, Cicero pointed out that Atticus' property was only four days distant from the lair of some of his bitterest enemies. The presence of P. Autronius Paetus and other (unnamed) Catilinarians was a source of constant worry for Cicero. His fear of these men is one of the recurring themes of his *exilium*.⁷⁰

Upon reaching Brundisium, Cicero did not enter its walls, claiming (no doubt with a touch of melodrama) that he did not want any penalties inflicted on the city on his behalf. Instead he stayed at the nearby gardens of M. Laenius Flaccus and remained there for thirteen days. Both in a contemporary letter to Terentia and in a speech delivered four years later, Cicero praised Flaccus for his steadfast loyalty in aiding him despite the threatened penalties for doing so. On 29 April, Flaccus and his elderly father escorted Cicero on board a ship for Dyrrachium. According to Plutarch, Cicero's initial attempt to cross the Adriatic was frustrated by contrary winds. The following day he successfully crossed over to Dyrrachium. On his arrival there was an earthquake and tidal surge, which were seen as portents of change signifying that his exile would soon be reversed. There is no mention of this supernatural event in Cicero's correspondence, nor is there any hint of this omen in his *De divinatione*, in which he includes a dream prophesying his speedy return from banishment.⁷¹

MRR, 2.180; Tatum, *Patrician Tribune*, 89–90. Perhaps Vergilius' acquaintance with Clodius influenced his decision to keep Cicero out of Sicily.

⁷⁰ Fears for Sicca: Cic. *Att.* 3.4; letters *en route* to Brundisium: 3.5 and 6; fears concerning Autronius: 3.2; 3.7.1; cf. 3.1; *Planc.* 98 and 100.

⁷¹ Cic. *Fam.* 14.4.2; *Planc.* 97; Plut. *Cic.* 32.3–4. Cicero's dream concerning his restoration: Cic. *Div.* 1.59.

Once in Dyrrachium, Cicero apparently began his journey east across the province of Macedonia, intending to cross over into Asia. En route he was met by Cn. Plancius, a quaestor serving in Thessalonica. Plancius had received word that Cicero had arrived in Greece and hurried to offer his assistance. The quaestor's prior connection to Cicero is uncertain, but he rendered steadfast service to the banished orator. They arrived at Thessalonica on 23 May, and Cicero was lodged in Plancius' official residence. The praetorian governor of Macedonia, L. Appuleius Saturninus, did not actively aid Cicero while he was in exile, but he did not interfere with Plancius' efforts. His acquiescence to Cicero's presence in his province strongly contrasts with Vergilius' refusal. Initially Cicero sent letters to his brother Quintus, who was due to leave the province of Asia, and attempted to have him divert to Thessalonica on his journey home. By mid-June he had corresponded with his brother, but due to fears that Quintus might be prosecuted by political enemies for his provincial administration, Marcus advised him to hurry straight to Rome and not visit him. Cicero soon began once again to contemplate moving from Thessalonica to a new location.⁷²

Cicero constantly wavered about where he should go for his exile. His personal correspondence contains the most detailed evidence of the factors that an exile might weigh in his choice of a new domicile. If the news from home was optimistic, he considered returning to Epirus to be closer to Rome, despite the perceived danger from his enemies. But when he received bad tidings, he despaired of restoration and his thoughts turned toward relocating to Cyzicus in Roman Asia. The following selections from his letters to Atticus illustrate the importance of location to an exile's hope (or lack thereof) and plans for restoration.

(Thessalonica, 21 July 58): in Epirum ideo, ut scripseram, non veni quod subito mihi universi nuntii venerant et litterae qua re nihil esset necesse quam proxime Italiam esse (Therefore, I did not go to Epirus as I had written, since suddenly all news and letters I have received show that there is no need to be as close to Italy as possible).⁷³

(Thessalonica, 19 August 58) totum iter mihi incertum facit expectatio litterarum vestrarum Kal. Sext. datarum. nam si spes erit, Epirum, si minus,

⁷² Plancius and Thessalonica: Cic. *Planc.* 98–99; *Att.* 3.8.1; Appuleius: *Planc.* 19, 28, and 99; Schol. Bob. 153St; Quintus: *Att.* 3.9.1.

⁷³ Cic. *Att.* 3.14.2.

Cyzicum aut aliud quid sequemur (Waiting for your letters dated the Kalends of August makes all my travel plans uncertain. For if there is hope, I will go to Epirus, if not, to Cyzicus or some other site).⁷⁴

(Thessalonica, 5 August 58) nunc quoniam iam est Cyzicum nobis eundum, quo rarius ad me litterae perferentur, hoc velim diligentius omnia quae putaris me scire opus esse perscribas (Now since I ought to go to Cyzicus, where letters will come to me less frequently, I want you to write at length more carefully about everything you think I should know).⁷⁵

Once Cicero finally left Thessalonica and made for Dyrrachium in November 58, his letters stressed the advantages inherent in this location, namely nearness to Italy and the speed of correspondence with Rome.⁷⁶ Thus Cicero's letters are the clearest confirmation of the importance of proximity to Rome for the exile hopeful of eventual recall.

While Cicero languished in exile, his supporters in Rome were not idle. Unlike previous cases we have examined, there were not any large-scale public demonstrations on Cicero's behalf. His relatives and friends would not imitate the theatrics of the *Popilliani* or the Metellan faction. Perhaps the presence of Clodius' armed gangs discouraged such public gatherings. In his speeches *post reditum*, Cicero contrasts the restoration of these earlier exiles with his own. He notes that he did not have such a large (and politically powerful) extended family to stage demonstrations as did Popillius Laenas or Metellus Numidicus. Cicero had only his wife, Terentia, his infant son, and his brother Quintus. Despite his lack of a large and influential family, Cicero had the full support of the senate. As he was quick to point out, no previous exile could claim a *senatus consultum* calling for his restoration.⁷⁷ The

⁷⁴ *Ibid.* 3.16; cf. 3.15.6.

⁷⁵ *Ibid.* 3.13.2.

⁷⁶ Cic. *Fam.* 14.1.7: (Dyrrachium, 25 November 58) *Dyrrachium veni, quod et libera civitas est, et in me officiosa et proxima Italiae* (I have come to Dyrrachium, because it is an independent state, one both loyal to me and the nearest to Italy); *Ibid.* 14.3.4: (Dyrrachium, 29 November 58) *et ad fratrem misi, ut crebro tabellarios mitteret. nam ego eo nomine sum Dyrrachii hoc tempore, ut quam celerrime, quid agitur, audiam, et sum tuto; civitas enim haec semper a me defensa est* (And I wrote to my brother to send more frequent letters. For this reason I am at Dyrrachium at this time, so that I may hear as quickly as possible what is happening. Also, I am safe here, since I have always protected the interests of this city). It seems that Cicero had some personal ties to Dyrrachium, which recommended the site, although the exact nature of his connection there is unknown.

⁷⁷ Cic. *Red. Sen.* 37–38; *Red. Pop.* 6 and 10–11; *Dom.* 87.

struggle to reverse Cicero's banishment was largely conducted within the framework of the Roman government. Rather than using public demonstrations to sway the opinion of the *populus* as a whole, Cicero's supporters focused instead on an agenda aimed at the senate and magistrates. While attempts to gain support from state officials were certainly present in previous campaigns for restoration, such action was the primary focus of the efforts to recall Cicero.

The first positive development for Cicero did not even concern his case *per se*. Soon after Cicero left Rome, Clodius came into direct conflict with Pompey's interests. The ambitious tribune had secured the release of Tigranes of Armenia, whom Pompey was holding as a hostage as a part of the settlement of his Eastern campaign. The particulars of this affair are not important to the discussion of the present topic. Clodius' scheme did succeed in freeing Tigranes, but one of Pompey's clients was killed in a confrontation with the tribune's gangs. Following this incident, Pompey ceased his acquiescence to Clodius' activities, and he began to work behind the scenes to support an eventual recall for Cicero.⁷⁸

On 1 June 58, the first official action in pursuance of Cicero's recall took place. L. Ninnius Quadratus, a tribune of the plebs and ardent supporter of the exiled orator, proposed a motion in the senate calling for the restoration of the banished consular. Clodius was absent from the senate that day, and the measure was overwhelmingly approved. One of Clodius' adherents, the plebeian tribune Sex. Aelius Ligus, interposed his veto and halted the proceedings.⁷⁹ Clodius took steps to thwart any subsequent attempts in the senate: on several occasions he posted in the *curia* the clause in his law of interdiction against Cicero that forbade any official discussion of the exile's case.⁸⁰ The initiative had passed to the exile's supporters, however. Members of the senate still spoke out on behalf of Cicero whenever possible. The *equites*, a group with which Cicero had traditionally enjoyed

⁷⁸ See *MRR*, 2.194 and 195–196 for sources. Cf. Tatum, *Patrician Tribune*, 168–170; Mitchell, *Cicero*, 144–145. Atticus had a private discussion with Pompey in late May, on account of which he made an optimistic report to Cicero. The exile, however, did not share this view and thought the rift between Pompey and Clodius was minor: *Cic. Att.* 3.8.3.

⁷⁹ *Cic. Senst.* 68 (claiming the vote was unanimous, probably an exaggeration since Ligus likely voted against it before he interposed his veto); *Red. Sen.* 3; *Att.* 3.23.4; Dio 38.30.2–4. Dio states that Ninnius was acting as Pompey's agent in the efforts to recall Cicero.

⁸⁰ *Cic. Att.* 3.12.1; 3.15.6. The consuls of 58 often invoked this clause to prevent any further discussions: *Senst.* 69; *Pis.* 29. On the constitutional issues involved in the clause that forbade any discussion of Cicero's case, see P. Moreau, "Le rogatio des huit tribuns de 58 av J.-C. et la clause de *sanctio* réglementant l'abrogation des lois," *Athenaeum* 67 (1989), 151; Millar, *Crowd in Rome*, 146–147.

excellent relations, began to hold frequent meetings to help in the campaign for recall. Finally, the senate as a body refused to transact any business until the consuls should allow full discussion of Cicero's case.⁸¹

Despite his being one of leading literary lights in Roman history, there is no evidence that Cicero publicly contributed to these efforts through published letters or pamphlets as it seems Metellus Numidicus had done during his banishment. Of course, it is possible that the orator did compose such tracts and the surviving sources did not record this fact. Given the "behind the scenes" nature of the campaign to recall Cicero, it is probable that he did not write any such works for public consumption. He did correspond with both Pompey and Metellus Nepos (cos. 57) in attempts to encourage them to act on his behalf.⁸² Certainly he wrote to other key players in this political drama. Ironically, a document written by Cicero was circulated in 58, but it was used against him by his enemies. To embarrass the exile and detach some of his supporters, a speech that Cicero had written as a literary exercise was "leaked" and circulated. The oration *In Clodium et Curionem* (Against Clodius and Curio) had been written some three years earlier in the wake of the *Bona Dea* scandal. Although C. Scribonius Curio (cos. 76) had supported Clodius in this earlier affair, Cicero was now counting on his backing in the matter of his restoration. There is no hint of who may have brought this previously unpublished speech to light, but it remained extant into the late first century AD. Cicero asked Atticus to smooth over any ruffled feathers that the speech's publication may have caused. He even suggested that Atticus could pass it off as a forgery, since the style of the piece was not up to his normal high standards. Either Atticus' efforts succeeded or Curio took no offense – he was speaking on behalf of Cicero in the senate by late July.⁸³

The elections for 57 were of crucial importance for the campaign to restore Cicero. It was unlikely that any substantive legislation could be passed while Clodius was still in office, so all hope of recall rested with the following year's magistrates. Pompey advised that further efforts in the senate should wait until

⁸¹ Cic. *Sest.* 68.

⁸² Cicero mentions his letters to Pompey: *Att.* 3.8.4; 3.9.3. An epistle to Metellus Nepos in January 57: *Fam.* 5.4.

⁸³ Cic. *Att.* 3.12.2 (dated 17 July 58); 3.15.3 (dated 17 August 58); Quint. *Inst.* 3.7.2; cf. Shackleton Bailey, *Ad Atticum*, 2.148. Although Cicero initially denigrated his artistry in the speech, later he was surprised that Curio had read it and was not moved to indignation!

after the elections, which were held in late July. The results of the elections were largely favorable to the exile's cause: P. Lentulus Spinther was one of the consuls-designate, and most of the new college of tribunes seemed well disposed to the orator. Lentulus' election was especially encouraging – he had been an aedile during Cicero's consulship in 63 and had aided him in crushing Catiline's conspiracy. The other consul-designate, Q. Caecilius Metellus Nepos, had been an *inimicus* of Cicero, but was not implacable in his hatred of his old foe.⁸⁴

Despite the favorable outcome of the elections, the remainder of 58 was disappointing for Cicero's backers. Clodius forestalled any effective action by unleashing his armed partisans. Pompey was constantly harassed, and when the consul Gabinius attempted to aid him, his *fascēs* were smashed and he was wounded. In an attempt to frighten Pompey, Clodius had a slave drop a dagger in the Temple of Castor during a meeting of the senate. Fearful of assassination, Pompey withdrew to his private house for the rest of the year. The campaign for Cicero subsequently lost its momentum until the new magistrates took office.⁸⁵

Even without much official action to effect a recall, Cicero's friends were active behind the scenes in shoring up support and planning for the upcoming year. Caesar was courted to gain his backing. P. Sestius, a tribune elect and staunch partisan for Cicero, even traveled to Gaul and met with Caesar while he was on campaign. Atticus softened Metellus Nepos' attitude toward Cicero and even received assurances from the consul-elect that he would not oppose the orator's recall. Strategies were also discussed for attacking the validity of Cicero's interdiction. Atticus reported to Cicero the suggestion of Q. Terentius Culleo, a *tribunus plebis* for 58. Culleo believed that Clodius' law interdicting Cicero could be successfully attacked as a *privilegium* (a bill or law directed against an individual). Presumably this was possible since Cicero had not been formally accused of any crime before he was interdicted. Thus the *lex Clodia* concerning his outlawry could be represented as a law *ad hominem*, a practice forbidden by the Twelve Tables. In Culleo's view, only a decree of the senate would be necessary to invalidate Cicero's banishment as a *privilegium* and ensure his return. In commenting on this stratagem,

⁸⁴ Elections: Cic. *Att.* 3.14.1; 3.13.1; *Q. Fr.* 1.4.3; *Sest.* 70. Lentulus: *Red. Pop.* 15; *Sal. Cat.* 47.3; cf. Mitchell, *Cicero*, 146. Metellus Nepos: see *MRR*, 2.200 for sources. Metellus appears to have been related to Clodius, perhaps as a cousin or half-brother: see Tatum, *Patrician Tribune*, 34–36.

⁸⁵ Cic. *Sest.* 69; *Dom.* 67 and 124; *Har. Resp.* 49; *Mil.* 18 and 37; *Pis.* 16 and 27–28; *Asc.* 46C; *Dio* 38.30.4; *Plut. Pomp.* 49.2. On Gabinius' rupture with Clodius, see Tatum, *Patrician Tribune*, 170–171.

Cicero stressed that no action should be undertaken against Clodius' first law, the *lex de capite civis*. These two points, the representation of the interdiction from fire and water as a *privilegium* and avoidance of any discussion of the first law, became the major focus of the efforts to reverse Cicero's banishment the following year.⁸⁶

In mid-November, Cicero left Thessalonica and journeyed to Dyrrachium. There were several reasons for his departure. His benefactor for the past six months, the quaestor Cn. Plancius, was about to return to Rome owing to the arrival of a new governor. This new commander, L. Calpurnius Piso, had played a major role in Cicero's banishment as consul in 58 and would not be well disposed to the exile's presence in the quaestor's official residence. Although his letters demonstrate his gloomy mood, Cicero must have felt some hope for action under the magistrates of 57. Thus he needed to be as close to Italy as possible. He did contemplate going to Atticus' villa in Epirus, but finally settled in Dyrrachium. Soon after he arrived in late November, Cicero learned of a tribunician bill for his recall that had been promulgated on 29 October. Sponsored by eight plebeian tribunes (Clodius and Aelius Ligus certainly were the missing two), it is unclear if this measure was ever discussed at a *contio*. The proposal was perhaps vetoed by the two hostile tribunes, although the consul-elect Lentulus publicly voiced his support, and Pompey reportedly backed the measure. Despite its failure, this bill of the eight tribunes did demonstrate that Cicero's supporters were still active and set the stage for further measures on the exile's behalf.⁸⁷

Despite this show of support, Cicero was displeased by what he felt was the careless drafting of this initiative. The *rogatio* consisted of three clauses, portions of which are preserved in Cicero's correspondence to Atticus. The first clause called for the restoration of Cicero's citizenship and his membership in the senate at his previous rank (*civitatem et ordinem*).⁸⁸ While Cicero criticized the first clause since it did not restore his property (the return of his house was especially important

⁸⁶ Caesar: Cic. *Att.* 3.15.3; 3.18.2; *Sest.* 71; Metellus Nepos: *Att.* 3.22.2–3; 3.24.2; Culleo's suggestion: *Att.* 3.15.5. See Appendix I, "The *leges Clodiae* Concerning Cicero's Exile," below for the *lex Clodia* as a *privilegium*.

⁸⁷ *Rogatio* of the eight tribunes: Cic. *Att.* 3.15.5, 3.19.1, 3.20.3, 3.23.1; *Red. Sen.* 4, 29; *Sest.* 69–70; cf. Tatum, *Patrician Tribune*, 174–175; Mitchell, *Cicero*, 150–151.

⁸⁸ Cic. *Att.* 3.23.2. We should not assume from this passage that the *interdictus* lost his citizenship (contra Shackleton Bailey, *Ad Atticum*, 2.160). A bill of restoration likely mentioned the return of citizenship *pro forma* to counter the assumption that the exile had taken up a new citizenship during his absence.

to him), he reserved his most stinging condemnation for the final provision in the bill. This third clause stated any measure included in the proposal that was forbidden by previous legislation would be void.⁸⁹

Since Clodius' law interdicting Cicero had contained sanctions against any official discussion of the exile's case, the third clause effectively invalidated the entire bill of the eight tribunes. Cicero hoped that the new college of tribunes would be bolder and not include such a clause in any legislation they drafted on his behalf. The exile desired only that the incoming tribunes take some action – he even stated he would be grateful for a single clause proclaiming his restoration, so long as it was done. Several draft measures for recall had been written by the new tribunes in anticipation of their inauguration, and Cicero had seen at least two of them. On unspecified grounds, he disapproved of P. Sestius' proposal (which Atticus apparently liked), but recommended the one C. Visellius Varro had drawn up for the tribune-elect T. Fadius to examine.⁹⁰

Although the prospects for Cicero were still uncertain as the next year began, the new magistrates reinvigorated the efforts for recall. The consul Lentulus opened debate in the senate on the first of January on the question of Cicero's restoration. His colleague Metellus Nepos spoke in favor of the orator's return and proclaimed that he was setting aside his old rivalry with Cicero. As a senior consular, L. Aurelius Cotta (cos. 65) was first asked for his *sententia*. He maintained that the law interdicting Cicero from fire and water was illegal on several grounds, especially that Cicero had been ejected from the state without a trial. Since the orator had been forced into exile by no valid law, only a *senatus consultum* was necessary to recall him. In delivering his opinion, Pompey expressed agreement with Cotta, but felt that a vote of the Roman people should accompany the decree of the senate. The majority of the senate concurred, but the tribune Sex. Atilius Gavianus prevented any further action by declaring he would take a day to consider the matter. A subtle form of veto, Gavianus persisted in his obstruction well beyond one day. Although Clodius no longer was tribune, he had found an ally in the new college to continue to hinder effective legislative action.⁹¹

⁸⁹ Cic. *Att.* 3.23.3; cf. Shackleton Bailey, *Ad Atticum*, 2.160; E. Badian, "E.H.L.N.R.," *MH* 45 (1988), 203–218. Cicero's concern about the restoration of his Palatine house: *Att.* 3.20.2; *Fam.* 14.2.3.

⁹⁰ Cic. *Att.* 3.23.4; cf. R. Y. Tyrrell and L. C. Purser, eds, *The Correspondence of M. Tullius Cicero*² (Dublin, 1915), 1.410. Visellius Varro was a noted legal expert and also was a cousin of Cicero: H. Gundel, *RE* IX A.1, s.v. "Visellius (3)," col. 355–358.

⁹¹ Cic. *Sest.* 72–77; *Red. Pop.* 11–12; *Dom.* 68–69; *Pis.* 34.

Action on Cicero's behalf was not confined to the senate. A tribune of the plebs, Q. Fabricius, sponsored a bill to restore Cicero which was due for a vote before the *concilium plebis* on 23 January. Voting on the measure never had a chance to get underway, as Clodius used gladiators to force Fabricius and his associates from the assembly. The violence of that day claimed several victims – Quintus Cicero was seriously wounded but escaped with his life.⁹² Clodius' resort to open violence instead of tribunician obstruction (through Gavianus and another friendly tribune, Q. Numerius Rufus) was no doubt intended to deter any further tribunician bills concerning Cicero. In this he succeeded – efforts to recall Cicero through the tribunate were abandoned.

Cicero's most determined supporter among the college of tribunes began to attack Clodius in an effort to neutralize his political power. T. Annius Milo had some of the gladiators involved in the attack on Fabricius arrested and brought before the senate, but Gavianus interceded and had them released. When Clodius' gangs attacked Milo, the tribune responded by charging Clodius with the illegal use of force (*de vi*). After the courts were suspended by Clodius' adherents to prevent the prosecution, Milo began to rely on street gangs to directly counter his rival. Another pro-Cicero tribune, P. Sestius, fielded his own bands of thugs. Faced with this opposition, Clodius' ability to disrupt proceedings favorable to Cicero was greatly diminished.⁹³

To offset Clodius' mastery of the urban plebs, Pompey looked to the support of Italian *municipia*. As *duovir* of Capua, Pompey sponsored a motion by the city council calling for Cicero's recall. Other Italian communities followed suit, and several such local decrees were passed. The consul Lentulus also mobilized Italian support by initiating a *senatus consultum* entreating all citizens throughout Italy to come to Rome and support efforts for Cicero's recall. A further SC formally gave thanks to everyone who had aided Cicero in his exile. *Publicani* and various guilds began to agitate in favor of Cicero. By early July, Cicero's backers were confident enough to once again attempt legislative action.⁹⁴

In a meeting of the senate called by the consul Lentulus, Pompey delivered a speech calling for a motion to be put before the *comitia centuriata* for Cicero's

⁹² Cic. *Sest.* 75, 78; *Red. Sen.* 22; *Mil.* 38; Dio 39.7.

⁹³ See *MRR* 2.201–202 for sources.

⁹⁴ Cic. *Dom.* 30, 74–75, 85; *Sest.* 116, 128; *Pis.* 25, 34, 41, 80; *Red. Sen.* 24, 25–26, 29; *Red. Pop.* 10; *Planc.* 78; *Mil.* 39. For the mobilization of large numbers of citizens from Italy on Cicero's behalf, see Millar, *Crowd in Rome*, 150–151.

restoration. Of the senators present, only Clodius voted against the measure. Subsequently, the senate decreed that anyone who obstructed the bill to recall Cicero would be considered a public enemy. In addition, if the legislative process was delayed more than five days, Cicero would automatically be considered restored. On 4 August the measure was put before the *comitia centuriata* and passed unanimously. Cicero was thus officially recalled, with all his civic rights, status, and property restored.⁹⁵ From his vantage point in Dyrrachium, Cicero was kept well informed of the upcoming vote in the assembly. He began his return to Italy the day the question of his recall was put before the *comitia centuriata*, obviously made confident of a positive outcome by his informants. He had already apprised his family of his plans, as he was greeted by his daughter Tullia upon his arrival in Brundisium.⁹⁶

Eighteen months earlier, Cicero had slipped quietly away into exile, no doubt to avoid the embarrassment of turning his ignominious retreat into a public spectacle. His return, however, was a different matter: the orator followed the example of earlier exiles and turned it into a civic event. We have seen how Sulla made the restoration of exiles into a triumphant parade into Rome. Cicero improved upon this display: his procession began in Brundisium and continued all the way to the capital. The restored consular was greeted by deputations and crowds from all the towns along his route. The spectacle culminated with his entry in Rome on 4 September, the start of the *Ludi Romani*.⁹⁷ The next day he delivered his speeches *Post reditum in senatu* and *Ad Quirites*, putting a positive “spin” on his eighteen-month absence from the city, which he never referred to as *exilium*.⁹⁸ He would adopt the same stance that Metellus Numidicus had taken some forty years earlier, that he left Rome to avoid civil conflict. Despite his dramatic return to Rome, Cicero never regained the confidence necessary to restore his full political authority. As

⁹⁵ See *MRR*, 2.200 for sources. The college of *pontifices* decided on 29 September that the consecration of Cicero's Palatine house was invalid. The property was thus returned to him. The senate later compensated Cicero for the damages to his various holdings. He was awarded two million sesterces for the Palatine house, five hundred thousand for his Tusculan estate, and two hundred and fifty thousand for the Formian villa. Cicero considered these sums inadequate and attributed the low payments to the work of his political enemies (*Att.* 4.2.5). See Mitchell, *Cicero*, 160 and Tatum, *Patrician Tribune*, 187–193 for further sources and discussion.

⁹⁶ *Cic. Att.* 4.1.4–5.

⁹⁷ *Cic. Att.* 4.1.4–5; *Sest.* 131; *Pls.* 51–52; *Plut. Cic.* 33.5.

⁹⁸ Cf. A. Robinson, “Cicero's References to His Banishment,” *CW* 87 (1994), 475–480; Grasmück, *Exilium*, 117. Cicero often called his exile “a departure” (*discessus*).

R. G. M. Nisbet succinctly put it, "his exile was a disaster from which he never recovered, politically or psychologically."⁹⁹

It is instructive to compare Cicero's restoration with those of previous exiles. So far as we can tell, the use of the *comitia centuriata* to effect recall was an innovation. Clodius' tactics made the traditional use of the *concilium plebis* in this regard untenable. Perhaps the most striking difference is one that Cicero himself pointed out – his own recall was not enabled by the massacre of his political opponents.¹⁰⁰ Indeed, both Popillius Laenas and Metellus Numidicus were restored following the violent demise of their enemies. While violence was employed by Cicero's supporters, it did not result in the downfall and killing of the faction that caused his exile. Nor did Cicero have to take advantage of a large-scale civil conflict to be restored, as did the Sullan *restituti*. This relative lack of unrestrained violence and internal conflict seems to have been unique to the orator's restoration. Subsequent exiles would owe their restoration to yet another round of civil war and large-scale recalls.

4.5 MILO AND THE MULLETS OF MASSILIA: *EXILIUM* IN THE 50s

The decade before the outbreak of the civil war between the Caesarians and Pompeians in 49 was remarkable for the increase in prosecution for political offenses. So far as we can tell from our extant sources, the number of Roman senators in exile rose proportionally. Unfortunately, there is little information concerning where most of these men went into exile. Athens was the destination of at least two exiles of this period. L. Caninius Gallus, one of the prosecutors who had forced C. Antonius (cos. 63) into banishment, found himself an exile in 55. Accused of an unrecorded charge, Caninius was defended by Cicero. Despite the orator's best efforts, his client was nonetheless convicted and resettled in Athens.¹⁰¹ The large number of convictions under Pompey's reconstituted court system in 52 included C. Memmius, the literary patron of Lucretius. As befitted such a cultured man, Memmius followed in the footsteps of T. Albucius and L. Caninius and chose Athens as his new home. The Athenians seem to have held Memmius in high

⁹⁹ R. G. M. Nisbet, ed., *M. Tulli Ciceronis In L. Calpurnium Pisonem Oratio* (Oxford, 1961), xvi. Cf. T. N. Mitchell, "Cicero before Luca," *TAPA* 100 (1969), 311–320.

¹⁰⁰ Cic. *Red. Sen.* 38.

¹⁰¹ Cic. *Fam.* 7.1.4, 2.8.3; V. Max. 4.2.6.

regard, as the Areopagus granted him permission to tear down the historic house of Epicurus to accommodate the exile's planned construction project.¹⁰² Another Roman exile of this era similarly enjoyed a high status in his adopted community. C. Maenius Gemellus settled in Patrae in the northwestern Peloponnesus, where he assumed the local citizenship. Maenius adopted the son of Lyso, a prominent man in this region of Greece. Lyso was acquainted with some of the leading men in Roman politics, including Cicero, Caesar, and Sulpicius Rufus (cos. 51).¹⁰³ The fact that such an influential foreigner would allow his son to be adopted by a relatively obscure exiled Roman senator is significant. Banished Roman elites, despite their unfortunate circumstances, were still high-status individuals and were well received by the provincial aristocracy.

The most famous exile of the 50s was certainly T. Annius Milo, Cicero's ardent supporter during his exile and implacable foe of P. Clodius. His ongoing feud with Clodius would prove to be his undoing. After a brawl between their entourages on the Appian Way left Clodius dead, Milo was accused of murder and defended by Cicero. The orator's performance in defense of his ally was below his usual standard (he was alarmed by troops that Pompey had stationed about the court to prevent violence), and Milo was convicted. Milo relocated to Massilia, a somewhat unusual move since he appears to have desired restoration. As we have seen, Western Greece had become the usual domicile for such men. Perhaps Milo had personal connections in Massilia, or he may have feared violence from his political enemies had he settled in an area such as Epirus, which was home to so many other exiles. Whatever his reasons for choosing Massilia, Milo evidently relieved his distress at being an exile by enjoying the culinary delights that the city offered. When Cicero sent Milo the improved, published version of the inadequate defense speech he had delivered on his behalf, Milo made a cutting reply to his friend. He feigned happiness that Cicero had not delivered the new and improved oration in court, or he would not currently be enjoying the famed mullets of Massilia.¹⁰⁴ Despite Milo's biting commentary, the publication of the *Pro Milone* was not just an opportunity for Cicero to display his literary acumen. The circulation of this speech was probably also an attempt to gain public

¹⁰² Cic. *Fam.* 13.1; *Att.* 5.11. Although Memmius was the dedicatee of Lucretius' Epicurean poem *De Rerum Natura*, his devotion to that philosophical sect is doubtful given his lack of reverence toward Epicurus' house. Cf. C. J. Castner, *Prosopography of Roman Epicureans* (Frankfurt, 1988), 99–104.

¹⁰³ For Maenius and Lyso, see Chapter 6, number 53.

¹⁰⁴ Plut. *Cic.* 35; Dio 40.54.2–3; Asc. 38, 39, and 54C.

sympathy for Milo and to aid in any attempts to recall him. Seen in this light, the *Pro Milone* is a sort of descendant to Metellus Numidicus' letters from exile as a form of political pamphlet to help the cause of a banished man.

One final banished senator of the 50s deserves comment: T. Munatius Plancus Bursa. As a tribune of the plebs in 52, Plancus played a key role in the burning of the senate-house after the funeral of Clodius. Convicted for his activities the following year, Plancus went into exile at Ravenna in Cisalpine Gaul. The destitute Plancus was sustained by donatives from Caesar, who was governor of this province.¹⁰⁵ His choice of refuge was somewhat ominous: with the clouds of civil war gathering, Plancus had fled to one of the potential combatants. His strategy, however, paid dividends as he appears to have been among the first exiles restored in the conflict between Caesar and Pompey.

4.6 A NEW CIVIL WAR AND MASS RECALL OF EXILES

Civil disorder was injurious to the Roman state, but it provided excellent opportunities for exiles to reverse their fortunes. Full-scale *bellum civile* offered the best occasion for a large number of banished men to re-enter their former homeland. Sulla had amply demonstrated the effectiveness of gathering prominent exiles as a source of support during civil war. This example was not lost on Julius Caesar when he crossed the Rubicon in January 49 and initiated a confrontation with Pompeian forces. At the start of hostilities, it was expected that exiles would be recalled – such an action was seen as a stock feature of civil strife.¹⁰⁶ When Caesar returned to Rome in the autumn of that same year, a law that officially restored those who had been convicted under the Pompeian courts in 52 was carried by Caesar's adherent, the tribune of the plebs M. Antony. Some justification was needed for this measure, so Caesar claimed that these men had not been granted fair trials. Milo was specifically excluded from this general recall, however. These restored men who had suffered under Pompey's consulship could be expected to be loyal Caesarians henceforth. Other select exiles must have been recalled, since A. Gabinius (cos. 58) returned to Rome and fought on Caesar's side.

¹⁰⁵ Cic. *Fam.* 7.2.2–4, 8.1.4; V. Max. 6.5.2; Plut. *Pomp.* 55.5; *Cat. Min.* 48.4; Dio 40.55.

¹⁰⁶ Cic. *Att.* 7.11.1; 10.8.2. Cicero states that Ser. Sulpicius Galba claimed he would go into exile himself if Caesar recalled banished men: *Ibid.* 10.14.3. Sulpicius did not carry out this threat, however. For the general connection between civil war and recall of exiles, see Cic. *Vér.* 5.6.12; *Leg. Agr.* 2.4.10; *Sul.* 22.63. Cf. E. Wistrand, *Sallust on Judicial Murder in Rome* (Göteborg, 1968), 36–37.

Gabinus had been convicted in 54, so not just those banished under the Pompeian laws enjoyed Caesar's *clementia*.¹⁰⁷

4.7 DEFEATED POMPEIANS AND CAESAR'S *CLEMENTIA*

Caesar tended to pardon those who took the field against him but later surrendered. After the death of Pompey in late 48, Caesar was less well disposed to the Pompeians who persisted in resisting him.¹⁰⁸ The opponents who fell into his hands following the conclusion of the African war in 46 were not pardoned, but exiled. No ancient source states the exact nature of this banishment, but it was probably accomplished by Caesar's authority as dictator.¹⁰⁹ Most did not suffer any confiscation of property, but at least one did.¹¹⁰ The efforts of several of these former Pompeians to gain restoration are recorded in Cicero's letters. The orator aided these men in their attempts to reverse their situation, and offered them advice and solace on their condition. The locations chosen by the Pompeian exiles were similar to those chosen by earlier exiles hopeful of restoration. The western coast of Greece was apparently still a popular destination due to its proximity to Italy: both Cn. Plancius (Cicero's benefactor in 58) and C. Toranius settled on Corcyra. The two men formed a sort of "exile colony" and appear to have shared the use of each other's messengers in corresponding to Rome.¹¹¹ A. Manlius Torquatus resided in Athens during his enforced absence. Although this was a somewhat distant site for one who expected recall, Torquatus seems to have been attracted to the city because his friend Ser. Sulpicius Rufus was the current governor of Macedonia and lived in Athens.¹¹²

¹⁰⁷ Cic. *Phil.* 2.55–56, and 98; *Att.* 10.4.8; *Caes. BC* 3.1.4; *Suet. Iul.* 41; *Plut. Caes.* 37; *App. BC* 2.48; *Dio* 41.36.2, 42.24.2; cf. *Vell.* 2.68.2. Gabinus: *Cic. Att.* 10.8.3; *Dio* 39.36. Note that Caesar also sponsored legislation restoring the rights of the sons of the Sullan *proscripti*: *Suet. Iul.* 41; *Plut. Caes.* 37; *Dio* 41.18.2, 44.47.4; *Zonar.* 10.8.

¹⁰⁸ *Cic. Fam.* 6.13.3; *Schol. Grov.* 291st. Note that after Pharsalus, Caesar barred the return of his former enemies to Italy until he had personally reviewed their cases. Cicero and Decimus Laelius were exempted from this ban in an edict issued by Marc Antony: *Cic. Att.* 11.7.2.

¹⁰⁹ The *acta* of Caesar had the force of law: *Dio* 42.20.1.

¹¹⁰ C. Trebianus lost his property: *Cic. Fam.* 6.10.1–2; 6.11.2. On Caesar's general tendency against such forfeitures, see P. A. Brunt, *Roman Manpower 225 BC–AD 14* (Oxford, 1971), 321.

¹¹¹ See Chapter 6, numbers 56 and 57 for Plancius' and Toranius' exile. Cicero praised Corcyra's perfect location for receiving timely news from Rome: *Cic. Fam.* 6.20.1–2.

¹¹² For Torquatus, see Chapter 6, number 58.

The domiciles of two of these defeated Pompeians deserve special mention. Captured during the African war, A. Caecina was granted special permission by Caesar to live in Sicily until the beginning of 45. It is interesting that Caecina needed Caesar's leave to reside in Sicily: normally exiles were barred only from Italy at this time. Perhaps since the civil war was still raging in Spain, Caesar did not wish there to be any significant number of former Pompeians on the island. Given Sicily's importance to Rome's grain supply and its history of servile insurrection, Caesar may have feared that exiles might be tempted to renew hostilities on this vulnerable but vital area. Although Caecina thought about relocating to the province of Asia (where he had business interests), Cicero persuaded him to remain in Sicily as long as possible due to the island's nearness to Italy. Cicero met with C. Oppius and Cornelius Balbus – Caesar's agents in Rome while the dictator was conducting the war in Spain – and succeeded in getting Caecina permission to stay indefinitely.¹¹³

Following the defeat at Pharsalus in 48, M. Claudius Marcellus (cos. 51) withdrew to Mytilene on the island of Lesbos with a group of other Pompeians. His choice of this location was a political statement of his continued opposition to Caesar: such a distant site from Rome showed that he did not wish to ask for the *clementia* of his victorious enemy. His retirement was initially voluntary, but at some point Caesar made it official. To continue his public stance as an unrepentant foe of Caesar (and to contrast this steadfastness with those who had begged for Caesar's pardon), Marcellus refused to request restoration from Caesar. This intransigence was probably just political posturing. His friends and relatives in Rome were very active in attempts to sway Caesar's opinion and secure a recall. Surely these efforts could not have taken place if Marcellus truly opposed them. Even once Caesar did grant him a return home in September 46, Marcellus continued his intractable behavior and showed no eagerness or haste to return to Rome. He had not left Mytilene by January 45 and had progressed only as far as Athens by May. Marcellus would never see Rome again, as he was murdered by one of his companions shortly before he was due to leave Athens.¹¹⁴

The Pompeian exiles and their supporters employed the same sorts of tactics to secure a recall that had been used in earlier periods, but with one important difference. While in the past banished men had attempted to sway the opinion

¹¹³ Cic. *Fam.* 6.8.1–2.

¹¹⁴ See Chapter 6, number 54 for sources and discussion of Marcellus' exile.

of the Roman people or gain the support of the senate or key magistrates, now all such attention was focused on Caesar alone. Since the dictator held the power to restore the exiles, all hope depended on him. Public opinion, the senate, and other magistrates mattered little, except only as far as they could influence Caesar. Instead of friends and relatives supplicating themselves before the Roman people as the *Popilliani* had done, such theatrics were now directed at Caesar. For example, the senate as a group begged the dictator to recall M. Claudius Marcellus, and C. Marcellus actually clasped Caesar's knees as a suppliant.¹¹⁵ A. Caecina followed in the tradition of Metellus Numidicus and put his literary talents to work to gain a recall. Unlike Metellus, however, his writing was not an attack against his political foes, but rather it was panegyric of the man who had exiled him. Caecina's *liber querelarum* (book of complaints) praised Caesar's clement and merciful nature. The exile claimed to have agonized over every word of the book to avoid offending Caesar and even enlisted Cicero's help in editing the work. In another diversion from the traditional methods to gain recall, Caecina saw no use for his own son in the campaign for restoration, since the boy was young and had no political connections with important Caesarians.¹¹⁶ This lack of a role for an exile's son represents quite a contrast to the effectiveness of Metellus Pius and other children in the demonstrations for their banished kinsmen. With Caesar holding the ultimate power in the state, efforts to secure a recall now resembled the intrigues of a royal court more than the broadly based political maneuvering of earlier generations. The question of an exile's restoration was no longer decided by the political clash of Roman elites – it was now based on the prerogatives of a one man.

The majority of banished Pompeians were allowed to return home following Caesar's victory over the Pompeian remnant at Munda in Spain. Only those who had committed serious crimes during the wars were not granted restoration.¹¹⁷ Caesar's policy on exiles and their restoration would have some grave consequences for himself. Q. Ligarius, a banished Pompeian restored by Caesar, resented the *clementia* of his former enemy and joined the conspiracy to kill the dictator. Another man, Tillius Cimber, participated in the assassination plot because his brother had not been recalled from exile. Indeed, it was Cimber who approached Caesar

¹¹⁵ Cic. *Fam.* 4.4.3–4.

¹¹⁶ Cic. *Fam.* 6.6.8; Caecin. *Fam.* 6.7.1–6.

¹¹⁷ Vell. 2.61.1; Suet. *Iul.* 75.4; App. *BC* 2.107; Plut. *Caes.* 52.3; Dio 43.50.1. Only Plutarch states that Caesar's pardon was not extended to all who had fought against him. Appian adds the proviso that those who were guilty of serious crimes (whatever that may entail) were not restored.

on the Ides of March in 44 and initiated his assassination. Cimber begged Caesar to restore his brother, and several other senators crowded around the dictator and added their pleas. Thus surrounded, Cimber grasped Caesar's toga and immobilized him while his fellow conspirators drew their daggers and struck Caesar down.¹¹⁸

¹¹⁸ Ligarius: Plut. *Brut.* 11 (erroneously given the praenomen Gaius); App. *BC* 2.113. Tillius Cimber: Nic. Dam. *Vit. Caes.* 24; Sen. *Ira* 3.30.4–5; Plut. *Caes* 66.3; *Brut.* 17.2–4; Suet. *Iul.* 82.1; App. *BC* 2.113, 117; Dio 44.19.4. Note that Nicolaus states that Tillius' brother had been exiled by Caesar.

5 TOPICS OF EXILE

5.1 ACCOMPANIMENT INTO EXILE

The journey into exile was certainly a heart-wrenching event. The fugitive was leaving behind his homeland, his friends, and his family, perhaps forever. While banishment could be a lonely experience, exiles did not make this fateful trip by themselves. Indeed, a banished man probably went abroad with a retinue of freedmen, slaves, and perhaps a free friend or two. Our extant sources provide us only a few glimpses of the companions that accompanied an exile. Although Cicero's correspondence from his exile in 58/57 is our most detailed account of the personal life of an exile, the author makes little mention of those who journeyed with him. Perhaps his silence about his associates indicates his sense of loss and isolation as an *exul*. His letters occasionally speak of companions (generally freedmen), but he gives us no details. Cicero's friend Sicca accompanied him from Vibo to Brundisium and had apparently told the orator he would stay with him on his journey, but returned home before Cicero crossed over into Greece.¹

Later epistles in the Ciceronian corpus provide us with a more detailed picture of an exile's retinue. During his exile from 47 to 45, M. Claudius Marcellus had some freeborn Roman companions; perhaps they were also defeated Pompeians. One of them, P. Magius Cilo, murdered Marcellus over a personal dispute at Athens while they were preparing to return to Rome in May 45. Marcellus also had several freedmen and slaves with him while in exile. He used the freedman Theophilus to carry letters to his friends back in Rome, and other men of servile status certainly served as messengers as well. When the governor of Macedonia, Ser. Sulpicius Rufus (cos. 51), arrived at the scene of Marcellus' murder shortly after the event, he found the man's body being attended by two loyal freedmen.

¹ Cic. *Fam.* 14.4.6: At Brundisium, Cicero sent the freedman Clodius Philhetaerus back to Rome because he had developed eye problems. He also mentions two other companions, Sallustius and Pescennius. Perhaps they were also freedmen, but their nomenclature suggests they may have been freeborn (D. R. Shackleton Bailey, *Epistulae Ad Familiares* [Cambridge, 1977], 1.286). For Sallustius, see Cic. *Div.* 1.59. The *libertus* Phaetho was used by Cicero as a messenger, carrying letters to his brother Quintus in May and August 58 (*Att.* 3.8.2; *Q. Fr.* 1.4.4).

Several slaves cowered nearby, fearing that they would be punished for their master's death. Many other *servi* had panicked and fled the area.²

The entourage of almost any exile certainly did include many slaves and freedmen, as did Marcellus' group. An upper-class Roman even in *exilium* would be attended by *servi* and *libertini* as he had been accustomed before his misfortune. Milo was known to have taken a great number of slaves with him for his exile in Massilia. Some exiles, like Metellus Numidicus and Rutilius Rufus, brought freedmen who had very specialized skills. Numidicus took along his speechwriter Aelius Stilo perhaps to help him write political pamphlets as a part of the campaign to get his banishment reversed. The grammarian Aurelius Opilius accompanied Rutilius, either to serve a similar role as I have conjectured for Stilo or perhaps as learned company for a distinguished man of letters.³

There is no reason to doubt that many exiles went abroad with freeborn Romans as companions – or met up with them later. In 102, a year following his departure into exile, Q. Servilius Caepio was joined in Smyrna by his friend L. Reginus. As a tribune of the plebs the previous year, Reginus' intercession had freed Caepio from potential imprisonment and execution. It is unknown if Reginus remained abroad with Caepio or returned to Rome at some point. As we have seen earlier, some fugitives banded together to form "exile colonies." Nuceria in Campania was one such location, which attracted at least three exiles in the closing decade of the second century. A later example of this was the group of ex-Catilinarians in Epirus, led by Autronius Paetus. M. Claudius Marcellus' group on Lesbos may have been a "colony" of unrepentant ex-Pompeians.

Romans in exile certainly also sought the companionship of any previous clients or connections that they had in their new domiciles. Thus an exile would have the company of fellow Romans, freedmen, slaves, and foreign associates to console him. One type of companionship that they normally did not enjoy was the presence of their families. Family members doubtless visited their unfortunate relatives from time to time, but there are very few examples of a household permanently relocating along with an exile. Moving abroad with a banished relation would have served to cut off the entire family from Roman society. This would effectively end any chance of an exile's children growing up to pursue Roman political careers.

² Theophilus: Cic. *Fam.* 4.9.1 and 4.10.1; other freedmen and slaves: Sulp. Ruf. *Fam.* 4.12.3.

³ Milo: Cic. *Att.* 8.5.2; Metellus and Stilo: Suet. *Gram.* 3.3; Rutilius and Aurelius: Suet. *Gram.* 6.

Wives did not go into exile along with their husbands for a similar reason: their responsibilities to the family required their presence in Rome. Additionally, after restoration from exile was possible, family members were a valuable resource in the efforts to bring a banished kinsman home. While in the depths of despair leaving Italy for exile in the East, Cicero desperately desired to have Terentia's companionship, but realized that she needed to remain in Rome to bolster his chances for recall and provide for their children's future. His letter to Terentia in late April 58 captures his internal conflict:

o me perditum, o me adflictum! quid nunc? rogem te ut venias, mulierem aegram, et corpore et animo confectam? non rogem? sine te igitur sim? opinor, sic agam: si est spes nostri reditus, eam confirmes et rem adiuves; sin, ut ego metuo, transactum est, quoquo modo potes, ad me fac venias. unum hoc scito: si te habebō, non mihi videbor plane perisse. sed quid Tulliola mea fiet? iam id vos videte; mihi deest consilium. sed certe, quoquo modo se res habebit, illius misellae et matrimonio et famae serviendum est. quid? Cicero meus quid aget? iste vero sit in sinu semper et complexu meo. non queo plura iam scribere; impedit maeror.⁴

Oh, how I am ruined and shattered! What now? Should I ask you to come, a sick woman exhausted in both body and mind? Should I not ask? Am I therefore to be without you? I suppose I should express it thus: if there is hope of my recall from exile, you ought to strengthen it and advance my cause; but if matters have run their course, as I fear, come to me by any means you are able. Know this one thing: if I have you, I will not consider myself as totally ruined. But what will happen to my daughter Tullia? You all must see to this matter; I am unable to propose anything. But certainly, whatever happens, the marriage and reputation of that unfortunate little girl must be protected. Likewise, what will my son Marcus do? Indeed, may he always be on my lap and held in my embrace. My sorrow overwhelms me – I am unable to write anything more right now.

⁴ Cic. *Fam.* 14.4.3. For a thorough analysis of Cicero's rhetoric in this letter to Terentia, see G. O. Hutchinson, *Cicero's Correspondence* (Oxford, 1998), 28–33. Cf. S. Treggiari, *Roman Marriage* (Oxford, 1991), 253–255; W. Jäger, *Briefanalysen. Zum Zusammenhang von Realitätserfahrung und Sprache in Briefen Ciceros* (Frankfurt am Main, 1986), 80–84; R. Degl' Innocenti Pierini, *Lettere Dall' Esilio dalle Epistulae ad Atticum, ad Familiares, ad Quintum Fratrem* (Florence, 1996), 130–132.

Although Cicero left the possibility open that his family might join him in exile at some point, he seems never to have made any arrangements to that effect. For the period of Cicero's exile, Terentia stayed in Italy and managed affairs on the home front.

From the extant evidence, there are only two examples of family members who accompanied a relative into exile in the Republican period. Rutilia, a sister of the exiled Rutilius Rufus, went into banishment with her son, C. Aurelius Cotta, when he fled the Varian *quaestio* in 90. She remained with him until he was restored in 82 following Sulla's victory over the Marians.⁵ While there is no direct evidence, it seems that C. Appuleius Decianus took his son with him into exile in 97. The *Scholia Bobiensia* state that Decianus went to the court of Mithridates following his withdrawal from Rome. As I discuss below, there is no reason to doubt the scholiast's evidence on this issue. Almost forty years after the elder Decianus' exile, his son is featured in Cicero's *Pro Flacco*, delivered in 60. The junior Decianus was a joint-signer (*subscriber*) to an accusation of extortion against Cicero's client, the former governor of Roman Asia. From this defense oration, we learn that the exile's son had been living and conducting business in the Asian province for about thirty years before the trial. He resided in the free state of Apollonis, but was an *eques Romanus* and had even served with the Roman army in Caria.⁶ Cicero unfortunately does not provide any information on how this man came to be in Asia. That he had been a businessman in the province for around thirty years strongly implies that he left Rome at around the same time as his father. His residence in an area close to where his father reportedly went into exile suggests that he had accompanied him into banishment. There are of course many unanswered questions about the Deciani and their Asian experiences. The son had been working in Roman Asia since at least the late 80s, so it is possible that the elder Decianus left Mithridates' court around this time, or perhaps the young man left his father behind in Pontus to pursue his own career. One thing is certain: the younger Decianus did not attain the senatorial status that his father had. His removal from Rome had ensured that. The pitfalls of taking a son into exile were perhaps best expressed by the historian Tacitus in the case of C. Sempronius Gracchus. Although the example concerns the reigns of Augustus and Tiberius, the sentiments here expressed were germane for the Republican period as well: *hunc comitem exilii admodum infantem pater Sempronius*

⁵ Sen. *Hel.* 16.7; cf. Cic. *Brut.* 311.

⁶ See Chapter 6, number 24, for sources and discussion.

*in insulam Cercinam tulerat. illic adultus inter extorris et liberalium artium nescios, mox per Africam ac Siciliam mutando sordidas merces sustentabatur . . .*⁷ (His father Sempronius had taken him when nearly still an infant to the island of Cercina as a companion in exile. Having grown up in this place among exiles and uneducated men, later he used to make a living by selling petty merchandise in Africa and Sicily).

5.2 THE ECONOMICS OF EXILE

When confronted with the prospect of going into exile, there were serious economic concerns that had to be considered. Since exiles who fled *iudicia populi* were faced with the confiscation of their property as a facet of the *aquae et ignis interdictio*, certain measures were necessary to prevent poverty. Those avoiding judgments of jury courts could suffer substantial economic penalties even if they were not made subject to the interdiction from fire and water. The basic strategy before departing Rome was to liquidate as much of one's assets as possible into a moveable form for transportation abroad. This is apparently what C. Verres did when his trial began. Cicero notes that Verres must be anticipating a guilty verdict and exile, since he was having a ship loaded with his ill-gotten Sicilian gains.⁸ Such preparations were probably common for those who faced judicial peril. When the Emperor Augustus imposed restrictions on *exilium* in AD 12, he prohibited exiles from possessing more than one cargo ship of a specified capacity or more than two smaller oared vessels. Furthermore, an exile could not have more than twenty slaves or freedmen or own more than half a million sesterces.⁹ Dio claimed that this measure was designed to prevent exiles from living too luxuriously, but such a provision would also serve to hinder a fugitive from removing much of his wealth into exile with him and preventing its confiscation. Limiting the ships that could be owned would restrict activities such as Verres' removal of his Sicilian plunder. The cap on the amount of coinage obviously would impede an exile from liquidating real property into cash for transportation into banishment. Even the restriction on the number of slaves an exile could own may have had an economic

⁷ Tac. *Ann.* 4.13 (for the year AD 23). The elder Gracchus was exiled in AD 2 and executed by Tiberius in AD 16: *Ibid.* 1.53.

⁸ Cic. *Vér.* 2.5.44.

⁹ Dio, 56.27.2. Note that the emperor also restricted an exile's choice of domicile: the mainland of Greece and Asia was off-limits, as well as any islands within fifty miles, with the exception of Cos, Rhodes, Samos, and Lesbos.

motive, since the purchase of expensive slaves before departure could be a method to secure “moveable wealth.”¹⁰ The fact that Augustus saw the need for this decree effectively demonstrates how successful were tactics of Verres and his ilk. Another way to prevent seizure of goods by Roman authorities was to own real estate in a state independent of Roman jurisdiction (*civitas libera*). Not only would such land be safe from forfeiture, but an estate in another community could also serve as a new domicile.¹¹ An informal manumission of slaves at Rome before departure into banishment was a further method of protecting property from confiscation. If an exile’s property was forfeit and sold at auction, the slaves could claim that they were freedmen, and thus not a part of the exile’s possessions. The exile would still benefit from these former slaves, since they would be his freedmen and owe him certain duties. If, however, confiscation did not place (or the exile managed to secure a recall before confiscation), they would remain slaves in their master’s estate. Cicero arranged such a fictive manumission for some slaves prior to his flight from Rome in 58, although he was uncertain if the slaves could successfully assert freedman status if necessary.¹² Thus there were several tricks to evade the total confiscation of property, and the provident exile could manage to keep a portion of his original assets.

For exiles who were less prepared for their misfortune (perhaps due to the suddenness of their predicament), maintenance while abroad required extraordinary measures. Establishing a new domicile in an area where one’s family had great influence could ease the financial burden. Funds and basic subsistence could be acquired from *clientes*.¹³ Loans were another way an exile could provide for the expenses of banishment. When Marcus Cicero departed from Rome in 58, he received funds from the treasury that were owed to his brother Quintus for his expenses as governor of Asia. He accomplished this act without Quintus’ authorization – but far from being angry, his brother offered Marcus an additional loan. Atticus lent him an additional twenty-five thousand sesterces before he left the city. A Roman equestrian Rabirius also financially aided Cicero in some way

¹⁰ The exiled Milo’s large retinue of slaves may have had this economic function.

¹¹ Cf. Shatzman, *Wealth*, 252 and 255. See also Chapter 6, number 51, for another potential method to shield property from judicial seizure.

¹² Cic. *Fam.* 14.4.4; Shackelton Bailey, *Ad Fam.*, 1.286; S. Dixon, “Family Finances: Terentia and Tullia,” in B. Rawson, ed., *The Family in Ancient Rome: New Perspectives* (Ithaca, 1986), 95.

¹³ The maintenance of P. Rutilius Rufus by his friends and acquaintances in Asia is the prime example of such largess: Dio 28, frag. 97.4.

during his banishment. It seems that Rabirius' father had helped earlier exiles in this capacity as well.¹⁴ Perhaps the Rabirii made a business of loaning money to exiles (possibly in exchange for sureties of property). Exiles who were unable to make adequate preparations before departure or who lacked the resources or connections to secure loans or other support could find themselves in desperate financial straits. Q. Pompeius was so destitute upon his banishment in 51 that he was reduced to manual labor and pursuing a civil suit against his own mother to acquire funds. Even his former prosecutor took pity upon his wretched condition and successfully represented Pompeius in this civil action.¹⁵

The extent that a wife *sui iuris* would personally contribute her own funds to maintain a banished husband is unclear. If Cicero's attitude was typical, spouses were not anticipated to sacrifice their property on an exiled husband's behalf, and were even discouraged from doing so. Cicero's letters seem to indicate the expectation that he would be financially supported in exile by his brother Quintus and friends, and that his wife Terentia would provide for the children. When Terentia sold some of her own property to support him, Cicero reacted with horror and begged her not to use up her own assets for his sake. He implored her to preserve her fortune and use it to support their children.¹⁶ Since the property of a wife *sui iuris* was separate and distinct from her husband's possessions, her assets were safe from the confiscation of his goods.¹⁷ Thus it may have been customary for her to support the children, while the exile was provided for by relatives, friends, and other means.

Although a wife's property was generally distinguishable from her husband's, her dowry could be problematic. Since a Roman husband (or his *paterfamilias*, if living) became the owner of the dowry for the duration of the marriage, the status of dotal property upon the confiscation of the husband's goods seems to have been ambiguous. Licinia, the wife of C. Gracchus, appears to have lost her dowry when her slain husband's property was seized and auctioned by the state.¹⁸

¹⁴ Cic. *Q. Fr.* 1.3.7; *Att.* 2.6.2; *Rab.* 47; *Nep. Att.* 4.4.

¹⁵ For the circumstances of Pompeius' exile, see Chapter 6, number 51.

¹⁶ Cic. *Fam.* 14.1.5, 14.2.3; Dixon, "Family Finances," 98–101.

¹⁷ In the throes of despair and grief, however, Cicero once feared that Terentia's property would be taken away (*Fam.* 14.4.4).

¹⁸ Plut. *CG* 17.5; *Dig.* 24.3.66. Scholars are divided on the issue of whether Licinia lost her dowry irrevocably. For the view that Licinia was deprived of her *dos* (or at least part of it): Mommsen, *Strafrecht*, 1010; D. Daube, "Licinia's Dowry," in B. Biondi, ed., *Studi in onore di Biondo Biondi* (Milan, 1965), 1.197–212;

Whether this practice was standard in the Late Republic is unclear, but it seems as if the return of the dowry from a husband's confiscated property was at the discretion of the authorities and was not automatic.¹⁹ After his possessions were confiscated in 52, the exile Milo was concerned about property he wished to be preserved for his wife Fausta – most probably her dowry, or compensation for its loss. A friend of Milo's, C. Duronius, with financial backing from Philotimus (one of Terentia's freedmen), had purchased Milo's estate at public auction. Milo was displeased with Cicero for this purchase, since Philotimus seems to have been acting as his agent. Most likely Milo was upset that Cicero, his erstwhile defender, was profiting from his exile by purchasing his confiscated estate at a low price. In response, Cicero claimed that he and Duronius had resolved to purchase Milo's auctioned goods and salvage as much as possible for him and ensure that Fausta received the property that Milo had desired her to have. Their purchase of the estate was to prevent its acquisition by an unscrupulous buyer (*malus emptor*) who might even try to take away Milo's slaves, many of whom he had taken into exile with him.²⁰

Cicero and Duronius were probably following a traditional method of preserving an exile's financial fortunes: supporters would band together and try to purchase his confiscated goods (sold *en bloc* at auction) and hold them in his interests. Although Cicero was attempting to aid his friend in his time of need, his altruism caused him several headaches.²¹ Not only did Milo misinterpret Cicero's

F. Wieacker, "Die römischen Juristen in der politischen Gesellschaft des zweiten vor Christlichen Jahrhunderts," in W. G. Becker and L. Schnorr von Cardsfeld, eds., *Sein und Werden im Recht* (Berlin, 1970), 211–214. That Licinia ultimately received her dowry and her case provided a precedent for later instances, see W. Waldstein, "Zum Fall der 'dos Liciniae,'" *Index: Quaderni Camerti di Studi Romanistici* 2 (1972), 343–361; cf. Dixon, "Family Finances," 96.

¹⁹ Note that Dio specifically mentions that Caesar restored the dowries of the widows of his vanquished foes, and that the Second Triumvirate pledged to follow such a policy (43.50.2 and 47.14.1). A wife's right to retain her dowry after the seizure of her husband's property was only granted in AD 396. See Fuhrmann, *RE* XXIII.2, sv. "Publicatio," col. 2505, and Daube, "Licinia's Dowry," 202–204, for sources and discussion.

²⁰ *Cic. Att.* 5.8.2–3. Cf. Dixon, "Family Finances," 96–97. Since Cicero feared that the slaves Milo had taken into exile might be confiscated, Milo probably had not yet become a citizen of Massilia and retained the Roman franchise. Had Milo taken up the citizenship of Massilia, his possessions in his new country would presumably be immune to seizure by the purchaser of Milo's estate.

²¹ Some modern scholars have questioned the purity of Cicero's motives in the purchase of Milo's estate, especially J. Carcopino, *Secrets de la Correspondence de Cicéron* (Paris, 1947), 1.183–189; D. R. Shackleton Bailey, *Cicero* (London, 1971), 98. A. W. Lintott's excellent examination of Cicero's involvement with

motives for the purchase and accuse him of profiteering, but the exile's estate was heavily encumbered by debt. As the buyers, Cicero and Duronius assumed legal responsibility to satisfy Milo's creditors. Thus some of Milo's goods needed to be sold to cover the debts.²² Cicero later suspected his agent Philotimus of embezzling funds from the sale of Milo's property and neglecting to pay Milo's creditors. This dishonesty on the part of his wife's freedman no doubt contributed to strained relations between Cicero and Terentia as well as creating financial problems for Cicero.²³ Our sources do not record if Milo ever changed his opinion of Cicero's motives in this matter, although it is clear that he bitterly resented the loss of his property. When Milo joined forces with M. Caelius Rufus and returned to Italy in 48 to foment an uprising against Caesar, he sent an armed gang of men to take back his former house in Rome. His attempt to retake his confiscated property failed, as the wife of the house's current owner managed to organize the household and repel the attacks.²⁴

5.3 EXEMPLA AND ACCOUNTS OF EXILE

At one point in the *De divinatione*, M. Cicero's interlocutors discuss the use of dreams as predictors of the future. His brother Quintus then relates an incident that allegedly occurred shortly after Marcus' departure from Rome in 58:

venio nunc ad tuum [somnia]. audiui equidem ex te ipso, sed mihi saepius noster Sallustius narravit, cum in illa fuga nobis gloriosa, patriae calamitosa, in villa quadam campi Atinatis maneres magnamque partem noctis vigilasses, ad lucem denique arcte et graviter dormire te coepisse. itaque, quamquam iter instaret, se tamen silentium fieri iussisse neque esse passum te excitari; cum autem experrectus esses hora secunda fere, te sibi somnium narravisse: visum tibi esse, cum in locis solis maestus errares, C. Marium cum fascibus laureatis quaerere ex te, quid tristis esses, cumque tu te patria vi pulsum esse dixisses, prehensisse eum dextram tuam et bono animo te iussisse esse lictorique

the sale of the exile's goods, however, demonstrates that Cicero had no intention of financial gain at Milo's expense ("Cicero and Milo," *JRS* 64 [1974], 76–78).

²² Milo's debts: Asc. 54C; cf. B. A. Marshall, *A Historical Commentary on Asconius* (Columbia, 1985), 208–209; Lintott, "Cicero and Milo," 76–78.

²³ Philotimus: Cic. *Att.* 6.4.3 and 5.2; Financial problems: Cic. *Att.* 6.5.2 and 7.1. Cf. Cic. *Fam.* 8.3.2.

²⁴ As recorded in the famous "*laudatio Turiae*": *CIL* VI 1527; *ILS* 8393, pag. II, lines 8–10.

proximo tradidisse, ut te in monumentum suum deduceret, et dixisse in eo tibi salutem fore. tum et se exclamasse Sallustius narrat reditum tibi celerem et gloriosum paratum, et te ipsum visum somnio delectari.²⁵

I come now to your dream. Indeed, I have heard about it directly from you, but more often our friend Sallustius related it to me, that when you were staying in a certain villa in the Atinan plain during your exile – which was glorious for us but a catastrophe for Rome – you had stayed awake most of the night, but finally fell into a deep and heavy sleep towards dawn. Despite your pressing itinerary, Sallustius ordered everyone to keep quiet and did not allow you to be awakened. After you had woken up about two hours after sunrise, you told him about your dream: grief-stricken, you were wandering in a desolate landscape when C. Marius appeared to you, with his *fascēs* crowned with laurel. He asked you why you were sad, and you answered that you had been expelled from your homeland by violence. He took your right hand and told you not to despair, and ordered his nearest attendant to escort you to his own victory monument, and said that you would be safe there. Sallustius (as he tells it) then predicted a swift and glorious restoration from exile for you, and you also appeared to be pleased by the dream.

Exile had an enormous impact on the lives of those who personally experienced it. It was not only a personal experience, however. The exile of an elite Roman was a public event. The traditions and stories about the experiences of former exiles were also used didactically. These tales could teach moral lessons or provide solace and comfort to those who faced a similar misfortune. Cicero's reported vision of Marius belongs to this second category, as does Seneca's use of Rutilius Rufus' fortitude in exile as an example of outstanding virtue.²⁶ Allusions to the experiences of exiles probably also became a part of Roman popular culture. Macrobius preserves an anecdote about an exchange of words between P. Clodius and the playwright Decimus Laberius. When the dramatist refused his request

²⁵ Cic. *Div.* 1. 59. Although Marius was not an exile in the traditional sense (he had been declared a *hostis*), his example as someone who had overcome expulsion from the state was germane to the banished orator. Marius' case was especially meaningful for Cicero, since he was a fellow Arpinate and *novus homo*. Note that Sallustius was one of Cicero's companions during his exile.

²⁶ Sen. *Ben.* 5.17.2; 6.37.2; *Ep.* 24.4. For the genre of *consolatio ad exulem* (philosophic epistles written to fortify the spirits of an exile), see J. M. Claassen, *Displaced Persons: The Literature of Exile from Cicero to Boethius* (London, 1999), 77–102, and “Dio's Cicero and the Consolatory Tradition,” *Arca* 9 (1996), 29–39. Cf. F. Millar, *A Study of Cassius Dio* (Oxford, 1964), 49–55.

to produce a mime for him, Clodius grew angry. In response to Clodius' wrath, Laberius replied with a mocking reference to Cicero's exile and restoration: "What more can you do to me, other than send me to Dyrrachium and back?"²⁷ Since exile was of great political significance, the circumstances of a particular man's banishment or restoration often became the fodder for partisan propaganda. Below I discuss the political context of the important traditions and *exempla* concerning Republican era exiles.

The optimates of the first century promoted a favorable interpretation of Metellus' exile that depicted the banished consular in a heroic light. Metellus himself may have created this version of the events through his letters from exile. This optimate tradition, which dominates our extant sources and is featured prominently in Cicero's works, has three major features. Metellus is shown to have withdrawn from Rome not to preserve his own life, but to spare the state from civil war. Had he remained and defended himself against his enemies, many Romans would have died in internal strife. Cicero borrowed this idea and used it to justify his own exile.²⁸ Furthermore, this favorable tradition portrays Metellus bearing his exile without complaint or desire for restoration. He returned to Rome only because the republic ordered his recall.²⁹ Upon his restoration, he enjoyed great praise and renown for his steadfastness while in exile. In fact, his banishment is lauded as his greatest triumph in a distinguished career.³⁰ It is probable that Metellus himself had much to do with the creation of this favorable interpretation of his exile. He most likely employed his letters from exile not only to attack his political enemies who caused his banishment, but also to paint a heroic picture of himself enduring separation from his homeland. The anecdote recorded by Valerius Maximus concerning Metellus' receipt of the news of his own restoration may originate from the exile's own writings:

Numidicus autem Metellus populari factione patria pulsus in Asiam secessit. in qua cum ei forte ludos Trallibus spectanti litterae redditae essent, quibus scriptum erat maximo senatus et populi consensu reditum illi in urbem datum, non e theatro prius abiit quam spectaculum ederetur, non laetitia

²⁷ Macrob. 2.6.6: *quid amplius, inquit, mihi facturus es, nisi ut Dyrrachium eam et redeam*. Note that in this quotation, "Dyrrachium" is almost synonymous with "exile."

²⁸ Cic. *Pis.* 20; *Planc.* 89; *Liv. Per.* 69; App. *BC* 1.31. Cicero's use of this concept: *Red. Sen.* 6; *Dom.* 20–21 and 63; *Planc.* 95; *Sest.* 43; cf. Schol. Bob. 168St.

²⁹ Cic. *Fam.* 1.9.16; *Sen. Ep.* 24.4.

³⁰ Cic. *Dom.* 87; *Planc.* 89; Vell. 2.15.4; *Liv. Per.* 69; V. Max. 3.8.4; App. *BC* 1.33.

suam proxime sedentibus ulla ex parte patefecit sed summum gaudium intra se continuit. eundem constat pari vultu et exsulem fuisse et restitutum. adeo moderationis beneficio medius semper inter secundas et adversas res animi firmitate versatus est.³¹

Metellus Numidicus, expelled from his homeland by the *populares*, withdrew to Asia. While watching the games at Tralles, a letter was delivered to him reporting that the senate and people had granted his recall to Rome by a tremendous majority. He did not exit the theater until the performance was complete, nor did he in any manner display his joy to those seated near him, but kept his feeling of great happiness to himself. It is well-known that Metellus displayed the same demeanor both as an exile and as a restored man. In this way he always remained moderate in both favorable and adverse times due to his self-restraint and the strength of his mind.

Since this anecdote purports to depict Metellus' personal reaction – a reaction that no one else in the theater noticed – the source for this information was probably Metellus himself, or at least one of his personal confidants (perhaps Aelius Stilo). Since a restored exile needed to rehabilitate his tarnished public image and put a positive “spin” on his misfortune, Metellus almost certainly continued to publish his letters after he received news of his restoration. Such letters written during his triumphant return journey to Rome would be an important tool in re-establishing his political position and authority.

The *populares* were not silent on the issue of Metellus' *exilium*. They appear to have had a hostile tradition of these events, but only a hint of it remains in the historical record. In a letter written to P. Cornelius Lentulus Spinther (cos. 57) in 54, Cicero mentions an interpretation of Metellus' exile that certain of his enemies believed: . . . *qui de uno acerrimo et fortissimo viro meoque iudicio omnium magnitudine animi et constantia praestantissimo, Q. Metello L. f., quondam falsam opinionem acceperant, quem post reditum dicitant fracto animo et demisso fuisse . . .*³² (They are the ones who have accepted a false account about Q. Metellus, one of the keenest and bravest men, and in my judgment a man surpassing all in the magnitude and steadfastness of his spirit.

³¹ V. Max. 4.1.13

³² Cic. *Fam.* 1.9.16. For the hostile accounts of Metellus' deeds while commanding Roman forces in the Jugurthine War, see F. Fontanella, “Metello Numidico: Una Tradizione Ostile,” *Atene e Roma* 37 (1992), 177–188.

They repeatedly claim that after his return from exile, Metellus was broken and dispirited.) Cicero then refutes this “false account” with his standard praises of Metellus’ conduct. Aside from this brief remnant, the optimate account (probably due to the authority of Cicero) has blotted out any other traces of the opposing view. Metellus’ case was not unusual: our extant sources suggest alternate partisan accounts for a few other exiles in the late Republic.³³

Although P. Rutilius Rufus does not appear to have desired recall from exile, he still utilized his literary skills to exculpate his own guilt and to write polemic against his adversaries back in Rome. Following his exile to the East, Rutilius wrote a Greek language history of Rome, as well as a Latin *De vita sua*, his political autobiography.³⁴ While these two works represent only a small part of his literary endeavors after his retirement, he used them as key documents to publicize his version of his political career. Rutilius’ choice to write his Roman history in Greek and a Latin autobiography demonstrates the scope of his efforts in this regard: his history was most likely aimed at getting his message across to Greeks, while his memoirs were for his former countrymen. This bilingual approach not only assured a wider contemporary audience for Rutilius’ interpretation of events, but also provided source material for both subsequent Greek and Latin historians.³⁵ In choosing to cast his subjective Latin work as an autobiography, the banished Roman used a genre that was in vogue at the time. Writing partisan memoirs was a popular literary activity for the major political figures of the early first century – both M. Aemilius Scaurus and Q. Lutatius Catulus wrote self-serving autobiographies. Sulla’s *commentarii* also fit into this genre of political apology.³⁶ The extant fragments and testimonia of Rutilius’ Roman history and *De vita sua* give us a hint concerning the author’s depiction of his own exile and the nature of his attacks on his former political rivals.

³³ Contrary to Cicero’s own claims, Dio mentions that the orator was initially in favor of resisting his enemies with armed force, but was persuaded by Cato and Hortensius to go into exile peacefully (38.17.4). Perhaps this detail belongs to a hostile account of Cicero’s exile.

³⁴ For the view that Rutilius’ *History* was essentially the author’s translation of his *De vita sua* into Greek, see G. L. Hendrickson, “The Memoirs of Rutilius Rufus,” *CP* (1933), 166–170; cf. E. Pais, “L’autobiografia ed il processo di P. Rutilio Rufo,” in *Dalle guerre puniche a Cesare Augusto* (Rome, 1918), 1.65.

³⁵ Rawson, *Intellectual History*, 64–65; cf. J. G. F. Hinds, “Mithridates,” *CAH*², 9.145, who speculates that Appian may have used Rutilius’ Greek history as a source. Cicero’s Greek works concerning his own career had the same purpose. Plutarch later cited one of them as a source: *Plut. Caes.* 8.3; *Crass.* 13.

³⁶ The genre of political autobiography: E. Rawson, *Intellectual Life in the Late Roman Republic* (Baltimore, 1985), 92.

The grammarian Charisius of the late fourth century AD quoted a fragment of Rutilius' autobiography that suggests how the exile might have depicted himself bearing his misfortune: "P. Rutilius wrote in Book II of his autobiography, 'with a firm spirit.'"³⁷ Since Charisius was interested in Rutilius' words for grammatical reasons, he does not give any context for the quotation. Although the meaning of this fragment is unclear, it is possible that Rutilius was referring to his own fortitude in exile. Metellus Numidicus had portrayed himself in a similar fashion, but his equanimity was only a part of the propaganda concerning his banishment. The optimate tradition of Metellus' *exilium* primarily stressed his patriotic self-sacrifice in accepting banishment rather than provoking civil war. For Rutilius, however, the central theme of the literary tradition on his exile was his composure and peace of mind despite his misfortune. The extant literary sources are unanimous in showing Rutilius as an unjustly convicted man who nonetheless endured his banishment without complaint, making no effort to secure a recall. This seamless depiction reflected in the ancient sources may originate from Rutilius' own works.

In addition to the fragment of his autobiography cited above, there are other indications that Rutilius himself was the ultimate source for the favorable depiction of his character while in exile. Even during his trial, Rutilius refused to use any rhetorical tricks or employ any theatrics in his own defense – according to several sources, he preferred to defend himself only with the truth.³⁸ This image of Rutilius' dignity and fortitude in adversity owes much to his devotion to Stoic philosophy. Indeed, the exiled Rutilius is depicted by later writers as the embodiment of Stoic virtues.³⁹ Cicero cites Rutilius Rufus himself for the information about his restrained and dignified defense in court when faced with the charge that eventually sent him into exile. He further reports that the accused consular stated that death or banishment was preferable to using base tactics in court. Although Cicero claims he heard this statement personally from Rutilius when he visited the banished orator at Smyrna in 78, this sort of self-glorifying anecdote would likely have been in Rutilius' autobiography as well.⁴⁰

³⁷ HRF, 189 frag. 8 = Charisius 1. p. 125K: *P. Rutilius de vita sua II 'animo' inquit 'constante.'*

³⁸ Cic. *de Orat.* 227–30 (comparing him to Socrates); *Brut.* 85–88, 115; Quint. *Inst.* 11.1.13 (also comparing Rutilius to Socrates).

³⁹ Rutilius was a pupil of Panaetius the Stoic; Cic. *Brut.* 114; cf. *de Orat.* 230. For the depiction of Rutilius as the ideal Stoic sage, see Claassen, *Displaced Persons*, 105.

⁴⁰ Cic. *de Orat.* 227–228; *Brut.* 85–88.

The extant fragments of Rutilius' writings provide no further clues about the content of his literary self-depiction. However, there are some anecdotes concerning the exile's life that most likely originated from Rutilius' pen. Seneca reports the banished Rutilius' denunciation of exiles who use civil war as an opportunity to return home. While this account could have been the invention of Seneca or some other author, it is consistent with the heroic nature of Rutilius' self-depiction and provides a convincing explanation for his rejection of Sulla's recall. The personal nature of the anecdote also recommends it as originating from the works of the exile himself:

Rutilius noster animosius, cum quidam illum consolaretur et diceret instare arma civilia, brevi futurum, ut omnes exules reverterentur: "quid tibi," inquit, "mali feci, ut mihi peiorem reditum quam exitum optares? ut malo, patria exilio meo erubescat, quam reditu maereat!" non est istud exilium, cuius neminem non magis quam damnatum pudet.⁴¹

Our Rutilius showed himself to be even nobler [than the previous examples] when a certain man was consoling him and said that civil war was looming and soon all exiles would be restored. "What evil have I done to you," Rutilius replied, "that you might wish me a more unfavorable return home than departure? I prefer that my homeland be ashamed of my banishment than lament my return!" That is not truly exile, which makes no one less ashamed than the banished man.

During the massacre of Romans and Italians in Asia instigated by Mithridates of Pontus in 88, Rutilius was residing in Mytilene on the island of Lesbos. Mytilene was not a safe harbor for Romans during this crisis – indeed, the legate M. Aquilius was betrayed by the Mytileneans and handed over to the Pontic king for execution.⁴² Despite living in this treacherous city, the banished Rutilius managed to survive the blood bath that so many of his former countrymen failed to escape. That he was able to remain so conspicuously alive needed explanation – especially since there seems to have been a Roman historiographical tradition of exiles allying themselves with the enemies of their former homeland⁴³ Cicero's explanation of the banished consular's survival on Mytilene during the massacre may have used

⁴¹ Sen. *Ben.* 6.37.2

⁴² Vell. 2.18.3; V. Max. 9.13.1; Liv. *Per.* 78. For Aquilius' execution at Pergamum, see *MRR*, 2.43 for sources.

⁴³ See Chapter 3, number 2.

Rutilius' works as a source. In his speech for Rabirius Postumus (delivered 54), Cicero states that it is not disgraceful for a Roman to assume foreign dress if necessity dictates. He uses the example of Rutilius Rufus on Mytilene as a case of such compulsion. To avoid the massacre, the exile disguised himself by discarding his toga and donning Greek clothing. Cicero concludes his remark by claiming that no one ever censured Rutilius for this act.⁴⁴ Given that Rutilius' conduct during the chaos on Mytilene was unlikely to have been noted by outside sources (especially since he successfully concealed himself from the notice of the hostile locals), I believe that Cicero's report was derived from Rutilius' writings.⁴⁵

Of course, the favorable tradition concerning Rutilius need not have originated solely in the literature of the exile himself. Rutilius had friends and associates who were active writers, and these men no doubt promulgated "good press" for their banished comrade. We have seen how Rutilius was accompanied into exile by the grammarian Aurelius Opilius: this learned freedman not only may have assisted his patron with his literary endeavors, but also could have mentioned him in his own works. The writings of Posidonius of Apamea, a Stoic philosopher and polymath who knew Rutilius personally, may have contributed considerably to the banished man's positive depiction.⁴⁶ Posidonius certainly held him in high regard – he wrote that Rutilius was one of only three Romans who truly lived up to the Stoic ideal.⁴⁷

⁴⁴ Cic. *Rab. Post.* 27. This passage highlights the expectation that even exiled Romans would continue to dress as Romans. Note the ridicule T. Albucius received as a student in Athens when a Roman praetor saw him dressed and deporting himself in Greek fashion: Lucil. 2.89–95M; Cic. *Fin.* 1.3.9.

⁴⁵ Cf. J. Malitz, *Die Historien des Poseidonios* (Munich, 1983), 340.

⁴⁶ Hendrickson, "Rutilius," 174–175. Posidonius was one of the foremost intellects of the late first and early second centuries. Rutilius and Posidonius were both pupils of Panaetius: Cic. *Off.* 3.2.10. In this passage, Cicero cites a letter of Posidonius as a source for one of Rutilius' sayings. Cicero's language implies that Posidonius gained this information from personal conversation with Rutilius (*Posidonius, qui etiam scribit in quadam epistula P. Rutilium Rufum dicere solere . . .*). Cf. A. R. Dyck, *A Commentary on Cicero, De Officiis* (Ann Arbor, 1996), 505; Münzer, *RE* 1A1, s.v. "Rutilius (34)," col. 1278. Rutilius' remark must have been heard by Posidonius sometime after the death of Panaetius in 109, since it concerned one of their teacher's unfinished treatises. While it is possible that Posidonius, who lived on nearby Rhodes, visited Rutilius during his Asian exile, there is no direct evidence to support this (contra Claassen, *Displaced Persons*, 105, who cites the aforementioned passage as proof that the philosopher visited the banished Rutilius frequently).

⁴⁷ Ath. 6.274C–E. The other two Romans were also pupils of Panaetius: Q. Mucius Scaevola "Augur" (cos. 117) and Q. Aelius Tubero. Scholars have speculated that Diodorus Siculus used Posidonius as a source for his favorable portrait of Q. Mucius Scaevola "Pontifex" (cos. 95) and his governance of Asia: D. S. 37.3.5; K. Rheinhardt, *RE* XXII.1, s.v. "Poseidonios (3)," col. 823; Malitz, *Poseidonios*, 332–338.

In his works from exile, Rutilius did not just concentrate on publicizing his own innocence and sterling character, but also boldly attacked his enemies back in Rome. He characterized Cn. Pompeius Strabo (cos. 89) as “one of the worst men living” in his *History*. The nature of the enmity between Rutilius and Pompeius is unclear – Münzer speculated that as a praetor, Pompeius may have had a hand in Rutilius’ unjust trial.⁴⁸ A Pompeius is mentioned in a fragment from Book One of Rutilius’ autobiography, although there is no context to determine which member of this *gens* is depicted or if the passage had a hostile tone.⁴⁹ Nor was Rutilius silent about C. Marius, one of his primary political enemies. He claimed that Marius had not only secured his sixth consulship through bribery, but also used graft to have L. Valerius Flaccus as his colleague, lest his rival, Metellus Numidicus, be elected to the office.⁵⁰

In addition to defaming politically powerful Romans who were not to his liking, Rutilius mocked some lesser known figures. A man named Sittius was slandered in Rutilius’ *History*; the author described him as infamous for his effeminacy and extravagance. Sittius, a native of Nuceria who fought for Rome during the Social War, seems to have been a target of derision for the Stoics, because Cato Uticensis also mocked him for his vices. In his own *Histories*, Rutilius’ associate

Posidonius’ original work surely would have also praised the conduct of the Stoic Rutilius, Scaevola’s legate in Asia. See also K. S. Sacks, *Diodorus Siculus and the First Century* (Princeton, 1990), 22 and 177 for Diodorus’ reliance on Posidonius for the history of the late Republic.

⁴⁸ Plut. *Pomp.* 37.3 = *HRF*, 188, frag. 4. The fragment suggests that Pompeius was alive when it was written (thus before his death in 87). Enmity between Rutilius and Pompeius: F. Münzer, *RE* IA.1, s.v. “Rutilius (34),” col. 1277–1278. The date of Pompeius’ praetorship is unknown, but it is possible that he was praetor in 92, the traditional date for Rutilius’ trial. Cf. *MRR*, 2.18, 19 n. 3; T. C. Brennan, *The Praetorship in the Roman Republic* (Oxford, 2000), 2.373.

⁴⁹ *HRF*, 189, frag. 7 = *Charis.* II p. 195K: *Pompeius elaboravit, uti populum Romanum nosset eumque artificiose saluaret*. Since this fragment comes from his *De vita sua*, presumably it refers to a Pompeius who was politically active while Rutilius was still in Rome: most likely either Pompeius Strabo or Q. Pompeius Rufus (cos. 88).

⁵⁰ Plut. *Mar.* 28 = *HRF*, 188, frag. 4. For the following section of Plutarch’s *Life of Marius* (29), G. Marasco has speculated that the biographer also used Rutilius’ *History* as a source for his description of Metellus Numidicus’ banishment: *Vita di Mario* (Torino, 1994), 413 n. 19. While this suggestion cannot be substantiated, the fact that Plutarch’s depiction of Metellus’ exile reflects stoic ideals does lend some credence to it. As a firm adherent of that philosophy, Rutilius would likely have emphasized the stoicism of Metellus – another victim of Marius’ policies – in his work. For Metellus’ stoicism, see G. Garbarino, *Roma e la filosofia greca dalle origini alla fine del II secolo a.C.* (Torino, 1973), 2.473 ff; R. Degl’ Innocenti Pierini, “Orgoglio Di Esule: Su Due Frammenti Di Un’ Epistola Di Q. Caecilio Metello Numidico,” *Maia* 52 (2000), 252–253.

Posidonius wrote a similar remark about a certain Apicius, claiming that he was the most profligate man in the world. Additionally, he depicted this Apicius as responsible for Rutilius' exile.⁵¹ Since Posidonius was an associate of Rutilius, he may have consulted the exile's works as a source – or even obtained oral information from him during a visit.⁵² Aside from another note in Athenaeus' *Deipnosophistae* about the luxurious lifestyle of Apicius, we know nothing else about this man who allegedly caused Rutilius' banishment. Perhaps it is not too bold to speculate that Apicius was foremost among the equestrians who conspired to accuse Rutilius of extortion. The fact that he is assigned the prominent role in Rutilius' banishment, yet is otherwise unknown, suggests that he was either a low-ranking senator or an equestrian. Since the equestrian order, displeased with Rutilius' curtailment of their corrupt activities in Asia, was one of the driving forces behind the prosecution, it is plausible that Apicius was an *eques*.⁵³

Although the extant sources reflect Rutilius' own version of his exile, one slanderous comment about the exile's character has survived as representative of a hostile tradition. In his *Life of Pompey*, Plutarch notes that Pompey the Great seized the correspondence of King Mithridates during the Third Mithridatic War. The captured documents illustrated the various crimes of the king as well as interpretations of his dreams. According to Plutarch, Theophanes of Mytilene claimed that a letter written by Rutilius Rufus was discovered among Mithridates' archives, and in this letter the banished Roman urged the king to massacre Roman citizens in Asia. Plutarch rejects Theophanes' allegation and adds that most historians believe this story was fictitious. Since he was a partisan of Pompey the Great, Theophanes' slander may have been retaliation against Rutilius for his defamation of Pompey's father (Cn. Pompeius Strabo).⁵⁴

⁵¹ Sittius: Athenaeus 543AB = *HRF*, 188, frag. 6; Plut. *Cat. Min.* 3.4; F. Münzer, *RE* II.3, s.v. "Sittius (2)," col. 409. Apicius: Athenaeus 168DE. Cf. *FGrH* 2c, 171 (Kommentar); I. G. Kidd, *Posidonius II. The Commentary* (Cambridge, 1988), 1.330.

⁵² H. Peter, *HRF*, CCLX; Kidd, *Posidonius II*, 1.330.

⁵³ Apicius' equestrian status: C. Nicolet, *L'ordre équestre à l'époque républicaine* (Paris, 1974), 2.779, no. 26; Klebs, *RE* I, s.v. "Apicius (1)," col. 2802. The *equites* planning the prosecution of Rutilius: Dio 28, fr. 97.1; Flor. *Epit.* 2.5.3; cf. Vell. 2.13.2. Dio adds that C. Marius played a role in the proceedings against his *inimicus* (frag 97.3). Athenaeus mentions Apicius' character again at 543D, immediately after he cites Rutilius' remarks about Sittius.

⁵⁴ Plut. *Pomp.* 37.3 = *FGrH* 2B, 188 F1; B. K. Gold, "Pompey and Theophanes of Mytilene," *AJP* 106 (1985), 319–322; M. H. Crawford, "Greek Intellectuals and the Roman Aristocracy in the First Century BC," in

Theophanes of Mytilene was an ardent *Pompeianus* – he accompanied the general on his Eastern campaigns and wrote a history that seems to have compared Pompey's exploits with those of Alexander the Great. For his services, Pompey saw that Theophanes received Roman citizenship.⁵⁵ Theophanes' insinuation was no mere slur on Rutilius' character; rather, it was an attempt to implicate him in the murder of a reported eighty thousand Romans and Italians by Mithridates in 88. There could scarcely be a more grave charge laid against a Roman than collusion with such a hated foreign enemy in the massacre of so many fellow countrymen. By making this extreme accusation, Theophanes was doubtlessly attempting to utterly destroy Rutilius' reputation and completely discredit him. Fortunately for Rutilius, his own works proved to be authoritative – he had effectively established his version of his life and character. Despite the fact that his autobiography and history were peppered with partisan attacks against his rivals, Rutilius seems to have enjoyed a reputation for truthfulness.⁵⁶ Theophanes' lack of literary merit and penchant for inaccuracy also may have hindered the acceptance of his account.⁵⁷ It is interesting that he bothered to denigrate Rutilius at all, since the exile was probably deceased when Theophanes' book was published. Rutilius was still alive in 75, but was at least 82 years old. Pompey's seizure of Mithridates' archives at Caenum (which supposedly included Rutilius' letter) occurred in 65. Theophanes seems to have completed his work by late 62, and Rutilius (if still living) would have been in his mid-90s. To invite such savage invective, the aged (or deceased)

P. D. A. Garnsey and C. R. Whittaker, eds., *Imperialism in the Ancient World* (Cambridge, 1978), 203–204; W. S. Anderson, *Pompey, His Friends, and the Literature of the First Century BC.* (Berkeley, 1963), 36.

⁵⁵ Rawson, *Intellectual Life*, 108–109. His receipt of Roman citizenship: Cic. *Arch.* 24. Pompey favored Theophanes so much that he restored the status of *civitas libera* to his hometown of Mytilene, which had lost this right after betraying the Romans to Mithridates in 88 (Vell. 2.18.4). On the long association between Pompey and Theophanes, see Anderson, *Pompey*, 34–41. Ironically, Rutilius' friend Posidonius may have written a favorable account of Pompey's Eastern campaigns as well. He at least promised Pompey that he would write such a work when the victorious general visited Rhodes in 62: Cic. *Tusc.* 2.61; Strabo 11.1.1; Plin. *NH* 7.112; Plut. *Pomp.* 42. Anderson believes that Posidonius did not promise to write a separate work on Pompey's achievements, but rather wrote favorably about him in his larger *Histories* (*Pompey*, 60). Cf. E. Schwartz, "Einiges über Assyrien, Syrien, Koilesyrien," *Philologus* 86 (1931), 391–392 n. 22; K. Rheinhardt, *RE* XXII.1, s.v. "Posidonius (3)," cols. 638–639; Malitz, *Posidonios*, 71–74; Kidd, *Posidonius II*, 1.332.

⁵⁶ Plut. *Mar.* 28; Tac. *Agr.* 1.1–4; J. Marincola, *Authority and Tradition in Ancient Historiography* (Cambridge, 1997), 178–179.

⁵⁷ Rawson, *Intellectual History*, 109.

Rutilius still must have been a powerful political symbol for friends and foes alike. That he was still a viable political figure after 30 years in exile demonstrates the effectiveness of his exilic writings.⁵⁸

One final vestige of an anti-Rutilian tradition remains, although it does not deal with grave political accusations or matters of state. The fourth-century AD pagan apologist Symmachus records in his letters that Rutilius maintained his grammarian Aurelius Opilius in meager fashion.⁵⁹ This anecdote contradicts the picture of a generous Rutilius found in Athenaeus' *Deipnosophistae*, which reports that Rutilius used to give substantial support to Stoic philosophers and that he even paid his own slaves for fish they had caught.⁶⁰ Symmachus' comment was probably based on a source hostile to Rutilius that attempted to blacken the exile's character by showing his Stoic frugality to have been mere cheapness. Thus the accounts of Symmachus and Athenaeus seem to reflect competing traditions concerning the life of the controversial Rutilius.

Although Cicero greatly admired Rutilius and often maintained his innocence, he did not invoke the banished consular's *exemplum* as a model for comparison with his own exile. In his speeches following his return to Rome, Cicero turned instead to the precedents of Popillius Laenas and Metellus Numidicus to put his experience in perspective. Although Rutilius was an inspirational figure, he was not an appropriate archetype for Cicero to use in his speeches. After all, Rutilius had never sought to be restored and had died in exile, whereas Popillius and Metellus had been successfully recalled to Rome. Cicero also invoked the image of his fellow Arpinate C. Marius, who had been driven from his country by Sulla but managed to return to Rome (albeit by armed force). While Cicero seems to have admired Marius in some ways, his presentation of this controversial figure in his post-exilic speeches varies according to his audience. Before the Roman senate, Marius is briefly characterized as a man who nearly destroyed the senate after his violent return to Rome. In his speech to the people of Rome, for whom Marius

⁵⁸ Rutilius ran for the consulship of 115, so must have met the minimum forty-two-year age requirement to be a consular candidate. He was mentioned among the living orators in Cicero's *De natura deorum*, the dramatic date of which was 75 (Cic. *N. D.* 3.80). Theophanes finished his *History* before Pompey returned to Italy and dismissed his troops in late 62. Cicero notes that Theophanes received his citizenship at an assembly of Pompey's soldiers as a reward for the book: *Arch.* 24; Rawson, *Intellectual History*, 108.

⁵⁹ Symm. *Ep.* 1.20.2.

⁶⁰ Athen. 274D; cf. Rawson, *Intellectual History*, 80 n. 65, believes that Athenaeus gleaned this information from Posidonius, a source he uses elsewhere in his *Deipnosophistae*.

was a popular hero, Cicero depicted him as a man of great courage who was never cowed by adverse fortune. Before both the senate and people, however, Cicero contrasts the peaceful nature of his own restoration with the violence of Marius' return.⁶¹ Despite his ambivalent statements about Marius, the figure of his fellow Arpinate and *novus homo* was an inspirational one for Cicero at the time of his own flight from Rome. Indeed, following his restoration in 57, Cicero wrote *Marius*, an epic poem that apparently dealt with the hero's retreat from his homeland and eventual return.⁶² Although Cicero may have had held special empathy for Marius' endurance of adverse fortune, he did not press the parallels with his own situation in his political orations.

In his speeches *post reditum*, Cicero depicted the "unjust" banishment of Popillius and Metellus as the work of demagogic tribunes and placed his own *exilium* in this tradition.⁶³ Cicero was thus able to depict his exile as a part of this ongoing struggle between the lawful *boni* and the chaotic *populares*. Metellus in particular was lauded by Cicero for his courageous refusal to swear to uphold Saturninus' agrarian legislation and his willingness to endure exile rather than compromise his principles.⁶⁴

Cicero's deep respect for Metellus did not prevent him from engaging in a bit of self-promotion by depicting how the glory of his own departure and return surpassed that of his predecessor. Metellus had shown more regard for his own personal integrity than concern for the commonwealth by refusing to swear to uphold Saturninus' *lex agraria* and accepting exile. In contrast, Cicero believed that his own flight from Rome protected the welfare of the state rather than his personal concerns.⁶⁵ By this implied criticism (albeit mild) of Metellus

⁶¹ Cic. *Red. Sen.* 38; *Red. Pop.* 7–11, 19–20; J. M. Claassen, "Cicero's Banishment: *Tempora et Mores*," *Acta Classica* 35 (1992), 32–33. For the complex depiction of Marius in the works of Cicero, see T. F. Carney, "Cicero's Picture of Marius," *Weiner Studien* 73 (1960), 83–122.

⁶² For the fragments of *Marius*, see E. Courtney, *The Fragmentary Latin Poets* (Oxford, 1993), 174–178.

⁶³ Cic. *Dom.* 87; *Red. Sen.* 38; *Red. Pop.* 10–11. He would even invoke three examples of unjustly exiled men from Rome's distant past who were later restored to the state: Cic. *Dom.* 86. See Appendix II for a discussion of this passage.

⁶⁴ There are thirty-one passages in the extant Ciceronian corpus that mention Metellus Numidicus, twenty-two of which deal with his exile. Cicero seems to have seen Metellus as a kindred spirit, since their political careers had several parallels. Both men had resisted the actions of radical tribunes of the plebs, withdrew into voluntary exile due to the machinations of their enemies, but in the end managed a triumphant return to Rome. Cf. Degl' Innocenti Pierini, "Orgoglio Di Esule," 250–251.

⁶⁵ Cic. *Plan.* 89; *Sest.* 37.

for his perceived preoccupation with his individual *dignitas*, Cicero was perhaps upholding an ethic of selfless devotion to the needs of the republic.⁶⁶ Naturally, this contrast with Metellus depicted Cicero in a more heroic light and was favorable to his public image. In his earlier speeches *post reditum*, Cicero had made a similar comparison and demonstrated how his exile and restoration surpassed that of previous exemplars. While Popillius Laenas and Metellus Numidicus had counted on scores of influential relatives to press for their restoration – something that Cicero did not possess – his own recall was demanded by the senate, the Roman people, and all Italy. In contrast to this wide support across the entire spectrum of Roman society, Popillius and Metellus owed their return from exile to tribunician legislation after the massacre of their political opponents. Thus Cicero not only placed himself in the line of brave Romans who endured exile, but also sought to demonstrate that he was the greatest of these heroes.⁶⁷

Cicero's speeches *post reditum* were the first step in attacking the enemies who caused his exile and represented an attempt to restore his tarnished political image. Indeed, Cicero wasted no time in publicizing this positive version: he delivered speeches before the people and the senate respectively on the day after he returned to Rome. Almost a month later, Cicero delivered his *De domo sua* before the College of Pontiffs for the purpose of regaining his Palatine property. Clodius, the former tribune responsible for Cicero's banishment, is slandered and attacked throughout the oration. In addition to vilifying his adversary, Cicero also concentrates on creating a unique image for his *discessus*. The orator claims that he committed no crime to warrant his persecution by Clodius and that he was never even charged with breaking the law. Thus Cicero maintains that he was never truly an exile and the label of *exul* cannot be applied to him.⁶⁸ This assertion seems to have been in response to Clodius' public denigration of Cicero as a criminal and an exile.⁶⁹

⁶⁶ Degl' Innocenti Pierini, "Orgoglio in Esule," 252–253; Carney, "Cicero's Picture of Marius," 99.

⁶⁷ Cic. *Dom.* 86–87; *Red. Sen.* 37–38; *Red. Pop.* 6–12; cf. *Ad Fam.* 1.9.16. To dramatically illustrate the unanimity of his recall, Cicero claimed that a personified Italy had carried him back on her shoulders (*Red. Sen.* 39; cf. *Red. Pop.* 10), a depiction later mocked by the author of the Pseudo-Sallustian *In Ciceronem* (7). In his other works, Cicero used the recurring image of the personified Republic (or Italia) recalling him from abroad: J. Glucker, "As has been rightly said . . . by me," *LCM* 13 (1988), 6–9.

⁶⁸ Cic. *Dom.* 72–92.

⁶⁹ Cic. *Dom.* 72 and 95; cf. *Har. Resp.* 17. Clodius was not alone in using this sort of slur against Cicero. In 54, A. Gabinius called Cicero *exul* during a meeting of the senate: Cic. *Q. Fr.* 3.2.2.

The orator also echoed a sentiment found in Metellus' exilic letters and asserted that Clodius was the real exile wherever he lived due to his infamy and dishonor.⁷⁰

Cicero was quite pleased with the quality of his speech *De domo sua* and wrote to Atticus that he intended to publish it as soon as possible. Although he stated he wanted rapid publication of the speech so as not to keep the youth of Rome waiting too long to read it, Cicero was probably being somewhat facetious; certainly he also wished to immediately disseminate his *tour de force* of invective against Clodius and defense of his own reputation.⁷¹ Since the decision of the *pontifices* had been in Cicero's favor, the publication of this successful speech would be effective in vindicating his version of events.

The partisan war of words concerning Cicero's exile did not end with the publication of his post-exilic orations. In the ongoing struggle to regain his political authority and retaliate against his enemies, Cicero turned his attention to L. Calpurnius Piso Caesonius and A. Gabinius. Piso and Gabinius had been the consuls of 58 who allowed Clodius a free hand in the activities that caused Cicero's banishment.⁷² Eager to disgrace Piso and Gabinius, Cicero delivered a speech in June 56 *de provinciis consularibus* that demanded that the senate replace them as governors of their respective provinces. Cicero's efforts proved partially successful; although Gabinius was allowed to remain in his province of Syria until 54, a praetorian governor was sent to Macedonia to replace Piso in 55.⁷³

⁷⁰ Cic. *Dom.* 72. Metellus: Gell. 17.2.7. In his *Paradoxa Stoicorum* published ca. 46, Cicero returned to examining the true meaning of *exul*. In a monologue to an unnamed auditor (internal references suggest Clodius), Cicero again asserts that only an unjust man can truly be called an exile – even if he has never been expelled from his homeland (4.30–32). Cf. Degl' Innocenti Pierini, "Orgoglio Di Esule," 256, and "Ubi non sis qui fueris, non esse cur velis vivere," *RFIC* 126 (1998), 49–54. For Cicero's view of exile in his philosophical works, see E. Narducci, "Perceptions of Exile in Cicero: The Philosophical Interpretation of a Real Experience," *AJP* 118 (1997), 55–73.

⁷¹ Cic. *Att.* 4.2.2 For the theory that Cicero composed a substantial portion of *De domo sua* while in exile in anticipation of his return, see D. R. Shackelton Bailey, *Cicero: Back from Exile: Six Speeches upon His Return* (New Baskerville, 1991), 38.

⁷² See *MRR* 2.193 for the sources concerning their support of Clodius' activities. Although Cicero pursued a vendetta against A. Gabinius, he ultimately was compelled by Pompey to defend Gabinius when he was accused of extortion in 54.

⁷³ Cic. *Prov. Cons. passim*; *Pis.* 88–89. Cf. H. E. Butler and M. Cary, eds., *M. Tulli Ciceronis De Provinciis Consularibus Oratio Ad Senatum* (Oxford, 1924), 13; E. G. Hardy, "Consular Provinces between 67 and 52 BC," *CR* 31 (1917), 13; T. P. Wiseman, "Caesar, Pompey and Rome, 59–50 BC," *CAH²*, 9.395; R. G. M. Nisbet, ed., *M. Tulli Ciceronis In L. Calpurnium Pisonem Oratio* (Oxford, 1961), 158–159.

Upon his return from his province in mid-55, Piso protested Cicero's invective against him during a meeting of the senate and proceeded to respond to his tormentor with some choice comments of his own. Naturally, Piso belittled his opponent for his humiliating exile, but he added a new twist to this stock abuse – he jested that in reality Cicero had been banished due to his self-glorifying poetry.⁷⁴

Cicero launched an oratorical counterattack against Piso during a meeting of the senate sometime during the summer of 55. He would later adapt this speech *In Pisonem* and publish it the following year. Piso did not passively endure Cicero's scathing invective; after the publication of Cicero's *In Pisonem*, he circulated a pamphlet of his own. Quintus Cicero advised his brother to write a reply to his enemy's publication. Marcus replied to his brother's recommendation with his typical egocentrism: no one would read Piso's miserable writing unless he dignified it with a response. In contrast to the obscurity of his political enemy's work, Cicero proudly observed that all schoolboys memorized his speech against Piso by heart.⁷⁵ In the letter to his brother Quintus that discusses this matter, M. Cicero used the unique nomenclature *Calventius Marius* to identify Piso. Calventius was the name of Piso's maternal grandfather who was of Gallic extraction; thus Cicero continued to mock his opponent's non-Roman background as he did in the *In Pisonem*. The name Marius is also an allusion to the published oration in which Cicero made reference to Metellus Numidicus' exile – likening himself

⁷⁴ Piso's complaint about his abuse by Cicero: Asc. 2C; his comments about Cicero's exile: Cic. *Pis.* 31 and 34. Piso singled out the line from Cicero's epic poem *De consulatu suo* that brought about his exile: *cedant arma togae, concedat laurea laudi* (let arms yield to the toga, let the laurel give way to praise): *Pis.* 72–74. Piso claims that this line offended Pompey because it implied that Cicero's civilian deeds were greater than Pompey's military achievements. Cf. Nisbet, *In Pisonem*, 140–143. By linking Cicero's exile with his poetry, Piso skillfully targeted two of his opponent's sensitivities with one blow. Naturally, Cicero was vulnerable to abuse on the subject of his banishment, but he was also very defensive about criticism of his poetry: Sen. *Dial.* 5.37.5 (*Cicero, si derideres carmina eius, inimicus esset.*) For an interesting discussion of Cicero's psychological motives in writing *In Pisonem*, see Claassen, *Displaced Persons*, 133–139.

⁷⁵ Cic. *Q. F.* 3.1.11. On the date and delivery of the *In Pisonem*, see Nisbet, *In Pisonem*, 199–202. It has been suggested that the *In Ciceronem* attributed to the historian Sallust was an extract from Piso's pamphlet: E. Meyer, *Caesars Monarchie und das Principat des Pompeius* (Stuttgart, 1922), 163; J. Carcopino, *Histoire romaine II, La République romaine de 133 à 44 avant J.-C.* (Paris, 1936), 754; Claassen, *Displaced Persons*, 209, n. 13. This hypothesis is unlikely given that some of the information contained in the *In Ciceronem* postdates July 54, the latest possible date for the publication of Piso's work (Nisbet, *In Pisonem*, 198). For the theory that the *In Ciceronem* is an Augustan Age imitation of Sallust's style, see R. Syme, *Sallust* (Berkeley, 1964), 314–318; G. B. Conte, *Latin Literature: A History*, trans. J. B. Solodow, rev. D. Fowler and G. W. Most (Baltimore, 1994), 243.

to the heroic Metellus and casting Piso as a bargain-basement Marius.⁷⁶ That he continued this comparison between himself and Metellus Numidicus in his private correspondence demonstrates how powerful the *exemplum* of the earlier exile was for Cicero. His identification with Numidicus was not merely for public propaganda value, but seems to have held personal significance.⁷⁷

Cicero did not confine himself to orations and pamphlets to attempt to repair the damage exile caused to his political influence. Just as Cicero had extolled the glory of his consulship with the epic poem *De consulatu suo*, he turned to this same genre to depict his exile in suitably heroic proportions.⁷⁸ This work would deal with Cicero's career not only in human terms: even divinities were depicted as actors in the drama. In a letter to his brother Quintus from September 54, Cicero mentions *De temporibus suis* as a work in progress. Earlier in the year he had sent his brother the second book of this poem for his review. Quintus was evidently quite pleased with his brother's epic. Despite Quintus' approval of the second book, the author later contemplated updating this section of the poem based on current events. Since Piso had recently been accused of treason, Cicero considered adding this incident to a prophesy Apollo makes about the fate of Piso and Gabinius. At the end of 54 the poem was completed, but as yet unpublished. Cicero mentioned to his friend P. Cornelius Lentulus Spinther that the finished work comprised three books and contained praises for Lentulus' actions on his behalf.⁷⁹

Although there are no extant fragments of the *De temporibus suis*, references to the poem indicate that it dealt with Cicero's exile in some fashion. The epic poem probably treated the events after Cicero's consulship down to his return from exile, as Cicero was eager to have this period gloriously recorded. At first he looked to others to accomplish this task, since an account written by a third person would appear to be more objective and credible. Cicero tried to persuade the historian L. Lucceius to write about these events, but to no avail. In his notorious letter to the historian in April 55, Cicero lauded Lucceius' literary talent in an attempt to flatter the writer into glorifying his deeds. Cicero even asked the historian to ignore the

⁷⁶ Cic. *Pis.* 20; D. R. Shackelton Bailey, *Cicero Epistulae ad Quintum fratrem et M. Brutum* (Cambridge, 1980), 208, and *Onimasticon to Cicero's Speeches* (Norman, 1988), 30; Nisbet, *In Pisonem*, 80.

⁷⁷ Cf. *Ad Fam.* 1.9.16.

⁷⁸ Several scholars of the late nineteenth century conflated the two Ciceronian epic poems: cf. M. Grollm, *De M. Tullio Cicerone Poeta* (Königsberg Dissertation, 1887), 35–36.

⁷⁹ Cic. *Q.F.* 2.8.1, 3.1.24; *Fam.* 1.9.23.

normal rules of history writing and praise his actions as much as possible. The orator pointed out to Lucceius that if he was reluctant to write such a work, he would have to resort to autobiography and chronicle the events himself. But autobiography had its limitations, as the author tended to have less credibility in the eyes of his readers and was apt to seem immodest.⁸⁰ The references to the *De temporibus suis* in Cicero's correspondence appear soon after his failed attempt with Lucceius, suggesting that Cicero turned to his own poetic skills to immortalize the events leading up to his exile and his triumphant return.

Cicero's comments about the poem in three of his letters written in 55 and 54 give further clues as to the work's scope. The author stated that the poem lauded Lentulus Spinther's signal services for him – certainly a reference to his efforts as consul of 57 to secure a recall for the banished orator.⁸¹ We also know from his correspondence that Cicero contemplated including a scene set in a council of the gods, where Apollo predicted that both Piso and Gabinius would suffer an ignominious return from their provincial commands. Of course, Apollo was not the only god to appear in Cicero's epic, as Jupiter made a speech at the end of Book II, perhaps at the same divine assembly.⁸² Based on these references in Cicero's letters, modern reconstructions of the *De temporibus suis* hypothesize that Book I dealt with Cicero's struggle against Clodius and flight from Rome, the second book covered his exile, and the final book detailed his restoration.⁸³ Cicero wrote to Lentulus in December 54 that he had not published his new epic poem, and it is unclear if the *De temporibus suis* ever received wide circulation. The lack of direct quotation in any ancient source seems to indicate that the poem was never published. Indeed, outside of the three references in Cicero's letters discussed above, no ancient authors seem to be aware of the poem.⁸⁴ Aside from sending

⁸⁰ Cic. *Fam.* 5.12; cf. *Att.* 4.9.

⁸¹ Lentulus was one of the key figures in Cicero's restoration. For sources, see *MRR* 2.200.

⁸² Cic. *Q. F.* 2.7.1.

⁸³ W. W. Ewbank, *The Poems of Cicero* (London, 1933), 16–19; J. Soubiran, *Cicero: Aratea, Fragments Poétiques* (Paris, 1972) 40; K. Büchner, *RE* 7.A.1, s.v. "Cicero: Briefe, Fragmenta," col. 1250–1252; cf. S. J. Harrison, "Cicero's 'De Temporibus Suis': The Evidence Reconsidered," *Hermes* 118 (1990), 456–457; Claassen, *Displaced Persons*, 208–209.

⁸⁴ *De temporibus suis* never published: Shackleton Bailey, *Cicero*, 91; E. Rawson, *Cicero* (London, 1975), 145; Harrison, "De Temporibus Suis," 462–463; E. Courtney, *The Fragmentary Latin Poets* (Oxford, 1993), 173–174; M. Hose, "Cicero als hellenischer Epiker," *Hermes* 123 (1995), 458–455; S. M. Goldberg, *Epic in Republican Rome* (Oxford, 1995), 166. Harrison, 458–463, has convincingly demonstrated that alleged later

copies to a few friends and associates, Cicero appears to have kept the poem to himself.⁸⁵ Perhaps the delicate political situation of the time influenced him not to formally publish the work, for fear of alienating Caesar and Pompey, the pre-eminent men in the Roman state. After all, Caesar had supported Clodius' actions in 58, and Pompey had avoided taking measures to oppose the radical tribune's persecution of Cicero. Since he was trying to stay in the good graces of Caesar and Pompey following his restoration from exile, Cicero's publication of an epic poem that depicted the gods aiding him and opposing those responsible for his banishment may have tread on ground that could jeopardize his political goals. Cicero denied in his letter to Lentulus in December 54 that he had not yet published the poem because its contents might offend some men. Rather, he worried that some of his supporters might feel snubbed because he could not mention all of those who had helped him during his time of need without creating an endless work.⁸⁶ Whether due to the fear of antagonizing the powerful,

testimonia to the poem ([Sal.] in *Cic.* 2.3, 4-7; Quint. 11.1.23-4) actually refer to Cicero's *De consulatu suo* or his speeches. Contra: Grollm, *De M. Tullio Cicerone Poeta*, 31; Ewbank, *Poems of Cicero*, 12; H. Malcovati, *Cicerone et la poesia* (Pavia, 1943), 263-264; A. Traglia, *Ciceronis Poetica Fragmenta* (Rome, 1950), 16-17; Soubiran, *Ciceron*, 37-40; C. Büchner, *Fragmenta Poetarum Latinorum Epicorum et Lyricorum Praeter Ennium et Lucilium* (Leipzig, 1982), 86.

⁸⁵ *Cic. Q. F.* 2.14(13).2 and 2.16(15).5 both make reference to poetry that Cicero had sent for Caesar's opinion. Some scholars believe the poetry mentioned in these two passages is the *De temporibus suis*. W. Allen, "The British Epics of Quintus and Marcus Cicero," *TAPA* 86 (1955), 146 and 155-156; Claassen, *Displaced Persons*, 209. The first letter seems to refer to a different poem, an epic account of Caesar's exploits, of which Cicero had sent a sample (Shackleton Bailey, *Ad Q. Fratrem*, 198-199). The identity of the poem mentioned in the second letter is more problematic. In this epistle, M. Cicero asked his brother Quintus (present with Caesar in Britain in late 54) how Caesar reacted to the verses he had sent him. Caesar had written Marcus that he had read the first book and praised it highly, but found the rest of the work "languid" (cf. D. R. Shackleton Bailey, "L. S. J. and Cicero's Letters," *CQ* 12 [1962], 164). Thus Marcus pressed his brother Quintus to determine if Caesar disliked the topic (*res*) of the work or the style. The poem mentioned in the second letter is widely believed to be the *De temporibus suis*: Shackleton Bailey, *Ad Q. Fratrem*, 202; Harrison, *De Temporibus Suis*, 455; Traglia, *Poetica Fragmenta*, 17; Ewbank, *Poems of Cicero*, 17-18; Courtney, *Fragmentary Latin Poets*, 173. Since Cicero wondered if Caesar was displeased with the subject matter of the poem, the work certainly concerned something other than Caesar's exploits. Cicero had been working on the *De temporibus suis* in late 54, so it is likely that he sent it for Caesar's review, given the poem's controversial nature and Caesar's power and influence in the Roman state. For Caesar's opinion of Cicero's poetry, see S. Byrne, "Flattery and Inspiration: Cicero's Epic For Caesar," in C. Deroux, ed., *Studies in Latin Literature And Roman History IX*, (Brussels, 1998), 132-135 and F. Lossman, *Cicero und Caesar im Jahre 54* (Wiesbaden, 1962), 61-62.

⁸⁶ *Cic. Fam.* 1.9.23.

alienating his own supporters, or some other reason, the text of his letter to Lentulus implies that by the end of 54 Cicero had decided against publishing the *De temporibus suis*.⁸⁷

Although literary figures like Cicero often painted heroic portraits of those who endured exile, these works had their limitations. Exiles such as Rutilius Rufus were praised in writing, but few were inspired to follow their examples. Despite the dominance of the optimate tradition of Metellus' exile in the literary sources, this *exemplum* was not sufficiently powerful to embolden a later generation of Roman senators faced with similar circumstances. In 59, Caesar sponsored a *lex agraria* that imitated Saturninus' earlier law by including a clause that required all senators to swear to uphold the measure. The legislation threatened noncompliance with serious penalties. This situation was almost identical with Metellus Numidicus' earlier predicament. Although he had been lauded as a paragon of virtue by the optimates, no one was inclined to imitate Metellus' example. Indeed, Plutarch states that the knowledge of Metellus' banishment did not inspire any resistance, but actually *encouraged* the senate to comply. Only Cato Uticensis contemplated opposition to the distasteful legislation. Cicero was reportedly instrumental in persuading Cato to take the oath – quite ironic given the orator's later praise for Metellus' actions.⁸⁸ Caesar and his associates had learned something from Metellus' *exemplum* that Cicero and the *boni* seem to have overlooked – that in the year 100, all senators but one had taken the oath, such was their fear of exile.

⁸⁷ Shackleton Bailey believes that *Fam.* 1.9.23 suggests that Cicero was contemplating a posthumous publication of the poem (*Ad Fam.* 1.315). T. P. Wiseman speculates that Cicero abandoned the publication of the *De temporibus suis* and began to write an epic poem on Caesar's invasion of Britain to gain Caesar's support for his brother Quintus' consular ambitions: "The Ambitions of Quintus Cicero," *JRS* 56 (1966), 110. For an excellent discussion of Cicero's political situation at this time with regard to Pompey and Caesar, see T. N. Mitchell, "Cicero before Luca," *TAPA* 100 (1969), 311–320.

⁸⁸ Plut. *Cat. Min.* 32.2.

6 PROSOPOGRAPHY OF ROMAN EXILES

THE FOLLOWING IS A CHRONOLOGICAL LIST OF ROMANS MENTIONED IN ANCIENT sources as being exiles between the dates of 220 and 44. The cases are arranged by the initial date of exile. I have included *RE* numbers in parentheses after each name when applicable. The highest magistracy and year attained is listed (according to *MRR* unless otherwise noted) with the individual's name. Each listing is divided into three parts. The first (a) sets forth the facts of the judicial proceedings that precipitated exile. The next (b) deals with the exile's activities after his flight, and the final section (c) describes any additional material, such as return from exile and subsequent career, source problems, or significant modern scholarship concerning the case. Major ancient sources are embedded in the descriptions, whereas any remaining citations that only mention the person's exile but give no specific details are placed at the end of each listing.

1. Certain Matronae

Date: 213

a. For the beginning of the consular year in 213, Livy describes a series of prosecutions initiated by the plebeian aediles: *L. Villius Tappulus et M. Fundanius Fundulus aediles plebei aliquot matronas apud populum probi accusarunt; quasdam ex eis damnatas in exilium egerunt* (Liv. 25.2.9: The plebeian aediles, L. Villius Tappulus and M. Fundanius, charged some women before the people with immodest conduct. They drove some of them into exile who had been convicted). It is very unusual for women to be publically tried for crimes. Normally, the conduct of women was a family matter, and any misbehavior was judged by a domestic *consilium* and punishment meted out by the *paterfamilias*. That these *matronae* were publicly condemned suggests that they were *sui iuris* and free from the normal system of domestic justice. Their reported crime of "immodesty" is very vague and offers few clues as to the specific circumstances of these trials. However, the conditions in Roman society at this time – during the height of the Hannibalic War – do provide some background for interpreting this event. A sudden increase in the number of women free from the control of their husbands and other male relations would be expected

following the enormous military casualties that Rome had suffered in the previous few years. Without such traditional family structures to support them, economic necessity no doubt forced these independent women to be in public far more frequently than was normal for a Roman *matrona*. Many would have been obliged to seek employment outside the household and thus leave the established sphere of female activity. The increased independence of these women might have been offensive to a conservative Roman society and even fueled rumors of immorality and licentiousness. In this light, the prosecutions of 213 can perhaps be seen as a reaction against the changing roles of women in society due to the consequences of a crippling and protracted conflict.

b. N/A

c. N/A

2. M. Postumius (18) Pyrgiensis, *eques Romanus*

Date: 212

a. In 212 the *publicanus* M. Postumius was accused of defrauding the state and fined 200,000 asses by the tribunes of the plebs L. and Sp. Carvilius. It seems he had been purposely sinking the ships on which he was contracted to send supplies to Roman forces overseas and then inflating the claims of his losses. Postumius appealed this penalty to the *concilium plebis*. The assembly was disrupted by other *publicani* when the proceedings appeared to be going against Postumius. The senate censured the actions of Postumius and his associates, and he was indicted on capital charges by the Carvili. The tribunes also demanded that Postumius furnish *vades* or be incarcerated to ensure his presence at trial (Liv. 25.3.8–4.8).

b. Postumius gave the sureties, but did not appear on the appointed day. A plebiscite was passed that allowed Postumius a certain amount of time to appear and reply to the charges. If he did not, he would be considered to have gone into exile, his property would be confiscated, and he would be interdicted from fire and water. The other *publicani* responsible for the disruption of the earlier *concilium plebis* were similarly indicted on capital charges and ordered to provide *vades*. Initially, those who did not comply were incarcerated. Subsequently, even the accused who were able to furnish the requested bail were thrown into prison. Many of the *publicani* avoided this situation by going into exile (Liv. 25.4.9–11).

c. Postumius' case has been misinterpreted as an example of a capital trial before the plebeian assembly (Greenidge 1901, 328–329; Feig Vishnia 1996, 74–75). Hardy

(1924, 9–10) has demonstrated that Postumius was to appear before a *iudicium populi*, but his flight beforehand made the trial unnecessary.

Münzer (*RE* XXII.1, s.v. “Postumius [2],” col. 895, and [18], col. 899–900) postulates that Postumius of Pyrgi may have been descended from the Etruscan pirate Postumius who was active in Sicilian waters in 339 (Diod. 16.82.3). While possible, this idea is unsupported by any solid evidence (aside from both men being Etruscans with a predilection for committing crimes on the high seas). The tribune C. Servilius Casca was reportedly a close relative of Postumius. The *publicani* thus pressed Casca to use his veto to protect their comrade (Liv. 25.3.15–19). See *MRR*, 2.271–272 n. 5 for the identification of this Servilius Casca.

3. Cn. Fulvius (54) Flaccus, pr. 212

Date: 211

a. As praetor in Apulia, Fulvius was defeated by Hannibal at Herdonea (Liv. 25.20–21; 26.1.9; 27.1.9). The following year, he was accused of *perduellio* by the tribune C. Sempronius Blaesus. Initially, Sempronius only demanded a fine, but changed the trial to a capital one at the third *anquisitio*. The praetor urbanus C. Calpurnius Piso fixed the day for the meeting of the *comitia centuriata* to hear the case (Liv. 26.2.7–3.11).

b. When the day for the vote of *comitia centuriata* arrived, Fulvius sought refuge at Tarquinii. A vote of the *plebs* officially confirmed his exile (Liv. 26.3.12).

c. Livy’s statement *id ei iustum exsilium esse scivit plebs* (26.3.12: the plebs judged that it was lawful exile for him) has been variously interpreted by scholars (see especially Sherwin-White 1973, 39; Crifo 1961, 182–190). This plebiscite, however, only appears to be an affirmation that Fulvius is considered to have gone into exile. Thus, this measure is similar to the one enacted in the case of Postumius Pyrgiensis in the previous year (Liv. 25.4.9; see number 2).

Livy’s account of the battle of Herdonea in 212 has been seen by de Sanctis as a doublet of a similar report of a Roman defeat at the same place in 210 (1956, 3.2.445 n. 28). He argues that Livy duplicated his account of the battle because his sources gave two different dates for the same engagement. According to de Sanctis, the actual battle occurred in 210 (the defeated Roman general was Cn. Fulvius Centumalus), while Fulvius Flaccus’ debacle in 212 is rejected as spurious. He connects Fulvius Flaccus’ trial in 211 not to a defeat, but to a victory – citing Valerius Maximus 2.8.3 as evidence. In this passage a Cn. Fulvius Flaccus

is mentioned as being punished with exile by a *quaestio publica* for his refusal of a triumph decreed by the senate:

quid facias Cn. Fulvio Flacco, qui tam expetendum aliis triumphi honorem decretum sibi a senatu ob res bene gestas spreuit ac repudiavit, nimirum † non plura praecipiens quam acciderunt? nam ut urbem intravit, continuo quaestione publica adflictus exilio multatus est, ut, si quid religionis insolentia commisisset, poena expiaret.

What would you do about Cn. Fulvius Flaccus, who spurned and refused the honor of a triumph, which is so desired by others, after it was decreed to him by the senate for his accomplishments? Surely he expected no more than what happened: for as he entered the city, straightaway he was convicted before a public court and punished with exile, so that if he had arrogantly violated religious custom, he might atone for the act with this penalty.

De Sanctis' views about Livy's duplication of the battle of Herdonea have been effectively refuted by Rosenstein (1990, 207–208) and Earl (1960, 284). There is no reason to doubt that there were two engagements in this strategic area of Apulia.

The question remains whether Valerius Maximus' report can refer to the praetor of 212. It seems impossible to reconcile Valerius' brief notice of the exile of a haughty *triumphator* with Livy's extended account of a disgraced and defeated praetor. Münzer (*RE* VII, s.v. "Fulvius [54]," col. 238–239) associates the Valerius Maximus passage with the defeated praetor, noting that this story must be somehow distorted.

4. Q. Pleminius (2), leg. pro pr. 205

Date: 204

a. Placed in command of Locri by the consul P. Cornelius Scipio, Pleminius allegedly plundered the temple of Proserpina and murdered the military tribunes P. Matienus and M. Sergius (Liv. 29.6–9, 16–22; Diod. 27.4; V. Max. 1.1.21). In 204 the senate sent legates to investigate the conduct of Pleminius and Scipio (Liv. 29.20–22; Diod. 27.4).

b. Livy reports two variants of the subsequent events. In one account, Pleminius heard about the dispatch of the legates and departed for Neapolis to seek exile. However, he was seized *en route* by the legate Q. Metellus and taken to Rhegium.

In the second version, Scipio himself arrested Pleminius and turned him over to the legation (Liv. 29.21.1–3; Diod. 27.4 gives only the second variant). He was later transported to Rome and incarcerated, but died before the completion of his trial (Liv. 29.22.7–9).

c. N/A

5. Etruscan nobles

Date: 204

a. In accordance with a *senatus consultum*, the consul M. Cornelius investigated the collaboration of Etruscan nobles with Mago's Carthaginian forces.

b. Many aristocrats appeared before the consul's *quaestio* and were condemned, but some went into exile and avoided capital punishment. Those who escaped the inquisition were condemned *in absentia* and their property was subject to confiscation (Liv. 29.36.10–12).

c. Livy's report of this incident suggests that the Romans allowed voluntary exile under certain conditions for noncitizens confronted by *quaestiones extraordinariae*. The Etruscans who appeared before the inquisition and were convicted were not permitted to escape punishment by *exilium* – only those who retired before being investigated preserved their lives. This practice was not unique to foreigners, as even Roman citizens were not assured of exile if they were condemned by such special commissions. For example, the suppression of the cult of Bacchus by a *quaestio* in 186 resulted in numerous executions of Roman citizens (Liv. 39.8–19). Since Etruria had been investigated by special commissions beginning in 209, it is probable that other people went into exile prior to the incident in 204 (cf. Liv. 27.24). See Harris (1971, 135–141), Reid (1915, 123–124), and Pfiffig (1966, 208–209) for the consul Cornelius' inquisition in Etruria.

6. P. Furius (82) Philus, pr. 174

Date: 171

a. In 171, envoys from both Spanish provinces complained of extortion and abuses by Roman magistrates. The senate established boards of five *recuperatores* to judge the allegations against each official and assess pecuniary damages. The envoys from Hispania Citerior accused P. Furius of serious crimes during his praetorship three years earlier (Liv. 43.2.1–10).

b. After a delay in the trial for further investigation of the charges, Furius went into exile at Praeneste, where he became a citizen (Liv. 43.2.10).

c. The provincials of Nearer Spain chose M. Porcius Cato (cos. 195) and P. Cornelius Scipio as their *patroni* (Liv. 43.2.7). Ps. Asconius reports that Cato accused Furius on account of his unjust appraisal of the annual grain quota collected from the local inhabitants (*Div. in Caec.* 124 Or), which Livy also records as one of the general complaints of the Spanish provincials (43.2.12). A fragment of Cato's speech *pro Hispanis de frumento* survives (ORF⁴ 8.XXXIX).

7. C. Matienus (2), pr. 173

Date: 171

a. In the same incident described in number 6 above, Matienus was accused of misconduct during his praetorship by envoys from Hispania Ulterior and was tried by a board of five senatorial *recuperatores* in 171 (Liv. 43.2.1–10).

b. During an adjournment in the case for further investigation of the charges, Matienus sought refuge at Tibur and assumed its citizenship (Liv. 43.2.10).

c. Although Livy gives the praenomen Marcus to the accused praetorian (42.1.5; 43.2.9), he is identified as Gaius earlier in the narrative (41.28.5). A Gaius Matienus also appears in Livy as a *duumvir navalis* who defeats Ligurian pirates in 181 (40.26.8, 28.7). Matienus' exploits are mentioned in Lucilius' satires (219 M). This Matienus is probably identical to the rapacious praetor of 173 (see MRR, 1.386, and 410 n. 2; Münzer, *RE* XIV.2, s.v. "Matienus [2]," col. 2204). See Brennan 2000, 172–173 for the prosecution of Matienus and Furius.

8. C. Plautius (9), pr. 146

Date: 145

a. As governor of Further Spain in 146, Plautius suffered a stunning military defeat at the hands of the Lusitanian leader Viriathus (App. *Hisp.* 64; Liv. *Per.* 52; Oros. 5.4.3). He was brought to trial for this failure upon his return home the following year (Diod. 33.2).

b. Plautius was found guilty and subsequently left Rome to go into exile (*Ibid.*).

c. Diodorus reports that Plautius was charged ἐπὶ τῷ τεταπεινωκέναι τὴν ἀρχήν, which is the usual Greek phrase for *maiestatem minuere* (diminishing the dignity of the Roman state). This terminology is anachronistic, however, as the crime of *maiestas* had yet to be defined at the time of Plautius' debacle. Thus he was

probably charged with *perduellio* and tried before the *comitia centuriata* (Gruen 1968, 29 n. 46; Bauman 1967, 22; Brennan 2000, 176).

9. L. Hostilius (26) Tubulus, pr. 142

Date: 141

a. As praetor presiding over a murder court (*quaestio inter sicarios*), Tubulus openly took bribes to influence the results of the trials. The following year the tribune P. Mucius Scaevola introduced a measure calling for the establishment of a *quaestio* to investigate Tubulus' activities. With this plebiscite enacted, the senate assigned the consul Cn. Servilius Caepio to set up the special court (Cic. *Fin.* 2.54).

b. Tubulus fled Rome before his trial and went into exile (*Ibid.*). According to Asconius, even voluntary banishment did not spare Tubulus from punishment, as he was retrieved from exile and thrown into prison. To avoid execution, Tubulus chose to take his own life by drinking poison (Asc. 23C). For a full discussion of Tubulus' seizure, see Chapter 2.6, "The Attempted Exile of L. Hostilius Tubulus and Q. Pleminius."

c. Tubulus' unethical actions were so infamous that he became a symbol of dishonesty and corruption to later writers (Lucil. 1312M apud Cic. *N. D.* 1.63; Cic. *Scaur.* frag. k; *Fin.* 4.77, 5.62; *N. D.* 3.74; Gel. 2.7.20).

10. P. Popillius (28) Laenas, cos. 132

Date: 123

a. As consul in 132, Popillius had suppressed and relegated supporters of Ti. Gracchus. During his first tribunate in 123, C. Gracchus proposed a law making any magistrate who had banished citizens without a trial before the people subject to prosecution. Popillius fled the city before being put on trial (Plut. *CG* 4.2)

b. Popillius took his exile outside Italy (*Ibid.*), making him the earliest known *exul* to have done so. Following his departure, Gracchus introduced a *rogatio* that interdicted him from fire and water (Cic. *Dom.* 82; *Brut.* 128). His family and friends mounted a public campaign to secure a recall from exile. Not only did his young sons plead for his return, but also his blood relatives and even those only related by marriage. (Cic. *Red. Sen.* 37; *Red. Pop.* 6) The women of Popillius' family were also involved, and the fact that Gracchus gave a speech *In P. Popillium et matronas* (Against Popillius and the Women) indicates that their efforts were

significant enough to warrant a public reply (*ORF*⁴ 48.X). Following the death of C. Gracchus, Popillius was restored by a *rogatio* of the tribune L. Calpurnius Bestia in 120 (Cic. *Brut.* 128).

c. In his speeches *post reditum*, Cicero compared his own exile and restoration with that of Popillius (*Dom.* 87; *Red. Sen.* 38; *Red. Pop.* 10–11).

There has been some scholarly confusion concerning P. Popillius Laenas' place of exile. It centers on a statement by Cicero (*Balb.* 28) that a C. Laenas went into exile in Nuceria. Without further comment, Volkmann (*RE* XXII.1, s.v. "Popillius [28]," col. 63–64) states that this reference concerns P. Laenas, the consul of 132, although there is no manuscript tradition to support such an emendation. He later contradicts himself by also using this same reference to support a Nucерian exile for C. Popillius (19) Laenas, an error followed by Alexander (1990, 14, and 30). Plutarch's statement that the consul of 132 went into exile outside Italy (ἐφυγεν ἐξ Ἰταλίας) clearly demonstrates that the Cicero passage cannot refer to the same man. See number 15 below for further discussion.

Other sources: Popillius' exile: Cic. *Clu.* 95; *Red. Sen.* 37; *Red. Pop.* 6; *Dom.* 82, 87; *Brut.* 128; *Leg.* 3.26; Vell. 2.7.4; Diod. 34–35.26; Gel. 11.13.1; Schol. Bob. 111St. His recall: Schol. Bob. 174St.

11. C. Papirius (33) Carbo, cos. 120

Date: 119

a. The first legal case handled by the famous orator L. Licinius Crassus was his prosecution of Carbo in 119. The exact charge is unknown, but the trial was before a *quaestio* (Cic., *Brut.* 103). While *maiestas* has been suggested (Mommsen 1903, 2.126; *ORF*⁴ 66.I), Gruen is correct in asserting that no such charge was defined at that time (1968, 108). With no known *quaestiones extraordinariae* established around the time of Carbo's trial, Gruen believes that he must have appeared before the standing extortion court. An anecdote in Valerius Maximus (3.7.6) seems to support this theory. A slave of Carbo reportedly attempted to give Crassus a document box containing incriminating material (presumably to spite his master or for profit), which the prosecutor refused and returned to Carbo unopened. This report somewhat strengthens the idea that Carbo was charged with extortion, since documentary evidence was so potentially damning to the defendant accused of this crime (Alexander 1990, 16). Whatever the charge, Crassus' oratorical skills triumphed and Carbo was found guilty (Cic. *Orat.* 1.40).

b. Although Valerius reports that Carbo went into exile (3.7.6), Cicero states that he committed suicide by taking poison, thereby avoiding the severity of the jury (*Brut.* 103; *Fam.* 9.21.3). Münzer attempted to reconcile these differing accounts and suggested that Carbo contemplated exile, but was either prevented from flight or decided against it. Thus he took his own life rather than face execution (Münzer 1912, 169; *RE* XVIII.3, s.v. “Papirius (33),” col. 1020). Valerius’ comment that Carbo was exiled is unlikely to be a distortion of the defendant’s unfulfilled intentions. Either Valerius has erred about the banishment or Carbo went into exile and committed suicide at a later time. Cicero’s remark that Carbo’s suicide saved him from a harsh jury implies the former, but the comment is rhetorical and does not seem precise enough for a definite determination.

c. Hoping to discover some criminal offense and avenge his father’s conviction, in 94 C. Papirius Carbo Arvina followed L. Crassus to his proconsular command in Gaul (V. Max. 3.7.6, probably Cisalpine Gaul, as *MRR*, 2.13 has it). Crassus allowed young Carbo to be an observer at his advisory council (*consilium*) and concealed nothing from him. Unfortunately for the zealous son, he uncovered no wrongdoing by Crassus.

It was rumored that Carbo had murdered Scipio Aemilianus, and Crassus used this piece of gossip to blacken the defendant’s character during his prosecution (Cic. *Orat.* 2.170; *ORF*⁴ 66.I). Despite his early pro-Gracchan leanings, Carbo had successfully defended L. Opimius in 120 for the massacre of C. Gracchus and his supporters (Cic. *Orat.* 2.106, 170).

Other sources: Cic. *Vér.* 3.3; *Orat.* 1.121, 154; 3.74; *Brut.* 159; Tac. *Dial.* 34.7.

12. Q. Marcius (82, cf. 81) Philippus, monetal. ca. 128 (*RRC*, 1.284–285)

Date: ca. 120

a. The legal circumstances of Philippus’ exile are unknown.

b. Cicero mentions Q. Philippus among some Romans who took citizenship in new states due to exile (*Balb.* 28). Aside from this brief remark recording that he settled in Nuceria with two other prominent exiles, there are no other certain details about this Philippus in the extant sources. Some facts can be tentatively reconstructed, however. Cicero’s notice contains the names of men exiled from at least 109 (C. Porcius Cato) to 92 (P. Rutillius Rufus). It is reasonable to suppose that Philippus’ banishment occurred in the late second or early first century. Given that no known Roman exile relocated to Italy during the 90s (perhaps Italian

discontent made the region unattractive to upper-class Roman expatriates), it is probable that Cicero's Q. Philippus went into exile sometime in the previous decades. This chronology supports those scholars who believe that the exiled Q. Philippus was the father of L. Marcius Q. f. Q. n. Philippus, the consul of 91 (Mommsen 1860, 547; Münzer, *RE* XIV.2, s.v. "Marcius (82)," col. 1579; Gruen 1966, 62–3; 1968, 210; Crawford, *RRC*, 1.284–285).

This banished Philippus is often identified as the moneyer Q. *Pilipus*, whose name appears on a denarius generally dated to the late second century (see *MRR*, 2.445 and 3.139 for a summary of the dates assigned). H. A. Grueber's dating of this coin to ca. 99–95 caused him to reject the idea that it was issued by the father of the consul of 91 and to speculate that the *monetalis* in question was an otherwise unknown son of the same consul (Grueber 1910, 1.175). The lack of an aspirate and nonduplication of the "P" in the name *Pilipus* as found on the coin all suggest a date earlier than the one advanced by Grueber (Kubitschek 1911, 14f), who had dismissed these features as "somewhat late survivals of this form of orthography."

Gruen has suggested that the simultaneous presence of three prominent Roman exiles – Q. Phillipus, Q. Fabius Maximus Eburnus (see number 16), and C. Popillius Laenas (number 15) – in Nuceria is not mere coincidence. He speculates that their mutual hostility toward the Metellan faction may have encouraged them to band together in exile. This enmity could have even been behind their prosecutions (Gruen 1966, 63). While Gruen's hypothesis about the Metellan connection can only be regarded as tentative, he is right to point out that some political bond probably influenced the choice of Nuceria by these three men.

13. L. Opimius (4), cos. 121

Date: 109

a. In 109, Opimius was convicted of treason with Jugurtha by the *quaestio extraordinaria* established by the *lex Mamilia* (Cic. *Brut.* 128; Plut. *CG* 18.1).

b. Opimius lived the remainder of his life in exile. Since Cicero mentions that he was buried at Dyrrachium (Cic. *Sest.* 140), this was likely his home during his banishment.

c. Cicero considered Opimius the only man to have been punished unjustly by the state without eventual restoration (*Ibid.*).

Other sources: Cic. *Pis.* 95; *Planc.* 69, 70; *N. D.* 3.74; Sal. *Jug.* 40.1; Vell. 2.7.3; Asc. 17C; Plut. *CG* 18.1.

14. C. Porcius (5) Cato, cos. 114

Date: 109

a. Cato was convicted in 109 for treason with the Numidian king Jugurtha under the *lex Mamilia* (Cic. *Brut.* 128). Cicero attributed Cato's conviction to his anti-Gracchan position rather than actual guilt.

b. He sought exile at Tarraco in Spain, where he became a citizen (Cic. *Balb.* 28). Like other anti-Gracchans who were convicted in this period, Cato did not resettle in Italy, but went abroad. The connections and *clientelae* of the Porcii in Spain, which dated to Cato the censor's proconsulship in 194, certainly influenced C. Cato's relocation (Badian 1958, 161 and 318). His family's influence in this area probably made this otherwise remote frontier town attractive as a new home.

c. Cato had been convicted *de repetundis* in 113 for his governorship of Macedonia (Cic. *Vér.* 3.184, 4.22; Vell. 2.8.1). Henderson conflates this trial with Cato's later conviction by the Mamilian inquisition (Henderson 1951, 85; effectively refuted by Sherwin-White 1952, 44–45). Alexander mistakenly lists exile as a result of this earlier conviction, for which only a fine was levied (Alexander 1990, 23). For a full discussion of C. Cato's career, see Badian 1993, 203–210.

15. C. Popillius (19) Laenas, leg. 107

Date: ca. 106

a. C. Popillius served as a legate for the consul L. Cassius Longinus during his campaign in Gaul. Following the defeat of the army and death of Cassius, Popillius negotiated a treaty with the victorious Tigurnini that saved the surviving Roman forces. The terms included giving hostages to the enemy, conceding half of the army's baggage, and passing under the yoke (*Rhet. Her.* 1.25; Caes. *B.G.* 1.12.4–7; Oros. 5.15.24). Sometime after returning to Rome, he was prosecuted by the tribune C. Coelius Caldus for either *perduellio* or *maiestas*. To facilitate the condemnation of Popillius, Coelius had earlier proposed a law to extend the secret ballot to treason trials (Cic. *Leg.* 3.36).

b. Popillius went into exile at Nuceria, where he became a citizen (Cic. *Balb.* 28). He was most likely the son of the consul of 132, who is known to have had a son Gaius (Cic. *Brut.* 95; Volkmann, *RE* XXII.1, s.v. "Popillius [19]," col. 58–59; Sumner 1973, 46; see number 10). His choice of Nuceria may have been influenced by his father's connections in this area. Based on an inscription at Polla

(*ILLRP*, 454 and 454a), P. Popillius is often considered the builder of the extension of the *via Appia* from Capua to Rhegium, which ran through Nuceria.

c. Cicero's statement that a C. Laenas went into exile at Nuceria and became a citizen has been the source of some confusion for scholars. As discussed in number 10 above, this passage cannot refer to P. Popillius Laenas, the consul of 132, although this is a common mistake (see Gruen 1966, 63 for the misunderstandings concerning the *Pro Balbo* passage). The confusion between the two Popillii Laenates continues as some facets of P. Popillius' career have been erroneously transposed to his son Gaius. Both Volkmann (*RE* XXII.1, s.v. "Popillius [19]," col. 58–59) and Alexander (1990, 30) state that Gaius was recalled from exile, although there is no evidence to support this assertion. Volkmann's citation to support this claim (Cic. *Dom.* 87) clearly refers to P. Popillius, a consular and enemy of the Gracchi. The C. Laenas of the *Pro Balbo* has also been identified with the senator C. Popillius (10) mentioned by Cicero (*Vér.* 39) to have been convicted *de peculatu* (de la Ville de Mirmont 1903, 323–324). Cicero's text makes it clear that Popillius' misconduct occurred after Sulla's judicial reforms. Thus, had this C. Popillius gone into exile, he surely could not have taken refuge at Nuceria and assumed its citizenship. The fact that the Roman franchise had been extended to all of Italy following the Social War would have prevented him.

Other sources: *Rhet. Her.* 4.34; Cic. *Inv.* 2.72–73; *Leg.* 3.36.

16. Q. Fabius (111) Maximus Eburnus, cos. 116, cens. 108

Date: ca. 104

a. Around the year 104, Fabius exercised his *patria potestas* to punish his son's immorality (*impudicitia*) and relegated the young man to the family's rural property. He later sent two slaves to kill his son and manumitted them for accomplishing the deed. Fabius was subsequently prosecuted for his son's death (*V. Max.* 6.1.5; *Oros.* 5.16.8; [Quint.] *Decl.* 3.17)

b. Fabius went into exile at Nuceria, where he became a citizen (Cic. *Balb.* 28).

c. Fabius' trial was to be before the people in the *comitia centuriata*, as suggested by Orosius' use of the term *diem dicere*. His account also names a Cn. Pompeius as the prosecutor, whom Gruen has convincingly identified as Cn. Pompeius Strabo (Gruen 1964, 102–103), and Badian has concluded was tribune of the plebs due to his role as Fabius' accuser (Badian 1984b, 307–308). See *MRR*, 3.165–166 and Alexander 1990, 32 for a review of the scholarship on this case.

Valerius Maximus gives a unique nomenclature for this Fabius: *Q. Fabius Maximus Servilianus*. Other sources, including the Capitoline *Fasti*, do not list this adoptive cognomen. Brassloff (*RE* VI, s.v. "Fabius [111]," col. 1769) postulates that he may have been the son of Q. Fabius (115) Maximus Servilianus, the consul of 142.

17. Q. Servilius (49) Caepio, cos. 106

Date: 103

a. Due to his role as a commander in the defeat at Arausio in 105, Caepio was indicted two years later by the tribune of the plebs C. Norbanus (*Cic. Brut.* 135; *Liv. Per.* 67; cf. *Gran. Licin.* 13 Fl). Two other tribunes, T. Didius and L. Aurelius Cotta, were driven away by violence when they attempted to halt proceedings with their vetoes (*Cic. Orat.* 2.197).

b. Caepio was incarcerated during the proceedings against him, but the intercession of the tribune of the plebs L. Reginus freed him and allowed his escape into exile. Reginus, a personal friend of Caepio, voluntarily joined him in banishment (*V. Max.* 4.73). While this accompaniment into exile was attributed to *amicitia* by Valerius Maximus, Reginus may have left Rome because he feared political violence or eventual prosecution for his role in this affair (Münzer 1912, 170). Interdicted from fire and water by a *rogatio* of Saturninus (*Gran. Licin.* p. 12 Crin.) and stripped of his property (*Liv. Per.* 67), the banished Caepio became a citizen of Smyrna (*Cic. Balb.* 28).

c. Another passage in Valerius Maximus (6.9.13) is commonly viewed as a corrupt reference to the consul of 106 (Münzer, *RE* II A.2, s.v. "Servilius [49]," col. 1783; *MRR*, 1.564; Alexander 1990, 34):

Q. Caepio . . . is namque praetorae splendore, triumphī claritate, consulatus decore, maximi pontificis sacerdotio ut senatus patronus diceretur adsecutus in publicis vinculis spiritum deposuit, corpusque eius funestis carnificis manibus laceratum in scalis Gemoniis iacens magno cum horrore totius fori Romani conspectum est.

This Q. Caepio, with the splendor of his praetorship, the fame of his triumph, the grandeur of his consulship, the office of Pontifex Maximus, used to be called "the patron of the senate." It befell him to die publicly in chains, and his body was seen lying on the Gemonian steps to the great horror of the

entire Roman Forum, after it had been torn by the ghastly hands of the executioner.

This report contradicts Valerius' earlier account (4.73), Cicero's statement about Caepio's exile at Smyrna (*Balb.* 28), as well as a comment by Strabo (4.1.13) that he died in banishment. Furthermore, the reference to the Gemonian steps has clearly been demonstrated by Münzer (1912, 171–175) to be tendentious and anachronistic. The offices and honors that Valerius attributes to Caepio are also problematic since he was never *pontifex maximus*. Valerius has either reported the wrong name or conflated the facts from different cases. It is incautious to salvage bits of information from this faulty passage and apply them to the case of the exiled consular Caepio, although Münzer (1999, 265–266) postulated his membership in the pontifical college based on Valerius' report. Due to the flawed nature of the Valerius Maximus passage, it cannot be viewed with any certainty as a reference to the defeated proconsul of Arausio.

Citing the historian Timagenes as his source, Strabo attributes Caepio's exile to his theft of the sacred gold of Tolossa (4.1.13). While this offense is mentioned by other authors (Cic. *N. D.* 3.74; Liv. *Per.* 67; Dio 27 fr. 90; Auct. *Vir. Ill.* 73.5; Oros. 5.15), Strabo alone claims this as the reason for his banishment. Because the defeat at Arausio is specifically mentioned as the cause of Caepio's *exilium* by several sources, we can conjecture that Strabo confused the crimes of Caepio. Strabo also states that when he died, the consular had only female children left as heirs, adding that they later became prostitutes. This is clearly a sensationalized account. But if we can trust that Caepio died with only his female children surviving him, his death occurred sometime after 90, when his son Q. Servilius (50) Caepio lost his life in the Social War.

Julius Obsequens (44) notes that in 101, a slave of Q. Servilius Caepio castrated himself in worship of the Magna Mater. As a result, he was deported and barred from returning to Rome. This probably means that a magistrate used his power of *relegatio* to expel the offending slave. Münzer (*RE* II A.2, s.v. "Servilius [49]," col. 1783) states that the slave may have mutilated himself for no other reason than to share in his master's exile. This seems somewhat implausible. Furthermore, the slave may have belonged to the son of the exile, since father and son shared the same nomenclature and Obsequens does not give any information to differentiate the two Caepiones.

18. Cn. Mallius (13) Maximus, cos. 105

Date: 103

a. In 103, Mallius was brought to trial for his actions as consul during the Roman defeat at Arausio. He was defended by M. Antonius (Cic. *Orat.* 2.125; *ORF*⁴ 65.III), although his prosecutor is uncertain. Based on a remark in Granius Licinianus (13 Fl), Gruen believes that Saturninus prosecuted Mallius (1968, 165). While Saturninus' political agenda certainly makes this identification likely, the cited passage refers to Mallius' interdiction from fire and water and not his prosecution.

b. It is not stated if Mallius was convicted and went into exile or fled Rome before the completion of his trial. He was soon placed under an *aquae et ignis interdictio* by a *rogatio* of Saturninus (Gran. Licin. p. 12 Crin.).

c. N/A

19. T. Albucius (2), pr. ca. 107

Date: ca. 105

a. Albucius was accused *de repetundis* ca. 105 for his actions as governor of Sardinia. Cn. Pompeius Strabo, Albucius' former quaestor, sought the right to prosecute him, but was disqualified (Cic. *Div. Caec.* 63; [Asc.] 203 St). Instead prosecuted by C. Julius Caesar Strabo, Albucius received the support of many Sardinians, but was convicted on the strength of evidence from a variety of sources (Cic. *Scaur.* 40; *Off.* 2.50; Suet. *Iul.* 55.2).

b. Albucius went into exile at Athens, where he spent the remainder of his life studying philosophy (Cic. *Tusc.* 5.108). A noted devotee of Epicurean doctrine (*Ibid.*; *Pis.* 92), Albucius had spent some of his youth in Athens, perhaps pursuing his passion for philosophy. He was there ca. 120 when the praetor Q. Mucius (21) Scaevola passed through on his way to Asia (Lucil. 2.89–95M; Cic. *Fin.* 1.3.9).

c. For the dating of Albucius' governorship of Sardinia and his subsequent prosecution, see *MRR*, 3.14 and Brennan 2000, 476–477.

Other sources: Apul. *Apol.* 66.4 (erroneously identifying Albucius as “Albertius”).

20. L. Licinius (103) Lucullus, pr. 104

Date: ca. 102

a. Lucullus was prosecuted by a Servilius Augur ca. 102 for misconduct during his command of the Sicilian slave war in 103. He was subsequently convicted either *de repetundis* or *de peculatu* (Diod. 36.8.5–9.1; Plut. *Luc.* 1).

b. Lucullus went into exile (*Ibid.*), perhaps to Heraclea in Lucania (see below).

c. W. Drumann speculates that Lucullus may have relocated to Heraclea (1908, ed. P. Groebe, 4.214). He bases this theory on Cicero's statement that the poet Archias accompanied a M. Lucullus to Sicily and traveled with him to Heraclea on the return trip. The poet desired to become a citizen of that city, and Lucullus used his prestige and influence among the Heracleans to secure such a grant for his comrade (Cic. *Arch.* 6). Drumann emended this Lucullus' praenomen to Lucius and identified him with the praetor of 104. He then associated the trip to Sicily with Lucullus' command against the Sicilian slaves and the journey to Heraclea with Lucullus' exile. There are several problems with Drumann's theory, however. Archias' initial arrival in Rome and introduction to the Luculli was placed in 102 by Cicero (Cic. *Arch.* 5), too late for him to have accompanied L. Lucullus on his Sicilian command. Furthermore, Lucullus did not go straight into exile from his province, but returned to Rome and was later prosecuted and went into exile following his conviction (for these points, see Groebe's commentary in Drumann 1908, 4.214–215). The M. Lucullus of Cicero's speech was most likely M. Terentius (109) Varro Lucullus, son of the exiled praetor of 104. His trip to Sicily with Archias may have been to gather evidence for the planned prosecution of his banished father's accuser (Nall 1901, xii; Groebe in Drumann 1908, 4.214 n. 3). M. Lucullus and his older brother Lucius are known to have brought charges against their father's accuser, Servilius, while they were both still young (Cic. *Ac.* 2.1; *Off.* 2.50; Quint. *Inst.* 12.7.4; Plut. *Luc.* 1). The stop at Heraclea on the return journey to Rome might have been to visit and confer with their exiled father (Nall 1901, xii).

Lucullus' activities during his praetorship offer an explanation why he may have chosen Heraclea as his new domicile. While he was serving as either *praetor urbanus* or *perigrinus* in Rome, the Senate dispatched him to southern Italy to quell a servile uprising led by a renegade equestrian named either T. Vettius or Minucius (Diod. 36. 2.6–2a). As the recent defender of this region, his contacts and *clientelae* would have made this area a desirable domicile when he sought exile. Indeed, Cicero's mention of the influence and authority that the young M. Lucullus held amongst

the citizens of Heraclea certainly implies some sort of family tie to the city (Cic. *Arch.* 6).

The identity of the elder Lucullus' prosecutor is controversial. Plutarch identifies him as Servilius Augur (Plut. *Luc.* 1), and several modern scholars have assumed that this Servilius was the same who succeeded Lucullus as commander of the Sicilian slave war (Münzer *RE* II A.2, s.v. "Servilius [12]," col. 1762; *MRR*, 1.568; *CAH* 9.155). This identification is unlikely, however, as Badian has convincingly demonstrated (1984b, 301–306; see also Gruen 1968, 176–177 and Brennan 2000, 479). The chief problem with this association of L. Lucullus' successor in Sicily and his prosecutor involves the trial of the latter by the sons of Lucullus. Whereas Plutarch reports that the young Luculli were unsuccessful in their legal action against their father's prosecutor (*Luc.* 1.1), the elder Lucullus' successor in Sicily was convicted for his misdeeds in that province and went into exile (Diod. 36.9.1). As Badian (*op. cit.*) has noted, L. and M. Lucullus would have been far too young to undertake a prosecution until the late 90s, by which time their father's successor in Sicily, the praetor C. Servilius, had certainly long since been convicted and exiled. Thus the elder Lucullus' prosecutor was not his successor in the Sicilian command, but a different Servilius.

During Lucullus' trial, Metellus Numidicus refused to appear in court on his behalf as a character witness (*laudator*), although the accused was married to his sister (Cic. *Vér.* 4.147; Auct. *Vir. Ill.* 62.4). Metellus' refusal may have been based on the fact that he was also related to the prosecutor's *gens* by marriage and may have even been the brother-in-law of the prosecutor, if Gruen's reconstruction is correct (1968, 178). What is certain is that Metellus' nonparticipation in this trial caused no rift with the Luculli – young Lucius and Marcus were both ardent supporters in the efforts to recall Numidicus following his exile in 100 (Cic. *Red. Sen.* 37; *Red. Pop.* 7).

Groebe supposed that young Marcus – and perhaps even his older brother Lucius – lived with the exiled *pater* Lucullus in Heraclea (in Drumann 1908, 4.215 n. 11). Had the young Luculli been staying in southern Italy with their father instead of living in Rome, they would have been removed from the political scene in the capital at an age when youthful Roman aristocrats learned the skills essential to the success of their future civic careers. Subsequently, it would have been a difficult task for them to effectively compete for political office. This apparently was not the case, however, since both sons had distinguished political careers and reached the consulship (Lucius in 74 and Marcus in 73).

Other sources: Cic. *Prov.* 22 (concerning the feud between the Licini Luculli and the Servilii).

21. C. Servilius (11), pr. 102

Date: 101

a. Succeeding L. Licinius Lucullus (see number 20) in command of the Sicilian slave war in 102, Servilius achieved little during his tenure. Sometime after his return to Rome, he was brought to trial for his actions during his magistracy (Diod. 36.9.1). His quaestor L. Philo (or Pithio) sought the right to prosecute his former superior, but was rejected (Cic. *Div. Caec.* 63).

b. Servilius was convicted and went into exile (Diod. 36.9.1).

c. This Servilius was probably not the “Servilius Augur” reported by Plutarch who successfully prosecuted L. Licinius Lucullus and was later tried by his victim’s sons, although this association is commonly made (see number 20 above for a full discussion). The praetor of 102 has been identified alternately as C. Servilius (91) Vatia (Mommsen 1860, 535–536; Gruen 1968, 178) or his son (Münzer, *RE* II A.2, s.v. “Servilius [91],” col. 1811–1812; *RRC*, 1.270). It seems possible that the exiled praetor of 102 was a Servilius Vatia, and his prosecution was involved in the political rivalry between the Licinii Luculli and Servilii Vatae (Gruen 1968, 177–178).

Other Sources: [Asc.] 203St; Florus 2.7.9–11

22. Q. Caecilius (97) Metellus Numidicus, cos. 109; cens. 102

Date: 100

a. In 100, the plebeian tribune L. Appuleius Saturninus proposed a land distribution law that included a provision that compelled all senators to swear to uphold the measure. Those who refused to take this oath would be expelled from the senate and fined 20 talents. The law was passed by violence, and all senators except for Metellus took the oath. Saturninus tried to have Metellus dragged out of the curia, but the other tribunes prevented it (App. *BC* 1.29–31). Saturninus indicted Metellus for his failure to take the oath (Liv. *Per.* 69; Oros. 5.17.4), and at some point before trial, Metellus left Rome.

b. Upon Metellus’ departure, Saturninus proposed the *aquae et ignis interdictio* be passed against the fugitive. Once passed by *concilium plebis*, the consul Marius enforced the plebiscite (Cic. *Dom.* 82; Liv. *Per.* 69; App. *BC* 1.31–32). Although exile

in Italy was still possible – and Metellus owned a villa in Tibur (Cic. *De Orat.* 2.263), a traditional refuge for Roman exiles – he went into banishment at Rhodes (Liv. *Per.* 69; Plut. *Mar.* 29; contra Auct. *Vir. Ill.* 62.3, which names Smyrna), accompanied by the renowned grammarian and speechwriter L. Aelius Stilo (Suet. *Gram.* 3.3). After the death of Saturninus and his followers in December 100, Metellus' supporters began a campaign to reverse his banishment. The following year, a proposal for recall was vetoed by the tribune P. Furius with Marius' support (App. *BC* 1.33; Oros. 5.17.11). Metellus' son ceaselessly lobbied for his father's return and earned the honorific title of *Pius* for his efforts (App. *op. cit.*; Vell. 2.15.4; V. Max. 5.2.7). He was not alone in his exertions – many of Metellus' relatives participated in the efforts to bring him home (Cic. *Red. Sen.* 37; *Red. Pop.* 6).

During his exile, Metellus wrote letters to Cn. and L. Domitius at Rome which were still extant in the second century AD (Gell. 15.13.6; 17.2.7). These letters may have been circulated as a part of the campaign for his restoration; indeed, one of the surviving fragments is a polemic against those who caused his exile. Perhaps Aelius helped Metellus write these letters (which are praised by Gellius for their style), since he is known to have written speeches for him (Cic. *Brut.* 206). His recall was finally effected by a *rogatio* of the tribune Q. Calidius in 98 (Cic. *Planc.* 69; *Dom.* 87; V. Max. 5.2.7; Auct. *vir ill.* 62.3). Metellus received the news of his restoration while attending the *ludi* at Tralles (V. Max. 4.1.13; Auct. *Vir. Ill.* 62.3).

P. Furius, the tribune who had blocked Metellus' recall in 99, was indicted for this act the following year. He was killed by a mob before his trial (App. *BC* 1.33; cf. Dio 28. fr. 95.2–3). Metellus Pius did not forget Q. Calidius' role in the restoration of his father. During his consulship in 80, Pius publicly supported Calidius' candidature for the praetorship (Cic. *Planc.* 69; V. Max. 5.2.7). When Calidius was prosecuted *de repetundis* upon the completion of his praetorship in Spain, Metellus spoke on his behalf at the trial, but to no avail (Cic. *Planc.* 69; cf. Cic. *Vér.* 138; 3.63; [Asc.] 219St).

Additional Sources: Cic. *Clu.* 95; *Dom.* 82; *Sest.* 37, 101; *Leg.* 3.26.

23. Sex. Titius (23), tr. pl. 99

Date: 98

a. Sometime after his tribunate, Titius was brought before a *quaestio* (probably *de maiestate*) to answer charges that he displayed a bust of the slain tribune Saturninus in his house (Cic. *Rab. Perd.* 24–25; V. Max. 8.1 damn. 3). M. Antonius, consul the

year of Titius' tribunate, gave evidence against him (Cic. *Orat.* 2.48, 265; *ORF*⁴ 65.IV).

b. Convicted by the equestrian jury, Titius went into exile (Cic. *Rab. Perd.* 24–25; V. Max. 8.1 *damn.* 3).

c. N/A

24. C. Appuleius (21) Decianus, tr. pl. 98

Date: 97

a. During the course of his prosecution of P. Furius, Decianus is said to have lamented the death of Saturninus. Not only did this cause him to lose this case, but following his term as tribune, he was brought up on unspecified charges for this statement and was convicted (Cic. *Rab. Perd.* 24; *Flac.* 77; V. Max. 8.1 *damn.* 2; Schol. Bob. 95St).

b. Decianus went into exile (Cic. *Flac.* 77). He is reported to have gone to Pontus and become attached to Mithridates' court (Schol. Bob. 95St). It seems that Decianus' son accompanied him into exile. He appears in 60 as a cosigner for the charge of extortion against L. Valerius Flaccus for his conduct as governor of Asia (see Marshall 1969, 267–269 for a discussion of Decianus' role in this case). The younger Decianus had been a businessman in the Roman East for some thirty years by the time of the trial. Although he lived in the *civitas libera* of Apollonis, Decianus was a Roman citizen of equestrian status. He had served in the Roman army in Caria and had even been a member of the *concilium* of the defendant Valerius Flaccus during his governorship (Cic. *Flac.* 70–77). Cicero claimed that during his consulship, emissaries from Apollonis complained of various deprivations committed by the younger Decianus (Cic. *Flac.* 81).

c. The scholiast's statement that the senior Decianus went to the court of Mithridates has been viewed with some skepticism. Badian (1956, 96 n. 41) thought it likely that this account is only a scholiast's inference based on Cicero's comment that the people of Apollonis had suffered under both Mithridates and the elder Decianus (*Flac.* 71). Cicero's silence about the elder Decianus' exile with such an infamous enemy has also been offered as a reason to reject the scholiast's version (Klebs, *RE* II, s.v. "Appuleius [21]," col. 259–260). These both are valid points. A Pontic exile for Decianus should not be ruled out, however. At least one other Roman senatorial *exul* is known to have taken refuge with the Pontic

king and become a close confidante (App. *Mith.* 90; see number 35 below). Perhaps Mithridates courted such aristocratic exiles to use as advisors on Roman affairs.

The elder Decianus may have been the son of P. Decius Subulo, the tribune of the plebs who unsuccessfully prosecuted L. Opimius in 120. His adoption into the *gens Appuleia* perhaps explains his ill-advised defense of Saturninus (Badian 1956, 95–96). A son of the younger Decianus appears to have regained senatorial status and served as a quaestor under Sex. Pompey from 44 to 42 (MRR, 2.474; Badian 1956, 96 n. 44).

25. P. Rutilius (34) Rufus, cos. 105

Date: 92

a. Around 97, Rutilius served as a *legatus* to P. Mucius Scaevola, the governor of Roman Asia. His efforts in curbing the excesses of the *publicani* in the province earned him political enemies. In 92, he was accused of extortion in the course of his provincial duties. Despite his manifest innocence, Rutilius was convicted and assessed damages beyond his ability to pay (See MRR, 2.8 and 9 n. 6 for sources).

b. Rutilius went into exile at Mytilene on Lesbos. He survived the massacre of Roman citizens in Asia by Mithridates in 88 (Cic. *Rab. Post.* 27; Dio 24, frag. 97.3–4). In 85 he was with Sulla's army in Asia and served as an emissary to the camp of the rival general C. Flavius Fimbria (App. *Mith.* 60). Rutilius may have accompanied Sulla's forces for protection during the Mithridatic War – he does not seem to have been an ardent *Sullanus*. Indeed, he refused Sulla's offer of a recall from banishment at around this time (Sen. *Ep.* 24.4; Quint. *Inst.* 11.1.13; cf. Sen. *Ben.* 6.37.2). After the war with Mithridates, Rutilius relocated to Smyrna, where he became a citizen (Cic. *Balb.* 28; Tac. *Ann.* 4.43; Suet. *Gramm.* 6; Oros. 5.17.12–13). Smyrna was located in the very province Rutilius had supposedly victimized, but his innocence was demonstrated by the financial support he received from the area's inhabitants (Dio 28, frag. 97.4). He lived there as an exile for the remainder of his life. Cicero met Rutilius during a trip to the East in 78 (Cic. *Brut.* 85–89; *Rep.* 1.13.17). He died sometime after 75, the dramatic date for the *De Natura Deorum*, since he was listed among living orators in that work (Cic. *N. D.* 3.80).

c. Rutilius wrote extensively during his exile, his most significant work being an autobiography that influenced later writers (Cic. *N. D.* 3.80; *Brut.* 113; Posidonius in Athen. 4.66, 168DE = FGtH 2A.27, 233, cf. *HRF*, 120–124; Oros. 5.17.12–13).

26. Mummius (1) Achaicus

Date: 90

a. Appian reports that in 90, “Mummius the conqueror of Greece” (Μούμμιος ὁ τὴν Ἑλλάδα ἐλὼν) was charged under the *lex Varia* for inciting the Italian allies to rebel against Rome. This Mummius was confident of acquittal, but he was convicted contrary to expectations (App. *BC* 1.37).

b. Mummius went into exile on the island of Delos, where he remained for the rest of his life (*Ibid.*).

c. Appian’s description of this victim of the Varian inquisition has led scholars to various conclusions. Clearly, the historian’s naming this Mummius as “the conqueror of Greece” is erroneous. The simplest and most convincing explanation is that this Mummius is either a son or grandson of the famous consul of 146 who had earned the title “Achaicus,” and this *cognomen* was adopted by the family. Indeed, some Mummii used this cognomen into the first century AD – the mother of the emperor Galba was a Mummia Achaica (Suet. *Galb.* 3.4). When Appian encountered the name “Mummius Achaicus” in his sources regarding the Varian law, he translated the *cognomen* literally, without realizing that it was a part of the family nomenclature (Rühl 1901, 634–635; Badian 1969, 469 n. 65).

Other scholars have attempted to associate Appian’s Mummius with a L. Memmius mentioned by Cicero as defending himself before the *quaestio Variana* (Biedl 1930, 104; Gruen 1965b, 66–67; cf. Cic. *Brut.* 30.4). Not only does this approach involve an unnecessary textual emendation, it also does not adequately explain Appian’s use of the phrase ὁ τὴν Ἑλλάδα ἐλὼν. See Alexander 1990, 54–55 for further scholarship on this issue.

27. L. (?) Calpurnius Bestia

Date: 90

a. A “Bestia” was accused under the *lex Varia* in 90 (App. *BC* 1.37).

b. He departed Rome into voluntary exile rather than stand trial (*Ibid.*).

c. Appian records this accused senator as οὐιστία, which has traditionally been emended by historians to “Bestia.” Although this exile has generally been identified as L. Calpurnius Bestia, the consul of 111 (Münzer *RE* III, s.v. “Calpurnius [23],” col. 1366–1367; Gruen 1965b, 64–65; Alexander 1990, 55), this is most improbable. That consular Bestia fell victim to the Mamilian inquisition in 109 and presumably went into exile to avoid execution (there is no direct evidence for his exile, however).

Unless he had been recalled in the intervening years – an unlikely occurrence, since there is no mention of restoration for anyone convicted under the *lex Mamilia* – it must have been a different Bestia who fled Rome in 90. Citing the restoration of Popillius and Metellus Numidicus, Gruen asserts that a recall from banishment for the consul of 111 “would not be unprecedented” (1965b, 65 n. 74). Gruen does not take into account the unique circumstances that surrounded the restoration of Popillius and Metellus: both men were able to return home only after the massacre and disgrace of the political enemies who were responsible for their exile. The supporters of the *lex Mamilia*, however, never suffered such a violent demise. Beloch’s suggestion that Appian’s Bestia is a son of the convicted consular appears to be correct (1909, 70–72). This identification also bridges a gap in the line of Calpurnii Bestiae, perhaps explaining in part why the family disappears from public life until 62, when a L. Bestia is tribune of the plebs (see *MRR*, 3.46). This tribune was probably the son of the Varian exile.

28. C. Aurelius (96) Cotta, cos. 75

Date: 90

a. Accused under the *lex Varia* in 90, Cotta defended himself with an oration written by L. Aelius Stilo (Cic. *Brut.* 205, 207; *ORF*⁴ 80.II). His defense included a diatribe against his equestrian jurors (App. *BC* 1.37).

b. Cotta left Rome before a verdict was reached and went into exile (Cic. *Brut.* 303 and 305; *Orat.* 3.11; App. *BC* 1.37). His mother, Rutilia, the sister of the banished P. Rutilius Rufus (Cic. *Orat.* 1.229; cf. *Att.* 12.20.2; *N.D.* 3.80), accompanied Cotta into exile and did not return to Rome until he was restored (Sen. *Hel.* 16.7). Cotta must have gone outside Italy for his exile, with the Social War rendering the peninsula an unsuitable and unsafe refuge. He most likely went East for his banishment, since he appears to have joined Sulla’s forces campaigning in that area. Perhaps Cotta and his mother initially stayed with their exiled relative Rutilius Rufus on Mytilene, although this is only speculation. While his uncle Rutilius refused Sulla’s offer of recall from exile (see number 25), Cotta evidently did not. He returned to Rome following Sulla’s victory over the Marians (Cic. *Brut.* 311), possibly as one of the *restituti* who proceeded Sulla’s triumphal entry into the city (cf. Plut. *Sull.* 34.1).

c. Cotta enjoyed a distinguished career following his return, becoming consul in 75. As proconsul in Cisalpine Gaul the following year, he earned a triumph, but died on the eve of its celebration (Cic. *Pis.* 62; Asc. 14C). His mother, Rutilia,

survived him. Her composure and restraint from public grief became exemplary (Cic. *Att.* 12.20.2; Sen. *Hel.* 16.7).

29. Q. Varius (7) Hybrida, tr. pl. 90

Date: ca. 89

a. Following his tribunate – most likely in early 89 – Varius was accused under his own law for inciting the Italian allies to rebel (Cic. *Brut.* 305).

b. Varius was convicted and withdrew into exile (*Ibid.*).

c. Two ancient passages appear to suggest that Varius was executed as a result of this conviction. Valerius Maximus' statement *sua lex eum domesticis laqueis constrictum absumpsit* (8.6.4: His own law consumed him, strangled by his own noose) along with Cicero's assertion *summo cruciatus supplicioque Q. Varius, homo importunissimus, periit; si quia Drusum ferro, Metellum veneno sustulerat, illos conservari melius fuit quam poenas sceleris Varium pendere* (*N.D.* 3.81: Q. Varius, a most ruthless man, perished by the most severe torture and punishment. If his demise was because he had killed Drusus by sword and Metellus by poison, it would have been better to save his victims than for Varius to pay the penalty for his crimes). While these two reports are often cited by modern scholars as proof of Varius' execution, Badian has convincingly demonstrated that Valerius' comment is clearly metaphorical: it implies that Varius fell victim to his own designs (Badian 1969, 463–466). Furthermore, Cicero's statement in the *De natura deorum* about the torture and death of Varius appears in a passage concerning the nature of divine punishment. Thus this comment only indicates that Varius came to a bad end, not that he was executed as a result of his conviction. Indeed, Cicero lists his "crimes" as his rumored killing of Drusus and Metellus, not his condemnation under the *lex Varia*. Therefore, it is unlikely that Varius was put to death, and he probably went into exile and met a terrible fate sometime thereafter. His demise in the civil wars of the 80s has been mentioned as a possibility (Badian 1969, 463–466).

c. Sources report Varius' *cognomen* as both *Sucronensis* and *Hybrida*. See *MRR*, 2.31 n.10.

30. Ap. Claudius (296) Pulcher, cos. 79

Date: ca. 86

a. Claudius, praetor in 89, was placed in charge of the siege of Nola by Sulla before he departed for his Mithridatic command in 87. After being driven from

Rome by Sulla's adherents, the consul Cinna gained control of Claudius' army, allegedly by bribery (Liv. *Per.* 79). Sometime after the capture of Rome by Marian forces, Claudius was summoned by a tribune of the plebs to stand trial in Rome on unspecified charges (Cic. *Dom.* 83).

b. When he refused to return to Rome, his *imperium* was revoked and he was exiled (*Ibid.*), the latter probably by the plebiscite of *aquae et ignis interdictio*. He may be one of the στρατηγοί mentioned by Dio as suffering interdiction from fire and water in early 86 (Dio 31 frag. 102.12; Weintrib 1971, 43 n. 45; see number 31 below).

c. Claudius appears to have fled to Sulla. Since he went on to hold the consulship in 79, Claudius was certainly among those restored by Sulla in 82 (cf. Plut. *Sul.* 34.1).

His son was P. Clodius Pulcher, tribune of the plebs in 58 and *inimicus* of Cicero.

31. Two "praetors"

Date: 86

a. Early in 86, the younger C. Marius reportedly killed a tribune of the plebs, had another hurled from the Tarpeian rock, and caused two στρατηγοί to be interdicted from fire and water (Dio 31 frag. 102.12).

b. N/A

c. Dio's term στρατηγοί probably should not be narrowly translated as "praetors": it seems unlikely that any of the praetors of 86 would be treated thus, since they were certainly all Marius' and Cinna's men (Weintrib 1971, 43 n. 45). Since the term στρατηγός is often used very broadly by Greek authors in reference to Roman magistrates (Mason 1974, 55–58), it seems best to translate it here as "general." The suggestion that these two *interdicti* may have been Ap. Claudius Pulcher and Metellus Pius is attractive (Weintrib 1971, 43 n. 45; Niccolini 1934, 236–237). Both were Sullan generals, and we know that Claudius was summoned to stand trial and went into exile (see number 30). It seems reasonable that Metellus was similarly indicted and suffered interdiction when he refused to return to Rome.

Dio's description of young Marius' deeds echoes evidence concerning the activities of the tribune P. Popillius Laenas in 86 (see number 32) and thus may reflect the same events.

32. Two or three former tribunes

Date: 86

a. In January 86, the tribune of the plebs P. Popillius Laenas threw Sex. Licinius, a tribune from the previous year, from the Tarpeian Rock. He also initiated a *iudicium populi* against two or three of Licinius' tribunician colleagues (Vell. 2.24.2; cf. Plut. *Mar.* 45.1; Liv. *Per.* 80).

b. The indicted ex-tribunes withdrew from Rome before trial and sought Sulla's protection. They were subsequently interdicted from fire and water on Popillius' motion (Vell. 2.24.2).

c. Given the fragmentary nature of the sources for this period, it is not surprising that somewhat contradictory accounts emerge. While Livy and Plutarch report that the consul Marius caused a senator Sex. Licinius (Sextus Lucinus in Plutarch) to be thrown from the Tarpeian rock (*Per.* 80; Plut. *Mar.* 45.1), Velleius names the perpetrator as the tribune P. Laenas and the victim as the former tribune Sex. Lucilius. Additionally, Dio reports that the younger Marius killed two tribunes (see number 31), one of whom he hurled from the Tarpeian rock. These two tribunes in Dio's account were most likely ex-tribunes, since Marius and Cinna surely would not have allowed the election of hostile magistrates during their domination of the Roman state. The information in the Dio fragment may well be a somewhat distorted version of the same incident recorded by Livy, Plutarch, and Velleius.

Velleius' account does not specify the number of former tribunes that were prosecuted by Popillius. Since other sources mention that six of the tribunes of 87 were pro-Cinnan (Liv. *Per.* 79; Gran. *Licin.* 15 Fl), this leaves four potential victims for indictment early the next year. Of these remaining four, Licinius at least was killed (and perhaps one additional ex-tribune died by young Marius' hands if Dio's account refers to the tribunes of 87). Thus either two or three former tribunes went into exile and were placed under the *aquae et ignis interdictio* in early 86.

33. Cn. Cornelius (135) Dolabella, pr. 81

Date: 78

a. Dolabella served as governor of Cilicia from 80 to 79. C. Verres initially accompanied him as a *legatus* and was later made proquaestor when Dolabella's quaestor Cn. Malleolus died. Allegedly both Dolabella and Verres ruthlessly plundered not only their province, but neighboring ones as well (see Alexander

1990, 69 for sources). Upon his return from his province, Dolabella was prosecuted *de repetundis*, with Verres betraying his erstwhile superior and giving evidence against him (Cic. *Ver.* 11; 1.41, 42, 77, 97, 98; 3.177; [Asc.] 234St).

b. Dolabella was convicted and went into exile, reportedly leaving his children behind in poverty (Cic. *Ver.* 1.77 and 98). He was also assessed a fine of HS 3,000,000 (*Ibid.* 1.99–100).

c. N/A

34. Statius Albius (10) Oppianicus, *eques Romanus*

Date: 74

a. In 74, Oppianicus was accused by his stepson A. Cluentius Habitus of attempting to poison him. Previously that same year, Cluentius had successfully prosecuted two of Oppianicus' alleged accomplices, C. Fabricius of Alatrium and the freedman Scamander (Cic. *Clu.* 20, 46–61, 86, 105, 189). A conviction against Oppianicus was secured, but only amid rumors that the senatorial jurymen had been bribed (*Ibid.* 73–78).

b. Oppianicus went into exile to avoid punishment, although he remained in Italy. He did not take up permanent residence anywhere, but stayed for short periods of time with various friends and acquaintances. At one point, he lived in a house just outside the walls of Rome (*Ibid.* 170 and 175). Around the year 69, he died while still an exile (*Ibid.* 169–175 and 178).

c. The tribune of the plebs L. Quinctius used the allegations of bribery in this case to attack senatorial corruption in the courts (*Ibid.* 74 and 77). C. Junius, the presiding magistrate for the murder court, was later fined for irregularities in this trial (see *MRR*, 2.102 for sources).

Cluentius went to trial in 66 for the alleged murder of Oppianicus, but was acquitted (see Alexander 1990, 100 for sources).

35. Attidius (2), senator prior to 67

Date: Before 67

a. A certain senator identified as Attidius went into exile due to unfavorable legal proceedings.

b. Attidius took refuge at the court of Mithridates, where he enjoyed the Pontic king's friendship for many years. Around the year 67, during the Third Mithridatic War, Attidius joined in a conspiracy to assassinate his host. The plot

was detected, and Attidius was put to death. Mithridates ensured that the execution was without torture, as befitted Attidius' status as a former Roman senator (App. *Mith.* 90).

c. Appian's notice of Attidius' death is the only evidence of his life or career. Other Attidii are elusive: the *nomen* Attidius is uncommon and occurs only a handful of times in the ancient sources. Indeed, this exile is the only known senatorial holder of this name in Republican times (Klebs, *RE* II, s.v. "Atidius," col. 2074). Appian's Ἀττίδιος may be the corrupt juryman M. Atilius Bulbus, who in 74 allegedly accepted bribes in the trial of Statius Albius Oppianicus (Cic. *Clu.* 71, 72, 75, 79; *Ver.* 39; 2.79. Note that Petro Candidus rendered the name as "Attilius" for his 1452 Latin translation of Appian). His judicial misdeeds were not Atilius Bulbus' downfall, however. He was convicted *de maiestate* for attempting to suborn the legion of C. Cosconius in Illyria (Cic. *Clu.* 97; cf. Cic. *Ver.* 39). The precise date of Cosconius' command in Illyria is unclear, but it probably began in 78 and ended in 76 (see *MRR*, 2.88 n. 4). Atilius' conviction occurred sometime after Oppianicus' trial in 74, but before Cicero's prosecution of Verres in 70 (cf. Cic. *Ver.* 39). Since he was found guilty of a capital crime, Atilius most likely chose to go into exile.

If this identification is correct, Atilius' activities offer a hint as to why he chose to go to Pontus for his banishment. Cicero nowhere mentions Atilius' motive for tampering with a legion in Illyria (or even just what that entailed exactly). Attempting to influence or win over military forces generally appears in the context of civil war, suggesting that Atilius' actions are connected to either Lepidus' uprising in 78 or Sertorius' ongoing war in Spain. Sertorius is known to have corresponded with supporters in Rome (Plut. *Ser.* 27.2; *Pomp.* 20.4). Perhaps Atilius was one of these sympathizers, and he attempted to sway Cosconius' army against the government. If he was somehow connected to Sertorius, his flight to Mithridates' court is consistent with this association. Sertorius had entered into an alliance with Mithridates in the mid-70s, receiving ships and financial support from Pontus (Plut. *Sert.* 23–24). With the fortunes of the rebels in Spain failing at around the time of Atilius' conviction (especially after Sertorius' death in 72), Pontus may have been a natural refuge. This reconstruction is highly speculative and is offered only on the most cautious terms. It is another question whether Atilius Bulbus' potential four- to eight-year residence in Pontus by 67 constitutes "a long time" (πρὸ πολλοῦ), as Appian describes the duration of the banished Roman senator's association with the Pontic King.

36. C. Verres, pr. 74

Date: 70

a. Verres was prosecuted by Cicero *de repetundis* in 70 for his governorship of Sicily the previous three years (see Alexander 1990, 90 for sources).

b. Prior to the second *actio* of his trial, Verres quit Rome and went into voluntary banishment ([Asc.] 205 and 225St). Verres apparently lived opulently as an exile, since he managed to take much of his Sicilian plunder with him (Lact. *Inst. Div.* 2.4.35–36; cf. Cic. *Vér.* 5.44). He lived an untroubled life until 43 when his name wound up on the proscription lists because he had refused to surrender some Corinthian bronzes to Antony (Plin. *Nat.* 37.6). Asinius Pollio is quoted as having written that Verres died bravely (Sen. *Suas.* 6.24). His courage was no doubt fortified when he learned of Cicero's proscription and murder before he met his own fate (Lact. *Inst. Div.* 2.4.37).

c. Verres' place of exile is often identified as Massilia (Strachan-Davidson 1912, 11–12, and 59; Long 1862, 6; Stevenson, *OCD*¹, 942; Badian, *OCD*², 1114; *OCD*³, 1589). This information, however, seems to be entirely a construct of modern scholarship – no ancient evidence is offered to support this assertion. Thus Strachan-Davidson's remark "Verres, himself, as is well known, went into exile to Massilia" (1912, 11–12) is left to stand without citation of supporting evidence.

37. P. Autronius (7) Paetus, cos. des. 65

Date: 62

a. Autronius, convicted *de ambitu* as consul designate for 65, later became involved in Catiline's conspiracy. In 62 he was tried for his role in the events of the previous year. Although Autronius initially asked Cicero to defend him (according to Cicero, of course: *Sul.* 18), he refused and instead gave evidence against him (*Ibid.* 10).

b. Convicted, Autronius went into exile. He settled somewhere in Epirus and appears to have kept company with other banished enemies of Cicero, perhaps ex-Catilinarians like himself (cf. Cic. *Planc.* 98). When Cicero fled Clodius' threatened prosecution in 58, he declined Atticus' invitation to stay at his Epirote villa due to its nearness to Autronius and his associates (Cic. *Att.* 3.7.1, 3.8.1; *Planc.* 98). Indeed, Cicero's fear of Autronius and his ilk was always a major consideration in his plans while in exile (Cic. *Fam.* 14.3–4; *Q. Fr.* 1.3.4; *Planc.* 100). Autronius died sometime before 46, the dramatic date of the *Brutus* (Cic. *Brut.* 251).

c. In 61, the consul M. Valerius Massalla purchased Autronius' house (Cic. *Att.* 1.13.6). Most likely this was part of the property confiscated when he went into exile and suffered the *aquae et ignis interdictio*.

Additional Sources: Cic. *Sul.* 7, and 71.

38. C. Antonius (19), cos. 63

Date: 59

a. Following his consulship, Antonius served as governor of Macedonia 62–60. Upon his return in 59, he was prosecuted either for poor performance of his provincial duties or for his alleged participation in Catiline's plot (see Alexander 1990, 119 for the sources and a summary of the scholarship on this point).

b. Antonius was convicted and withdrew into exile. He took up residence on the island of Cephallenia, which he reportedly ruled over as if his own personal property. He even set about founding a city there, a project that was incomplete when he was recalled from exile (Strabo, 10.2.13).

c. Despite the recall of many exiles by the Caesarians during the civil war of the 40s, Antonius was not initially restored. His omission from the lists of *restituti* is especially curious since his nephew M. Antony was the tribune in 49 who proposed the first large-scale recall of exiles in this era (Cic. *Phil.* 2.56; Dio 46.15.2). The elder Antonius was finally allowed to return to Rome sometime before 44, when his nephew proposed his candidacy for the censorship (Cic. *Phil.* 2.98), and he is said to have attended a meeting of the senate on the Kalends of January (*Ibid.* 2.99; cf. 2.79). Although Cicero accused Antony of treating his uncle in an insulting and degrading manner (Cic. *Phil.* 2.98.), it was certainly his nephew's support that enabled the elder Antonius eventually to become censor in 42 (see *MRR*, 2.358 for sources).

His daughter Antonia was married to her cousin Marcus, although he divorced her in 44 on suspicion of adultery with P. Cornelius Dolabella (Cic. *Phil.* 2.99; Plut. *Ant.* 9.1–2).

39. M. Tullius (29) Cicero, cos. 63

Date: 58

a. Following his election as a tribune of the plebs for the year 58, P. Clodius Pulcher began to take steps against his *inimicus* Cicero. In late January or early February 58, Clodius proposed a law to punish anyone who had executed a Roman citizen

without trial. Velleius Paterculus states that the penalty included in this measure was *aquae et ignis interdictio*, but other sources are silent on this issue (Vell. 2.45.1; cf. Dio 38.14.4; Plut. *Cic.* 30.4; App. *BC* 2.15, *Liv. Per.* 103). While the bill mentioned no names, it clearly endangered Cicero, since he had put some Catilinarian conspirators to death during his consulship. The interval between Clodius' *rogatio* and the vote on the measure featured much political maneuvering and demonstrations by Cicero, Clodius, and their supporters. To undermine popular support for Clodius' legislation, Cicero went in public garbed as a mourner. He was soon followed in this act by a large number of sympathetic *equites*. The senate even decreed that its members do the same to show support for Cicero (*Cic. Att.* 3.15.5; *Sest.* 26; *Dom.* 99; *Red. Pop.* 8; Plut. *Cic.* 30.6, 31.1; Dio 38.14.7). To counter these efforts, the consul Gabinius forbade the senate by edict to continue such demonstrations on Cicero's behalf (*Cic. Sest.* 32, 52; *Red. Sen.* 12, 16, 31; *Red. Pop.* 13; *Pis.* 18; *Dom.* 55, 113; *Planc.* 87; Dio 38.16.3). Gabinius also used his consular power of *relegatio* to suppress Cicero's supporters. When a deputation of *equites* attempted to enter the senate and intercede for Cicero, they were turned away by Gabinius. Additionally, he banned one of the envoys named L. Aelius Lamia from an area 200 miles around Rome for his stubbornness (*Cic. Dom.* 55, 96; *Sest.* 28–29; *Red. Pop.* 12, 31, 32; *Pis.* 23; *Fam.* 11.16.2, 12.29.1; Asc. 10C; Dio 38.16.4; Schol. Bob. 168St).

Without any support from Caesar, Pompey, or Crassus, Cicero despaired of withstanding Clodius' attacks. Indeed, Clodius publicly claimed that his actions had the backing of these three men (*Cic. Sest.* 40; *Har. Resp.* 47). Most of Cicero's associates advised him to leave Rome, and he accepted their counsel. He left the city one night in mid-March (*Cic. Planc.* 73; Plut. *Cic.* 31.4–6; Dio 38.17.4; for additional sources see Gelzer, *RE* VII A.1, s.v. "Tullius [29]," col. 916–917).

b. The day following Cicero's departure, Clodius' proposed law was passed by the *concilium plebis* (*Cic. Sest.* 53; Dio 38.17.6). Initially, Cicero may have hoped for an opportunity for a quick return to Rome. He later wrote that his friends and supporters had expected that he could safely come back within three days after his departure (*Cic. Q. Fr.* 1.4.4). The political developments in Rome were not favorable to Cicero, however. Some time soon after Cicero's flight from the city, Clodius put forward a *rogatio* calling for the application of the *aquae et ignis interdictio* against the orator. Cicero was vulnerable to this traditional plebiscite because he had apparently gone into exile to avoid prosecution under the new law. The measure was enacted by plebs and also provided for the seizure of Cicero's property (see Appendix I for sources).

Cicero appears to have contemplated going into exile in Asia, but soon decided to go to Sicily. He was prevented from entering this province by the governor C. Vergilius when an amendment to Clodius' law increased Cicero's interdiction to a distance of four hundred miles from Rome (Cic. *Planc.* 95–96; *Att.* 3.4; Plut. *Cic.* 32.2; Dio 38.17.7). He then traveled to Greece and took refuge in Thessalonica with the quaestor Cn. Plancius (Cic. *Planc.* 98–101). While in Thessalonica, Cicero constantly wavered as to where to go next. If the news from Rome was good, he thought of going to Dyrrachium or Epirus to be closer to Italy. If tidings were bad, however, he considered going to Cyzicus in Roman Asia. Finally, in November 58, he traveled west to Dyrrachium, where he remained until recalled on 4 August 57 by a vote of the *comitia centuriata* (Cic. *Fam.* 14.1.7; *Att.* 4.1.4–5.)

c. Restored to his former status, Cicero remained a force in Roman politics until his death in 43 as a part of the proscriptions (see Gelzer, *RE* VII A.1, s.v. "Tullius [29]," col. 927–1091 for Cicero's career *post reditum*).

For complete sources and a full discussion of Cicero's exile and restoration, see Chapter 4.4, "The Exile of M. Tullius Cicero."

40. L. Livineius (2) Regulus, pr. (?)

Date: ca. 57

a. N/A

b. Livineius was in exile (*calamitas*) for some unstated reason when Cicero wrote a letter of recommendation for his freedman Trypho (Cic. *Fam.* 13.60). Internal references in the letter show that it was written sometime after Cicero's return from banishment in 57, but exactly when is uncertain. Shackleton Bailey placed the letter before the year 56 in the order of Cicero's correspondence (1977, 354).

c. Livineius was a friend of Cicero who supported him during the latter's exile. His service consisted of making Trypho available as a messenger to bear news and letters from Rome to the banished orator. Cicero mentions that Trypho made several journeys on his behalf, including some in the dangerous winter sailing season (*Ibid.*). The freedman's arrival in Thessalonica was noted by Cicero in a letter to Atticus dated 4 September 58 (3.17.2).

Münzer's idea that Livineius was an exile living at Thessalonica at the time of Cicero's banishment there is difficult to accept (*RE* XIII.1, s.v. "Livineius [2]," col. 807–808). The letter of recommendation for Trypho suggests that Livineius' banishment occurred after Cicero's return. Furthermore, had Trypho's patron been at Thessalonica at the same time as Cicero, it seems unlikely that the

orator would have been so personally grateful for the freedman's efforts. Under this circumstance, Trypho's service as messenger would have been primarily on Livineius' behalf, with Cicero only an incidental beneficiary (Shackleton Bailey 1965, 153).

Cicero's letter of recommendation for Trypho was addressed to an otherwise unknown C. Munatius. The circumstances for this *commendatio* are unknown, although Münzer speculates that the use of Trypho as a messenger to Thessalonica suggests that he had some ties to the area, and that the Munatius in question may have been a magistrate in Macedonia (*RE* XVI.1, s. v. "Munatius [7]," col. 535).

41. L. Caninius (3) Gallus, tr. pl. 56

Date: 55

a. In 55, Caninius Gallus, one of the prosecutors of C. Antonius (see number 38), was himself accused of an unspecified crime (*V. Max.* 4.2.6). Despite being vigorously defended by Cicero (*Cic. Fam.* 7.1.4), Caninius was convicted (*V. Max.* 4.2.6).

b. As he was traveling east in 51 for his proconsulship, Cicero visited Caninius in Athens (*Cic. Fam.* 2.8.3). It is very likely that Caninius was in exile there as a result of his conviction.

c. He was probably restored from exile during the civil strife of the early 40s. In April 46, Cicero's letters mention an acquaintance named Caninius (no cognomen given) who visited him at Rome and carried a letter for him to Varro in Cumae (*Cic. Fam.* 9.2.1, 3.1, 6.1). Cicero notes his death in a letter to Atticus in November 44 (*Att.* 16.14.4), describing Caninius as *non ingratus* (not ungrateful). Shackleton Bailey surmises that this phrase suggests that Caninius was in a position to display his gratitude – in other words he was on the winning side in the civil war (1965, 6.306). This view has some merit – although Caninius had been a *Pompeianus* before his banishment (see Gruen 1974, 313), he probably switched allegiances to be included in one of Caesar's mass recall of exiles (cf. *Cic. Phil.* 2.56; Dio 46.15.2).

Münzer identified the Caninius Gallus mentioned by Valerius Maximus as the prosecutor of C. Antonius (4.2.6) with the consul of 37 and believed that he was a son of the Caninius mentioned in Cicero's letters (*RE* III, s.v. "Caninius [4]" col. 1477; contra Gruen 1974, 313 n. 15). There is no evidence to back up Münzer's assertion, and the chronology seems unlikely, given that Antonius was prosecuted in 59.

42. A. Gabinius (11), cos. 58

Date: 54

a. In 54, Gabinius was charged *de repetundis* for accepting bribes from King Ptolemy XII Auletes during his governorship of Syria (Cic. *Rab. Post.* 8, 21, 30, 34, 38; Schol. Bob. 168, 177St). Cicero was compelled by Pompey to defend his former *inimicus*, but the orator's efforts were in vain as Gabinius was convicted (V. Max. 4.2.4; Quint. *Inst.* 11.1.73; Dio 39.63, cf. 46.8.1).

b. Gabinius went into exile (App. *BC* 2.24; Dio 39.63), but was restored by Caesar at the start of the civil war in early 49 (Cic. *Att.* 10.8.3; Dio, 39.63). As a legate of Caesar, he commanded forces in Illyria, where he suffered heavy losses near Salona. In early 47, he died there from an illness (Caes. *Alex.* 43; Plut. *Ant.* 7.1; App. *BC* 2.59; *Illyr.* 12, 25, 27; Dio 42.11; cf. Cic. *Att.* 11.16.1).

c. Upon his first appearance in the senate following his return from Syria in 54, Gabinius was roundly criticized for his conduct abroad. Cicero took the opportunity for a tirade against his old enemy, to which Gabinius responded by calling the orator *exul* (Cic. *Q. Fr.* 3.2.2).

Other Sources: Cic. *Q. Fr.* 3.1.15; V. Max. 8.1 abs. 3; Plut. *Ant.* 3.2.

43. C. Memmius (8), pr. 58

Date: 52

a. Memmius was convicted in 52 under the *lex Pompeia de ambitu* for his campaign for the consulate during the previous year. Hoping to avoid punishment since Pompey's law provided judicial immunity for successful prosecutors, he accused Q. Caecilius Metellus Scipio (Pompey's father-in-law) of the same offense. In response, Pompey summoned the entire *album* of jurors to his house and solicited their help. Demonstrations of support for Metellus Scipio by the jurymen and Pompey – which included the donning of mourning garb – induced Memmius to withdraw his charge (App. *BC* 2.24; Plut. *Pomp.* 55.4).

b. Memmius left Rome and went into exile (App. *BC* 2.24). He took up residence in Athens, where he became involved in a dispute over the ruins of Epicurus' house. Memmius had acquired the property and had received approval from the Areopagus to tear down the remains of the old building and construct a new house. Patro, the head of the Epicurean school at Athens, was upset by Memmius' plans and demanded that the house be returned to the Epicureans.

Although Memmius subsequently abandoned his intention of pulling down the old structure, he refused to turn the lot over to Patro and his followers. Patro wrote to Cicero, a former associate, and asked him to intercede on his behalf. Cicero took no action on Patro's request, but when he arrived in Athens in 51 while traveling to his province of Cilicia, the philosopher appealed to him in person. While Patro had asked Cicero to pressure the Areopagus to rescind their decree, Cicero agreed only to contact Memmius and ask him to consent to its cancellation. Since Memmius had left for Mytilene a day before his arrival, Cicero wrote the exile a letter to this effect (Cic. *Fam.* 13.1; cf. *Att.* 5.11). The resolution to this problem is not recorded.

c. As a tribune of the plebs in 50, C. Scribonius Curio proposed a measure to restore Memmius from exile (Cic. *Att.* 6.1.23). The outcome of this particular bill is unknown. If Memmius was not restored at that time, he may have been included through Curio's influence in the mass recall of exiles under Caesar's dictatorship in 49. Whatever his status, Memmius had died before the year 46 (Cic. *Brut.* 247).

Curio's support of the exiled Memmius had its roots in kinship – they were cousins. An older sister Memmia had married Scribonius Curio, tribune of the plebs in 90 (Sis. *Hist.* 3, frag 44; cf. Sumner 1973, 89–90).

Additional Sources: on Memmius' prosecution of Metellus Scipio, see Alexander 1990, 157.

44. T. Annius (67) Milo, pr. 55

Date: 52

a. In April 52, Milo was tried under the *lex Pompeia de vi* for the murder of P. Clodius Pulcher. Cicero was one of his advocates, but delivered his speech very poorly when he was frightened by the sight of the troops Pompey had stationed around the court for security (Plut. *Cic.* 35; Dio 40.54.2). Milo was convicted of this charge, and on the following days he was tried *in absentia* and convicted *de ambitu*, *de sodaliciis*, and another charge *de vi* (Asc. 38, 39, 54C; Dio 40.53.2).

b. Milo left Rome after the conclusion of all the trials against him and went into banishment at Massilia (Asc. 54C; Dio 55.1). Milo's property was confiscated, either as a penalty or to satisfy his creditors. The former seems likely: Cicero's language on this issue suggests that the sale of Milo's property was a penalty (Cic. *Att.* 5.8.2; see Marshall 1985, 209). Furthermore, Pompey's law on violence

had included *poena gravior* (Asc. 36.9C). In a capital offense such as *de vi*, the “more serious penalty” was probably *aquae et ignis interdictio*, which would have added the confiscation of property to the customary exile (Greenidge 1901, 391; see Chapter 2.4, “Exile and Interdiction as a Legal Penalty”). The sale of Milo’s goods caused problems for Cicero, who became involved in their purchase by using his wife Terentia’s freedman Philotimus as an intermediary. Milo protested that Cicero was profiting at his expense, but Cicero maintained that he had bought portions of the estate for his former client’s sake. He intended to salvage something of the value of the property for Milo, rather than allowing low-bidding purchasers to take everything, with no return to the former owner (Cic. *Att.* 5.8.2–3). Cicero later suspected Philotimus of doctoring his account books and embezzling funds in this transaction (Cic. *Att.* 6.4.3, 5.2).

Despite his poor performance in defending his client, Cicero sent Milo a copy of the polished, literary version of his defense speech (i.e., the extant *Pro Milone*). Unhappy at his status as an exile, Milo dryly replied that he was glad that Cicero had not delivered the improved version of the oration in court, for if he had, he would not now be dining on the famous mullets of Massilia (Dio 40.54.3).

c. Milo constantly sought recall from banishment, but to no avail (Dio 40.54.4). When Caesar supported a mass recall of exiles in 49, Milo was specifically excluded from the measure (Dio 41.36.2, 42.24.2; App. *BC* 2.48; cf. Vell. 2.68.2). In 48, the renegade praetor M. Caelius Rufus persuaded Milo to come out of exile and join him in an armed uprising against Caesar’s forces in Italy. Their plans failed and both men were killed in the attempt (Caes. *BC* 3.20.1–22.4; Liv. *Per.* 111; Vell. 2.68.1–3; Dio 42.22.1–25.3).

Additional Sources: Liv. *Per.* 107; Vell. 2.47.4–5; Asc. 30–56; Quint. *Inst.* 3.6.93, 11.15 and 17; 4.1.20, 2.25, and 3.17; 6.3.49; 10.1.23; App. *BC* 2.24; Schol. Bob. 111–125 St; Schol. Grov. 322–323St.

45. T. Fadius (9), tr. pl. 57

Date: ca. 52

a. N/A

b. All of the information regarding Fadius’ exile comes from a letter of consolation that Cicero wrote for him in 52 (*Fam.* 5.18). Fadius was convicted by one

vote on some unstated charge (*ambitus* has been suggested: Shackleton Bailey 1977, 1.350). Cicero describes his condemnation as the only one of many recent cases in which the verdict is generally considered unfair. Furthermore, he states that Fadius' conviction by just one vote occurred to please "someone powerful" (*Fam.* 5.18.2). Cicero's report seems to place Fadius' trial in the flood of prosecutions under Pompey's courts in 52, and his reference to "someone powerful" is to Pompey himself (Gruen 1974, 349).

The location of Fadius' exile is not specified, although it is sometimes advanced that he was allowed to take his exile in Italy based on the following section of Cicero's letter:

tu vero, qui et fortunas et liberos habeas et nos ceterosque necessitudine et benevolentia tecum coniunctissimos, quique magnam facultatem sis habiturus nobiscum et cum omnibus tuis vivendi . . . debes istam molestiam quam lenissime ferre (*Cic. Fam.* 5.18.2).

Truly, you are someone who has his fortune and his children, as well as myself and others intimately connected to you by bonds of friendship and kindness. And since you also are about to have great opportunity for living with me and all yours, you ought to endure this current ill-fortune as lightly as possible.

From this evidence, Shackleton Bailey concluded that the conditions of Fadius' banishment excluded him from Rome but permitted him to live in Italy (Shackleton Bailey 1977, 1.350–351). Tyrell and Purser drew the same conclusion, in part due to Cicero's description of Fadius' penalty as "very light" (Tyrell and Purser 1904, 1.263 n. 1). However, exile in Italy – fully enfranchised at this time – was not legal and Cicero's language is far too ambiguous to support the suggestion that Fadius enjoyed some special permission to dwell in otherwise forbidden territory. The example of Q. Pompeius Rufus, an exile who remained in Italy in the late 50s, is exceptional and should not be used to interpret Fadius' case (as does Shackleton Bailey), since Pompeius remained in Italy under special circumstances. Furthermore, Pompeius' tenure as an exile in Italy was probably only temporary (see number 51). It is far more likely that Fadius' children had accompanied him in exile outside of Italy, and Cicero's statement that Fadius will soon enjoy the company of himself and his other friends probably refers to the hope of future

recall (thus Tyrell and Purser, rejected by Shackleton Bailey), rather than actually indicating that Fadius was currently allowed to live close enough to Rome for his friends to visit. The context of this statement also demonstrates its futurity: the impending opportunity to live among his friends contrasts with Fadius' current condition – that among his *familiares*, he has only the company of his children. Furthermore, Fadius' punishment was very light (*lenissima*) since his property was not confiscated (*tu vero, qui fortunas . . . habebas*), a penalty apparently permitted under the strict *leges Pompeianae* (see number 44). Thus there are no grounds to posit an extraordinary Italian exile for Fadius.

Fadius had served as Cicero's quaestor in 63 (Cic. *Red. Sen.* 21) and as tribune of the plebs in 57 had supported his restoration (Cic. *Q. Frat.* 1.4.3; *Att.* 3.23.4). Despite their former close association, Cicero and Fadius had a falling out around the year 49. Internal references in an angry letter sent by Cicero to "Gallus" – which might have been Fadius' cognomen – clearly indicate that this epistle was addressed to Cicero's erstwhile quaestor and tribunician supporter (Cic. *Fam.* 7.27; see Shackleton Bailey 1969, 195–196 for Fadius' cognomen). The unfortunate Fadius was still in exile, although he was hopeful of a restoration by Caesar. He had apparently made a request of Cicero, possibly to be a guarantor for a loan or other financial transaction, which the orator had refused. Fadius then sent Cicero an insulting letter, to which *Fam.* 7.27 is a reply. This response was probably written in early 49, when it was rumored that Caesar would restore exiles, but before his return to Rome and the enactment of this measure (Shackleton Bailey 1977, 1.486. On Caesar's anticipated action: Cic. *Att.* 7.11.1; 9.14.2; 10.4.8).

46. M. Aemilius (141) Scaurus, pr. 56

Date: 52

a. Brought to trial in 52 under the *lex Pompeia de ambitu*, Scaurus – the son of the famous *princeps senatus* – was supported by a crowd of people who clamored for his acquittal. Eventually, Pompey's soldiers were needed to break up this demonstration and the trial continued without interruption, resulting in Scaurus' condemnation (App. *BC* 2.24; Cic. *Off.* 1.138).

b. Scaurus proceeded to go into exile after his conviction (*Ibid.*).

c. Defended by Cicero, Scaurus had been tried and acquitted *de ambitu* in 54 (Cic. *Att.* 4.17.4; for additional sources, see Alexander 1990, 147). Cicero also spoke on his behalf at the second trial in 52 (Quint. *Inst.* 4.1.69).

47. P. Plautius (23) Hypsaesus, pr. ca. 55

Date: 52

a. Plautius was charged *de ambitu* as a result of his campaign for the consulship of 52. Although he had been one of Pompey's associates, Plautius sought his friend's help in vain (V. Max. 9.5.3; Plut. *Pomp.* 55.6, with Plautius incorrectly identified as being of consular status). Thus abandoned by Pompey, Plautius was found guilty (App. *BC* 2.24; Dio 40.43.1).

b. Plautius was banished following his conviction (App. *BC* 2.24).

c. The name Πόπλιος Πλαύτιος Παπειρία (P. Plautius Papiria) is listed among senators who witnessed the registration of a *senatus consultum* in April 44 (Jos. *Ant. Iud.* 14.220). Since Caesar is known to have restored many exiles in the 40s – particularly those convicted by Pompey's courts – this man is probably the same Plautius who was condemned and banished in 52 (Münzer, *RE* XXI.1, s.v. "Plautius [23]," col. 18; for Caesar's restoration of exiles, see Chapter 4.6, "A New Civil War and Mass Recall of Exiles").

48. Sex. Cloelius (Clodius 12)

Date: 52

a. Cloelius was brought to trial under the *lex Pompeia de vi* in 52 for his role in the burning of curia during the riots following the murder of P. Clodius. He was convicted by an overwhelming majority of jurors (Asc. 55–56C).

b. He went into exile, and while Cicero lamented his potential recall under Caesar's administration (*Att.* 10.8.2), Cloelius remained a banished man. Following the death of Caesar, M. Antonius claimed that he had sought the restoration of Cloelius before the dictator's murder, and Caesar's approval was recorded in his official journal (*commentarii*). Antonius wrote to Cicero that he would enact the recall only if he gave his blessing (*Att.* 14.13a.2). Although Cicero confided to Atticus that he believed Caesar never would have restored Cloelius and that the *commentarii* were forged (*Att.* 14.13.6), he nonetheless gave his approval in a letter to Antonius (14.13b.3). Antonius later read the letter aloud in the senate, either to show proof of Cicero's consent in Cloelius' recall or perhaps to embarrass Cicero due to the fulsome tone of the epistle. In his second *Philippic*, Cicero responded that if Cloelius had been recalled by an actual law of Caesar, Antonius should not have needed his approval (Cic. *Phil.* 2.10).

c. Cloelius' name is often erroneously reported as "Clodius" in modern works. See Shackleton Bailey 1976, 3 and 27.

49. T. Munatius (32) Plancus Bursa, tr. pl. 52

Date: 52

a. Immediately following the expiration of his term as tribune, Plancus was accused by Cicero under the *lex Pompeia de vi* for his role in the burning of the curia following the death of P. Clodius. Pompey attempted to deliver a speech praising Plancus at his trial, although this practice had been banned by Pompey's own law. Even the support of Pompey could not save Plancus, who was subsequently convicted (Cic. *Fam.* 7.2.2–4; V. Max. 6.5.2; Plut. *Pomp.* 55.5; *Cat. Min.* 48.4; Dio 40.55).

b. Plancus withdrew from Rome and sought refuge at Ravenna in Cisalpine Gaul. Here he was maintained by the largess of Caesar (Cic. *Fam.* 8.1.4), governor of the province. A partisan of Caesar during the civil war, he was probably restored by him in early 49. By late 46 Plancus had certainly been recalled, since Cicero reported seeing him at the *ludi victoriae Caesaris* (*Fam.* 12.18.2).

c. After Caesar's assassination, Plancus sided with Antony and served with his forces at Mutina (Cic. *Phil.* 6.10, 10.22, 12.20, 13.2). He was given command of forces at Pollentia in Liguria, but was routed by Pontius Aquila, one of Caesar's assassins. During his flight from this defeat, Plancus allegedly broke his leg (Cic. *Phil.* 11.14, 13.27; Dio 46.38.3; Zonar. 10.15). Nothing further about Plancus is recorded.

50. C. Claudius (303) Pulcher, pr. 56

Date: 51

a. C. Claudius, the brother of infamous tribune P. Clodius, served as proconsul of Asia from 55 to 53 (see *MRR*, 2.218; 3.58 for sources). He was charged *de repetundis* in 51 and convicted, despite his alleged attempt to secure an acquittal by bribery (Cael. *Fam.* 8.8.2–3).

b. Claudius appears to have gone into exile leaving behind an estate inadequate to cover the estimate of damages (*litis aestimatio*). His son Appius prosecuted a certain M. Servilius for having received some of his father's ill-gotten gains (*Ibid.*; see Shackleton Bailey 1977, 1.398–401 for a thorough discussion of this case).

c. In 43, Cicero asserted that C. Claudius' son Appius had joined Antony's forces due to a sense of obligation for the restoration of his father (Cic. *Fam.* 11.22.1). Thus the elder Claudius returned either under the measure sponsored by

Antony as tribune of the plebs in 49 or during Antony's consulship of 44, when he recalled numerous exiles supposedly listed in the *commentarii* of the slain Caesar (see number 48).

51. Q. Pompeius (41) Rufus, tr. pl. 52

Date: 51

a. A partisan of the slain P. Clodius, Pompeius was charged *de vi* upon the expiration of his tribunician office for his part in the burning of the curia. Prosecuted by M. Caelius, he was condemned (Dio 40.55.3; V. Max. 4.2.7).

b. Presumably Pompeius went into exile, but he is mentioned by his former adversary Caelius as living in Campanian Bauli in mid-51 (Cael. *Fam.* 8.1.5). His residence in this area was probably temporary. While an exile, he pursued a civil case *in absentia* against his mother for withholding a *fideicommissum* (a trust established by a will) owed to him. Represented by his erstwhile prosecutor Caelius, Pompeius won the lawsuit (V. Max. 4.2.7; see Chapter 4.2, “*Exiles in Italia: The Cases of Oppianicus and Q. Pompeius*” for a full discussion).

Some interesting deductions can be drawn from Pompeius' civil action against his mother. That Roman law recognized the claims of an exile in a case of inheritance implies that banished men did not automatically lose their citizenship (and Pompeius could not have yet taken up a new citizenship since he was still in Italy). The nature and circumstances of the legal dispute bring new questions to mind. A *fideicommissum* was a request by a testor for his heir to perform some act, generally to transfer some funds or property from his estate to a third person (Berger 1953, 470–471). Who then would have left some estates to Cornelia as heir with the request that they be transferred to her son? And why this roundabout way of leaving Pompeius a legacy? Certainly Pompeius' father would be the most likely candidate to have made such a *fideicommissum*. This elder Pompeius – son of the consul of 88 – did not survive his father's consulship. During the violence of that year he was murdered by Sulpicius' partisans (Liv. *Per.* 77; Vell. 2.18.6; App. 1.56; cf. Plut. *Mar.* 35; Sull. 8; Miltner, *RE* XXI.2, s.v. “Pompeius [40],” col. 2252). Since so many years had lapsed between his father's death and the dispute over the inheritance – a dispute that occurred only after banishment – it is reasonable to assume that some contingency invoked the *fideicommissum*. Perhaps the elder Pompeius had left some property to Cornelia on the condition that it revert to their son should he suffer some financial disaster. Thus the *fideicommissum*

would have safely reserved some assets for the son, even if he should suffer a judicial condemnation that stripped him of all his goods. As a victim of the *lex Pompeia de vi*, just such a calamity befell Pompeius. Cornelia, however, did not keep her end of the bargain and her son was forced to turn to legal action to obtain the property. That the court ruled in favor of Pompeius suggests that such *fideicommissa* were an accepted way of insuring against total ruin due to judicial forfeiture of goods. Since loss of property was a usual consequence of banishment, this form of testamentary manipulation could be seen as a sort of “exile insurance.”

c. Nothing further is known of Pompeius.

52. C. Sempronius (79) Rufus, mag. desig. (?) 50

Date: 51

a. Accused of an unspecified crime by M. Tuccius, Sempronius laid a spurious charge *de vi* against his prosecutor in the hopes of delaying his own trial. His plan misfired and he was convicted for malicious prosecution in late 51 (Cael. *Fam.* 8.8.1).

b. Sempronius went into exile and remained there until recalled sometime after Caesar's death. Cicero anticipated that his restoration by Antony in 44 via the *commentarii* of Caesar was imminent (*Att.* 14.14.2). In another letter, Cicero mentions a *Sempronianum* SC passed in 44, which was distasteful to both himself and his friends (*Fam.* 12.29.2). Badian believes that the decree restored Sempronius Rufus from exile (1968, 4 n. 18; see also Alexander 1990, 162). This seems unlikely, however, since Cicero clearly believed that he was to be restored “by Caesar's notebooks,” and the *acta* of the dictator had the force of law. No *senatus consultum* would have been necessary in this instance. The decree in question was either proposed by Sempronius or concerned him in some way other than recall from exile. It has been suggested that Sempronius was convicted as a magistrate-designate in 51, thus explaining his ploy to delay his trial (Weinrib 1971, 149 n. 8). Perhaps the SC restored Sempronius Rufus to the status of his designated office. Of course, this is far from certain and is offered only as pure speculation.

Based on the evidence of Horatian scholiasts, Broughton concluded that Sempronius Rufus was a praetorian by 44 (*MRR*, 2.465, 616). In his *Satires* 2.2.49–50, Horace mentions a certain *praetorius* who first introduced stork meat as a culinary delight. Porphyrio identified this man as a Rufus, and Acron as either an Asellius

or a Sempronius. This evidence has generally been interpreted as a reference to the Sempronius Rufus found in Cicero's letters (Münzer, *RE* II A.2, s.v. "Sempronius [79]," col. 1436–1437; Shackleton Bailey 1965, 3.192). Even if this traditional identification is correct, there are no grounds for positing a praetorship for Sempronius Rufus. Indeed, Porphyrio relates that this "Rufus" had actually been defeated for the praetorship, implying that the poet was being ironic in his use of term *praetorius*. He even includes an anonymous epigram that attributed Rufus' electoral defeat as revenge for the death of so many storks.

53. C. Maenius (20) Gemellus

Date: Before 46 (ca. 50?)

a. N/A

b. Some time before 46, an exile named C. Maenius Gemellus settled in Patrae and assumed its citizenship. Maenius, a client of Cicero, adopted under the laws of Patrae the young son of local man named Lyso. In a letter written in 46 to Ser. Sulpicius Rufus, the governor of Macedonia, Cicero commended Lyso's entire family to Sulpicius and made a special request for him to look after the rights of Maenius' adopted son with respect to his inheritance (Cic. *Fam* 13.19.2).

c. Since Cicero alludes to difficulties with the adopted son receiving his inheritance, the elder Maenius must have died recently. Although Maenius had been enrolled as a citizen of Patrae and lawfully had adopted Lyso's son, it seems that some of the exile's relations at Rome were contesting his will.

Münzer speculated that the exiled Maenius Gemellus may have been the *Gemellus tribunicus viator* (Gemellus the tribunician messenger) who in 52 threw a scandalous party for the consul Metellus Scipio and the tribunes of the plebs (V. Max. 8.1.8; Münzer, *RE* XIV.1, s.v. "Maenius [20]," col. 253). The entertainment included both male and female prostitutes of noble lineage, a fact which shocked the citizens of Rome. Such conduct could have resulted in the indictment, conviction, and exile of Gemellus, but it is impossible to link with any degree of certainty the Gemellus of Valerius' sensationalized account with the banished Maenius Gemellus found in Cicero's letters.

Lyso of Patrae, the natural father of Maenius' adopted son, was an acquaintance of Cicero and stayed with him at Rome for about a year around 47 (Cic. *Fam*. 13.19.1). He had earlier hosted Cicero and his entourage at Patrae as they returned to Italy in late 50 following Cicero's proconsulship. Tiro remained with Lyso and

recovered from an illness as the rest of the party continued the journey (Cic. *Fam.* 16.4.2). Lyso sided with the Pompeians during the civil war (perhaps by giving shelter to Cicero and other *Pompeiani* during the campaign in Greece). He was threatened with some form of reprisal for his allegiance, but was ultimately pardoned by Caesar (Cic. *Fam.* 13.19.1). Cicero's *commendatio* successfully dispelled the proconsul Sulpicius' distrust of Lyso, who had heard a rumor that Lyso had been speaking ill of him publicly (Cic. *Fam.* 13.24).

Lyso was a man of some importance in his homeland – he could count Cicero as a close acquaintance and was powerful enough to catch the attention of Caesar and the proconsul Sulpicius. It is interesting to note that such a provincial luminary allowed his son to be adopted by Maenius, an undistinguished Roman exile. Therefore, even such an unremarkable aristocrat as Maenius must have enjoyed a high status among the provincial upper classes, and Lyso no doubt saw the adoption as advantageous to himself and his family.

Although the exile C. Maenius of *Ad familiares* 13.19.2 has been associated with the banished C. Memmius (number 43 above), there are no grounds for such an emendation (for this association: Strachan-Davidson 1912, 2.54–55; refuted by Tyrell and Purser 1918, 4.497). Furthermore, Memmius had relocated to Athens, a suitable place for such a cultured man. When Cicero passed through Greece while traveling to Cilica in 51, he had expected to find Memmius in Athens, strongly suggesting that this was his permanent home. Maenius, however, was a citizen of Patrae.

54. M. Claudius (229) Marcellus, cos. 51

Date: 47

a. Although an outspoken *inimicus* of Caesar, Marcellus had little confidence in the Pompeian conduct of the civil war and thus undertook no major role in the conflict (Cic. *Fam.* 4.7.2–3). Following the defeat at Pharsalus, Marcellus withdrew to Mytilene, thus refusing the *clementia* of the victorious Caesar (*Ibid.*; Sen. *Dial.* 9.3–8; Schol. Grov. 418St mistakenly mentions Athens – the site of Marcellus' death – as his place of exile.).

b. While Marcellus' retirement was initially voluntary, at some point it became official. Cicero's letters reveal that in 46 Marcellus' relatives and friends had to petition Caesar to allow his return to Rome (Cic. *Fam.* 4.7.6; 4.9.4). The chief stumbling block in obtaining this consent appears to have been Marcellus' unwillingness to request Caesar's pardon (Cic. *Fam.* 4.8.3; 4.9.4), a position Cicero

urged him to abandon (Cic. *Fam.* 4.6; 4.7; 4.8 *passim*). Marcellus did not suffer any confiscation of property while in exile, although Cicero feared that certain unnamed opportunists might plunder his estate if he remained in banishment for an extended period (Cic. *Fam.* 4.8.3–5; 4.9.4).

During his exile in Mytilene, he was visited by M. Iunius Brutus, who in his *De virtute* later praised Marcellus' tranquillity of mind in enduring his banishment (Sen. *Dial.* 9.4). Brutus also reported that Caesar did not stop at Mytilene (presumably while journeying to Egypt in 47) because he could not endure to see Marcellus as an exile (*Ibid.* 9.6). Brutus' interpretation is obviously partisan. It seems far more likely that Caesar wanted Marcellus to approach him for clemency (as reflected in Cicero's letters discussed above), or perhaps he was just too occupied with other matters to waste time meeting with an old and implacable enemy.

The effort to restore Marcellus finally bore fruit. During a meeting of the senate in mid-September 46, in a planned display, the body of senators entreated Caesar to recall his old foe, led by C. Marcellus, who actually clasped Caesar's knees. The dictator acceded to their demands, after which Cicero delivered the *Pro Marcello*, his first speech in the senate since Milo's conviction in 52 (Cic. *Fam.* 4.4.3–4; Schol. Grov. 418–419St; Sen. *Dial.* 9.6; Liv. *Per.* 115). Marcellus, however, was in no haste to return to Rome. In a letter to Cicero following this meeting of the senate, Marcellus thanked the orator for his efforts, but in a rather unenthusiastic tone (*Fam.* 4.11). Marcellus still had not budged from Mytilene in January 45, prompting Cicero to send him a mild rebuke (*Fam.* 4.10.1–2). By late May, Marcellus had progressed only as far as Athens in his return home. Just before he was going to depart for Italy, he was murdered by P. Magius Cilo, one of the companions in his retinue. Ser. Sulpicius Rufus, then proconsul of Macedonia and Marcellus' former consular colleague, saw to it that his ashes were buried in the Academy under a marker set up by the Athenians (Sulp. Ruf. *Fam.* 4.12; V. Max. 9.11.4; Liv. *Per.* 115). Although some suspicion fell on Caesar for the murder, Brutus wrote to Cicero that the dictator had no part in Marcellus' death. Cicero, who had been well enough acquainted with Magius at an earlier time to have acted as his *sponsor* (probably by providing sureties for some financial transaction), guessed at his motive for the killing. Speculating that Magius' debts had driven him to ask for help from Marcellus, he felt that the latter's brusque manner in rejecting this plea may have led the frustrated and desperate man to murder (Cic. *Att.* 13.10.3). Valerius Maximus states that the killing occurred because Magius was jealous

that Marcellus favored his other companions to himself (V. Max. 9.11.4). Perhaps the length of their exile – extended by Marcellus' intransigence – had worsened Magius' financial position and focused his anger against Marcellus, especially when the latter refused to aid him.

Marcellus seems to have been the center of a group of ex-Pompeians who withdrew to Mytilene following the battle of Pharsalus. His fellow exile and future assassin Magius had served with him in Pompey's forces (V. Max. 9.11.4) and is also described as either his *cliens* (Liv. *Per.* 115) or *familiaris* (Sulp. Ruf. *Fam.* 4.12.2). Perhaps P. Postumius, another associate of Marcellus present in his troupe at the time of his death, was also a former Pompeian. Several slaves and freedmen accompanied Marcellus as well (*Ibid.*).

The *Periochae* of Livy give the name of Marcellus' killer as Cn. Magius, as opposed to P. Magius Cilo found in Sulpicius' letter. Shackleton Bailey suggests that Magius' praenomen was Numerius and identifies him as N. Magius, Pompey's *praefectus fabrum* in 49 (1977, 2.422).

55. A. Caecina (7)

Date: 46

a. Caecina fought on the Pompeian side in the civil wars, but his efforts in this struggle were not confined to the military sphere. During the war he wrote a propaganda tract that openly insulted Caesar (Cic. *Fam.* 6.5.3, 6.9; Suet. *Jul.* 75.5). Caecina participated in the African war, but surrendered to Caesar following the Pompeian defeat at Thapsus in 46 (Caes. *Bell. Afr.* 89.5).

b. Spared by Caesar, Caecina was not allowed to return to Italy. He retired to Sicily, but his stay there was permitted only until 1 January 45 (Cic. *Fam.* 6.8.1). Caecina considered moving to the province of Asia (where he had business interests) and asked Cicero's advice on this relocation. The orator strongly recommended that he remain in Sicily as long as possible due to its proximity to Italy and rapid communications with Rome (Cic. *Fam.* 6.8.2). Cicero interceded with C. Oppius and Cornelius Balbus – Caesar's agents in Rome while he was abroad – to extend Caecina's authorization to remain in Sicily indefinitely. He not only succeeded in securing this permission, but also planned to meet with T. Postumius Furfanus, the future proconsul of Sicily, while he was in Rome and put in a good word for Caecina. Cicero additionally sent Caecina a letter of recommendation with respect to Furfanus (Cic. *Fam.* 6.8.1–3; 6.9) and one for P. Servilius Isauricus,

the governor of Asia, in case Caecina should relocate to that province against his advice (Cic. *Fam.* 13.66).

Although Caecina had used his literary talents to defame Caesar during the civil war, while in exile he put his pen to work placating the dictator. His *liber querelarum* (book of complaints) – perhaps a poetic work similar to Ovid’s later *Tristia* (Shackleton Bailey 1977, 2.402) – lauded Caesar’s gentle and merciful nature (Cic. *Fam.* 6.6.8). Another work he produced in banishment included praise of Cicero and was possibly a treatise on oratory (Shackleton Bailey 1977, 2.404), although this is far from certain. Caecina described how he agonized over every word of the *liber querelarum* in order to avoid offending Caesar, which proved a difficult task, since he was unsure of the dictator’s sensibilities (Caecin. *Fam.* 6.7.1–4). Cicero felt that Caecina’s literary endeavors improved his chances of restoration and counterbalanced his earlier scurrilous writings about Caesar (*Fam.* 6.5.3).

Caecina’s son visited him in exile and returned to Rome bearing his father’s *liber* for Cicero to read and revise (Caecin. *Fam.* 6.7.4–5). This seems to have been the extent of the young man’s usefulness in his father’s cause, for the elder Caecina had little confidence in his son to effectively carry out measures to aid his recall: *adulescens est; omnia excogitare vel studio vel aetate vel metu non potest* (Caecin. *Fam.* 6.7.5: he is a young man and is unable to consider all things thoroughly because of his eagerness, age, or fear). It seems that the boy’s immaturity was only partly responsible for his inability to help his father, as the young man also lacked the connections to have any influence with Caesar or his agents. Thus Caecina pinned all his hope of recall on Cicero’s good offices, noting the prestige that Cicero possessed with the Caesarians (Caecin. *Fam.* 6.7.6). Other of Caecina’s relations were more useful to him. Cicero felt that the important status of the exile’s family in Etruria would induce Caesar to recall Caecina to win the goodwill of this region (Cic. *Fam.* 6.6.8–9).

Caecina was probably restored in 45 or 44, since Suetonius mentions that toward the end of his life, Caesar allowed all the Pompeians he had not yet pardoned to return to Italy and even to hold magistracies and *imperium* (Suet. *Iul.* 75.4). That Suetonius states in the following section of his work that Caesar bore Caecina’s “most slanderous book” (certainly the tract written during the civil war) with civility suggests that its author was eventually fully pardoned.

A noted authority on Etruscan methods of divination, Caecina had supposedly predicted Cicero’s restoration from exile when the issue of his return was still in doubt (Cic. *Fam.* 6.6.3). Cicero had been on close terms with Caecina’s father and

in 69 he had delivered a speech on his behalf in a lawsuit (i.e., the *Pro Caecina*). Thus the younger Caecina had known the orator since boyhood (Cic. *Fam.* 6.9.1) and could refer to himself in a letter to Cicero as “your old client” (*veterem tuum clientem*; Caecin. *Fam.* 6.7.4). The Caecinae of Volaterrae were clients of the Servilli Vatae, perhaps dating to P. Servilius Isauricus’ command in Etruria in 82 (Harris 1971, 282; Shackleton Bailey 1977, 2.406).

The last clause in Cicero’s praise of Sicily’s location as a place of exile has been interpreted as having some interesting connotations: *propinquitat locorum vel ad impetrandum adiuvat crebris litteris et nuntiis vel ad reditus celeritatem re aut impetrata, quod spero, aut aliqua ratione confecta* (Cic. *Fam.* 6.8.2: Its proximity will aid you either in obtaining your goal by frequent letters and messengers, or in a swift return, when the matter is either settled as requested, which I hope it will be, or is accomplished by some other means). Tyrell and Purser (1915, 4.513), following Manutius, believed that *aliqua ratione confecta* (accomplished by some other means) referred to the possibility that Caesar may allow Caecina to reside in Italy, but not in Rome. Furthermore, they reject the possibility that the phrase might be alluding to a potential Caesarian defeat in Spain (*Ibid.*). Tyrell and Purser’s interpretation has no ancient evidence to support it – nowhere is it implied that Caesar allowed exiles to dwell in Italy. A reference to Pompeian victory in Spain seems to be the most natural reading (thus Shackleton Bailey 1977, 2.236, although he does not totally reject the former opinion).

56. Cn. Plancius (4), aed. cur. 54

Date: ca. 46

a. As quaestor in Macedonia in 58, Plancius had sheltered Cicero at the *quaestorium* in Thessalonica during the early period of his exile (Cic. *Planc.* 98–100). The orator returned the favor by successfully defending Plancius in 54 against a charge *de sodaliciis* (Cic. *Planc. passim*; *Q. Fr.* 3.1.11; Schol. Bob. 159–169 St). A Pompeian during the civil war, by late 46 or early 45 Plancius was in exile on Corcyra (Cic. *Fam.* 4.14.1; see Shackleton Bailey 1977, 2.407 for the date of the letter). His banishment indicates that Plancius probably served in the African war, since Caesar tended not to pardon those who continued to struggle against him after Pompey’s death (Cic. *Fam.* 6.13.3; Schol. Grov. 291St).

b. In a letter written shortly after his marriage to Publilia, Cicero assured Plancius that he was actively supporting his restoration and safeguarding his

property and reputation (Cic. *Fam.* 4.14.4). That Plancius had an estate to be protected shows that he had not suffered a confiscation of property.

Plancius may have expressed some annoyance with his banishment since other Pompeians (like Cicero) who had given up the struggle earlier enjoyed Caesar's full pardon. Cicero appears to be responding to such sentiments in a reply to one of Plancius' letters:

in magno omnes, sed tamen in communi sumus. qua re non debes aut propriam fortunam et praecipuam postulare aut communem recusare. quapropter eo animo simus inter nos quo semper fuimus; quod de te sperare, de me praestare possum (Cic. *Fam.* 4.15.2).

We all are in great danger, but nevertheless it is a common one. Therefore, you ought neither reject your own circumstance and demand it to be special, nor spurn the common lot of us all. On that account, let us keep that affection that we have always had. I hope that you will, and I can make good for my part.

Tyrell and Purser greatly exaggerate the disaffection between the two men as reflected in this letter (1915, 4.433). There is no reason to see any great rift developing between them, although relations do seem to have been a bit strained at the time of this letter. Although there is no other extant correspondence between them, Cicero and Plancius stayed in contact. In mid-45, Cicero sent a letter to C. Toranius – another Pompeian exile living on Corcyra – with Plancius' slaves (*Fam.* 6.20.1). That Cicero had access to Plancius' messengers demonstrates that he was still in touch with him. Furthermore, this use of messengers suggests that exiles in the same general region may have shared the burden of keeping in contact with Rome by making their couriers available to each other.

There is no direct evidence that Plancius was recalled from exile, but presumably he was included in the pardon of the ex-Pompeians that Caesar enacted following the successful conclusion of the Spanish war (Vell. 2.61.1; Suet. *Iul.* 75.4; Plut. *Caes.* 52.3; App. *BC* 2.107; Dio 43.50.1).

c. Cicero's letters to three banished associates – Cn. Plancius, C. Toranius, and A. Torquatus – contain passages that are similar in content and form (*Fam.* 4.14; 6.21; 6.1; cf. Shackleton Bailey 1977, 2.407). All of them seem to have been written in January 45.

57. C. Toranius (4), aed. pl. 64

Date: ca. 46

a. Toranius fought on the Pompeian side in the civil war, but it is difficult to tell when he fell into the hands of the Caesarians (Cic. *Fam.* 6.21.1). That he was in exile in early 45 suggests he may have participated in the African war and thus was not extended Caesar's customary clemency (see number 56).

b. Although his place of banishment is never directly mentioned, it can nevertheless be surmised. Since Toranius was receiving letters from Rome carried by the slaves of Cn. Plancius, an exile living on Corcyra, it can safely be assumed that he resided there also (Cic. *Fam.* 6.20.1). Furthermore, Cicero's endorsement of Toranius' (unnamed) place of refuge due to its rapid communication routes with Rome certainly applies to Corcyra's location. Cicero commented on the ideal situation of Toranius' current location because the exile had contemplated leaving to meet Caesar returning from Spain in mid-45, apparently to press his case for restoration in person. The orator strongly opposed this plan (Cic. *Fam.* 6.20.1–2; Shackleton Bailey 1977, 2.414).

Cicero promised to protect Toranius' family and to lobby for his recall to Rome, but it is unknown if efforts toward the latter were successful. It seems likely that Toranius received a full pardon and permission to return home along with the majority of ex-Pompeians subsequent to Caesar's return from Spain (Vell. 2.61.1; Suet. *Iul.* 75.4; Plut. *Caes.* 52.3; App. *BC* 2.107; Dio 43.50.1).

c. Even if Toranius was granted a homecoming, he had little time to enjoy it. Despite the fact that he had been the guardian of the young Octavian following his father's death (he and the elder Octavius had been aedilician colleagues), this bond did not save him from proscription under the triumvirate. His former ward supposedly added his name to the proscription list (Suet. *Aug.* 27.1; App. *BC* 4.12).

58. A. Manlius (76) Torquatus, pr. 70

Date: ca. 46

a. Torquatus was an adherent of Pompey, and left Italy with him at the approach of Caesar in 49 (Cic. *Att.* 9.8.1). At what point in the civil war he was captured by the Caesarians is unknown, but that he was in exile in early 45 suggests that he had fought in the African war (see number 56).

b. Torquatus was residing in Athens in early 45, where he enjoyed the company of Ser. Sulpicius Rufus, a friend and current governor of Macedonia (Cic. *Fam.* 6.1.6; 6.3.2-4; 6.4.5). He does not appear to have suffered confiscation of his property (Cic. *Fam.* 6.1.1). Cicero took up Torquatus' cause and aided his absent comrade by supporting his interests back in Rome, sending him news of events, and consoling him on his current position. Torquatus' slave (or freedman) Philogyrus was one of the messengers that his master used to carry correspondence to Italy. On at least one occasion, Cicero spoke at length with the courier to ascertain Torquatus' state of mind in bearing his exile (Cic. *Fam.* 6.1.6). The orator's absence from Rome in March and April reduced his correspondence with Torquatus, as he was unable to determine who was traveling out to the exile's location to bear his letters (Cic. *Fam.* 6.2.1).

Cicero's last extant letter to the exiled Torquatus (*Fam.* 6.2), which seems to date from April 45 (Shackleton Bailey 1977, 2.413), raises some interesting questions about his banishment. Tyrell and Purser believed that Torquatus had received permission to return to Italy, but not to Rome (1915, 5.58), basing this opinion on two passages in the letter. In the first citation, Cicero comforts Torquatus by asserting that he is safe no matter which side eventually wins the civil war: *si arma valebunt, eos a quibus recipere vereri debes nec eos quos adiuvisti* (Cic. *Fam.* 6.2.2: If the war is fought to a decision, you ought not fear those by whom you are being recalled, nor those whom you have helped). In interpreting *a quibus recipere* as meaning that Torquatus could return to Italy, Tyrell and Purser were followed by Shackleton Bailey, who translates this phrase as "[by those whom] you are in the process of being pardoned" (1977, 2.413; cf. 2.415). Thus they see his restoration as accomplished in increments, beginning with permission to return to Italy. There seems to be further evidence for such a gradual recall in Cicero's request at the letter's close: *tu velim scribas ad me quid agas et ubi futurus sis, ut aut quo scribam aut quo veniam scire possim* (Cic. *Fam.* 6.2.3: I wish that you would write to me about what you are doing and where you are going to be, so that I can know either where to write or where to go). Although unstated by both Tyrell and Purser and Shackleton Bailey, presumably they understand the author's *quo veniam* to mean that Cicero is anticipating Torquatus' presence somewhere close enough for himself to visit easily – doubtlessly a location in Italy.

This interpretation of Cicero's letter, however, is problematic. There is no direct reference to Torquatus' ability to return to Italy, and the exact meaning of the two cited passages is ambiguous. No certain conclusions can be drawn from

them. Indeed, the troublesome *quo veniam* may refer to where Cicero should go to get in touch with Torquatus' messengers, as Cicero had stated earlier in the letter that his illness and absence from Rome had made it difficult to find couriers going out to Torquatus' location (Cic. *Fam.* 6.2.1). If Torquatus truly was allowed to return to Italy, one would expect that communications with him would soon become easier and thus it would not justify Cicero's anxiety in staying in contact with him. Furthermore, if such a significant breakthrough in Torquatus' case had occurred and he was indeed allowed to return to Italy, it seems very strange that Cicero does not mention it and that the tone of the letter is not more hopeful.

In a letter to Atticus from mid-June 45, Cicero mentions a Torquatus (no praenomen given) who visited him in Tusculum and asked him to intercede in some matter on his behalf with Caesar's agent Dolabella (Cic. *Att.* 13.9.1). Tyrell and Purser identify this man with the exiled Torquatus and cite this as further proof that Torquatus had returned to Italy (1915, 5.119). This is not decisive evidence, however, as the banished man had sons (Cic. *Fam.* 6.1.7; 6.4.3), one of whom could be the Torquatus in question (Shackleton Bailey 1965, 5.362; cf. 5.313; Münzer *RE* XIV.1, s.v. "Manlius [76]," col. 1198). It seems far more credible that the exile's son came to Tusculum to dutifully lobby for his father's return rather than to posit that the *exul* himself enjoyed the unprecedented privilege of a return to Italy and made his entreaties in person. The pious son may have been Titus Torquatus, the *optimus adulescens* whom Cicero notes was dining with Cn. Domitius Calvinus and Ser. Sulpicius Rufus sometime in 45 when a slave informed them that he had been paid to give false testimony against King Deiotaurus of Galatia (Cic. *Deiot.* 32; Münzer *op. cit.*). Titus' association with the consular Sulpicius suggests that the young man was a son of the banished Aulus, with whom Sulpicius was a close friend.

Cicero continued to work on the exile's behalf into August 45 (Cic. *Att.* 13.20.1, 21.2). In that month, Torquatus' case occupied enough of his time that he was unable to travel to Puteoli to collect an inheritance (Cic. *Fam.* 13.45.2). Had Aulus Torquatus been living nearby in Italy at this time as some believe, it is unlikely that this case would have required so much of Cicero's time and energy.

It is not recorded if Torquatus eventually received his recall from Caesar. Presumably he was restored, since Caesar reportedly only denied recall to exiles who were guilty of serious offenses (App. *BC* 2.107). An Aulus Torquatus is mentioned among those who fought on the losing side at Philippi and received refuge and support from Atticus after the battle (Nep. *Att.* 11.1–2). While this man

may have been the aged former exile, it is equally possible that this combatant at Philippi was a son or other younger relative (see Mitchell 1966, 26–27 for a discussion of this problem). There is insufficient evidence to make a certain determination.

c. Torquatus had been active in attempts to recall Cicero from his exile (Cic. *Fin.* 2.72; *Fam.* 6.1.7), although his specific role is not revealed.

59. Q. Ligarius (4) leg. Africa 51–49

Date: 46

a. Beginning in 51, Ligarius served as a legate in the province of Africa under C. Considius. When Considius left the province in 50, he left Ligarius in command. After civil war broke out in 49, Ligarius yielded control to P. Attius Varus, a Pompeian and former governor of Africa. He remained and served under Varus and refused Q. Aelius Tubero – the new governor appointed by the senate – admittance to the province (Cic. *Lig.* 2–4 and 20–22). He fought against Caesar in the African war, but surrendered after the Pompeian defeat at Thapsus in April 46 (Caes. *Afr.* 89). Although spared by Caesar, he was banished outside Italy (Cic. *Lig.* 11). The account found in the Scholia Gronoviana, stating that Ligarius hid in Africa after Thapsus to avoid execution by Caesar, is clearly in error since it contradicts the two contemporary sources cited above (Schol. *Grov.* 291St).

b. Cicero acted on Ligarius' behalf and entreated Caesar and his associates to grant a pardon and allow him to return home. In this endeavor Ligarius' relatives – especially his two brothers – were most active. In a letter from August or September 46 to the absent Ligarius, Cicero was hopeful that Caesar's attitude toward him was softening, but noted that the dictator was generally ill disposed to Pompeian die-hards (such as Ligarius) who had continued the war in Africa and elsewhere (Cic. *Fam.* 6.13.3; cf. Quint. *Inst.* 11.1.80; Schol. *Grov.* 291St). Although access to Caesar was difficult to obtain, Cicero promised Ligarius that he would press his case at every available opportunity (*Ibid.* 2). On September 26, Cicero and Ligarius' relatives were granted an audience with Caesar. As his brothers knelt at Caesar's feet, Cicero spoke on the exile's behalf (Cic. *Fam.* 6.14.2). Cicero was optimistic about the meeting with Caesar and reported that he felt the exile's restoration was imminent. This optimism did not appear justified the following month, when Ligarius faced criminal prosecution. Q. Tubero, the son of the governor to whom Ligarius had refused entrance to his province, prosecuted him for his

activities in Africa. Probably under the charge of *perduellio*, Ligarius was accused of stubbornly persisting in civil war after the death of Pompey and joining forces with Juba of Numidia – a foreign king – against Rome (Quint. *Inst.* 11.1.80). Caesar himself heard the case in a trial held in the forum (Cic. *Lig.* 14 and 37; Quint. *Inst.* 5.13.5; Plut. *Cic.* 39.6). Ligarius was most likely tried *in absentia*, as his absence from the proceedings is implied in Cicero's defense oration (Cic. *Lig.* 11). In this same passage Cicero states that Ligarius would lose his life if convicted. The practical outcome of such a verdict, however, probably would have been to make his current banishment permanent (Münzer *RE* XIII.1, s.v. "Ligarius [4]," col. 521). In any event, Cicero's defense so moved Caesar that he acquitted Ligarius, despite the fact that the dictator had allegedly considered him guilty before the trial (Plut. *Cic.* 39.5–6). Drumann's belief that the entire trial was a vehicle for Caesar to display his *clementia* and gain popularity is attractive (1908, 6.273 n. 70).

c. Ligarius received a full pardon from Caesar and was allowed to return home, either as a result of the trial or shortly afterwards. He felt no gratitude for his restoration, however, and was among the conspirators who assassinated Caesar (App. *BC* 2.113). His hatred of Caesar was so strong that he reportedly joined in the plot despite a serious illness (Plut. *Brut.* 11, with his praenomen erroneously listed as Gaius).

Two brothers Ligarius living in Rome are mentioned among the victims of the proscriptions in late 43 (App. *BC* 4.22). Münzer is probably correct in asserting that these men were Quintus' two brothers, since he certainly would not have remained in Rome after his participation in the murder of Caesar (Münzer, *RE* XIII.1, s. v. "Ligarius [4]," col. 521). For the same reason, a third Ligarius proscribed and killed while hiding in the city (App. *BC* 4.23) was probably not the former exile, but a kinsman of some sort. Although not specifically recorded, Q. Ligarius must have met his end sometime prior to 32, when Cassius of Parma, the last surviving conspirator, was killed (Vell. 2.87.3).

60. C. Trebianus (1), *eques Romanus*

Date: ca. 46

a. Trebianus was an eminent equestrian who could count Cicero, Atticus and the renowned Epicurean Siro among his associates (Cic. *Fam.* 6.10.1–2; 6.11.2). Cicero's opinion that Trebianus had fought in the civil war "too long" suggests that he had

sided with the Pompeian remnant in the African war (Cic. *Fam.* 6.10.1; Shackleton Bailey 1977, 2.388; Tyrell and Purser 1915, 4.458). He probably came into Caesar's hands after the battle of Thapsus.

b. Caesar was generally hostile to obstinate Pompeians who continued to fight after Pharsalus (see number 56 above), and most were banished. Trebianus' punishment was more severe: in addition to exile (Cic. *Fam.* 6.11.1–2), he suffered forfeiture of property (6.10.1–2; 6.11.2). As he had vowed to his other banished associates at this time, Cicero promised to spare no effort or labor on Trebianus' behalf (to Ligarius: *Fam.* 6.14.1; to Caecina: 6.5.4; 6.6.13; to Plancius: 4.14.4; to Torquatus: 6.1.7; 6.3.4; to Toranius: 6.21.3). However, his pledge to Trebianus included an offer of financial support – an item not found in his letters to the other exiles (Cic. *Fam.* 6.10.1). Trebianus' loss of property most likely accounts for this unique gesture.

Through the agency of Dolabella, it seems that some of Trebianus' estate was restored to him (Cic. *Fam.* 6.11.1). In June 45, upon his return from meeting with Caesar in Spain, Dolabella reported that Trebianus was granted restoration (Cic. *Fam.* 6.11.1). It has been suggested that Dolabella carried the pardon with him (Schmidt 1893, 362), but this cannot be ascertained from Cicero's letter. It is equally possible that the official documents were sent to Rome at a later time or even that Trebianus had to wait until Caesar returned to Rome in September. The balance of his confiscated property was not returned to him as part of his restoration (Cic. *Fam.* 6.11.2). Nothing further is known of Trebianus or his family.

61. T. Ampius (1) Balbus, pr. 59, procos. Asia 58.

Date: ca. 46

a. Ampius was a Pompeian of long standing. As tribune of the plebs in 63, he cosponsored a measure to allow Pompey to wear a gold crown and the robes of a triumphator at the *ludi*, and at the theater a purple bordered toga and the gold crown (Vell. 2.40.4). When civil war broke out in 49, he conducted the levy of forces for Pompey in Campania with remarkable thoroughness and zeal (Cic. *Att.* 8.11b.2). Following defeat at Pharsalus, Ampius went to Ephesus and attempted to remove money from the temple of Diana, presumably to finance further Pompeian operations. His activities were interrupted by Caesar's arrival and he fled (Caes. *BC* 3.105). It is unknown when he was captured by Caesar, but his reputation as a staunch Pompeian (see below) make his presence in the African war seem

likely. His exile by the victorious Caesar – a common punishment for opponents who fought on after Pharsalus – also suggests that he served in Africa (see number 56).

b. Ampius' banishment was not a long one. In a letter which appears to date from August or September 46 (Tyrell and Purser 1915, 4.453; Shackleton Bailey 1977, 2.392), Cicero happily informed his exiled associate that a restoration has been granted to him (Cic. *Fam.* 6.12.1). The orator credited this accomplishment to his own long-standing ties and influence with many of Caesar's *familiares*. He particularly noted the assistance of C. Vibius Pansa and Tillius Cimber in presenting Ampius' case to Caesar. Only one hurdle remained to his return home – Ampius' reputation among some Caesarians, who named him *tuba belli civilis* (Cic. *Fam.* 6.12.2–3: “the trumpet of civil war”). Although it is unknown precisely how he had acquired such an epithet, Tyrell and Purser's suggestion of his energetic recruiting of troops for Pompey in 49 is certainly feasible (1915, 4.lxxxi). Given this enmity towards Ampius, a *diploma* allowing him free passage was not immediately issued. It seems that Caesar (or his agents) thought it best to proceed slowly in effecting the recall. Based on Pansa's assurances, Cicero was certain that Ampius would have leave to return home very soon (Cic. *Fam.* 6.12.3).

Ampius enjoyed the company of his wife and daughter for a while during his banishment. By the time that Cicero wrote to him, however, they were back in Rome (*Ibid.*). They may have just returned from a visit to him, or perhaps they accompanied him into exile anticipating only a short stay, but returned to Rome when his exile turned out to be longer than expected. Thus separated from his family, Cicero recommended that Ampius seek consolation in study and writing. His advice to the exile appears to contain a pun. It seems that Ampius engaged in the writing of history or biography. After counseling Ampius to emulate the great men of whom he writes, Cicero remarked *sed haec oratio magis esset apta ad illa tempora quae iam effugisti. nunc vero tantum te para ad haec nobiscum ferenda* (Cic. *Fam.* 6.12.5: But this speech was more fitting for that situation which you have now fled. But now prepare yourself to endure things here together with us). This is certainly a play on words; exile is normally a condition to which someone flees for safety. But here Cicero characterizes Ampius as just having escaped (or about to flee) his place of banishment.

c. While Pansa's guarantee implies that Ampius was shortly recalled, there is no direct evidence that Ampius actually received his restoration. His known literary activities, however, suggest that he was recalled from exile. In assessing Caesar's

conduct as dictator, Suetonius refers to some of his arrogant public remarks that were recorded in a work by T. Ampius (Suet. *Jul.* 77). Certainly Ampius would not have published something casting Caesar in a negative light when his recall still depended on him. While it could be argued that Ampius was still in exile at the time of Caesar's death and disseminated his book afterwards, this seems unlikely. After his return from Spain in late 45, Caesar pardoned all exiles except those guilty of serious crimes (App. *BC* 2.107; cf. Plut. *Caes.* 57.3). Former Pompeians did not fall under this category, however, as Caesar conspicuously displayed his *clementia* to his former opponents (cf. Vell. 2.61.1; Suet. *Jul.* 75.4; Dio 43.50.1).

Shackleton Bailey's tentative suggestion that Ampius Balbus may have been a brother or half-brother of L. Tillius Cimber deserves attention (1977, 2.392–3). In his letter to Ampius, Cicero singled out the efforts of Cimber in presenting the exile's case to Caesar:

Cimber autem Tillius mihi plane satis fecit. valent tamen apud Caesarem non tam ambitiosae rogationes quam necessariae: quam quia Cimber habebat, plus valuit quam pro ullo alio valere potuisset (Cic. *Fam.* 6.12.2).

Moreover, Tillius Cimber has done very well in my view. Nonetheless, requests based on ambition are not so effective with Caesar as those based on personal obligation. Since Cimber had this sort of bond [with you], he had more influence than he would have been able to have on behalf of anyone else.

Deducing a family connection between Cimber and Ampius based on this passage, Shackleton Bailey postulates that Ampius may have been Tillius Cimber's brother known to have been an exile at time of Caesar's assassination in 44. Indeed this brother's plight helped turn Cimber from loyal Caesarian to assassin (see number 63 for sources). While possible, this arrangement does not seem likely. The quoted passage only implies that Cimber's petition was not based on self-interest, but on a bond of *necessitudo* – a binding personal connection, but not always related to close kinship. Furthermore, had Cimber been Ampius' brother, it is strange indeed that Cicero did not refer to him as “your brother” or some similar expression. Finally, as discussed above, Ampius' continued banishment as late as March 44 is improbable. Thus T. Ampius Balbus is probably not the banished brother whose situation soured Cimber against his erstwhile patron.

T. Ampius Menander, a freedman of Ampius Balbus, was the beneficiary of a letter of commendation from Cicero to P. Servilius Vatia Isauricus, the proconsul of Asia (Cic. 13.70). There are no internal references to indicate if Ampius was in exile, and the letter could have been written anytime during Servilius' governorship, which spanned from 46 to 44.

62. P. Nigidius (3) Figulus, pr. 58

Date: ca. 46

a. Nigidius fought on the Pompeian side in the civil war. It is unknown when he surrendered or was captured by Caesar. The fact that he was in exile suggests that he continued to fight against Caesar following the battle of Pharsalus, as these Pompeians were generally not given clemency immediately (see number 56).

b. Cicero wrote to the banished Nigidius in late 46 and assured him that he was attempting to use his influence with certain Caesarians to gain him a recall (*Fam.* 4.13). Although Cicero felt that his restoration was imminent, Nigidius never saw Rome again. He died sometime in 45 (apparently of natural causes) while still an exile (Hieron. *Chron. a. Abr.* 1972).

c. Nigidius was a renowned scholar, particularly in the areas of astrology and magic (Kroll, *RE* XVII.1, s.v. "Nigidius [3]," col. 202–12).

63. Brother of L. Tillius (1) Cimber

Date: ca. 45

a. The brother of L. Tillius Cimber (name unknown) was in exile for an unspecified crime in early 44.

b. Caesar had caused this man's exile in some way (Nic. Dam. *Vit. Caes.* 24 = *FGrH* 2A.408). Since the dictator recalled all exiles after his return from Spain in 45 except those who had committed a serious crime, it is likely that Tillius' brother was just such a criminal (App. *BC* 2.107). Although he had been a loyal Caesarian, Tillius turned against his erstwhile leader due to his brother's continued banishment. He apparently often begged the dictator to restore his brother; indeed such an entreaty was the pretext for Tillius to distract Caesar while the other conspirators surrounded him and attacked on the Ides of March (Nic. Dam. *op. cit.*; Sen. *Ira* 3.30.4–5; Plut. *Caes.* 66.3, *Brut.* 17.2–4; Suet. *Iul.* 82.1; App. *BC* 2.113, 117; Dio 44.19.4).

c. The fate of the exiled brother is not recorded, although it is possible that he was proscribed as a relative of one of Caesar's assassins. See number 61 above for a possible identification of Tillius' brother.

64. Licinius (80) Denticulus

Date: Before 44

a. Licinius Denticulus went into exile sometime before the death of Caesar. His offense is not recorded. Since Cicero and Dio identified him as a notorious gambler who had been convicted for this offense, Alexander (1990, 181) speculated that he may have been tried under the *lex Cornelia de aleatoribus*. It is unlikely that such a conviction was the cause of this man's banishment, since Caesar had recalled all exiles in 45 who had not committed serious crimes (App. *BC* 2.107).

b. He was restored from exile by the consul Antony in 44 following Caesar's assassination. Antony claimed that Denticulus' recall was authorized by the *commentarii* of the slain dictator (Cic. *Phil.* 2.56; Dio 45.47.4).

c. Denticulus was allegedly one of Antony's friends (*Ibid.*). Nothing further is known of him following his recall. For the problems of his nomenclature, see Shackleton Bailey 1976, 47; *MRR*, 3.120.

65. Victor (4)

Date: Before 44

a. A man only identified as "Victor" was in exile for an unspecified reason prior to Caesar's assassination in 44 (Cic. *Att.* 14.14.2).

b. Cicero lamented that even Victor might be restored by Antony during his consulship via the alleged *commentarii* of Caesar (*Ibid.*).

c. The orator joked that Victor had never appeared in anyone's will as an heir (*Ibid.*).

CONCLUSIONS

THE PRACTICE OF ROMAN EXILE WAS INEXTRICABLY LINKED WITH THE LARGER political scene of the Republican era. Exile was not a static institution, but it was affected by the major events in Roman history and developed in response to them. *Exilium* was a relatively uncomplicated phenomenon down to the late second century. Roman aristocrats who elected to retire into exile normally relocated to nearby Italian *civitates foederatae*. Often they had some pre-existing personal tie to their new homeland. Although close to Rome, their banishment was permanent.

The political instability and violence that entered Roman domestic affairs in the time of the Gracchi changed the face of *exilium*. Internal strife resulted in a dramatic increase of politically motivated prosecutions, and thus more elites were forced to go into exile. However, this same instability made restoration from banishment possible: with a change in the political situation at Rome (often by the massacre of opponents), an official recall could be engineered. The case of P. Popillius Laenas highlights the changing nature of exile under the pressure exerted by partisan politics during this era. As consul in 132, Popillius played a key role in the suppression of the supporters of Ti. Gracchus. In 123, when he was threatened with legal proceedings by C. Gracchus for his actions years earlier, Popillius chose to go into exile to avoid prosecution. He traveled outside Italy for his banishment – the first time a Roman is recorded as having done so. The violent nature of the political situation in Italy no doubt induced him to take this extraordinary step.

Popillius' family and allies in Rome attempted to exploit the volatile political situation in the capital and initiated a campaign to reverse their associate's exile. By staging dramatic public demonstrations, they hoped to rally support for legislation to bring Popillius home. As far as we can tell from the surviving sources, this seems to have been the first example of such an endeavor. Despite its novelty, the undertaking was successful and Popillius was restored in 120. The supporters of many subsequent exiles would imitate the efforts of the *Popilliani*. The hope of restoration, however, served only to increase the tensions of political rivalry. The efforts to restore a particular exile added yet another theater of conflict between rival factions and added more fuel to the fire of partisan strife. Indeed, both

Popillius and later Q. Caecilius Metellus Numidicus in 98 ultimately owed their return to the violent demise of the rivals who had forced them into exile.

Once Popillius' case had demonstrated that one could be granted an official recall from exile, all subsequent exiles had an additional factor to consider in their choice of a new domicile. Those who did not desire to seek restoration were free to choose their new homes based on the attractions of the site. But for those who wished to try to repeat Popillius' success, it was necessary to relocate to a site that would enhance the chances of recall. Above all else, the most important characteristic of a new residence for such exiles was proximity to Rome. Sites offering rapid and regular communication routes with the capital allowed them to monitor political affairs closely and to issue timely instructions to supporters at home. Locations in Italy near Rome would appear to have been ideal locations for these activities. Political circumstances, however, often made nearby sites in Italy undesirable. Most optimate exiles in the last two decades of the second century found themselves in a similar situation to Popillius Laenas and opted for exile outside the Italian peninsula. L. Opimius' selection of Dyrrachium as his place of exile in 109 anticipated a trend in the following century.

With the enfranchisement of Italy following the Social War in the early first century, independent Italian communities no longer existed to receive exiled Romans. Thereafter, areas outside Italy promoting quick and regular correspondence with Rome became desirable, and a new region emerged as the most popular destination for Roman exiles: Epirus and its coastal islands. While lacking the sophistication and cultural attractions of other regions, Western Greece became the premier location for banished Romans seeking to return home due to its proximity to Italy and the relative ease of communication with Rome.

The relationship among exile, restoration, and violence comes into even sharper focus in the first century. The increasing numbers of banished men became an enticing source of recruits for civil war. In 88, Sulpicius Rufus seems to have introduced into Roman politics the concept of a mass recall of exiles. Such general recalls were a sure method to swell one's ranks for an upcoming conflict. Sulpicius did not live long enough to reap the benefits of his plan, but Sulla would use his former enemy's tactics to great advantage in the late 80s. In the civil war beginning in 49, Julius Caesar turned to this well-established method from the outset and gathered significant support from exiled senators. Later, Antony imitated these tactics as consul in 44 and continued to recall *exules* by claiming that Caesar's *commentarii* authorized such action.

Once he had defeated the Pompeians and assumed the foremost position in the state, Caesar no longer relied on the recall of exiles *en masse*. When he chose to extend his clemency to banished former enemies, he did so on a case by case basis. An individual's chance of restoration no longer rested with the Roman people, but depended entirely on the decision of Caesar. As a result, supporters of exiled men focused their efforts on swaying Caesar's opinion to gain a recall for their absent comrade. Public demonstrations were thereafter replaced by discreet supplication of Caesar. His personal role in granting and denying restoration to exiles had an unfortunate outcome for the dictator. L. Tillius Cimber turned from his position as a loyal Caesarian to become a leading figure in Caesar's assassination because his brother had been repeatedly refused a return from exile.

Exilium in Republican Rome was not just a feature of the political landscape. Potential exile was one of the major obstacles faced by elite Romans during their political careers, and it affected the senatorial milieu. We have seen how the exile of a relative often signaled the involvement of the victim's entire extended family in a calculated campaign to reverse the banishment. The demonstrations and theatrics associated with such activities gave women one of their first public roles in political affairs. Children such as Metellus Pius could gain renown by their dutiful efforts to help a banished relative. Indeed, the entire social world of Roman aristocrats came into play during exile – family, friends, clients, and even slaves and freedmen all performed their parts. Thus *exilium* was not merely a facet of the Roman legal system, but was interwoven into the fabric of Republican society.

APPENDIX I THE *LEGES CLODIAE* CONCERNING CICERO'S EXILE

THE LAWS SPONSORED BY THE TRIBUNE P. CLODIUS CONNECTED WITH THE EXILE of Cicero in 58 provide us with the most detailed account of the legislative activity associated with *exilium*. Although there is much evidence for these *leges*, the ancient sources must be used with caution. Most of the information we have regarding these acts comes from Cicero himself and is understandably biased and one-sided. Later ancient authors seem to have consulted the orator's works and thus also display his singular point of view. Cicero attempted to depict the *leges Clodiae* concerning his banishment as illegal and technically flawed. His speeches *post reditum* particularly stress that he was forced from Rome due to Clodius' unconstitutional legislation and violent gangs. In short, Cicero strove to illustrate that his downfall did not occur in the course of standard judicial procedure. For example, there were two Clodian laws that contributed to Cicero's eighteen-month exile from Rome, but Cicero in his public speeches telescoped these two measures into one and distorted events to make his opponent's legislation appear irregular. Cicero's argument that he had been the victim of a *privilegium* by Clodius partially relied on this bit of sophistry.¹

Indeed, Cicero's exile was not as unusual as the orator would have us believe and was largely accomplished in accordance with long-standing legal precedents. An initial Clodian law established that the execution of a Roman citizen without trial was a capital offense. This law is generally called the *lex Clodia de capite civis* by modern authors. When Cicero left Rome for fear of prosecution under this statute, a second law, often called the *lex Clodia de exilio Ciceronis*, applied the *aquae et ignis interdictio* against the orator based on the assumption that he had gone into exile.² An examination of the sources for both laws will help to reveal the misconceptions about these measures that arose from Cicero's propaganda.

¹ E. S. Gruen, *The Last Generation of the Roman Republic* (1974, Berkeley), 245–246. As Gruen astutely points out, it was only in Cicero's private correspondence that he mentions two Clodian laws. Cf. L. Fezza, "La legislazione tribunitia di Publio Clodio Pulcro (58 a.C.) e la ricerca del consenso a Roma," *Studi Classici E Orientali* 47.1 (2001), 291.

² Neither of these names for the *leges Clodiae* is used by ancient sources. For convenience, I will use the modern appellations. For sources on the Clodian laws, see *MRR* 2.196.

THE *LEX CLODIA DE CAPITIS CIVIS*

In February 58, Clodius promulgated a bill aimed against anyone who had put a Roman citizen to death without due process. The measure was retroactive, and it was obvious that Clodius' *inimicus* Cicero was an intended target. As consul in 63, Cicero played the leading role in the execution of the Catilinarian conspirators without trial. While this law served Clodius' ends as a potential method of removing a hated opponent, Gruen has effectively demonstrated that it also fit in with Clodius' overall *popularis* position. The *lex Clodia de capite civis* challenged the use of the *senatus consultum ultimum* as a shield for the killing of Roman citizens during times of political violence.³ Whatever Clodius' exact intentions, an important feature of this law was that it did not specifically name Cicero, as the orator himself acknowledged in a letter to Atticus.⁴ Little else can be reconstructed about the law with any certainty. Velleius Paterculus states that the penalty for this *lex Clodia* was interdiction from fire and water.⁵ He is alone in this assertion, as there is no corroborating ancient source. Cicero himself naturally makes no mention of this penalty for the first Clodian law, since he attempted to downplay the fact that there were two *leges Clodiae*. Both Plutarch and Dio, whose works contain the most detailed continuous narratives concerning Cicero's exile, also do not mention the penalty for the *lex de capite civis*. Their accounts imply that Cicero's interdiction was accomplished in the usual way (by plebiscite) after he fled the city of Rome.⁶ Velleius' evidence has been universally accepted by scholars at face value without further comment.⁷ If Velleius is correct, then this *lex Clodia* would

³ Gruen, *Last Generation*, 244.

⁴ Cic. *Att.* 3.15.5. Cf. Vell. 2.45.1. Cicero also admits that the law has many popular features (*multa popularia*) and should not be attacked in the efforts to restore himself from exile. This statement certainly supports Gruen's view that the *lex Clodia de capite civis* had implications beyond simply being an anti-Ciceronian measure. Cf. Fezza, "La legislazione tribunitia," 291–292.

⁵ Vell. 2.45.1: *P. Clodius . . . legem in tribunatu tulit, qui civem Romanum indemnatum interemisset, ei aqua et igni interdiceretur* (P. Clodius sponsored a law during his tribunate, that anyone who had executed an unconvicted Roman citizen should be interdicted from fire and water).

⁶ Plut. *Cic.* 32.1; Dio 38.17.7. Other ancient sources are ambiguous on this point.

⁷ Nearly every work that touches on Cicero's exile falls into this category. Among the most significant are the following: A. H. J. Greenidge, *The Legal Procedure in Cicero's Time* (Oxford, 1901), 535; E. G. Hardy, *Some Problems in Roman History* (Oxford, 1924), 35; *MRR* 2.196; D. R. Shackleton Bailey, *Cicero* (London, 1971), 61; Gruen, *Last Generation*, 245; A. M. H. Jones, *Criminal Courts of the Roman Republic and Principate* (Oxford, 1972), 74; B. Levick, "Poena Legis Maiestatis," *Historia* 28 (1979), 371; E. L. Grasmück, *Exilium: Untersuchungen zur Verbannung in der Antike* (Paderborn, 1978), 113; T. N. Mitchell, *Cicero the Senior Statesman* (London, 1991), 132; Fezza, "La legislazione tribunitia," 290–291.

be the first statute to incorporate the *aquae et ignis interdictio* as a legal penalty so far as the surviving evidence indicates.⁸

I am inclined to believe that Velleius' brief account, perhaps influenced by Cicero's deliberate conflation of the two Clodian laws (*de capite civis* and *de exilio Ciceronis*), has compressed Clodius' actions against Cicero. Velleius mistakenly believed that the interdiction Cicero suffered as a result of his flight from Rome was the actual penalty of Clodius' first law. This is an easy mistake to make, especially if the historian used Cicero's works (or later sources dependent on them) as his source material. Velleius may have also been influenced by the fact that the *aquae et ignis interdictio* was a formal legal penalty in his own day.⁹ That the more detailed accounts of Dio and Plutarch do not mention such a novel penalty for the *lex de capite civis* suggests that Velleius is in error. *Ex silentio* arguments must always be used with extreme caution, particularly for cases documented by scant sources. Yet it is not just the silence of Dio and Plutarch on this issue that is significant. Their description of the actions taken against Cicero are fully consonant with our knowledge of interdiction from fire and water and Roman exile: Cicero fled threatened prosecution and was subsequently outlawed by plebiscite. Velleius' account is thus at odds with normal procedure. Absent any corroborating evidence, Velleius' summary remark should be seen as anomalous.

Another source of controversy concerning the *lex de capite civis* is the method of trial prescribed by the law: was a defendant to be tried before the people (by *iudicium populi*) or by a jury court? There is no evidence that a standing jury court was established by this law. Since this *lex Clodia* was never repealed, if a specific *quaestio* was indeed created to hear cases, it would have continued to exist long after the events of 58. Yet there is no hint of the subsequent operation of such a court. It is more likely that cases arising from Clodius' legislation would have been directed toward one of the pre-existing standing *quaestiones*. The courts *de vi* or *de maiestate* would have been appropriate venues for adjudicating the illegal killing of Roman citizens. Perhaps trials were to be held in a *iudicium populi*, although this type of court was rarely invoked after Sulla established the system of *quaestiones perpetuae*.¹⁰

⁸ As maintained by Jones, *Criminal Courts*, 74; contra Levick, "Poena Legis," 371–372.

⁹ See Chapter 2.4, "Exile and Interdiction as a Legal Penalty." Velleius wrote during the principate of Tiberius.

¹⁰ R. G. Nisbet, ed., *M. Tulli Ciceronis de Domo Sua* (Oxford, 1939), xvi. Nisbet suggests that the charge for violation of Clodius' law was *perduellio*, which would be tried before a *iudicium populi*.

Lintott and Levick have suggested that the *lex Clodia de capite civis* made no provision for trials at all: the guilt of those affected by the law (i.e., Cicero) was assumed under an earlier statute, C. Gracchus' law *de capite civis* of 123. According to this argument, Clodius' law skipped the necessity of a trial and went straight to imposition of the *aquae et ignis interdictio* against offenders.¹¹ There are several problems with this theory. Both Lintott and Levick believe that guilt was already assumed under Clodius' law because it imposed interdiction from fire and water, which was normally only directed against convicted criminals or those whose culpability was presumed due to their voluntary exile. While Lintott and Levick recognize that Velleius' association of interdiction with the *lex Clodia de capite civis* signaled a deviation from the standard legal procedure of the mid-first century BC, they have constructed an unlikely scenario to justify the historian's statement. As stated above, I believe that Velleius' report should be set aside as flawed: it is unnecessary to posit such a unique and unprecedented situation to account for it. That the guilt of a potential defendant could be assumed under a particular law with no recourse to trial seems contrary to *mos maiorum* and the standard practice of Roman criminal law.¹² Furthermore, none of the sources on Clodius' law support Lintott and Levick on this issue. There was no trial in Cicero's case because he fled Rome before any legal action could be taken against him. Had the orator maintained his composure and remained in the city, he no doubt would have been accused under the *lex Clodia* and had his day in court.

THE *LEX CLODIA DE EXILIO CICERONIS*

Cicero fled Rome the day Clodius' bill became law. After Clodius was certain of his enemy's departure, he proposed to the *plebs* that Cicero be interdicted from fire and water. This so-called *lex de exilio Ciceronis* was an example of the standard plebiscite enacted against those who were assumed to have gone into voluntary exile, although it seems to have had some unique elements. In attempting to paint his opponent's actions against him as illegal, Cicero ignored the first *lex Clodia* and concentrated his efforts on attacking this second law on several grounds.

¹¹ A. W. Lintott, "P. Clodius Pulcher – *Felix Catilina*?" *G&R* 14 (1967), 163–164; Levick, "Poena Legis," 371–372.

¹² Indeed, such an assumption of guilt and application of outlawry without trial would have been illegal under the *lex Sempronia de capite civis*. For the sources for this law, see *MRR* 1.513–514.

To evaluate Cicero's criticisms, we must establish the contents of the law (to the degree that the sources allow) and compare them to the customary application of the *aquae et ignis interdictio* as reflected in earlier cases.

Cicero's orations purport to reproduce some of the actual language of the *lex de exilio*. I deal with these fragments first, since if they are authentic, they represent the only remains of an actual plebiscite of interdiction. Even if these quotations are genuine, we must remember that their meaning may be somewhat distorted since they have been removed from their proper context. Therefore, it is important to attempt to reconstruct the function of these fragments in the law as a whole rather than viewing them as isolated entities.

In his *De domo sua*, Cicero claims to reproduce a key piece of the *rogatio* for Clodius' law: VELITIS IUBEATIS UT M. TULLIO AQUA ET IGNI INTERDICTUM SIT (That you wish and command that M. Tullius has been interdicted from fire and water).¹³ Cicero proceeds to attack the legally flawed nature of this passage. In particular, he states that Clodius' use of the perfect tense instead of the present created an impossible situation. How could this measure claim that Cicero was already an *interdictus* before the actual interdict was passed against him? Such a state of affairs was beyond all precedent in the orator's mind.¹⁴ As it happens, Livy provides a paraphrase of a similar *rogatio* in the case of M. Postumius in 212.¹⁵ A comparison of the language and content of Postumius' and Cicero's interdictions is instructive. Clodius' law (in Cicero's rendition) does not fix a date after which Cicero will be considered an exile if he does not appear to answer charges, a feature we find in the bill against Postumius. Indeed, Cicero staunchly maintains elsewhere that Clodius never initiated legal proceedings against him, nor gave him notice to present himself for trial. Throughout his speeches *post reditum*, he claimed that he was driven out of the state without being tried or even charged with any crime.

¹³ Cic. Dom. 47.

¹⁴ Ibid. 47–48.

¹⁵ Liv. 25.4.9–10: *tribuni plebem rogaverunt plebesque ita scivit, si M. Postumius ante kal. Maias non prodisset citatusque eo die non respondisset neque excusatus esset, videri eum in exilio esse, bonaque eius venire, ipsi aqua et igni placere interdicti* (The plebeian tribunes made a proposal, and the plebs approved it, that if M. Postumius had not come forward before the first of May and had not responded when summoned and had not been excused, he was deemed to be in exile and his possessions were to be sold and he was interdicted from fire and water). Cf. Liv. 26.3.12 for the action against Cn. Fulvius: *Cn. Fulvius exsulatum Tarquinius abiit. id ei iustum exsilium esse scivit plebs* (Cn. Fulvius went into exile at Tarquinii. The plebs judged that it was lawful exile for him).

It has been suggested that Cicero may have intentionally omitted the protasis to the fragment, which named a date for him to return before the bill became effective.¹⁶ This would seem to be too bold a distortion of fact to be credible. If Cicero had suppressed such an important clause in his version, his audience would easily detect his subterfuge. The events in question were less than two years old at the time Cicero delivered *De domo sua*. Most likely there was no such clause in the *lex de exilio* directing Cicero to return before a certain date. Cicero's claim that his interdiction was illegal because he was never formally accused is worthy of close examination. In Postumius' case, he left Rome in the course of his prosecution. Since proceedings against him had already been initiated, perhaps this accounts for the clause fixing a time limit for his appearance. In other words, since he had been present for a portion of his trial, it was necessary to establish that his sudden absence was due to exile. In Cicero's case, however, he left Rome before any charges were brought against him and indeed even before Clodius' *lex de capite civis* became law. All the sources indicate that it was well known that Cicero had departed to avoid prosecution under the new statute. Perhaps Clodius made use of this common knowledge in proposing his interdiction of Cicero and felt there was no need for a formal accusation. Since Cicero had indeed fled Roman jurisdiction to avoid the operation of the new law, the lack of legal proceedings against the absent orator was in a sense a technicality, but an important one. After all, Cicero's troubles stemmed from his execution of unconvicted men whose guilt was nonetheless manifest. Adherence to the proper legal process was not immaterial to the Romans, and Clodius' deviation from the traditional course of outlawry provided Cicero with ammunition to effectively attack the legality of the *lex de exilio Ciceronis*.¹⁷

Cicero's "grammatical" objection to the *rogatio* deserves examination. Lintott and Levick maintain that the wording *ut interdictum sit* demonstrates that interdiction was the penalty prescribed by the *lex de capite civis*. According to this theory, when

¹⁶ Zumpt, *Der Criminal Process der römischen Republik* (Leipzig, 1871), 1.2.425; cf. Greenidge, *Legal Procedure*, 364. Note P. Moreau's refutation of this idea: "La Lex Clodia sur le bannissement de Cicéron," *Athenaeum* 65 (1987), 475–476.

¹⁷ R. Y. Tyrell and L. C. Purser (*The Correspondence of M. Tullius Cicero* [Dublin, 1915], 1.430) claim that the interdiction of Cn. Fulvius in 211 provides a precedent for Clodius' action. However, Fulvius (unlike Cicero) had been charged and assigned a trial date before the *comitia centuriata* previous to his exile. Cf. Nisbet, *De Domo*, xvii; Greenidge, *Legal Procedure*, 363; W. J. Tatum, *The Patrician Tribune: Publius Clodius Pulcher* (Chapel Hill, 1999), 157.

Cicero fled the first law, the *lex de exilio* assumed the *interdictio* to have been enacted by the earlier measure.¹⁸ Because it is based on the tenuous position that the *aquae et ignis interdictio* was the punishment written into Clodius' initial law, this conclusion remains unconvincing. The perfect tense certainly indicates that the *interdictio* was retroactive, probably to the time that Cicero left Rome and could be considered an exile. It has been suggested that the *lex de exilio* had this retrospective quality to ensure that the destruction of Cicero's property on the day he had departed for exile was technically legal.¹⁹ Such backdating may not have been unique to Clodius' law. Indeed, it seems simple and efficient to begin the period of exile *de iure* when the fugitive departed. Cicero, however, claims that this use of the past tense is unprecedented, and cites the examples of Popillius Laenas and Metellus Numidicus to prove his point. The *rogationes* for the outlawry of these men proposed that they *be interdicted*, not that they *were interdicted*.²⁰ We cannot check Cicero on this account, since the earlier legislation he mentions is not extant, and the orator does not quote from these earlier measures to prove his point. The issue of the tenses, however, did not constitute a key challenge to the legality of Clodius' law. Indeed, Cicero does not dwell on this matter or make it a major component of his case – it is merely one of many criticisms that he levels at the *lex Clodia*.²¹

The second fragment appearing in the *De domo sua* also seems to come from the initial *rogatio*: QUOD M. TULLIUS FALSUM SENATUS CONSULTUM RETTULERIT (In so far as M. Tullius has promulgated a spurious decree of the senate).²² Apparently, this was one of the accusations against Cicero listed in the *lex de exilio*. The orator's motivation in reproducing this fragment is clear: he asserts that if he is innocent of this charge, his interdiction is groundless. Presumably, the alleged false *senatus consultum* involved the Catilinarian conspirators executed by Cicero in 63.²³ The decree in question may have been the *senatus consultum ultimum*

¹⁸ Lintott, "Clodius," 164–165; Levick, "Poena Legis," 371; cf. Moreau, "Lex Clodia," 491.

¹⁹ Tyrell and Purser, *Correspondence* 1.430. The destruction was legal because Cicero would have been deemed an outlaw immediately upon his flight and his property considered forfeit.

²⁰ Cic. *Dom.* 82.

²¹ See Nisbet, *De Domo*, 204–205 and Moreau, "Lex Clodia," 491–492 for a thorough discussion of the law's use of the perfect subjunctive.

²² Cic. *Dom.* 50.

²³ A. C. Johnson, P. R. Coleman-Norton, F. C. Bourne, eds., *Ancient Roman Statutes* (Austin, 1961), 79 n. 4; E. Gabba, "Cicerone e la falsificazione dei senatoconsulti," *Studi Classici E Orientali* 10 (1961), 92; Moreau, "Lex Clodia," 473 and 491; C. Venturini, "I 'privilegia' da Cicerone ai romanisti," *St. Doc. Hist. Iur.* 56 (1990), 180 n. 69; Fezza, "La legislazione tribunizia," 303.

by which Cicero justified the executions. Perhaps it was alleged by Clodius that the consul Cicero had altered the senate's measure so as to account for the killing of innocent citizens.²⁴ Whatever the precise details concerning the "false" decree, undoubtedly this was not the only reason given in the *lex de exilio* for Cicero's interdiction. After all, he fled the *lex de capite civis*, so the bill of interdiction must have accused Cicero of the deaths of the Catilinarians. The ancient sources are unanimous in naming these executions as the cause of Cicero's banishment. Yet in the *De domo sua*, Cicero avoids quoting any parts of Clodius' law pertaining to this matter. Instead, he cites the allegation about the false decree, a far easier charge to refute. This is just another part of Cicero's strategy of isolating small details in Clodius' law to attack, while generally avoiding discussion of the larger issues.

In a later oration, Cicero does produce a further allegation from Clodius' law. In his speech against L. Calpurnius Piso delivered in 55, Cicero relates a joke made by the defendant based on a clause in the *lex de exilio Ciceronis*. Piso had allegedly commented that Clodius' law had outlawed the orator because of his bad poetry (*quod M. Cicero versum fecerit*). Cicero corrects his opponent's remark by interjecting the actual passage from the legislation. This fragment, although quoted in an incomplete form, does seem to deal with the Catilinarians: VELITIS IUBEATIS UT, QUOD M. CICERO VINDICARIT (That you wish and order that, in so far as M. Cicero has punished...).²⁵ The remainder of the clause probably continued *cives Romanos indemnatos* (unconvicted Roman citizens), or words to that effect. In this extract, Cicero may have altered the actual wording of the *lex de exilio* to avoid the harsher language of the original text. The verb *vindicare* normally implies legal or deserved punishment and thus would not seem appropriate to a law that condemned Cicero for his punitive actions. A word that was less favorable to the orator's deeds could have been used in the actual legislation.²⁶ This subtle (but substantial) reworking of the language of the original law serves

²⁴ The allegation that Cicero falsified or altered an SC may have been a way of shifting blame for the killing of the Catilinarians from the entire senate (which had passed the *SCU*) to Cicero alone. On the potential culpability of the entire senate under the *lex Clodia de capite civis*, see Dio 38.14.5.

²⁵ Cic. *Pis.* 72.

²⁶ R. G. M. Nisbet, ed., *M. Tulli Ciceronis In L. Calpurnium Pisonem Oratio* (Oxford, 1961), 141; Moreau, "Lex Clodia," 484–485. Moreau suggests *interimo* and *neco* for the original bill, because these verbs appear in the accounts of Velleius (2.45.1) and the Livian *Periochae* (103) concerning Clodius' law. He also believes that Cicero may have altered his quotations of the *lex de exilio* from the original indicative to the subjunctive.

to highlight the orator's manipulation of the facts to put the best possible "spin" on his banishment.

Further clauses in the plebiscite for Cicero's interdiction are recorded outside these fragments. Cicero's property was forfeited to the state and Clodius was designated to dispose of it. A provision also forbade anyone to discuss, propose, or vote on any measure that attempted to recall Cicero. Furthermore, it was made a capital offense to harbor the outlaw within the area forbidden by law. There is no direct evidence concerning the territory declared off-limits to Cicero in the initial proposal for the *lex de exilio*. Presumably it encompassed Italy, which was entirely enfranchised Roman territory. Shortly after the original *rogatio*, an amendment was added that altered the restricted area: the *interdictus* was subsequently barred from coming within four hundred miles of Italy.²⁷ Each of these clauses deserves closer examination, since some of them appear to have been unusual.

The confiscation of an exile's property was customarily linked with *aquae et ignis interdictio*, so this was not an innovation. The sanction against any discussion of restoration, however, seems to have been novel. No doubt the successful public opinion campaigns put on by the friends and families of previous exiles influenced Clodius to add this clause. Moreover, since Cicero had significant support in the senate, this provision was a method of stifling any meaningful action by that body on the orator's behalf. It is less clear whether the penalties prescribed for aiding the outlaw within interdicted territory were customary or unique to the *lex Clodia*. Cicero claims that his benefactors risked their lives and possessions and faced the threat of *exilium* by giving him shelter, while Dio states that the law allowed them to be killed with impunity.²⁸ Most scholars have assumed that this evidence implies that those who helped the outlawed Cicero were considered outlaws themselves.²⁹

²⁷ Forfeiture of property: Cic. *Att.* 3.20.2–3; *Fam.* 14.4.2; *Sest.* 65; *Dom.* 48, 51; *Pis.* 30; Asc. 10C; Plut. *Cic.* 33.1; Dio 38.17.6. Clause forbidding discussion of restoration: Cic. *Att.* 3.12.1; 3.15.6; 3.23.2; *Red. Sen.* 4 and 8; *Sest.* 69; *Pis.* 29. Sanctions against those who harbor Cicero: Cic. *Att.* 3.4; *Fam.* 14.4.2; *Dom.* 51; *Planc.* 96–97; Dio 38.17.7. Cic. *Att.* 3.4 gives the impression that the penalties for aiding Cicero may have been included in this amendment rather than the initial bill. Amendment of the initial bill: Cic. *Att.* 3.4; 3.7.1; Plut. *Cic.* 32.1; Dio 38.17.7. Cicero gives the limit of his interdiction as four hundred miles from Italy, although the later sources claim five hundred. See Moreau, "Lex Clodia," 475, for this discrepancy in the sources.

²⁸ Cic. *Planc.* 97; *Fam.* 14.4.2 mentions *caput* and *bona* (life and possessions); cf. *Att.* 3.4; Dio 38.17.7.

²⁹ J. L. Strachan-Davidson, *Cicero* (London, 1894), 235; Mommsen, *Strafrecht*, 936; Moreau, "Lex Clodia," 476; D. R. Shackleton Bailey, *Epistulae Ad Atticum* (Cambridge, 1965), 2.141; M. H. Crawford, ed., *Roman Statutes* (London, 1996), 2.773; Fezza, "La legislazione tribunitia," 301–302.

This theory has one major problem: it seems inconsistent for the plebiscite interdicting Cicero for punishing untried citizens to include automatic outlawry as a sanction. Since Clodius had reasserted the right of Roman citizens to trial with his *lex de capite civis*, it would be an obvious piece of hypocrisy for him to deny proper procedure for those who had allegedly failed to observe his *lex de exilio*. It would also seem to undermine his position as a champion of the people against magisterial abuse. I believe that the sanctions threatened capital prosecution for those who aided Cicero. The orator's words were therefore accurate, since his supporters were potentially risking their lives and property if they were tried and convicted. Dio's remark that they could be justly slain was probably based on a misinterpretation of Cicero's statements or on an analogy with the proscriptions. However, if the *lex de exilio* did threaten noncompliance with the imposition of the *aquae et ignis interdictio*, it was the first Roman statute so far as we can tell that included permanent banishment as a penalty. Even if this novel punishment was featured in the law, the guilt of the accused would certainly still need to be established by judicial means. In any event, this threat against aiding Cicero was not effective and did not deter most of his supporters from offering him shelter within the interdicted area.³⁰

The territorial limits later added to the initial proposal of the *lex de exilio* are expressed in a unique form. In our extant sources concerning *exilium*, forbidden territory is designated by distinct areas (either Rome or Italy) but not by distances.³¹ Indeed, Cicero seemed surprised by the amendment that barred him four hundred miles from Italy. Although this may have been an unusual addition to a plebiscite of *aquae et ignis interdictio*, there was a precedent for such territorial restriction. The power of *relegatio* allowed magistrates to expel undesirables and even confine them to a certain area. The consul Gabinius had made use of this ability in early 58 to enforce his ban on demonstrations on Cicero's behalf. He expelled L. Aelius Lamia from a distance of two hundred miles around Rome due to the latter's disregard of the consular edict.³² This recent use of *relegatio* may have inspired Clodius to add such a territorial restriction to the interdiction of his *inimicus*. Although the four hundred mile limit may have been unusual for a decree of interdiction from fire

³⁰ Plut. *Cic.* 32.

³¹ As I argue in Chapter 2.1, "The Basics of Exile," interdiction normally applied only to enfranchised Roman communities.

³² Cic. *Sest.* 29–31.

and water, Cicero does not claim in his public speeches that this particular feature was excessive or a violation of custom. His silence on this issue is noteworthy, since he disparages almost every other facet of the law. It would thus appear that the plebs were free to add such restrictive clauses as they saw fit.

Some scholars have argued that the amendment to the original proposal of interdiction was favorable to Cicero's cause: the initial *rogatio* banned Cicero from the entire *imperium Romanum*, but the revision reduced this to four hundred miles from Italy. The mitigation of the original bill has been ascribed to the influence of Cicero's friends along with that of the "triumvirs."³³ The chief evidence used to support this view is found in *Ad Atticum* 3.2, in which Cicero states that he will stay at Sicca's farm in Vibo particularly since the proposed law has not yet been amended (*praesertim nondum rogatione correcta*). This wording implies that Cicero was aware of a potential mitigating amendment to the bill and was waiting until he discovered the precise details before making any further moves.³⁴ I believe that this interpretation makes too many assumptions based on such slender evidence. Cicero may indeed have known that some sort of amendment to the proposal for his interdiction was expected. He also may have hoped that the changes would be favorable to his cause. But this falls far short of proving that the amendment was actually advantageous to him by reducing the amount of forbidden territory. In fact, there is no evidence that Cicero's allies in the capital had the political muscle to soften Clodius' bill. Their failure to prevent Clodius' measures against Cicero in the first place aptly displays their inability to thwart the tribune. As for the suggestion that the "triumvirs" may have had a hand in mitigating the terms of the initial *interdictio*, there is no hint in any of the historical sources that they were the least bit inclined to exert themselves on Cicero's behalf at this time.³⁵ Finally, it is difficult to believe that an interdiction from fire and water would encompass all Roman territory, as such an act would be unprecedented and the sources in no way suggest that it occurred in Cicero's case. Clodius' initial *rogatio* most likely banned Cicero only from Italy, as was customary at that time. The amendment extended this area by four hundred miles in all directions,

³³ C. L. Smith, "Cicero's Journey Into Exile," *HSCP* 7 (1896), 81–82; Tyrell and Purser, *Correspondence*, 1.431; Shackleton Bailey, *Ad Atticum*, 2.141; cf. W. Sternkopf, "Ueber die 'Verbesserung' des Clodianischen Gesetzentwurfes de exilio Ciceronis," *Philologus* 59 (1900), 288–304; "Noch einmal die correctio der lex Clodia de exilio Ciceronis," *Philologus* 61 (1902), 42–70.

³⁴ Smith, "Journey," 72.

³⁵ Cf. Gruen, *Last Generation*, 293; Mitchell, *Cicero*, 129–134.

perhaps in an attempt to prevent Cicero from seeking refuge with his clients in Sicily.³⁶

Finally, we must evaluate Cicero's miscellaneous objections to the propriety of the *lex Clodia de exilio Ciceronis*. He claims that his opponent's legislation violated the *lex Caecilia Didia* forbidding omnibus bills, since it included several disparate items in its text. The separate clauses of the law, however, all dealt with issues directly relating to Cicero's outlawry: the confiscation and disposition of his property, penalties for violation of the interdiction, and so on. It is therefore hard to view the law as including unrelated measures in contravention of the *lex Caecilia Didia*.³⁷ Cicero names the *lex Licinia* as another law that the tribune disregarded in drafting his measure. This statute barred any magistrate from serving in an office (*curatio*) that he himself had instituted. Cicero alleges that Clodius broke this very *lex* by appointing himself in his own law as the agent to dispose of Cicero's property.³⁸ Again, the orator's argument is specious. As the proposer of the law, Clodius was responsible for its proper execution, and he rightly held the duty as the custodian of Cicero's property. Furthermore, the administration of confiscated property cannot really be considered a distinct office.³⁹ Cicero's remaining complaint is certainly his most tendentious comment about the *lex de exilio*. He states that the plebiscite forbade anyone from providing him shelter, but did not mention that he was expelled from Rome.⁴⁰ This protest is pure sophistry, although it is based on a viable theory: that interdiction did not impose banishment, but made voluntary exile official and prevented the fugitive's return.⁴¹ However, since Cicero had fled Rome to avoid possible prosecution under the *lex de capite civis*, the interdiction against him served this very function of confirming his exile and preventing his return.

In conclusion, the *leges Clodiae* appear to have been in keeping with the customary practice of Roman legal procedure with one important exception: the lack of a formal accusation against Cicero before he was declared an *interdictus*. The orator

³⁶ Indeed, the measure had this effect, as the governor of Sicily forbid Cicero to enter his province: Cic. *Planc.* 95–96; Plut. 32.2; Dio 38.17.7.

³⁷ Cic. *Dom.* 50–51; cf. Tatum, *Patrician Tribune*, 157–158; Moreau, "Lex Clodia," 478–480.

³⁸ Cic. *Dom.* 51. See Moreau, "Lex Clodia," 477–478, for a possible reconstruction of the clause that ordered the confiscation and auction of Cicero's goods.

³⁹ Greenidge, *Legal Procedure*, 304–305; Tatum, *Patrician Tribune*, 157. Cf. Moreau, "Lex Clodia," 476.

⁴⁰ Cic. *Dom.* 51.

⁴¹ Moreau, "Lex Clodia," 474–475.

fully exploited this anomaly to depict his outlawry as not only a *privilegium*, but also a *proscriptio*. Cicero's other attacks on the Clodian laws, however, are not nearly as credible. The orator's strategy aimed to create the overall impression that his interdiction was technically flawed. In addition to pointing out Clodius' violation of customary procedure, Cicero apparently counted on the sheer number of his objections to undermine the legitimacy of the *lex de exilio*.

APPENDIX II RESTORATION OF LEGENDARY FIGURES OF THE EARLY REPUBLIC

ANCIENT SOURCES REPORT THAT THREE MEN WERE EXILED BUT LATER RESTORED in the Early Republic. These accounts are not authentic, but are later inventions.¹ Numerous authors mention the recall of Camillus in 390 following the Gallic sack of Rome.² The tradition of his return and subsequent heroics probably originated in the late third century. R. M. Ogilvie's dating of the origin of this story to no earlier than 217 is persuasive.³ In addition to Camillus, Cicero cites the restorations of Caeso Quinctius and C. Servilius Ahala.⁴ He is alone in this assertion, however. Livy depicts Caeso as having died in banishment by 458 and has the prosecution of Servilius only threatened by his enemies, but never accomplished. Although Valerius Maximus states that Servilius went into exile, he does not mention that he was ever restored.⁵ Cicero's source (if he did not invent the variants himself) was evidently outside the mainstream annalistic tradition later used by Livy. Perhaps his information derived from optimate propaganda of the late second century. As conservative Romans who opposed demagogues with force, Caeso and Servilius would have been powerful symbols during the political struggles in the age of the Gracchi.⁶ Indeed, these stories are remarkably anachronistic and seem to reflect the internal situation of the late Republic rather than early Rome. The tales of their restoration may have been invented to validate optimate violence or even to provide a precedent for the recall of Popillius Laenas. Of course, Cicero had similar motives in citing the exile and restoration of these legendary heroes – it allowed him to place himself

¹ See the Introduction for my methodology in evaluating sources for early Roman history.

² See *MRR*, 2.95 for sources.

³ R. M. Ogilvie, *A Commentary on Livy Books 1–5* (Oxford, 1965), 727–728, who labels the story of Camillus' recall as "the boldest fabrication in Roman history."

⁴ *Cic. Dom.* 86.

⁵ *Liv.* 3.25.3; 4.16.5, 21.3–4; *V. Max.* 5.3.2.

⁶ On the partisan alteration of stories from earlier times in light of the political struggles of the Late Republic, see A. W. Lintott, *Violence in Republican Rome* (Oxford, 1968), 55–58 and "The Tradition of Violence in the Annals of the Early Roman Republic," *Historia* 19 (1969), 12–29.

in this line of patriots who suffered exile for their principles, but triumphed in the end. Even if one should be inclined to accept these tales at face value despite their dubious historicity, one must admit that recall from exile was a most uncommon occurrence in Early Rome. No source gives an example of restoration from exile after the alleged return of Camillus in 390 until Popillius' recall in 120.

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Abbreviations of periodicals are those of *L'Année philologique*.

Abbreviations of Latin authors and texts follow those of the *Oxford Latin Dictionary*; Greek authors and texts follow those of Liddell, Scott, and Jones, *Greek-English Lexicon* ⁹.

CIL = *Corpus Inscriptionum Latinarum* (Berlin, 1862–).

FGrH+number = Fragments found in F. Jacoby, *Fragmente der griechischen Historiker* (Berlin, 1923).

HRF+number = Fragments found in H. Peter, *Historicorum Romanorum Reliquiae*, 2nd ed., 2 Vols. (Leipzig, 1914).

ILLRP = A. Degrassi, *Inscriptiones Latinae Liberae Rei Publicae*, 2 Vols. (Florence, 1956 and 1963).

ILS = H. Dessau, *Inscriptiones Latinae Selectae*, 3 Vols. (Berlin, 1882–1916).

MRR = T. R. S. Broughton, *Magistrates of the Roman Republic*, 3 Vols. (New York, 1951–1952 and 1986).

OCD = *Oxford Classical Dictionary*, 1st, 2nd, and 3rd eds. (Oxford, 1949, 1970, and 1996).

OLD = *Oxford Latin Dictionary* (Oxford, 1982).

ORF⁺+number = Fragments found in H. Malcovati, *Oratorum Fragmenta Liberae Rei Publicae*, 4th ed. (Torino, 1976).

RE = G. Wissowa, ed., *Paulys Real-Encyclopädie der classischen Altertumswissenschaft*, ed. in succession by Kroll, Mittelhaus, and Ziegler, 2nd ed. (Stuttgart, 1894–1980).

RRC = M. H. Crawford, *Roman Republican Coinage*, 2 Vols. (Cambridge, 1974).

TLL = *Thesaurus Linguae Latinae* (Leipzig and Munich, 1900–).

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