

CLODIUS' TRIBUNATE  
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## PREFACE

The main aim of this thesis is to obtain a clear understanding of the role which Publius Clodius Pulcher played in Roman politics during his tribunate and the period immediately preceding it. Since a great deal of evidence concerning this period comes from Cicero, Clodius' bête noire, as much emphasis as possible has been placed upon Clodius' deeds in order to give an accurate and objective delineation of Clodius' political career during the period in question.

In the thesis I have attempted to preserve the coherence of the text by placing in the footnotes many references to or discussion of modern authors' viewpoints. I have also sought to make the footnotes complete in themselves by minimizing the use of Latin reference tags such as ibid.

I am indebted to Professor P. Brind'Amour and to Professor C. M. Wells for their constructive criticism and especially to my thesis advisor, Professor S. M. Treggiari, for her many valuable comments and suggestions.

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## LIST OF ABBREVIATIONS

- Appian: Roman History = App. R. H.  
The Civil Wars = App. C. W.
- Clark, A. C., ed. Q. Asconii Pediani Orationum Ciceronis Quinque Enarratio. 1907; rpt. Oxford: Clarendon Press, 1956. = Asc. page number, Clark.
- Cicero: Epistulae: Epistulae ad Atticum = Cic. ad Att.  
Epistulae ad Familiares = Cic. ad Fam.  
Epistulae ad Quintum Fratrem = Cic. ad Quint.
- : alia opera: Brutus = Cic. Brut.  
In Catilinam = Cic. Cat.  
De Divinatione = Cic. Div.  
Pro Caelio = Cic. Cael.  
De Domo Sua = Cic. Dom.  
Pro Flacco = Cic. Flacc.  
De Haruspicum Responsis = Cic. Har.  
De Legibus = Cic. Leg.  
Pro Milone = Cic. Milo.  
Pro Murena = Cic. Mur.  
Philippicae = Cic. Phil.  
In Pisonem = Cic. Pis.  
Pro Plancio = Cic. Planc.  
De Provinciis Consularibus = Cic. Prov.  
Pro Rabirio Reo Perduellionis = Cic. Rab.  
Post Reditum ad Quirites = Cic. Red. Quir.  
Post Reditum in Senatu = Cic. Red. Sen.  
De Senectute = Cic. Sen.  
Pro Sestio = Cic. Sest.  
Pro Sulla = Cic. Sulla  
In Vatinius = Cic. Vat.
- Quintus Cicero (?): Commentariolum Petitionis = Quintus Cicero Com. Pet.
- Dio Cassius: Roman History = Dio
- Dionysius of Halicarnassus: Dion. Hal.
- Donatus ad Terentium: Adelphoe = Don. ad Ter. Ad.
- Aulus Gellius: Noctum Atticarum = Gellius
- Livy: Ab Urbe Condita = Livy

Livy: Periocha = Livy Per.

Valerius Maximus: Facta et Dicta Memorabilia = Val. Max.

Velleius Paterculus: Historiae Romanae = Vel. Pat.

Plutarch: Caesar = Plut. Caes.

Cicero = Cic.

Crassus = Crass.

Lucullus = Luc.

Pompey = Pomp.

Publicola = Publ.

Rhetorica ad Herennium = ad Her.

Scholia Bobiensia in Ciceronis Oratorum Scholiastae. Ed. by T. Stangl. Hildesheim: Olms, 1967. = Schol. Bob. page number, Stangl.

Sallust De Coniuratione Catilinae: Sallust Cat.

Suetonius: Domitian = Suet. Dom.

Iulius = Suet. Iul.

Tiberius = Suet. Tib.

Varro: De Re Rustica = Varro Rust.

Zonaras = Zon.

## CHAPTER I

## CLODIUS' QUEST FOR THE TRIBUNATE

P. Clodius Pulcher was a member of the gens of the Claudii Pulchri. This branch of the gens Claudia had originated with Appius Claudius Caecus whose eldest son bore the cognomen Pulcher. The gens Claudia Pulchra remained in the mainstream of political life, for by the time of Clodius' tribunate it had nine consulships and two censorships to its credit.<sup>1</sup>

Clodius belonged to the seventh generation of this gens.<sup>2</sup> The marriage of Appius Claudius Pulcher (cos. 79) to Metella Caecilia f. produced six children:<sup>3</sup> Appius (pr. 57, cos. 54),

<sup>1</sup> Schol. Bob. 89-90, Stangl; Cic. Cael. 33-35; Sen. 37; Gellius 10.6.2; Suet. Tib. 1,2,3; T. R. S. Broughton, The Magistrates of the Roman Republic, 2 vols. (Gluckstadt: J. J. Augustin, 1951), II, 547-48.

<sup>2</sup> W. C. McDermott, "The Sisters of P. Clodius," Phoenix, 24 (1970), 39.

<sup>3</sup> Of the three brothers Clodius is the one whose year of birth can be ascertained. Since his proper year for the praetorship was 53, he was born in 93: Cic. Milo. 24. If Appius and Gaius held their praetorships at the minimum age allowed for that office then they were born ca. 97 and 96. It is more difficult to determine the years of birth of the three sisters. For instance, it is uncertain whether or not Clodia, the youngest of the three sisters, was younger or older than Clodius: Plut. Cic. 29. Clodia "quadrantaria", however, was born before Clodius: Cic. Cael. 36. With regard to Tertia, W. C. McDermott thinks that she was the eldest of the three. He points out that numeral adjectives were often used to distinguish sisters who received their names from the family nomen. He proposes that two girls, Clodia Prima and Clodia Secunda, who would have died during infancy, preceded Tertia

Gaius (pr. 56), P. Clodius (tr. pl. 58), Clodia, later nicknamed "quadrantaria"<sup>4</sup>, Clodia Tertia and Clodia.<sup>5</sup> The three sisters were betrothed to prominent politicians: Clodia "quadrantaria" married Metellus Celer (cos. 60); Clodia Tertia married Marcius Rex (cos. 68); Clodia married Lucullus (cos. 74).<sup>6</sup> These marriage

and that the two girls, who were born after her, were named Clodia Quarta and Clodia Quinta. McDermott backs up his case by indicating that Cicero called the wife of Metellus Celer, "mulier potens quadrantaria" in order to make a pun on her name Quarta and that Cicero's remarks concerning Quinta Clodia in the Pro Caelio may have been innuendo aimed at the scandalously divorced wife of Lucullus, Quinta: Cic. Cael. 34,62. Another argument which McDermott employs is that the order in which Plutarch mentions Clodia Tertia and Clodia "quadrantaria" in Cic. 29 shows that the former was older than the latter: McDermott, Phoenix, 24 (1970), 40-43, 47. My only objection to this is that Plutarch may have referred to Tertia first in order to save till the last the interesting explanation of how Clodia "quadrantaria" received her nickname. T. P. Wiseman on the other hand thinks that the eldest daughter of a Metella would have been given in marriage to Metellus. He also posits Tertia as the middle one of the three surviving sisters on the grounds that it is easier to suppose that one, rather two daughters died in infancy: T. P. Wiseman, "Lesbia and her Children," Cinna the Poet and other Roman Essays (Old Woking: Leice<sub>s</sub>ter Univ. Press, 1974), p. 111, n. 35.

<sup>4</sup> Cic. Cael. 62; Plut. Cic. 29. I have used this nickname in order to distinguish her from her two sisters.

<sup>5</sup> R. Syme, La révolution romaine, trans. by R. Stuveras (1939; rpt. Paris: Gallimard, 1967), tableaux chronologiques.

<sup>6</sup> Cic. Cael. 59-60; Plut. Cic. 29. The exact chronology of these marriages is not known. All that is known about the dates of the marriages is that one of the two older sisters was married before the death of Appius in 76 and that Clodia was married to Lucullus after Appius' death and probably before Lucullus' departure for the East in late 74 or early 73: Varro Rust. 3.16.2. W. C. McDermott reaches the following conclusions about the marriages of Clodia Tertia and Clodia "quadrantaria". He states that Tertia, whose birth he places in 95, was probably the wife of Marcius Rex by 76 on the grounds that teen-age brides were the rule rather than the exception. For the same reason he suggests that Clodia "quadrantaria", whose birth he places in 74, was probably married to Metellus shortly after her younger sister had become the wife of Lucullus: McDermott, Phoenix, 24 (1970), 41. According to T. P. Wiseman Clodia "quadrantaria" the eldest of the three sisters, would have been married to Metellus Celer by 76: Wiseman, "Lesbia and her Children," in Cinna, p. 111, n. 35.

connections along with the careers, which were pursued by the three brothers, insured that the gens Claudia Pulchra remained an important political force in Rome during the late republic.

The career of Clodius, unlike those of his brothers, did not follow the patrician cursus honorum. In either March, April or May of 61, after he had been acquitted of sacrilege in the Bona Dea affair, he announced that he would seek to become a plebeian in order that he might stand for the tribunate. There were at least four factors which induced Clodius to pursue this course of action: his alienation from the optimates and the senate; his hatred of Cicero; the acquisition of popularity with the plebs which would result from his acquisition of plebeian status; the political power which the tribunate held.

Clodius' alienation from the optimates was the direct result of the Bona Dea affair. They had attempted to eliminate him from the political scene by having him indicted for his alleged disruption of the Bona Dea sacrifice in December, 62. His early military and political career had given them good reason for seeking his political destruction.

The first sign which we have of Clodius' participation in public life comes in 73. In that year a number of Vestal virgins were being prosecuted on the charge of incestum. Among those accused was Fabia, the half-sister of Terentia, who was accused of having illicit relations with Catiline. Clodius was one of the prosecutors. The defendants were represented by M. Piso (cos. 61). The case ended in acquittal. However,

as a result of his attack on the priestly establishment Clodius was berated so severely by Marcus Cato that he was compelled to leave Rome.<sup>7</sup>

For the next five years Clodius and his brother Appius served under Lucullus in the war against Mithridates and Tigranes. Despite the fact that Lucullus was his brother-in-law, Clodius was at least partly responsible for the mutiny of the Valerian legions at Nisibis. These legions, which had been in service since 86, were agitating for their discharge. Clodius took up their cause and incited them against Lucullus. Their mutiny prevented Lucullus from taking any further action against Mithridates and Tigranes. In fact it allowed them to recoup some of their losses. The following year, 66, Pompey superseded Lucullus under the terms of the Manilian law and subsequently reconquered the lands which Lucullus had lost as a result of the mutiny. Thus the role which Clodius had played in the mutiny of Lucullus' troops was of indirect assistance to Pompey, for it provided him with the opportunity to add further distinctions to an already illustrious military career.<sup>8</sup>

After his popularis activities at Nisibis Clodius deserted Lucullus lest any retaliatory measures be taken against him. He went to serve under another brother-in-law, Marcius Rex, the consul of 68, who had been given Cilicia as

<sup>7</sup> Asc. 91, Clark; Cic. Brut. 236; Cat. 3.9.; Plut. Cato 19; Sallust Cat. 15.1.

<sup>8</sup> Cic. Har. 42; Dio 36.14.3-4; 36.16.3; 36.17.1; 36.43.2; Plut. Luc. 34-35.

his proconsular command. Here Clodius was put in charge of the fleet, but he was captured and subsequently released by the pirates. This must have occurred in late 67 or early 66, for Dio informs us that the pirates released Clodius out of fear of Pompey. After his release Clodius went to Antioch in Syria where he once again showed his demagogic tendencies by inciting the people against the Arabs. In the ensuing disturbances Clodius was almost killed.<sup>9</sup>

In 65 Clodius returned to Rome where he unsuccessfully prosecuted Catiline on a charge of extortion. Cicero constantly alleged in later years that Clodius had been guilty of collusion with Catiline.<sup>10</sup> In the letters, which Cicero wrote at the time of the trial, there is no direct mention of collusion. Shortly before July 17, 65, Cicero wrote to Atticus "Catilina, si iudicatum erit meridie non lucere, certus erit competitor."<sup>11</sup> Later in the month Cicero wrote: "hoc tempore Catilinam, competitorem nostrum, defendere cogitamus, iudices habemus quos volumus, summa accusatoris voluntate."<sup>12</sup> Collusion is one possible explanation for Clodius' cooperation in the choice of the jury. Another explanation would be that Clodius was seeking to bring about Catiline's downfall and that, like Hortensius, one of the prosecutors in the Bona Dea case, he felt that the make-up of the jury did not matter because a sword of lead would be all

<sup>9</sup> Cic. Har. 42; Dio 36.17.3.

<sup>10</sup> Cic. Har. 42; Pis. 23.

<sup>11</sup> Cic. ad Att. 1.1.1.

<sup>12</sup> Cic. ad Att. 1.2.1.

that was necessary to cut the defendant's throat.<sup>13</sup> Perhaps he thought, as Cicero had, that the case was open and shut. Catiline, however, would have been acquitted because he enjoyed the support of Torquatus, the consul of the year, and of many consulars at his trial.<sup>14</sup> The combined auctoritas of these men would have been sufficient for Catiline's acquittal by the jury.

In 65 Clodius continued to pursue his military career when he went to Gaul with Murena the proprætor. When he returned to Rome in the following year, Clodius became involved with the plebs. This involvement proved fruitful, for his candidacy for the quaestorship of 61 was successful.<sup>15</sup> During this same time period Clodius also assisted Cicero against Catiline.<sup>16</sup> Clodius' career, however, suffered a temporary setback when he was indicted on the charge of sacrilege for his alleged intrusion into the performance of the Bona Dea sacrifice. Clodius' political enemies, a factio of optimates, were behind the proceedings against him because his actions during the previous decade had been detrimental to their interests.

<sup>13</sup> Cic. ad Att. 1.16.2.

<sup>14</sup> Cic. Sulla 81-82.

<sup>15</sup> Cicero refers to Clodius' activities after his return to Rome in Har. 42: "unde ut rediit, quaestum illum maxime fecundum uberemque campestrum totum ad se ita redegit, ut homo popularis fraudaret improbissime populum, idemque vir clemens divisores omnium tribuum domi ipse suae crudelissima morte mactaret." In this passage Cicero inserts the allegations concerning the butchery of the bribery agents and the defrauding of the people in order to blacken Clodius' character. The only fact, which can be extricated from this passage, is that Clodius had been involved with the plebs through bribery after his return from Gaul.

<sup>16</sup> Plut. Cic. 29.

The Bona Dea sacrifice was performed in December of each year by the Vestals on behalf of the Roman people. All males were forbidden access to the magistrate's house in which the sacrifice was held. On one night in December, 62, a man was discovered to be present while the sacrifice was being performed in the house of C. Julius Caesar, the Pontifex Maximus. It was subsequently rumoured that the intruder had been none other than the quaestor for 61, P. Clodius Pulcher.<sup>17</sup>

In January, 61, the matter was raised in the senate by Q. Cornificius. The question as to whether or not the intrusion upon the sacrifice constituted sacrilege was referred by a senatus consultum to the Vestals and the College of Pontiffs both of which had been previously attacked by Clodius. Therefore, it is not surprising to find that they decided that the intrusion constituted sacrilege. The senate then decreed that the consuls promulgate a bill to deal with the matter. The consul's bill enacted that a jury would be selected by a praetor and that it would serve under the same praetor's presidency. Clodius, the defendant in the case appealed to the senators for the rejection of the bill. He managed to win a certain number over to his side. M. Piso, the consul, assisted him in his endeavour to have the bill rejected, but the other consul, Messalla, as well as M. Cato zealously promoted the bill.<sup>18</sup>

At some point between January 25 and February 1 the

<sup>17</sup> Cic. ad Att. 1.12.3; Plut. Caes. 7,9,10; Cic. 19; Suet. Iul. 6.

<sup>18</sup> Cic. ad Att. 1.13.3; 1.14.5; Plut. Cato 19.

consuls' bill was brought before the Comitia Tributa<sup>19</sup>. Clodius' young noble friends, the "barbatuli iuvenes", with Curio the younger as their leader voiced their opposition to the bill. M. Piso did likewise. Then Clodius' recently recruited bands of roughs completely disrupted the voting by seizing the gangways and distributing no voting tablets with uti rogas written on them. Cato, Hortensius and Favonius gave speeches condemning this behaviour. Afterwards the senate was summoned and it was decreed that the consuls should urge the people to accept the bill. M. Piso spoke against the bill and C. Curio moved for its rejection. The vote was 15 for and 400 against. When this tactic failed, Fufius, the tribune, vetoed the decree. Following this Clodius made a number of public speeches against Lucullus, C. Piso, Hortensius and Cicero, who with Cato and Favonius were the leading members of that factio of optimates which had been in large part responsible for the senatorial action taken against him. During the same period in which Clodius was making his speeches, the senate decreed that no senatorial business, not even the casting of lots for propraetorian provinces, would be attended to until the bill had once again been put to the Assembly. Both sides, however, finally reached a compromise with regard to the bill which would be placed before the people. The new bill differed from the old one in that it was to be a tribunician bill which enacted that the jury

<sup>19</sup> Cicero in a letter of February 13 relates that since the writing of his last letter on January 25, the consular bill had been brought before the Comitia Tributa. In this period only January 26 to 29 were dies comitiales: Cic. ad Att. 1.13.3,6; 1.14.5,7.

was to be chosen by lot and was to be subjected to the process of relectio. This new bill was passed into law by March 15, for in a letter of that date Cicero informs Atticus that Quintus had received Asia as his propraetorian province. The trial itself took place between this date and May 15<sup>20</sup>.

At his trial Clodius was defended by C. Curio. The prosecution consisted of Hortensius and L. Lentulus Crus, with Cn. Lentulus Marcellinus, L. Lentulus Niger and C. Fannius as subscriptores. The key witnesses for the prosecution were Aurelia, Julia and Cicero. These testified that Clodius had been in Rome on the day of the Bona Dea scandal, while C. Causinius Schola bore witness that Clodius had been at Interamna on the day in question. Lucullus and many other senators attempted to undermine Clodius' position by giving evidence on others matters besides the charge of sacrilege. Lucullus, for instance, stated that he had ascertained that Clodius had committed incest with his youngest sister. Other senators bore witness against Clodius for perjury, the debauching of women, bribery of the multitudes and his behaviour at Nisibis. Caesar, however, gave no evidence despite the fact that it was alleged that Clodius had gone to the Bona Dea sacrifice in order to see Pompeia. Caesar only said that he had divorced his wife because he felt that all members of his family should be above suspicion. The preservation of his dignitas as Pontifex Maximus along with the fact that Pompeia had borne him no children are other factors which must have influenced his decision.

<sup>20</sup> Cic. ad Att. 1.13.3; 1.14.5; 1.15.1-2; 1.16.1-3,8-9.

Meanwhile the absence of any testimony could be accounted for by the fact that he did not wish to alienate a popular and influential politician who was supported at his trial by the populace and several prominent politicians and with whom he could possibly form a useful political amicitia later on in his career.<sup>21</sup>

Clodius may have had the backing of the people at his trial, but he did not have that of the jury. At the trial the jury showed itself favourable to the prosecution. It gave a clear indication of its disposition towards Clodius when it asked for a guard in order to be free from the intimidation of Clodius' adherents. The senate granted this request. After this occurrence, Cicero tells us that no one thought that Clodius would reply to the indictment. Clodius, however, was able to successfully extricate himself from this dangerous situation through bribery. Another factor involved in Clodius' acquittal is that the jury, despite the guard, was still being intimidated by his adherents. Cicero states: "ita summo discessu bonorum, pleno foro servorum, XXV iudices ita fortes tamen fuerunt ut summo proposito periculo vel perire maluerint quam perdere omnia."<sup>22</sup>

Cicero describes the bribery of the jury in a letter to Atticus of July 61:

<sup>21</sup> Cic ad Att. 1.16.2; 2.24.3; Dom. 80; Har. 37; Milo. 46,73; Dio 37.46.1-2; Val. Max. 4.2.5; Plut. Caes. 10; Cic. 29; Suet. Iul. 74; Schol. Bob. 85, 89, Stangl.

<sup>22</sup> Cic. ad Att. 1.16.4-5; Plut. Cic. 29.

Nosti Calvum ex Nanneianis illum, illum laudatorem meum, de cuius oratione erga me honorifica ad te scripseram. biduo per unum servum, et eum ex ludo gladiatorio, confecit totum negotium, arcessivit ad se, promisit, intercessit, dedit, iam vero (o di boni, rem perditam) etiam noctes certarum mulierum atque adulescentulorum nobilium introductiones non nullis iudicibus pro mercedis cumulo fuerunt.

Many modern scholars hold the view that Crassus is the person mentioned in this passage as the briber of the jury.<sup>24</sup> There is little evidence to support this unless we infer, as does D. R. Shackleton Bailey, that "Calvum" is a reference to Crassus' inferred baldness and to his ancestors which included the Licinii Calvii; that "ex Nanneianis" refers to the purchase by Crassus of the property of one Nannius who was a victim during the Sullan proscriptions; that "illum laudatorem meum" is a reference to the speech which Crassus had delivered about Cicero's consulship in the senate during February.<sup>25</sup> This interpretation of the passage is fairly weak when we consider that there is no proof as to the baldness of Crassus;

<sup>23</sup> Cic ad Att. 1.16.5.

<sup>24</sup> e.g. M. Cary, "The First Triumvirate", in The Cambridge Ancient History, ed. by S. A. Cook et al., (Cambridge: Camb. Univ. Press, 1925-39), IX, 508; F. B. Marsh. A History of the Roman World from 146-30 B.C., rev. by H. H. Scullard, 3rd ed. (New York: Barnes & Noble, 1971), p. 188; A. W. Lintott, "P. Clodius Pulcher-Felix Catilina?", Greece and Rome, 14 (1967), 162; D. Stockton, Cicero, A Political Biography (London: Oxford Univ. Press, 1971), p. 160. J. P. V. D. Balsdon is a little more cautious with regard to the bribery of the jury. He states that bribery through Crassus is only one of the possible explanations for Clodius' acquittal: J. P. V. D. Balsdon, "Fabula Clodiana", Historia, 15 (1966), 72. On this question I agree in general with E. S. Gruen and T. P. Wiseman: E. S. Gruen, "P. Clodius Pulcher-Instrument or Independent Agent," Phoenix, 20 (1966), 121; T. P. Wiseman, "Two Friends of Clodius in Cicero's Letters," Classical Quarterly, 18 (1968), 297-99.

<sup>25</sup> D. R. Shackleton Bailey, ed, Cicero's Letters to Atticus (Cambridge: Camb. Univ. Press, 1965), I, 316-17.

that Nannius and Nanneius are two different words; that there had been ample opportunity since Crassus' speech for Cicero to acquire another encomiast<sup>26</sup>. There are other factors which vitiate the hypothesis that Crassus was Clodius' paymaster. For instance, Cicero's description of Crassus as a profiteer in the Sullan proscriptions, which had taken place almost twenty years before, hardly seems relevant to the circumstances under which the trial was held. In addition to this, there is the fact that others could claim descent from the Licinii Calvi.

In the remaining part of the passage Cicero depicts the corrupter of the jury as openly using a slave to bribe the jurors not only with money, but also with introductions to noble youths and ladies. Cicero's inclusion of these details of the jury's corruption shows that he is either exaggerating or inventing the manner in which the bribery was effected in order to besmirch the character of the briber. Atticus would doubtless be aware that this was the desired effect of the depiction of the corruption, for Cicero would not expect him to give credence to the type of rhetorical invective which he usually reserved for his speeches. Atticus would probably also realize that this type of rhetoric was used lightly to satirize the briber and the jury in a humorous manner. This would be in keeping with the tone of the letter up to that point, for Cicero had criticised the jury's protection of him when he gave testimony, its request for a guard,

<sup>26</sup> Cicero may very well have written to Atticus about another encomiast in the lost letter to which he refers in ad Att. 1.15.2.

and its make up in the same way<sup>27</sup>. Cicero could afford to treat the trial and its outcome in this manner because when he wrote this letter at the beginning of July, 61, Clodius' acquittal, which would have been an insult to his dignitas, no longer mattered. At this time there were only two things which mattered: he had been victorious in an altercatio which he had with Clodius in the senate on May 15 and he had formed a political amicitia with Pompey<sup>28</sup>. Cicero's treatment of the corruption of the jury would exclude Crassus as the briber of the jury. If his portrayal of the bribery were aimed at Crassus, it would be a piece of malicious and irresponsible libel because Crassus' dignitas as an elderly statesman and his financial position, which enabled him to bribe a jury efficiently, do not provide the basis for it. This would be completely out of keeping with the tone which Cicero employs in the three paragraphs preceding this passage<sup>29</sup>.

<sup>27</sup> Cic. ad Att. 1.16.2-4.

<sup>28</sup> Cic. ad Att. 1.16.8-11,13; Balsdon, Historia, 15 (1966), 73.

<sup>29</sup> Cic. ad Att. 1.16.2-4. P. W. Fulford-Jones gives a different interpretation to the details of the jury's corruption. He remarks that there may have been a strong and credible rumour that Crassus had corrupted the jury and that Cicero's representation of the details of the bribery may be a combination of optimistic credulity, which results not only from his willingness to believe the most sensational explanation of a verdict which was an insult to him but also from his dislike of Crassus, and of malicious invention. However, Fulford-Jones seeks to have his cake and eat it too, for he adds that the depiction of the jury may be "too good to be true" of Crassus or anyone else. He thinks that this "implausibility may be half the fun". P. W. Fulford-Jones, "Calvus ex Nanneianis," Classical Quarterly, 21 (1971), 185. T. P. Wiseman disagrees with Fulford-Jones interpretation on the grounds

Another factor to be taken into consideration is that Crassus was ill-disposed towards Pompey during the years 61-60 and supported such optimates as Cato and Lucullus in their opposition to the ratification of Pompey's arrangements in the East.<sup>30</sup> If the optimates got wind of his bribery of the jury, he would isolate himself politically, for the optimates, who were attempting to eliminate Clodius as a political force, would be alienated from him.

C. Licinius Macer Calvus is a more likely candidate for the job of corrupting the jury than Crassus. He had derived his cognomen from his putative ancestor C. Licinius Calvus (cos. 364<sup>31</sup>). Thus, "Calvum", if we assume that the person in question is Calvus, would not be an adjective but a cognomen. This is supported by the fact that Cicero nowhere else employs this

that his defence of Crassus as the briber of the jury is based on the assumption that Cicero would employ the same language in a private letter (ad Att. 1.16.8) as in a public speech like the In Pisonem: T. P. Wiseman, "Two Friends of Clodius in Cicero's Letters," in Cinna the Poet and other Roman Essays (Old Woking: Leicester Univ. Press, 1974), p. 149, n. 10.

<sup>30</sup> App. C. W. 2.9; Plut. Crass. 14; Luc. 42; Suet. Iul. 19. Crassus' disposition towards Pompey is revealed in one of Cicero's letters where he is describing the senatorial proceedings which took place on one day in February, 61: ad Att. 1.14.1-4. In response to Messalla's queries concerning the senatorial decree which dealt with the Bona Dea scandal, Pompey only related that he was in favour of all senatorial decrees. After this speech Crassus delivered one in which he eulogized Cicero's consulship in the same encomiastic terms which Cicero employed to describe it. If there was anything which irritated Pompey it would certainly be this. We need only remember the cool response which Cicero had received from Pompey in the previous year after he had sent him a somewhat arrogant letter in which he described at length his consular activities: Cic. Planc. 85; Sulla 67. Schol. Bob. 167, Stangl.

<sup>31</sup> Shackleton Bailey, Cicero's Letters to Atticus, I, 288.

adjective.<sup>32</sup> The same is true of "ex Nanneianis". Its use here makes sense if we allow, as does T. P. Wiseman, that Cicero had originally written ex Neaniais. He would have used the Greek dative νεανιαίαις with ex and then he would have transliterated it. This use of Greek would be consistent with the introduction which Cicero gives to the passage.<sup>33</sup> Afterwards a scribe would have failed to see that Neaniais was the latinized form of a Greek word and would have given it a proper Latin ablative case ending. As a result of this the spelling would be Neanianis. A further corruption from Neanianis to Nanneianis by another scribe would be easily explainable.<sup>34</sup> Thus, "Nosti Calvum, ex Neaniais illum", would mean: "You know Calvus, one of those youths." The youths in this case would probably be the "barbatuli iuvenes" who had supported Clodius by their opposition to the consular bill which enacted the establishment of a special court to deal with sacrilege. As one of the "barbatuli iuvenes" Calvus would be in a position which would permit Cicero to allege that he bribed the jury with intro-

<sup>32</sup> Wiseman, Classical Quarterly, 18 (1968), 297.

T. P. Wiseman argues that calvus is not an adjective which designates Crassus because Cicero does not use it elsewhere and because it is not the type of obscene epithet which Cicero would have used to describe Crassus, however strongly he felt about him: Ibid., 297-8. P. W. Fulford-Jones, on the other hand, thinks that Cicero may be employing calvus simply to describe abusively Crassus' baldness. He also remarks that even if Wiseman is correct about the nature of the word, it would not prevent Cicero from using it in an angry private letter: Fulford-Jones, Classical Quarterly, 21 (1971), 184; see above, p. 13. no. 29.

<sup>33</sup> Cic. ad Att. 1.16.5.

<sup>34</sup> Wiseman, Classical Quarterly, 18 (1968), 299.

ductions to noble youths and ladies. Calvus can also be the "laudatorem meum" to whom Cicero refers. It is possible that Calvus may have delivered a complimentary speech about Cicero which followed Crassus' but preceded the verbal skirmishes between Cicero and Clodius which took place before the trial. On the other hand, "laudatorem meum" could well be an ironic reference to a vituperative speech which Calvus delivered against Cicero. Another factor to be taken into consideration is Cicero's introduction to the passage where the bribery is depicted. In his introduction Cicero asks the muses for inspiration. Perhaps this may be taken as an allusion to the fact that Calvus like Catullus was one of the neoteric poets.

There is at least one objection to the interpretation that Calvus is the person in the passage mentioned above: where did he get the money?<sup>35</sup> There is no difficulty in answering this question. Calvus may have received part of it from Clodius, for Cicero constantly accuses Clodius of having gone into debt in order to secure his acquittal. However, Calvus himself had sufficient funds for bribing the jury. In 66 Calvus' father, C. Licinius Macer, was charged before the praetor Cicero with extortion in his propraetorian province. He was found guilty, but before any litis aestimatio could be

<sup>35</sup> R. J. Rowland, "Crassus, Clodius and Curio in the year 59 B.C.," Historia, 15 (1966), 220, no. 16.

effected, he died. As a result of this, his son was able to inherit his money<sup>36</sup>.

During the first few months of 61 we are presented with the following state of affairs at Rome. To the exclusion of all senatorial business, a factio of optimates, which included such men as Cato, Hortensius, Cicero, Lucullus, Favonius, the three Lentuli, Messalla, C. Piso and Fannius, and the rest of the senate under pressure from the factio had sought only one aim: to have Clodius indicted for sacrilege before a quaestio extraordinaria despite the fact that he held the office of quaestor. It is improbable that his alleged intrusion upon the Bona Dea sacrifice was solely responsible for the concerted action which was taken against him. His prosecution on the charge of sacrilege was only a pretext through which they were seeking to eliminate him from the political scene on account of his earlier popularis activities which had been detrimental to their interests. Clodius, however, was no political weakling. With the assistance of his hired gangs, of the "barbatuli iuvenes" with young Curio as their leader, of M. Piso, the consul, of Fufius, the tribune, and of C. Curio, he was able to oppose the proceedings, which were taken against him, and to obtain a regular trial where there was a reiectio of the jurors. Then he secured his acquittal through the bribery of thirty-one of the fifty-six jurors. After his acquittal, Clodius' response to the attack, which had been made

<sup>36</sup> Cic. ad Att. 1.4.2; Har. 36; Pis. 95; Val. Max. 9.12.7; Plut. Cic. 9; Schol. Bob. 86-87,90, Stangl.

upon him by his political enemies, was to announce that he would seek the tribunate.<sup>37</sup>

His enmity towards Cicero is the second factor which contributed to his decision to seek the tribunate. Cicero and Clodius had been on good terms in the years which preceded the trial. For instance, during the Catilinarian crisis Clodius had been one of Cicero's co-workers and guards, while his brother Appius had been one of the four men chosen by Cicero to record the senatorial proceedings which were taken against the Catilinarian conspirators.<sup>38</sup> In addition to this, there is the probability that the Claudii Pulchri had offered Cicero a marriage alliance at some time in 62.<sup>39</sup> The sister in question may have been the respectable widow of Marcius Rex, Tertia.<sup>40</sup>

<sup>37</sup> Asc. 52-3, Clark; Cic. ad Att. 1.13.3; Dio 37.51.1; Schol. Bob. 87, Stangl; Suet. Iul. 6.

<sup>38</sup> Cic. Sulla 41-42; Plut. Cic. 29.

<sup>39</sup> Plut. Cic. 29.

<sup>40</sup> W. C. McDermott shows that although Cicero and Plutarch specifically allege incest against Clodia Metelli and Clodia Luculli, they do not do so with regard to Tertia. He posits that this along with the fact that Tertia was probably a widow at the time the offer was made would make her a suitable bride for Cicero: McDermott, Phoenix, 24 (1970), 43-45. H. D. Rankin, on the other hand, thinks that the sister in question is Clodia Metelli and that Cicero would have refused an alliance with the Claudii Pulchri because he did not wish to have his prestige captured by Clodius: H. D. Rankin, "Clodia II," Antiquité Classique, 38 (1969), 503. I would disagree with this interpretation on the grounds that Clodia Metelli's reputation may have been already blemished and that the Claudii Pulchri would not offer Cicero a bride who was married to one of his political allies, Metellus Celer. T. P. Wiseman has a completely different view on this question. He points out that the story concerning Cicero and Clodia is probably based on the contact which Cicero had with Clodia Metelli in 63. Near the end of 63 Cicero was attempting to head off the hostility of the new tribune Metellus Nepos by appealing to his cousin and sister-in-law, Clodia Metelli. Wiseman thinks that the go-between in Plutarch's

A marriage connection with the patrician Claudii Pulchri would have been appealing to a novus homo like Cicero. Cicero, however, had as many as four reasons for refusing the offer. Firstly, he may have been sufficiently attached to his wife and family so as to refuse the offer. Secondly, the three Claudii Pulchri did not yet have anything to offer Cicero for his consular dignitas and auctoritas: none of the three brothers had yet attained the rank of praetor. Thirdly, there was the fact that Clodius had shown himself somewhat of a popularis through his activities at Rome and abroad. Fourthly, Cicero was one who wished to maintain his political independence; such an alliance would only constrain him politically.

Their alienation from one another was the direct result of the Bona Dea affair. In early January when Cicero had first heard of Clodius' alleged escapade he had written to Atticus about it in a light and humorous vein<sup>41</sup>. In his capacity as senator, however, he viewed the offence seriously and voted

story would have been the same one who had acted as a contact between Cicero and Clodia Metelli in 63. However, he posits Thyillus, the freedman poet, who deserted Cicero between December 62 and July 61, as the go-between instead of Tullius on the basis of manuscript evidence: T. P. Wiseman, "The Go-Between." in Cinna the Poet and Other Roman Essays (Old Woking: Leicester Univ. Press, 1974), p. 146.

<sup>41</sup> T. P. Wiseman has a different view. According to him Cicero was a morally-minded senior senator whose immediate response to Clodius' escapade at the Bona Dea sacrifice was to show Draconian severity: Wiseman, "The Go-Between," in Cinna, p. 138. I would disagree with this interpretation on the basis of Cicero's reaction to the Bona Dea scandal in a light hearted and humorous manner. With regard to the intrusion on the rites he writes to Atticus: "rem esse insigni infamia, quod te moleste ferre certo scio.": ad Att. 1.12.3 Both Atticus and Cicero enjoyed scandal: "sumus enim ambo belle curiosi.": Ibid., 6.1.25. See also ad Fam. 8.7.2 which shows that Caelius was aware of Cicero's liking for scandal.

for the senatorial decree which enacted that the consuls promulgate a bill enacting the setting up of a special court to deal with the offence. Yet, when Clodius pleaded for the rejection of the bill by the senate during January, Cicero admitted that he, like some of the other senators, was giving way. In either late January or early February Clodius began to deliver abusive speeches against Cicero, Lucullus, C. Piso, Messalla, and Hortensius after the disruption of the Comitia Tributa by his gangs. Clodius' attack on Cicero may have simply resulted from the latter's lack of support for him. There is also the possibility that in the same time period Cicero sided in some way with the optimates in their proceedings against Clodius.<sup>42</sup> Clodius' main target seems to have been Cicero's activities against the Catilinarian conspirators. Cicero informs us that Clodius taunted him with "comperisse omnia"<sup>43</sup> and that he used his name to stir up ill-feeling. Cicero responded to the invective launched against him with a series of abusive speeches which he delivered against Clodius and his supporters.

<sup>42</sup> Cic. ad Att. 1.13.3,6; 1.14.5,7; see above, p. 8, n. 19.

<sup>43</sup> Cic. ad Att. 1.14.5. According to T. P. Wiseman Clodius' taunt that Cicero "comperisse omnia" would concern the fact that Cicero was able to disprove any alibi about his whereabouts on the day of the Bona Dea sacrifice. The remark would have signified that Cicero had discovered everything about his whereabouts in the same way as he had discovered everything about the Catilinarian conspiracy in 63: Wiseman, "The Go-Between," in Cinna, p. 139. In my view this taunt was a direct allusion to Cicero's activities as consul during the Catilinarian crisis. Cicero without doubt refers to this taunt in ad Att. 1.16.1 where he says that his name was used by Clodius to stir up ill-feeling. From 63 to 58 Cicero's activities against the Catilinarians was the main theme which his political inimici used in order to stir up ill feeling against him: see below, pp. 66-67.

Nor did Cicero limit his opposition to speech making. When Hortensius had shown himself willing to compromise with the tribune Fufius about the type of court which would deal with the Bona Dea affair, Cicero opposed him on the grounds that the matter would be committed to an unreliable tribunal.<sup>44</sup>

After the trial Cicero attempted to defend his behaviour to Atticus by stating that he had taken the offensive against Clodius in order to defend the senate's auctoritas, which he had re-established during his consulship, and which he did not wish to be undermined through Clodius' acquittal.<sup>45</sup> This would have been a secondary cause. The immediate cause of his hostility towards Clodius was the latter's assault upon his consulship.<sup>46</sup> Cicero, however, would seem to have overreacted to Clodius' abuse of his consular acts. In the previous year, during the trial of P. Sulla, Torquatus, the prosecutor in the case, had sought to undermine the position of Cicero, the defence attorney, with similar political invective. Cicero contented himself with rebutting the allegations made against him: he did not become Torquatus' inimicus.<sup>47</sup>

<sup>44</sup> Cic. ad Att. 1.16.1-3.

<sup>45</sup> Cic. ad Att. 1.16.1,6; 1.18.2-3.

<sup>46</sup> T. P. Wiseman considers Cicero's role as the defender of the auctoritas senatus as the primary cause: Wiseman, "The Go-Between," in Cinna, p. 139. However, Cicero himself shows what caused him to openly oppose Clodius: "cum enim ille ad contiones confugisset in iisque meo nomine ad invidiam uteretur, di immortales! quas ego pugnas et quantas strages edidi.": ad Att. 1.16.1.

<sup>47</sup> Cic. Sulla 44-50.

Cicero's opposition to Clodius before the trial deepened Clodius' enmity towards him. This hatred was enhanced by Cicero's testimony which ran counter to Clodius' alibi.<sup>48</sup> This enmity between Clodius and Cicero was another factor which led to the former's quest for the tribunate because after the trial Clodius held public meetings in which he announced that as tribune he would use his power to exact vengeance from his enemies in general, but from Cicero in particular.<sup>49</sup>

Cicero did not take this threat seriously. In the senate on the Ides of May he delivered a speech in which he berated Clodius for his desire for the tribunate and branded him as a public enemy. In the altercatio which followed the speech Cicero easily outwitted Clodius. As a result of his speech and the altercatio, both of which were immediately published,<sup>50</sup> Cicero thought that Clodius had been put in his place and that this would be the end of the matter.<sup>51</sup> In this instance, Cicero seriously misjudged Clodius, for his speech and its immediate publication only served to increase Clodius' desire to seek vengeance through the powers of the tribunate. Balsdon remarks that an ostrich could not have been more blind than was Cicero at this time.<sup>52</sup>

<sup>48</sup> Cic ad Att. 1.16.2; Plut. Cic. 29; Schol. Bob. 85-86, Stangl.

<sup>49</sup> Schol. Bob. 85-87, Stangl.

<sup>50</sup> W. C. McDermott, "Curio 'Pater' and Cicero," A.J.P., 93 (1972), 399-400.

<sup>51</sup> Cic. ad Att. 1.16.8-11; Schol. Bob. 87, Stangl.

<sup>52</sup> Balsdon, Historia, 15 (1966), 73.

Clodius' alienation from Cicero, the optimates and the senate was in large part responsible for his quest for the tribunate. The third factor was the popularity with the plebs which he would acquire if he were to reject his patrician status in order to stand for the tribunate. At Nisibis and Antioch Clodius had shown himself prone to popularis tendencies.<sup>53</sup> When he returned to Rome from Gaul in 63 he became involved with the plebs.<sup>54</sup> Then when he was indicted for sacrilege, many public meetings were held in which he rallied the people to his side.<sup>55</sup> He was even successful in raisings gangs of roughs from the plebs which were used to disrupt the Comitia Tributa when the consular bill dealing with the Bona Dea scandal was to be put to the vote.<sup>56</sup> At the trial itself, Clodius' involvement with the plebs proved successful, for those plebeians who were present voiced their support of Clodius and intimidated the jurors.<sup>57</sup> Thus, Clodius showed himself capable of being a homo popularis despite the fact that he was a member of a patrician gens which had been honoured with many consulships, censorships and triumphs.<sup>58</sup> By 61 Clodius had already adopted the plebeian spelling of his nomen.<sup>59</sup> If he were also to reject this patrician rank

<sup>53</sup> Cic. Har. 42; Dio. 36.17.2-3.

<sup>54</sup> Cic. Har. 42; See above, p. 6, n. 15.

<sup>55</sup> Cic. ad Att. 1.14.5; 1.16.1; Schol. Bob. 85, Stangl.

<sup>56</sup> Cic. ad Att. 1.13.3; 1.14.5.

<sup>57</sup> Cic. ad Att. 1.16.4-5; Plut. Cic. 29; Caes. 10; Schol. Bob. 85, Stangl.

<sup>58</sup> Cic. Cael. 34-35; Suet. Tib. 1.

<sup>59</sup> Cic. ad Att. 1.12.3.

in order to seek the tribunate, his popularity among the plebs and his chances of being elected would be significantly increased.<sup>60</sup> This proved to be the case, because in 59 when Clodius was finally transferred to plebeian status Cicero informs us that it was a popular move.<sup>61</sup>

The fourth factor which contributed to Clodius' decision to run for the tribunate was the political rights which that office conferred upon its holder. The most important of these was the tribune's flexible legislative powers. Apart from obnuntiatio the only impediment to the tribunician bill was the tribunician veto. The veto, however, could be overcome by having the opposing tribune deposed from office by a majority of the tribes. For instance, in 133 Tiberius Gracchus had used this method to have his fellow tribune, Octavius, deposed from office when he vetoed the former's land bill. Then in 67 the tribune Gabinius sought to remove Trebellius from office when he had vetoed his bill which enacted that Pompey be given an extraordinary command to deal with the pirates. Trebellius, however, withdrew his veto when seventeen

<sup>60</sup> In doing this Clodius would not be betraying family tradition. Whereas some of the Claudii had shown their contempt for the plebs, others had shown themselves capable of being populares. Appius Caecus, for example, in his censorship had distributed the freedmen through the tribes and had thus acquired a great number of clients: Cic. Sen. 37; Livy 9.46; Plut. Publ. 7; Val. Max. 8.13.5. C. Claudius Pulcher, the censor, showed the same popularis tendencies in 179. He prevented his colleague Tiberius Gracchus from removing the freedmen from the tribes altogether. He persuaded him to let the freedmen be enrolled in the four urban tribes: Livy 45.15.3-7.

<sup>61</sup> Cic. ad Att. 2.7.2.

of the thirty-five tribes had voted against him.<sup>62</sup> The legislative capability of the tribune must have appealed to Clodius, for it would provide him with the opportunity to implement into law without hindrance a series of popularis measures which would broaden his base of political support among the plebs.

Clodius' patrician status debarred him from tribunician office. When he returned to Rome in January 60, after he had completed his term as quaestor in Sicily,<sup>63</sup> he enlisted the aid of the tribune C. Herennius who proposed that a plebiscitum be held in which the people would vote on the matter of Clodius' adoption of plebeian status.<sup>64</sup> As a gesture of good will towards his brother-in-law Metellus Celer, the consul, promulgated the same proposal.<sup>65</sup> He was quite safe in doing so, for it was probably vetoed by the same tribunes who vetoed Herennius' attempts in March to make a plebeian out of Clodius.<sup>66</sup> In May or June, however, Clodius persisted in his endeavour to become a plebeian. He abjured his patrician rank and sought the tribunate. Metellus showed his optimate colours<sup>67</sup> and with the support of the senate

<sup>62</sup> Asc. 72, Clark; Plut. Gaius Gracchus 4.

<sup>63</sup> Cic. ad Att. 2.1.5.

<sup>64</sup> Dio states that at first Clodius attempted to induce several of the tribunes to move a proposal which would open up the tribunate to patricians, but he was unsuccessful: Dio 37.51.1. There is no contemporary evidence for this. Dio, however, may be generalizing upon Herennius' proposals to allow Clodius' transitio ad plebem.

<sup>65</sup> Cic. ad Att. 1.18.4-5.

<sup>66</sup> Cic. ad Att. 1.19.5.

<sup>67</sup> Another reason for this volte face may have been that he wished to recover any auctoritas which he had lost as a result

and Pompey successfully opposed Clodius' bid for the tribunate. His reason for disallowing Clodius' candidacy was probably that a lex curiata was required to effect a change in civil status.<sup>68</sup>

In early 59 Clodius finally acquired plebeian status when Caesar in his capacity as Pontifex Maximus moved a lex curiata which brought about Clodius' adoption by the plebeian Fonteius. During December 60 Caesar had given Cicero the opportunity of joining Pompey, Crassus and himself in the formation of a factio. Cicero refused on the grounds that he preferred to maintain his role as defender of the republic and of the auctoritas senatus.<sup>69</sup> Despite his refusal Cicero offered no open opposition to the factio in the first three or four months of 59. However, in March or early April when he was defending C. Antonius, his former colleague as consul, he complained about the political state of affairs which had been created by the factio. Three hours later, Caesar enabled Clodius, Cicero's deadly enemy, to become a plebeian through the lex curiata. Pompey also played a part in Clodius' transition to plebeian status, for he was present at his adoption in his capacity as augur.<sup>70</sup>

of promulgating his bill concerning Clodius' change in his civil status: Cic. ad Att. 1.18.5. Metellus may have also adopted this course of action because some source of enmity had arisen between Clodius and himself. Cic. Cael. 59-60 certainly suggests this.

<sup>68</sup> Cic. ad Att. 2.1.4-5; for the date of this letter see Shackleton Bailey, Cicero's Letters to Atticus, I, 343; Cic. Cael. 60 Har. 45; Dio 37.51.1-2.

<sup>69</sup> Cic. ad Att. 2.3.3-4.

<sup>70</sup> Cic. ad Att. 2.4.2; 2.7.2; 2.12.2; 7.7.6; 8.3.3; Dom. 34-37, 41; Sest. 15; Suet. Iul. 20.

Clodius' transfer to plebeian status was not simply a quid pro quo measure, through which Caesar sought to avenge himself on Cicero. Clodius' immediate transfer to the plebs was a shock tactic which would terrify Cicero into silence. Cicero at all costs must be prevented from employing his oratorical skills against the factio. Clodius' adoption would at least temporarily effect this, because in either May or June of 60 when Clodius was standing for the tribunate, Cicero had expressed his anxiety about it.<sup>71</sup> Now that Clodius had acquired the plebeian status necessary for seeking the tribunate, which he had sworn to use against his enemies, Cicero's anxiety would have increased. Cicero would also keep quiet because Clodius' transfer to plebeian status was an indication that the factio would take further action against him if he continued to oppose it.

There are at least three other factors which led to the decision to make a plebeian out of Clodius. Firstly, Clodius' transitio ad plebem served the purpose of intimidating the political adversaries of the factio. By the action taken against Cicero the factio had shown the political power which it could wield against its enemies. Afterwards anyone contemplating measures to be taken against the factio would think twice about it.

Secondly, Caesar must have taken into account that his actions on Clodius' behalf would amount to a political slap in the face for the optimates. It was probably the same factio of optimates, which had sought to destroy Clodius politically, that supported Metellus Celer's prevention of Clodius' candidacy

<sup>71</sup> Cic. ad Att. 2.1.4.

for the tribunate. Some of these same optimates were also Caesar's inimici.<sup>72</sup> This being the case, Caesar would have been likely to deliver this political blow. This blow would have added impact because Clodius had promised to use the tribunate against his political enemies, the optimates.

Finally there is the fact that the members of the factio expected Clodius to fit into their political plans perhaps as a result of his gratitude for the service rendered to him. There is every indication of this. For instance, shortly after his adoption, Pompey sought to protect his political amicus, Cicero,<sup>73</sup> by making Clodius swear that he would in no way use his new status as a means of undermining Cicero's political position.<sup>74</sup> In addition to this, the factio sought to prevent Clodius from attaining the tribunate by presenting him with a legatio to the Armenian king Tigranes. This legatio is insignificant if it is compared with other offices which the factio was bestowing upon its supporters at this time. Cicero calls Clodius' proposed legatio a skinny errand boy's job.<sup>75</sup> Clodius could not brook such a blow to his Claudian dignitas.<sup>76</sup> Nor could he allow the

<sup>72</sup> If we compare the list of optimates who opposed Clodius in the Bona Dea affair with the list of persons which Caesar and Vatinius made Vettius produce after a night of coaching there are at least three names in common: L. Lentulus Niger, Lucullus and Fannius; for Clodius see above, pp. 8-9; for Caesar see Cic. ad Att. 2.24.2-3; Sest. 132; Vat. 24-25.

<sup>73</sup> Cic. ad Att. 2.21.4.

<sup>74</sup> Cic. ad Att. 2.9.1; Sest. 15.

<sup>75</sup> Cic. ad Att. 2.7.2-3.

<sup>76</sup> Cf. Appian's Appietas; Cic. ad Fam. 3.7.5.

factio to deprive him of the tribunate. He had invested too much time and effort for the acquisition of the tribunate to let it slip through his fingers at the last moment. From 63 to 61 he had secured the support of the populace and he had even managed to form gangs of roughs from its members. He continued to maintain this popularity with the plebs after his return from Sicily. An indication of Clodius' appeal to the plebs at this time is the fact that Pompey turned to him for popular support after his land bill was ill received.<sup>78</sup> Then in early 59 he added to this appeal by the rejection of his patrician rank.<sup>79</sup> If he were now to accept the legatio which was offered to him, his opportunity to seek the tribunate with strong popular support would be taken away from him. This situation along with the blow to his dignitas which it constituted caused Clodius to break with the members of the factio. Clodius would pursue his own plans; not their's. Caesar, Crassus and Pompey need not have been surprised, for this was not the first time that Clodius had been unscrupulous. In 67, he had shown his gratitude to Lucullus, his brother-in-law, for his acceptance of him on his proconsular staff by inciting his troops to mutiny.

<sup>78</sup> Plut. Cato 31; Pomp. 46. Plutarch states that Pompey turned to Clodius in order to acquire popular support after his land bill had failed to be implemented. Cicero relates that the tribune Flavius' land bill, which was backed by Pompey, had faded into the background on account of more important matters by March 15, 60: ad Att. 1.19.4,11. Pompey must have sought out Clodius' assistance at some time after this date, but before he gave his support to Metellus' opposition to Clodius' candidacy for the tribunate. Pompey may have assisted Metellus in this as early as late May or early June: Cic. ad Att. 2.1.4; Har. 44-45.

<sup>79</sup> Cic. ad Att. 2.7.2

Clodius' break with the factio occurred about April 19, 59. At that time he announced his candidacy for the tribunate. He also asserted that he was Caesar's enemy and that he would undo all that the factio had implemented. Caesar immediately but unsuccessfully denied that he had proposed the lex curiata enacting Clodius' adoption by a plebeian.<sup>80</sup>

Clodius' disposition towards Cicero is also an indication of his hostility towards at least two members of the factio, Pompey and Caesar. Despite the favourable attitude of Pompey and Caesar towards Cicero in 59, Clodius persisted in threatening him. Immediately after Clodius' adoption, Pompey, who remained Cicero's political amicus despite his role in the adoption, elicited from Clodius the promise that he would do no harm to Cicero. Throughout the year Clodius continually broke this promise in spite of Pompey's repeated attempts to hold him to it.<sup>81</sup>

Caesar manifested his friendly inclinations towards Cicero by offering him various posts which would extricate him from the potential dangers which lay in store for him during Clodius' prospective tribunate. These posts included a legatio libera, a commissionership on the Board of Twenty and a post on his proconsular staff.<sup>82</sup> Cicero, however, refused all of these offers

<sup>80</sup> Cic. ad Att. 2.12.1-2; for the date of this letter see Shackleton Bailey, Cicero's Letters to Atticus, I, 375. The grounds on which Caesar denied his proposal of the lex curiata are obscure. Cicero claimed that this law was illegal because Caesar carried it three hours after his speech; he did not wait for the legal period of trinum nundinum to elapse before he did so: Cic. Dom. 41.

<sup>81</sup> Cic. ad Att. 2.9.1; 2.19.4; 2.20.1-2; 2.21.6; 2.22.2; 2.23.2; 2.24.5.

<sup>82</sup> Cic. ad Att. 2.18.3; 2.19.4-5; Prov. 41.

on the grounds that the acceptance of any one of them would associate him with Caesar's consular policies. Such an association would alienate him from his fellow optimates and constitute a betrayal of the constitutionalist precepts which he had followed since his consulship.<sup>83</sup>

Cicero's refusal of Caesar's offers was also based on his firm conviction that he could deal with Clodius without the assistance of the factio. In his letters to Atticus during April Cicero showed himself to be slightly apprehensive about Clodius' future activities.<sup>84</sup> However, in July and the following months when Clodius did openly oppose him he displayed no serious fear of Clodius. There seems to have been two reasons for this. First, despite the fact that he placed no confidence in the support of the factio,<sup>85</sup> he thought that the backing of the boni, his friends, the members of his old consular army, and the consuls and praetors for the year 58 would assist him in countering any measures which Clodius would take against him. Secondly, he believed that if Clodius did attempt anything against him, it would be in the form of a court battle, which he could easily win. As for violence, Cicero thought that if it were used against him, he could successfully avoid it. However, Cicero considered Clodius' employment of violence as a remote possibility.<sup>86</sup>

<sup>83</sup> Cic. ad Att. 2.5.1; Prov. 41.

<sup>84</sup> Cic. ad Att. 2.4.2; 2.5.3; 2.7.2.

<sup>85</sup> Cic. ad Att. 2.19.4; 2.20.1; 2.21.5; 2.22.5; ad Quint. 1.2.16.

<sup>86</sup> Cic. ad Att. 2.15.2; 2.18.3; 2.19.1,3-4; 2.21.6; ad Quint. 1.2.16; Flacc. 96-97.

Clodius' threats against Cicero were but one sign of his hostility towards the factio. Another indication of it is that after his election as tribune he continued to denounce the factio as he had done shortly after his adoption<sup>87</sup>. Clodius probably assumed this political position because Pompey and Caesar had become unpopular with all segments of Roman society during 59. For instance, they had alienated the senate by passing their laws through the Concilium Plebis or the Comitia Tributa without first getting its sanctional approval. Then when those knights and plebeians, who were present at some gladiatorial games in July, voiced their disapproval of Pompey and Caesar, they replied by threatening the Roscian law and the corn law<sup>88</sup>. Another incident points to their unpopularity with the plebs. This was Caesar's unsuccessful attempt to rouse a mob for an attack on Bibulus' house, after he had postponed the elections in mid July<sup>89</sup>. Since this was the case Clodius' opposition to them would have been a factor which contributed to his election as tribune and to the enhancement of his popularity after the election.

Throughout 59 Clodius also defied the optimates. In August Cicero wrote to Atticus:

Quam vellem Romae esses! mansisses profecto si haec fore putassemus. nam Pulchellum nostrum facillime teneremus aut certe quid esset facturum scire possemus. nunc se res sic habet; volitat, furit; nihil habet certi, multa multis denuntiat: quod

<sup>87</sup> ad Att. 2.22.1, 2, 5.

<sup>88</sup> ad Att. 2.19.3.

<sup>89</sup> ad Att. 2.20.6; 2.21.5.

fors obtulerit id acturus videtur. cum videt quo sit in odio status hic rerum, in eos qui haec egerunt impetum facturus videtur; cum autem rursus opes, vim, exercitus recordatur, convertit se in bonos;

Here Cicero is pointing out that Clodius' behaviour is erratic and opportunistic because he is attacking both the factio and its opponents, the boni<sup>91</sup>. However, Clodius' political activities at this time were not as erratic or as mercenary as Cicero makes them out to be. His attack on the boni resulted from their role in the Bona Dea affair and their prevention of his transition to plebeian status. Meanwhile his defiance to the factio was due to his political independence and the popularity which this defiance brought him. Clodius, therefore, had good reason to assail both the factio and its opponents.

From what had been discussed above the following conclusions are reached. In 62-61 four factors contributed to Clodius' quest for the tribunate: his alienation from the optimates; his hatred of Cicero; the popularity which would be acquired through the rejection of his patrician status; the political power of the tribunate itself. The following year, after his term as quaestor in Sicily had expired, his bid to secure plebeian status was foiled by Metellus Celer who was supported by the senate and Pompey. Then in early 59 he finally acquired plebeian status with the assistance of the factio. However, when it attempted to foil his prospective candidacy for the

<sup>90</sup> Cic. ad Att. 2.22.1.

<sup>91</sup> Cicero had taken a similar attitude in April: "etenim, coniectura auguramur, si erit nebulo iste cum his dynastis in gratia, non modo de 'cynico consulari' sed ne de istis quidem 'piscinarum Tritonibus' poterit se iactare. non enim poterimus ulla esse invidia spoliati opibus et illa senatoria potentia. sin autem ab iis dissentiet, erit absurdum in nos invehi. verum tamen invehatur.": ad Att. 2.9.1.

tribunate, he turned against it. He also menaced Cicero, to whom Pompey and Caesar were favourably disposed, and the optimates who had sought to undermine his political position in the period 62 to 60.<sup>92</sup>

<sup>92</sup> Clodius' activities in 59 are subject to various interpretations. E. S. Gruen for example maintains that although Clodius secured plebeian status through the assistance of the factio, it did not prevent him from afterwards going his own way. He also holds that the factio aided Clodius in the matter of his adoption because the prospect of having a friendly and energetic tribune in office would be an attractive prospect especially if Cicero's remarks were an instance of renewed senatorial opposition to the factio: Gruen, Phoenix, 20 (1966), 122, 130. I would disagree with this point of view in the grounds that immediately after Clodius' adoption the factio tried to prevent his candidacy by presenting him with the legatio to Tigranes. R. J. Rowland claims that by April 59 the factio had been reformed to the detriment of Crassus. Crassus would then have used Clodius to oppose Caesar and Pompey and to attack Cicero who was being shielded by them. Here Clodius' role as henchman is based on his acquittal in the Bona Dea trial by Crassus' alleged bribery of the jurv: Rowland, Historia, 15 (1966), 220-22. However, as I have shown, there are sufficient grounds for positing Calvus rather than Crassus as the briber of the jury. D. Stockton thinks that after his adoption Clodius put up an independent front in order to secure from Caesar not merely his tribunate but also a comparatively free hand in legislation. He also maintains that Cicero's talk of a need of defence against Clodius indicates that Cicero no longer had any hopes of Clodius' continued opposition to Caesar and that Caesar and Clodius had by this time made their peace with one another: D. Stockton, Cicero, A Political Biography (London: Oxford Univ. Press, 1971), pp. 179-80. A. W. Lintott holds a slightly different view. He regards Clodius' activities before the tribunician elections as a demonstration of independence which would compel the factio and its opponents to bid further for his support. With regard to Clodius' election he sees no reason why the factio should not have supported him: Lintott, Greece and Rome, 14 (1967), 162-63. Violence in Republican Rome (Oxford: Clarendon Press, 1968), p. 192. I would differ with both of these viewpoints on the grounds that Clodius openly opposed the factio not only after his adoption but also after his election as tribune. R. Seager sees Clodius' adoption as a hasty quid pro quo measure which was conceived not to show approval of Clodius' plans for Cicero, but to terrify Cicero momentarily into silence: R. Seager, "Clodius, Pompey and the Exile of Cicero," Latomus, 24 (1965), 520. However, there are at least three other factors which Caesar and the two other members of the factio must have taken into account when they sanctioned Clodius' adoption; it would constitute a political blow to those who had sought to prevent it in the previous year; it would show the political power which the factio could wield against opponents like Cicero; it would serve as a means of securing Clodius' co-operation.

## CHAPTER II

## CLODIUS' PRELIMINARY LEGISLATION

Shortly after Clodius began his term as tribune on December 10, 59, he promulgated four bills: de lege Aelia et Fufia, de censoria notione, frumentaria, de collegiis. These bills would have been promulgated on December 16, 59, which was the earliest dies comitialis. They were passed into law on January 3, 58, after the lapse of a trinum nundinum.<sup>1</sup>

<sup>1</sup> Asc. 7-8, Clark; Cic. Pis. 8-9; for the trinum nundinum, see below, p. 39, n. 7. In Pis. 8-9 Cicero says: "Tu, cum in Kalendas Ianuarias compitaliorum dies incidisset, Sex. Cloelium, qui numquam antea praetextatus fuisset, ludos facere et praetextatum volitare passus es ... Ergo his fundamentis positus consulatus tui, triduo post, inspectante et tacente te, a fatali portento prodigioque rei publicae lex Aelia et Fufia eversa est, propugnacula murique tranquillitatis atque otii." Clodius therefore passed his legislation triduo post Kalendas. This means that Clodius' laws were passed on January 3, a dies comitialis, for Cicero uses triduo inclusively: P. Brind'amour, "Le Calendrier Romain des origines de la ville à la rectification d'Auguste," Ottawa, 1975, p. 56 of the manuscript. A. K. Michels would object to this view. According to her, Cicero in Pis. 8 states that the rogatio of Clodius' four bills took place three days after the ludi compitalicii and not after the Kalends. She argues that the ludi compitalicii were almost certainly not celebrated on the day of the Compitalia itself, but on the days that followed. This would place Clodius' rogatio on the seventh as the fifth and the sixth were dies fasti: A. K. Michels, The Calendar of the Roman Republic (Princeton: Princeton Univ. Press, 1967), p. 205, pp. 205-206, no. 28. However, there is evidence which runs counter to this interpretation. In his commentary on Pis. 8 Asconius states that the ludi compitalicii were held on the same day as the Compitalia: "Invidiam ergo et crimen restitutorum confert in Pisonem, quod, cum consul esset, passus sit ante quam lex ferretur Kal. Ianuar. praetextatum Sex. Cloelium.": Asc. 7, Clark.

Clodius' first law in some way modified the lex Aelia et Fufia,<sup>2</sup> which had been in existence for nearly a century.<sup>3</sup> One

<sup>2</sup> Despite the use of this terminology there were definitely two laws: the lex Aelia and the lex Fufia. However, it is impossible to distinguish the provisions of one of these laws from those of the other: cf. Cic ad Att. 2.9.1; 4.16.5; Har. 58; Pis. 10; Prov. 46; Red. Sen. 11; Sest. 114; Vat. 5,23. G. V. Sumner nevertheless maintains that a distinction can be made between the two laws. While he assigns the prohibition of legislation on dies fasti and in the period between the announcement and the holding of elections to the lex Fufia, he ascribes the regulation of obnuntiatio and intercessio to the lex Aelia with regard to legislative assemblies: G. V. Sumner, "Lex Aelia, Lex Fufia," A.J.P., 84 (1963), 337-44.

<sup>3</sup> Cic. Pis. 10; Vat. 23. There are differing hypotheses as to the date and the purpose of the lex Aelia et Fufia. W. F. McDonald, who posits 153 as the probable year for the passage of the lex Aelia et Fufia, thinks that it regulated the use of obnuntiatio by the tribunes and the consuls in the assemblies and that it was inspired by the optimates and designed to be an effective curb upon the power of the tribunician office because it provided the consuls with the ius obnuntiationis which would serve as a counterweight to the tribune's ius intercessionis. He also says that the lex Aelia et Fufia prohibited the holding of legislative assemblies on dies fasti non comitiales, among which was the period of three nundinae before the Comitia Consularia: W. F. McDonald, "Clodius and the lex Aelia Fufia," J.R.S., 19 (1929), 165-67, 176. A. K. Michels takes exception to this last statement of McDonald. She states that his conclusion is impossible because it implies that before the lex Aelia et Fufia there was no distinction between dies fasti and dies comitiales. As proof for her claim she refers to the lex Hortensia of 287 which designated nundinae as dies fasti, days on which comitia were not permitted to be held. She considers as being more plausible L. R. Taylor's suggestion that the Concilium Plebis had been permitted to meet on dies fasti and dies comitiales before the lex Aelia et Fufia while the comitia were restricted to dies comitiales. Michels adds that lex Aelia et Fufia, whose purpose would have been to restrain tribunician activities, would have also limited the number of days available for these activities by enacting that the Concilium could no longer meet on dies fasti: Michels, Calendar, pp. 95-97. S. Weinstock, who places the law ca. 150, takes a slightly different view than McDonald, for he argues that the lex Aelia et Fufia appears to have confirmed previous legislation concerning the regulation of the use of obnuntiatio by the curule magistrates and the tribunes: S. Weinstock, "Clodius and the Lex Aelia Fufia," J.R.S., 27 (1937), 216-17. G. V. Sumner suggests that

of the provisions of the lex Aelia et Fufia concerned dies non comitiales. The Scholia Bobiensia mention the provision of the lex Aelia et Fufia, which forbids legislative assemblies between the announcement and the holding of elections, in the commentary on In Vatinius 23: "De legibus dicit Aelia et Fufia, quae non sinebant prius aliqua de re ad populum ferri quam comitia haberetur ad designandos magistratus."<sup>4</sup> Dio alludes to this prohibition when he is describing the events which took place before the consular elections of 67: "ἐπεὶ δὲ αἱ τε ἀρχαιρεσίαι προσηγγελημένοι ἦσαν, καὶ κατὰ τοῦτ' οὐδὲν προνομαθεταθῆναι πρὸ αὐτῶν ἐξῆν, καὶ οἱ σπουδαρχιῶντες πολλὰ καὶ κακὰ ἐν τῷ διακένῳ..."<sup>5</sup>

the lex Aelia and the lex Fufia were both passed in 132 and that they reaffirmed the constitutional principles challenged by Tiberius Gracchus: Sumner, A.J.P., 84 (1963), 346-50. A. E. Astin, however, disagrees with Sumner's dating of the laws. He points out that in Vat. 23 Cicero explicitly states that the two laws "in Gracchorum ferocitate ... vixerunt." He also thinks that the phrase "centum prope annos" which Cicero employs to describe the lex Aelia et Fufia in Pis. 10 can hardly be interpreted as the seventy-four years which Sumner thinks it to be. Astin himself situates the lex Aelia in 147 or 146 and the lex Fufia a little later. With respect to the nature of these laws he thinks that they may have restated and defined the circumstances which would prevent or nullify proceedings in the assemblies; that they may have attempted to do this in a comprehensive manner; that they may have restated and defined all legal conditions for the holding, prevention or vitiation of assemblies: A. E. Astin, "Leges Aelia et Fufia," Latomus, 23 (1964), 440, 444-45. E. S. Gruen takes a more cautious approach. He believes that we can only say with certainty that the lex Aelia et Fufia allowed obnuntiatio and prohibited some if not all legislation between the announcement and the holding of elections: E. S. Gruen, The Last Generation of the Roman Republic (Berkeley: Univ. of California Press, 1974), p. 255.

<sup>4</sup> Schol. Bob. 148, Stangl.

<sup>5</sup> Dio 36.39.1.

Cicero refers to the same subject in a letter to Atticus which was written at the beginning of February 61: "Lurco autem tribunus pl., qui magistratus simultatem cum lege Aelia iniit, solutus est et Aelia et Fufia ut legem de ambitu ferret quam ille bono auspicio claudus homo promulgavit. ita comitia in a. d. VI Kal. Sext. dilata sunt."<sup>6</sup> These three passages, therefore, indicate that the lex Aelia et Fufia disallowed dies comitiales immediately before the elections.

A trinum nundinum, a period of seventeen days had to elapse between the announcement and the holding of the elections. Since it was forbidden by the lex Aelia et Fufia to transact any business with the people during this time, the days in question were fasti. Before the announcement of the elections Lurco had promulgated a bill. A trinum nundinum had to elapse between the promulgation of the bill and its rogatio. As a result of this, the day on which Lurco was to put his bill to the vote would have been one of the days in the trinum nundinum between the announcement and the holding of the elections. In order to avoid this the elections had been delayed. If they had not

<sup>6</sup> Cic. ad Att. 1.16.13: for the date of this letter see Shackleton Bailey, Cicero's Letters to Atticus, I, 313. The manuscripts are corrupt with regard to the phrase "qui magistratus simultatem cum lege Aelia iniit." Shackleton Bailey, who reconstructs the phrase in this way, gives the different renderings of the manuscripts and the reasoning behind his reconstruction: magistratus Tunstall: - tum. simultatem Clark, duce Sternkoff: simul: ins-Mm. aelia s: alia: Ibid., I, 159. This reconstructed phrase would mean that either Lurco or the tribunate was at odds with the provision of the lex Aelia et Fufia which forbade legislative matters from being dealt with between the announcement and the holding of the elections. Cf. H. Sjögren ed., M. Tulli Ciceronis ad Atticum Epistularum (Gotoburgi: Eranos' Forlag, 1916), I, 38. Tyrrell, R. Y. and Purser, L. C. The Correspondance of M. Tullius Cicero, 7 vols. (Dublin: Hodges, Foster and Figgis, 1885-1901), I, pp. 212-13.

been put off Lurco would have had to wait till after they had been held before he could present his bill to the people for its approval. Then even after the elections he would have had to wait till the next dies comitialis. It is little wonder that either Lurco or the tribunate "simultatem cum lege Aelia iniit," for this provision of the lex Aelia et Fufia could be a stumbling block to the legislative process.<sup>7</sup>

In his speeches Cicero claims that the effects of the lex Clodia de lege Aelia et Fufia were far reaching.

Quare aut vobis statuendum est legem Aeliam manere,  
legem Fufiam non esse abrogatam non omnibus, fastis legem  
ferri licere ...<sup>8</sup>

Isdemque consulibus sedentibus atque inspectantibus  
lata lex est ne auspicia valerent, ne quis obnuntiaret,  
ne quis legi intercederet, ut omnibus fastis diebus  
legem ferri liceret ...<sup>9</sup>

Mitto eam legem, quae ... omnes leges, quae sunt et de  
tempore legum rogandorum, una rogatione delevit,<sup>10</sup>

In these three passages Cicero points out that as a result of the lex Clodia de lege Aelia et Fufia, all dies fasti were now dies comitiales on which legislation might be passed. However, Cicero is attacking Clodius' laws in these passages. His statements, therefore, are highly vituperative and hyperbolic. His claim that all dies fasti were converted into dies comitiales does not concur with the evidence which we have with regard to

<sup>7</sup> Cic. Phil. 5.3; Schol. Bob. 140, Stangl; Brind'amour, Calendrier, pp. 7, 54-60; A. W. Lintott, "Trinundinum," Classical Quarterly, 15 (1965), 281-85. Michels, Calendar, pp. 41, 95, n. 7.

<sup>8</sup> Cic. Prov. 46.

<sup>9</sup> Cic. Sest. 33.

<sup>10</sup> Cic. Sest. 56.

the holding of comitia. All the comitia which were held after Clodius' law and for which we have a date were held on days designated by C. Cicero would not make this type of allegation about Clodius' law without there being some factual basis for it. In this case Cicero is probably exaggerating the fact that some dies fasti were transformed into dies comitiales. The only clear cut evidence about the lex Aelia et Fufia is that it designated those days between the announcement and the holding of the elections as fasti. It is reasonable to assume, therefore, that these dies fasti were the ones which were changed into dies comitiales by Clodius' law.

As we have seen this provision of the lex Aelia et Fufia was a stumbling block to the legislative process. By the removal of this obstacle Clodius would make the promulgation and the rogatio of bills somewhat easier. Any extension of dies comitiales would be welcome from a legislative point of view. In the Roman calendar there were only one hundred and ninety five dies comitiales. This number was diminished even further, for the nundinae and the day that followed were fasti. The quantity of these days was also lessened by the celebration of the Ludi and by the holding of supplicationes. The removal of this provision would also make the legislative process more democratic, for it gave those, who made an effort to come to Rome for the elections, an opportunity to vote on laws.

<sup>11</sup> Cic. ad Att. 4.3.4; Macrobius Saturnalia 1.16.6; Michels, Calendar, pp. 34-35, 40-41; cf. Brind'amour, Calendrier, pp. 254-55.

Another clause of the lex Aelia et Fufia dealt with obnuntiatio. Obnuntiatio involved the process whereby a magistrate would announce beforehand that he would observe the heavens (spectio, de caelo servare) for omens (auspicia impetrativa). The announcement (nuntiatio) of unfavourable omens would constitute obnuntiatio. The main feature of obnuntiatio was that it prevented all magistrates from transacting either electoral or legislative business with the people. The mere announcement that one would watch the heavens would suffice to bring this about because the outcome was always obnuntiatio. Obnuntiatio, however, was only valid if it were announced before the holding of an electoral or legislative assembly.<sup>12</sup>

Cicero asserts that the clause in the lex Aelia et Fufia which pertained to obnuntiatio was also abolished.<sup>13</sup> However, there is evidence to the effect that Clodius only modified this element of the lex Aelia et Fufia. For example, there are several instances of the tribune's continued use of obnuntiatio after the passage of Clodius' law.<sup>14</sup> In early 57 the tribune Sestius observed the skies and subsequently announced the adverse omens to Metellus Nepos, the consul who was holding a legislative assembly before the temple of Castor. Sestius' obnuntiatio was taken seriously because some of Clodius' men almost killed

<sup>12</sup> Asc. 8, Clark; Cic. ad Att. 4.3.3-4; Phil. 2.81-84; Vat. 14-18; Don. ad Ter. Ad. 547.

<sup>13</sup> Cic. Har. 58; Pis. 10; Prov. 46; Red. Sen. 11; Sest. 33,56. Cicero's claim that the lex Aelia et Fufia was abolished is definitely rhetorical exaggeration for he speaks of the lex Fufia as still being in operation in 54: ad Att. 4.16.5.

<sup>14</sup> The tribunes had exercised this right before 58. In 59 three tribunes had observed the heavens along with the consul Bibulus. Their names were Domitius Calvinus, Q. Ancharius and C. Fannius: Cic. Sest. 113, Vat. 16; Schol. Bob. 135,146, Stangl.

him on account of it.<sup>15</sup> Later in the year the tribune Milo used the same method to prevent the elections of the aediles. He did so because Clodius was one of the candidates. Metellus Nepos, Clodius' cousin and ally, attempted to foil Milo's proceedings, but Milo continued to put off the elections by the same means until his term as tribune expired.<sup>16</sup> Another instance of obnuntiatio was that of the tribune Gaius Ateius who employed it against Crassus in 55.<sup>17</sup> In the same year Cicero speaks of the possibility of the census being held up by tribunician obnuntiatio.<sup>18</sup> The following year the tribune Scaevola used it to delay the consular elections in order to give Scaurus, who had just been acquitted of extortion, the opportunity to improve his chances of election through bribery.<sup>19</sup> These examples show that the tribunes retained the right of obnuntiatio with respect to electoral and legislative assemblies. Clodius' law, therefore, did not modify the lex Aelia et Fufia in this domain.

The consuls and the praetors also retained their powers of obnuntiatio. The only instances of the use of obnuntiatio by consuls are those of Antony and Pompey. However, in both cases the obnuntiatio employed is that of obnuntiatio through auspicia oblativa at electoral assemblies. Pompey and Antony, both being augurs, could use this power; it was separate from

<sup>15</sup> Cic. Sest. 79, 83, 95.

<sup>16</sup> Cic. ad Att. 4.3.3-5.

<sup>17</sup> Cic. Div. 1.29.

<sup>18</sup> Cic. ad Att. 4.9.1.

<sup>19</sup> Cic. ad Att. 4.17.4.

the magisterial right of obnuntiatio through auspicia impetrativa. Pompey and Antony announced auspicia oblativa when they saw that the elections in which they were interested were not going their way. Pompey, the consul of 55, declared that he had observed auspicia oblativa (thunder in this case) after the first class of centuries had voted in favour of M. Cato as praetor, in order to put off the election and to secure the election of his own candidate, P. Vatinius, through bribery, while Antony, the consul of 44, announced auspicia oblativa after the first two classes had voted<sup>20</sup> in order to prevent the election of Dolabella as his colleague<sup>21</sup>.

There are two passages in Cicero's speeches which show that the consuls retained the right of obnuntiatio through auspicia impetrativa. In the Pro Sestio Cicero states that

<sup>20</sup> When Cicero is speaking about Antony's use of obnuntiatio through auspicia oblativa he refers to obnuntiatio through auspicia impetrativa: "Quisquamne divinare potest, quid viti in auspiciis futurum sit, nisi qui de caelo servare constituit? quod neque licet comitiis per leges, et si qui servavit, non comitiis habitis, sed priusquam habeantur, debet nuntiare;": Phil. 2.81. The phrase "Quod...leges" is subject to at least two interpretations. S. Weinstock agreeing with T. Mommsen states that the leges to which Cicero alludes are a reference to the lex Clodia which would have abolished consular obnuntiatio. Weinstock, however, thinks that this law was abolished by the senate in 58 and reinstated by Caesar in 45: Weinstock, J.R.S., 27 (1937), 221. In my view W. F. McDonald has a more feasible explanation of this passage. He contends that it is a reference to the fact that it was illegal to watch the skies or to use obnuntiatio through auspicia impetrativa while an assembly was being held: McDonald, J.R.S., 19 (1929), 170. It was illegal for a magistrate to announce auspicia impetrativa in the middle of comitia. A magistrate had to announce beforehand that he would observe the heavens. Then he would proceed to observe the skies at dawn on the day on which a comitia was to be held. Afterwards he would announce his findings before the comitia had assembled: Cic. ad Att. 4.3.3-5.

<sup>21</sup> Cic. Phil. 2.81. Plutt. Cato 42; Pomp. 52.

the senate in July 57 decreed that no one should watch the skies in order to hamper the bill concerning Cicero's recall.<sup>22</sup> Meanwhile, in De Provinciis Consularibus Cicero asserts that the optimates had reluctantly sanctioned the bill which exiled him because no one had observed the heavens on the day when it was passed into law.<sup>23</sup> In both of these passages Cicero is not specific; he does not say who could have used obnuntiatio against Clodius' bill of exile or whom the senate forbade to use obnuntiatio against the bill enacting his recall. In both these cases Cicero would surely have designated those who were capable of using obnuntiatio after the passage of Clodius' law, if that law had removed the power of obnuntiatio from the praetor or the consul. Cicero, therefore, points out that Clodius left the power of obnuntiatio of all magistrates intact.

This is certainly true of the praetors. In January 57 Appius Claudius Pulcher as praetor had threatened to use his power of obnuntiatio in order to prevent the tribune Fabricius from bringing before the people a bill dealing with Cicero's recall.<sup>24</sup> However, it is doubtful that he would have done this, for the praetor's rights in this field were severely restricted by the consul's customary edict that no lesser magistrate exercise the right of spectio.<sup>25</sup>

If the consuls, praetors and tribunes retained the power

<sup>22</sup> Cic. Sest. 129.

<sup>23</sup> Cic. Prov. 45.

<sup>24</sup> Cic. Sest. 78.

<sup>25</sup> Gellius 13.15.1-7.

of obnuntiatio, then Clodius' law must have modified the use of obnuntiatio in some way. In 59 Bibulus, the consul, had shown how this power could be abused in an attempt to stifle the legislative process.<sup>26</sup> Clodius, therefore, may very well have placed some kind of check on the use of obnuntiatio by the consuls, praetors and tribunes in order to avoid any repetition of what had occurred in 59. Perhaps Clodius placed the control of the obnuntiatio of the praetors and consuls in the hands of the senate while he made the use of obnuntiatio by a tribune subject to the approval of the majority of the tribunician college.<sup>27</sup>

<sup>26</sup> This is the first recorded use of obnuntiatio by a consul. Bibulus employed it to invalidate the legislative proceedings of Caesar, his fellow consul: Cic. Dom. 40; Har. 48; Suet. Iul. 20. This obnuntiatio was probably intended to nullify not only Caesar's laws but also those measures which Vatinius had passed on his behalf. In his speeches Cicero points out that the lex Aelia et Fufia did contain a clause enabling consuls to use obnuntiatio against tribunes: Cic. Har. 58; Pis. 9; Sest. 33; Red. Sen. 11; Vat. 18. Asconius confirms this; Asc. 8, Clark. Zonaras, though he does not refer to the lex Aelia et Fufia, shows that such a right did exist before 58: Zon. 7.19.2. The only piece of evidence which can be taken to run counter to the view that consuls had the right to use obnuntiatio against tribunes is Vat. 16 where Cicero suggests that Bibulus' obnuntiatio was not directed against Vatinius by emphasizing that the three tribunes, Domitius Calvus, Q. Ancharius and C. Fannius, were using obnuntiatio against Vatinius. Cicero had good reason for suggesting this. He wanted at all costs to avoid mentioning Bibulus' obnuntiatio because it had been the main grounds through which Caesar's inimici had attacked his legislation: Cic. Dom. 40; Har. 48; Suet. Iul. 20. Since the In Vatinius was likely published after the conference of Luca Cicero would not make any hostile remarks concerning Caesar's legislation lest any retaliatory measures be taken against him.

<sup>27</sup> There are several differing interpretations concerning the effect which Clodius' law had on the lex Aelia et Fufia. S. Weinstock admits that the lex Aelia et Fufia had something to do "de iure et de tempore legum rogandarum", but he emphasizes that its primary function was the regulation of obnuntiatio. He holds that Clodius abolished the lex Aelia et Fufia through his law, but that in the same year the law was declared to be illegal by the senate on the grounds that Clodius had been transferred to plebeian status by a lex curiata which

From what has been discussed it can be seen that the lex Clodia de lege Aelia et Fufia did not effect the drastic changes

had been passed when Bibulus was observing the heavens: Weinstock, J.R.S. 27 (1937), 216-20. This interpretation is not feasible because Cicero in Vat. 18 and Prov. 46 indicates that all the terms of the lex Clodia de lege Aelia et Fufia were still in force during 56. According to W. F. McDonald the tribunes, under the terms of the lex Clodia, retained their right to obnuntiatio with respect to both types of assemblies while the consuls lost it in the case of legislative assemblies. He also takes the view that the lex Clodia, so far as legislative assemblies were concerned, abolished all "dies fasti non comitiales": McDonald, J.R.S., 19 (1929), 172, 176-78. A. K. Michels will only go so far as to state that if the phrase "ut omnibus fastis diebus legem", which Cicero employs to describe the law, was included in the provisions of the lex Clodia, then Clodius' law not only allowed the Concilium Plebis to meet on all dies fasti, but also the other legislative assemblies: Michels, Calendar, p. 97. A. E. Astin agrees with J. P. V. D. Balsdon's contention that as a result of Clodius' law the Concilium Plebis or the Comitia could vote on the validity of any obnuntiatio, which was made, while they were in session: Astin, Latomus, 23 (1964), 441-42. J. P. V. D. Balsdon "Roman History, Three Ciceronian Problems," J.R.S. 47 (1957), 15-16. E. S. Gruen, who maintains that an increase in the days available for the holding of legislative assemblies and the restriction of obnuntiatio constituted the substance of Clodius' law, disagrees with Balsdon on the grounds that his hypothesis is disproved by Cicero's hyperbolic statements and by the more precise statements of Asc. 8, Clark: "ne quis per eos dies, quibus cum populo agi liceret, de caelo servaret; and of Dio 38, 13.6: ... ἐσήνεγκε μὴδὲνα τῶν ἀρχόντων ἐν ταῖς ἡμέραις ἐν αἷς ψηφίσασθαι τι πρὸς τὸν δῆμον ἀναγκαῖον εἶη, τὰ ἐκ τοῦ οὐρανοῦ, γιγνόμενα παρατηρεῖν. Τοιαῦτα μὲν τότε ἐπὶ τὸν Κικέρωνα συνέγραψε. These statements, however, are no more precise or accurate than those of Cicero, for as it has been pointed out, the tribunes, praetors and consuls retained the right of obnuntiatio. Besides this, Gruen himself admits that some form of obnuntiatio was still permissible after 58. The evidence, which he alludes to, therefore, does not disprove Balsdon's contention: Gruen, Last Generation p. 256, 256 n. 174. Balsdon, however, does not substantiate his hypothesis. He only backs up his case by alluding to the following passage from Pro Sestio 129: "Est postridie decretum in curia populi ipsius Romani et eorum qui ex municipiis convenerant admonitu, ne quis de caelo servaret, ne quis moram ullam adferret," He believes that Cicero included "populi ipsius Romani et eorum qui ex municipiis convenerant admonitu" in order to claim that the senate's decree that no one interfere with his recall was tantamount to a decision of the people. According to Balsdon Cicero spoke in this way because the senate had abused Clodius' law which would have enacted that only the people could vote on the matter of obnuntiatio.

in the make-up of the calendar or in the field of obnuntiatio which are attributed to it by Cicero. It brought about some modification on the use of obnuntiatio by the consuls, praetors and tribunes and it probably made it possible to bring forth a bill in the period between the announcement and the holding of the elections. The facilitation of the legislative process through the partial extension of dies comitiales and the curbing of the abuses of obnuntiatio would not have been irresponsible measures undertaken by a mad tribune; they would have been sane and sensible measures brought forth by a responsible legislator.

Clodius' second law, the lex de censoria notione removed the censors' right of arbitrarily revising the list of senators. This law enacted that a senator must be tried and convicted by both censors before he was expelled from the senate.<sup>28</sup>

The censors' power of stigmatization was awesome. For instance, the censors of 70, Cn. Lentulus Clodianus and L. Gellius Publicola, who seemingly conducted a responsible purge of the senate, expelled sixty-four of its members.<sup>29</sup> A censor, however, could use his powers to attack his political enemies. For example, in 50, two years after Clodius' lex de censoria notione had been abrogated by Scipio Nasica, the censor, Appius Claudius Pulcher, struck off the names of many of his political foes from the senatorial list.<sup>30</sup> Clodius' removal

<sup>28</sup> Asc. 8-9, Clark. Cic. ad Att. 4.16.8; Pis. 10; Dio 38.13.1; Schol. Bob. 132, Stangl.

<sup>29</sup> Broughton, Magistrates, II, 126-27.

<sup>30</sup> Dio 40.57.1; 40.63.4-5.

of the censorial prerogative was designed to curb such abuses. His law therefore was a sound piece of legislation which brought about a needed reform. At the same time, however, this law would be of some assistance to Clodius, for it took away one of the potential means of retribution which might be employed against him by his political adversaries to repay him for the popularis program of legislation which he was implementing and for his past deeds.

Clodius' third law instituted the distribution of free wheat to all Roman citizens. Clodius made sure that he would retain control over the distribution of free wheat, for a clause of this law put his amicus, Sextus Cloelius, in charge of the corn supply.<sup>32</sup> He was not the first to deal with this matter. Other politicians such as Gaius Gracchus<sup>33</sup>, L. Saturninus<sup>34</sup>, the consuls of 73, M. Terentius Lucullus and C. Cassius Longinus<sup>35</sup>, and M. Cato<sup>36</sup> had also done so. Despite the differences in their political creeds all these politicians had shown their concern for the plebs by passing laws which brought about the subsidization

<sup>31</sup> Asc. 8, Clark; Cic. Sest. 55. There is no evidence pertaining to the number of modii of wheat which was given to each man under the terms of the lex Clodia frumentaria. However, it was probably the same amount which was permitted by the lex Terentia Cassia of 73: five modii: E. Badian, Roman Imperialism in the Late Republic, 2nd ed. (Oxford: Blackwell, 1968), p. 36; cf. P. A. Brunt, Italian Manpower 225 B. C. - 14 A. D. (Oxford: Clarendon Press, 1971), pp. 381-82.

<sup>32</sup> Cic. Dom. 25-26.

<sup>33</sup> Plut. Gaius Gracchus 5.

<sup>34</sup> ad Her. 1.21.

<sup>35</sup> Badian, Imperialism. p. 36.

<sup>36</sup> Plut. Caes. 8.

of the wheat which was sold to the poor of the city in limited quantities.<sup>37</sup> Clodius' law only brought the process, which these politicians had initiated, to its logical conclusion.

There were several consequences to Clodius' law. For instance, by 56 his abolition of the price of six and one third asses, which had been charged for each modius of wheat, diminished the state revenues by a fifth.<sup>38</sup> This situation would have gradually become aggravated, for by 45 there were 320,000 citizens on the grain dole,<sup>39</sup> whereas in 70 under the provisions of the lex Terentia Cassia there had only been 40,000 recipients of cheap grain.<sup>40</sup> Cato's measure in 62 likely enlarged the number, but Clodius' law was chiefly responsible for the increase.

Under the terms of Clodius' law the number of recipients swelled, because many slaves would have been set free by their masters in order that they might be fed at the expense of the state. A slave owner would be quite willing to do this because a freedman was still bound to his former master by fides. On account of this a former master could still compel his ex-slave to work for him as long as he gave him enough free time to earn a living.<sup>41</sup>

<sup>37</sup> It seems that except for Saturninus, who may have reduced the price of a modius to five sixths of an as, all of these politicians kept the price of subsidized wheat at six and one third asses per modius: Brunt, Manpower, pp. 381-82.

<sup>38</sup> Asc. 8, Clark; Cic. Sest. 55.

<sup>39</sup> Suet. Iul. 41.

<sup>40</sup> Brunt, Manpower, pp. 107, 378.

<sup>41</sup> Dio 39.24.1-2; Dion. Hal. 4.24.

Another reason for this increase was that the distribution of free grain would have accelerated the drift of people from the countryside into Rome. This influx had begun in the previous two decades as a result of the detrimental living and working conditions in the countryside. During the previous two decades many small farmers has been ruined. Conscription, debt, the depredations of the pirates in the years before 67, and the devastation wrought in the countryside by the risings of Lepidus and Spartacus, were responsible for this. Once the farmer had lost his property, his chances at earning a living in the countryside were scarce because the only employers were the latifondisti who preferred slave labour<sup>42</sup>.

The distribution of cheap wheat by the state and of free wheat by certain wealthy individuals was the main attraction which was responsible for the drift of people from the country to Rome.<sup>43</sup> Another attraction was that work could be found in and around Rome. There would be jobs at the docks and in the building trade. Besides this, employment would be available at harvest time when extra manpower was required.<sup>44</sup> Clodius' law would only provide a further incentive that would speed up this process.

The increase in the number of recipients was probably partly responsible for the grain shortage in August 57, which caused a sharp rise in the price of grain. However, the influx

<sup>42</sup> Brunt, Manpower, pp. 107, 109, 111, 311.

<sup>43</sup> Sallust. Cat. 37.7-8.

<sup>44</sup> Brunt, Manpower, pp. 380-81.

of country voters, who had come to Rome to vote for Cicero's recall in the Comitia Centuriata on August 4, would have also contributed to the grain shortage.<sup>45</sup> Cicero in De Domo Sua 11 finds several other reasons for it. He states that the corn growing provinces did not produce enough wheat for that year; that the dealers were withholding wheat in order to make its price rise; that wheat had been stored in case of a severe famine; that some of the wheat had been exported to other countries.

Clodius' main reason for the lex frumentaria was doubtless the popularity with the plebs which it would bring him. The plebeians would assuredly appreciate this law. Their living conditions were squalid and many of them had to depend upon seasonal work.<sup>46</sup> Therefore, any measure, which was taken to improve their lot,<sup>47</sup> would definitely meet with a positive response.

<sup>45</sup> Cic. ad Att. 4.1.4,6.

<sup>46</sup> The majority of the plebs was crowded into the flats of the insulae. For these flats, which did not provide suitable living quarters, the plebeians paid rents which could ruin them economically. Despite these high rents the landlords often did not bother to put up the money necessary for the upkeep of their insulae. As a result of this and their poor construction, tenement houses often collapsed. Earthquakes, floods and fire also took their toll of the poorly built tenement houses: P. A. Brunt, "The Roman Mob," Past and Present, 35 (1966), 12-13, 16; Gruen, Last Generation, p. 364; Z. Yavetz, "The Living Conditions of the Urban Plebs in Republican Rome," in The Crisis of the Roman Republic, sel. and intr. by R. Seager (Cambridge: Heffer, 1969), pp. 167-74, 178-79.

<sup>47</sup> Clodius' law only partially alleviated their lot. The plebeian would have to continue buying wheat at the market price because the five modii of wheat which Clodius' law granted to each male of ten years and over was more than enough for one man, but it was not enough for him and his family. Cato the elder had given from three to four and a half modii to his slaves according to the type of work which they did. Meanwhile, the Roman legionary received three modii. In addition to buying

The lex Clodia frumentaria made Clodius the undisputed patron of the plebs, for it removed the only stumbling block which stood between him and popular support. In 58 M. Cato was to a certain degree Clodius' rival for the support of the plebs. As tribune in 62 he had brought in a law which extended the distribution of cheap wheat to a larger section of the populace. Clodius, however, undermined any popularity, which Cato may have acquired by this measure, with his more generous law.

Clodius' fourth law, the lex de collegiis, not only reinstated those clubs which had been banned by the senatorial decree of 64, but it also allowed for the creation of new ones<sup>47</sup>. The precise character of the clubs which were outlawed is uncertain. A general concept of their nature, however, can be obtained from Asconius and Dio. Asconius states that the types of associations banned by the senate in 64 were called collegia; that these collegia had posed a danger to the state; that a small number of them was exempted from the senatorial decree; that the magistri of these collegia celebrated certain games<sup>48</sup>. Dio adds that these collegia were of ancient foundation<sup>49</sup>. These features are applicable to professional guilds because some of them are said to have been founded by Numa and because extra wheat the plebeian would have to purchase other food-stuffs, for he could not live on bread alone: Brunt, Manpower, pp. 382-83.

<sup>47</sup> Asc. 8, Clark; Cic. Pis. 9, Sest. 55

<sup>48</sup> Asc. 7, Clark.

<sup>49</sup> Dio 38.13.2.

the word collegia was used to designate them.<sup>50</sup> In addition Asconius mentions that the collegia fabrorum lictorumque were excluded from the senate's decree on the grounds that they provided useful services to the state.<sup>51</sup> This implies that some of

<sup>50</sup> Plut. Numa 17; J. P. Waltzing, Etude historique sur les corporations professionnelles chez les Romains jusqu'à la chute de l'Empire d'occident, 4 vols. (Louvain, 1895-96; rpt. Rome: L'Erma, 1968), I, 108.

<sup>51</sup> Asc. 75, Clark: "Frequenter tum etiam coetus factiosorum hominum sine publica auctoritate malo publico fiebant: propter quod postea collegia et S. C. et pluribus legibus sunt sublata praeter pauca atque certa quae utilitas civitatis desiderasset, sicut fabrorum lictorumque." According to J. Linderski the passage, which reads "propter quod... fabrorum lictorumque", would be a brief summary of the senatus consulta and laws which were directed against the collegia from 64 to the time of Augustus: the "S. C." in the passage should not be taken to refer only to the senatus consultum of 64 which would be a restatement of a rule of the Twelve Tables. As proof of his interpretation of the senatus consultum of 64 he cites a passage from the Digest: "his (sodalibus) potestatem facit lex (XII Tab.) pactionem quam velit sibi ferre, dum ne quid ex publica lege corrumpant."; D. 47.22.4. He believes that in 64 the senate simply restated this law on the grounds that it had done so in 186 to outlaw the bacchic collegia: J. Linderski, "Der Senat und die Vereine," in Gesellschaft und Recht im griechisch-römischen Altertum (Berlin, Akad.-Verl., 1968), pp. 94-98. J. P. Waltzing maintains that there was no such law. He states that it is a mistake to believe that the law of the Twelve Tables, to which Linderski alludes, regulated the collegia, because the purpose of this law was to permit collegia to erect statues for their cult as long as they conformed to the law. He quotes a passage from Livy in which the consul, Postumius justifies his actions against the bacchic reunions: "Maiores vestri ne vos quidem, nisi cum aut vexillo in arce posito comitiorum causa exercitus eductus esset ... forte temere coire voluerunt; et ubicunque multitudo esset, ibi et legitimum rectorem multitudinis censebant debere esse: Livy 39,15. On this Waltzing comments that if the consul had to justify his actions through analogy, it was because he could not use a law to do so. With regard to the matter of the senatus consulta of 186 and 64 he adds that the senate resorted to these measures in order to curtail the activities of the collegia for the simple reason that there was no law which enabled it to control the collegia: Waltzing, Corporations, I, 79-81. This being the case Asconius may very well be indicating that the senatus consultum of 64 was one of the senatus consulta which allowed the collegia fabrorum lictorumque to remain in existence. Besides this there is the highly likely probability that Asconius' "S. C." may refer only to the senatus consultum of 64. Firstly, there is no compelling reason for giving "S. C." the plural reading which J. Linderski gives it. Secondly, Asconius uses "S. C." elsewhere to denote a senatus consultum: Asc. 75-76, Clark.

the other professional guilds were excluded. The description, which Dio and Asconius give, also pertains to private and public associations because these bore the name collegia and some of them had been in existence for a few centuries.<sup>52</sup> Finally, those groups of men who adopted the guise of collegia in order to perpetrate political subversion are also included in this list. The collegium Corneliorum to which Cicero and Asconius allude may have been just such an organisation.<sup>53</sup>

<sup>52</sup> Waltzing, Corporations, I, 34-36, 42-43.

<sup>53</sup> Asc. 75, Clark. There is much controversy as to the nature of the collegia affected by the senatorial decree of 64. According to T. Mommsen, only the "collegia compitalicia" were banned by the senate in 64. Mommsen postulates that each compitum consisted of many vici. Each vicus would have its magistri and each compitum would form a collegium compitalicium which also had its own magistri. These magistri vicorum et collegiorum would celebrate the ludi compitalicii together: T. Mommsen, De Collegiis et Sodaliciis Romanorum (Kiel, 1843), pp. 57, 74-77. J. P. Waltzing denies the existence of such collegia on the grounds that the vicus was not a unit of the compitum; that the topographical units of the city such as the vici, vicinitates, montes and pagi were not called collegia; that these units are distinguished from the collegia by Marcus and Quintus Cicero; that the vici were not officially delineated till the time of Augustus. Waltzing thinks that the professional guilds are especially designated by the word collegia. As for the ludi compitalicii, he concludes that they were celebrated by the inhabitants of the vici under the direction of their magistri vici. He also thinks that the professional guilds would have participated in the ludi compitalicii because the members of a guild lived in the same quarter of a city: Waltzing, Corporations, I, 40-41, 98-99, 107-109. L. R. Taylor and A. W. Lintott hold views similar to Mommsen's. Taylor considers the collegia as being organizations of slaves and freedmen in guilds centering about the Lares and other divinities in the vici: L. R. Taylor, The Voting Districts of Republican Rome, Vol. 20 of Papers and Monographs of the American Academy in Rome, (Roma: Tipographia del senato del Dott. Bardi, 1960), p. 77. Lintott thinks that the collegia were organizations in the vici which celebrated the ludi compitalicii. He adds that the collegia need not have maintained only the cult of the Lares; they may have chosen a divinity more appropriate to their occupation or place of residence: Lintott, Violence, pp. 80-83. J. Linderski only goes so far as to state that those collegia, which posed a danger to the state, were banned in 64 by the senate: Linderski, "Senat," in Gesellschaft, pp. 96-98.

Asconius, as it had been noted above, relates that a few organizations were excluded. He points out the collegia fabrorum lictorumque whose services were deemed necessary to the state. It is also likely that such upper class public religious associations as the collegium Capitolinorum and the collegium Mercurialium were also excepted because their state

The main piece of evidence, which is used to link the ludi compitalicii and the cult of the Lares to the collegia, is Asconius' comment on Sextus Cloelius' holding of these games: "Solebant autem magistri collegiorum ludos facere, sicut magistri vicorum faciebant, Compitalicios praetextati, qui sublatiis collegiis discussi sunt.": Asc. 7, Clark. Max Cohn suggests that the comma after "faciebant" should be dropped: Max Cohn, Zum römischen Vereinsrecht (Berlin, 1873), p. 40, no. 62. S. M. Treggiari adopts this punctuation on the grounds that a comma after "faciebant" makes for awkward Latin: S. M. Treggiari, Roman Freedmen during the Late Republic (Oxford: Clarendon Press, 1969), p. 170, no. 8. With this comma removed the passage would signify that the magistri vici dressed in togae praetextae celebrated the ludi compitalicii and that the magistri collegiorum simply held games. This need not necessarily have excluded the magistri of the collegia from participating in the ludi compitalicii; they might have taken part in these games in an unofficial capacity, because as Waltzing points out, the members of a collegium lived in the same quarter of the city and would therefore join in their celebration. There are two instances which back up the meaning given to the passage by the removal of the comma after "faciebant". Firstly, in 58 Sextus Cloelius was clad in a toga praetexta when he celebrated the ludi compitalicii. It is probable that he was acting in the capacity of a magister vici, for Livy relates that the magistri vici had the right to wear this type of dress: Livy 34.7.2 Secondly, in 64 many collegia had been banned by the senate. Since this was the case, there would not be a sufficient number of magistri collegiorum to hold the ludi compitalicii, if it had been they who were responsible for their celebration. Therefore, in 61, the magistri ludorum, who were prevented from holding the ludi compitalicii by Metellus Celer after they had been ordered to do so by a tribune, would have been the magistri vici: Cic. Pis. 8; Asc. 7, Clark. Yet another reading can be given to this passage by the removal of all commas except the one preceding "qui". The plural nominative "praetextati" could then be taken to designate the magistri vici and the magistri collegiorum. This seems to be exactly the point that Asconius is trying to make. The fact that he includes the conjunction "autem" at the beginning of the sentence seems to show that he is drawing attention to the fact that the magistri collegiorum were entitled to wear the same type of dress in celebrating their games as was worn by the magistri vici in the celebration of the ludi compitalicii.

sanctioned activities could hardly pose a danger to the republic.<sup>54</sup>

As a prelude to the legalization of the collegia, Clodius directed Sextus Cloelius<sup>55</sup> to hold the ludi compitalicii in which the collegia had previously participated.<sup>56</sup> These games had also been forbidden by the senatorial decree of 64, presumably on the grounds that they too posed a danger to the state.<sup>57</sup> A great number of plebeians took part in these games. An opportunistic politician could use this occasion to secure widespread support for any bill which he had promulgated. In 67, for instance, the tribune Manilius passed a bill (which was later invalidated) around the time of the Compitalia<sup>58</sup> which distributed the freedmen among the rural tribes.<sup>59</sup> The congregation of a great number of people at these games also provided an opportunity to those collegia, which had shown themselves prone to politically subversive activities, to ferment further public unrest.<sup>60</sup> On January 1, 58 Sextus Cloelius, at the instigation of Clodius, held the ludi compitalicii in spite of the opposition of the tribune L. Ninnius Quadratus. Clodius' reinstatement of

<sup>54</sup> Waltzing, Corporations, I, 34-35."

<sup>55</sup> Not Sextus Clodius: D. R. Shackleton Bailey, "Sex. Clodius - Sex. Cloelius," Classical Quarterly, 54 (1960), 41-42.

<sup>56</sup> Waltzing, Corporations, I, 108-109.

<sup>57</sup> Asc. 7, Clark; Cic. Pis. 8.

<sup>58</sup> He would not have done so on the day of the Compitalia itself, for it was nefas: Gellius 10.24.3.

<sup>59</sup> Asc. 45, Clark; Dio 36.42.2-3.

<sup>60</sup> Asc. 7, Clark.

<sup>61</sup> Asc. 7, Clark; Cic. Pis. 8.

games was a move which would acquire the support of the people not only for himself but also for his four laws which were to be put to the vote in two days' time. However, this measure was especially designed to obtain the people's approval of his bill de collegiis. The renewed celebration of these games gave the plebeians a taste of the freedom which had been curtailed by the senate's decree in 64. This would make them favourably disposed to Clodius' bill de collegiis which offered a further extension of their civil liberties.

The right of association which Clodius' bill made legal for the first time allowed those collegia which had been banned in 64 to come back into being. As a consequence of this the magistri and the members of the restored collegia were likely to show their gratitude to Clodius by supporting whatever measures he attempted to implement. This assistance would be useful to Clodius, for the members of a collegium usually lived in the same quarter of the city and could, therefore, be quickly assembled by its magistri.<sup>62</sup> Clodius probably assured himself of the assistance of these collegia by establishing amicitiae with their magistri.<sup>63</sup>

<sup>62</sup> Waltzing, Corporations, I, 109.

<sup>63</sup> When Clodius' bill was passed, Cicero had thought that it would be useful to him: ad Att. 3.15.4. Perhaps he thought that like Clodius he would be able to increase his political influence through the establishment of amicitiae with the magistri collegiorum. In 64 at any rate his brother Quintus had believed that the friendship of these men would help him to bolster his auctoritas:" ... deinde habete rationem urbis totius: collegiorum, montium, pagorum, vicinitatum: ex iis principes si ad amicitiam tuam adjunxeris, per eos reliquam multitudinem facile tenebis;": Quintus Cicero (?) Com. Pet. 30; cf. Ibid., 3,32.

This influence over the restored collegia strengthened Clodius' political position. His creation of new collegia after the passage of his law had the same effect.<sup>64</sup> These new collegia were organized in the vici and they were subdivided into decuriae.<sup>65</sup> On account of their location in the vici, they probably adopted the cult of the Lares. The members of these new groupings consisted of slaves,<sup>66</sup> freedmen and ingenui.<sup>67</sup> Each collegium had its own leader.<sup>68</sup> This facilitated the chain of command. It is likely that the decuriones themselves picked these leaders. This would be consistent with Clodius' concern for libertas.

Clodius employed these new organizations to obtain several goals. For instance, he used them to obtain partial domination over the Concilium Plebis. The collegia formed a network which embraced the majority of the plebs. Clodius' command of his own collegia and his influence over the existing ones, therefore, would insure him of a certain amount of control

<sup>64</sup> Cic. Pis. 11.

<sup>65</sup> Cic. Dom. 54; Red. Quir. 13; Red. Sen. 33; Sest. 34.

<sup>66</sup> Cicero constantly describes the members of these collegia as servi. However, Cicero often used this name to designate freedmen: Treggiari, Freedmen, pp. 172-73, 265-66.

<sup>67</sup> Cic. Dom. 13,54; Red. Sen. 33; Sest. 34; Plut. Cic. 30.

<sup>68</sup> Cicero and Asconius give the names of some of these: Lentidius (Dom. 89); Lollius (Dom. 89); Plaguleius (Dom. 89); Sergius, perhaps a freeman of Catiline (Dom. 13, 89, 112); Titius (Sest. 112); Damio, a freedman of Clodius (Asc. 47, Clark); Firmidius (Sest. 112); Sextus Cloelius, Clodius' legal adviser (Dom. 47). Several of Clodius' upper class supporters perhaps acted as patroni of his collegia. These included Gellius Poplicola, the half brother of Marcius Philippus (cos. 56) (Sest. 110-112); Decimus (ad Att. 4.3.2; Dom. 50), perhaps D. Iunius Brutus Albinus (see Wiseman, Classical Quarterly, 18 (1968), 289) and Mark Antony (Phil. 2.19).

of the voters of the urban and the rural tribes. In the Concilium Plebis the support of the rural voters was essential, for they voted in thirty-one of the thirty-five tribes. As a result of the conditions in the countryside a substantial number of these rural voters had migrated to Rome<sup>69</sup>. It is highly likely that some of these remained registered in their tribes since there is no evidence for a completed census between 70 and 28<sup>70</sup>. Their votes were valuable to Clodius in the Concilium Plebis because the rural dwellers did not regularly come to Rome to vote except for the elections. However, it seems that despite the numbers of those who had migrated to Rome, there were still occasions when there were not a sufficient number of people to vote in certain rural tribes. Cicero claims that the members of another tribe would fill these vacancies<sup>71</sup>. At such times, Clodius would doubtless try to insure that his supporters replaced the absent rural voters.

The decuriae of Clodius' collegia proved useful. He armed these gangs and stationed them about the forum when he proposed his bills to the people from the tribunal of the temple of Castor<sup>72</sup>. This prevented any opposing tribune, praetor or consul from interfering with the implementation of his legislative program. In doing this Clodius without doubt had in mind at least two incidents which had taken place on the tribunal

<sup>69</sup> Sallust Cat. 37. 5-8; Varro Rust. 2.42; cf. Dio 38.1.3-4.

<sup>70</sup> Brunt, Manpower, pp. 104-105, 701-703.

<sup>71</sup> Cic. Sest. 109.

<sup>72</sup> Cic. Dom. 110; Pis. 23; Red. Sen. 32; Sest. 40.

of the temple of Castor in the years immediately preceding his tribunate. In 63, when the tribune Metellus Nepos was proposing from the tribunal of the temple a bill enacting that Pompey be recalled to Rome to deal with the Catilinarian army, M. Cato mounted the steps of the tribunal and prevented his colleague from putting the bill to the vote.<sup>73</sup> Then in 59 Bibulus on the same spot announced obnuntiatio to Caesar who was presenting one of his agrarian laws to the people.<sup>74</sup> Clodius likely wished to avoid any re-occurrences of these types of obstructive tactics. Perhaps, this was also the reason why he had the lateral steps on each side of the temple, which led to the tribunal, removed.<sup>75</sup>

Clodius also utilized these gangs to attack his political opponents. For example, they attacked Cicero's supporters who were appealing for the remission of Clodius' bill de capite civis Romani. Later in the year, Clodius used them to defeat Gabinius and his forces when he had taken up Pompey's cause. As for Pompey himself, Clodius' bands with Damio at their head besieged him in his own house.<sup>76</sup>

These decuriae were also valuable to Clodius in the legislative assemblies. Clodius used them to intimidate any voters unsympathetic to his bills. He would have also employed the

<sup>73</sup> Plut. Cato 27-28.

<sup>74</sup> Dio 38.6.2.

<sup>75</sup> Cic. Dom. 54; Pis. 23; Red. Sen. 32; for further details on the layout of the temple see Taylor, Voting Districts, p. 41.

<sup>76</sup> Asc. 46-47, Clark; Cic. Pis. 28-29; see below, p. 96, nn. 4-5.

members of these decuriae as bribery agents. Being dispersed among the plebs as they were, they could easily fulfill this role.

Clodius had to support these decuriae financially to a certain limit. However, sheer discontent with their lot and the hope of improving it would have been one of the factors which kept them together. Despite the importance of these decuriae to Clodius, they were not his only source of active political support. Clodius, unlike Catiline, had secured the backing of the ingenui and libertini shopowners and craftsmen. This is proven by the fact that he felt confident enough of their support to issue edicts closing the shops when he wanted a good attendance at his political rallies.<sup>77</sup>

The maintenance of his network of collegia must have been costly. There were at least two sources from which Clodius acquired the funds for its upkeep. Firstly, his wife, Fulvia, was wealthy. Being an ambitious and rich woman she would without doubt supply her husband with the money he needed in order to attain his political goals. Secondly, Clodius probably received large bribes from Brogitarus and the Byzantine exiles to pass legislation in their favour.<sup>78</sup>

The four laws, which Clodius implemented on January 3, 58, made him a politically powerful personage at Rome. His first two laws brought about significant political reforms: the lex de lege Aelia et Fufia facilitated the passing of legislation

<sup>77</sup> Cic. Dom. 54.

<sup>78</sup> Cic. Har. 28-29, 59; ad Quint. 2.9.2; C. Babcock, "The Early Career of Fulvia," A.J.P., 86 (1965), 2-11; see below, pp. 85-88, 93-94.

through the partial extension of dies comitiales and somehow checked the abuses of obnuntiatio by elected officials; the lex de censoria notione curbed censorial excesses.<sup>79</sup> A minor by-product of the latter law was that it removed a means by which his political foes could bring about his ruin. These two laws would give Clodius prestige as a legislator and thus increase his auctoritas and dignitas. The third law, the lex Clodia frumentaria, definitely brought Clodius overwhelming popular support. However, this law was certainly needed to alleviate the miserable lot of a large section of the plebs. As for his fourth law, Clodius used it to establish a network of collegia by means of which he attacked his political enemies and insured the implementation of his legislative program. Nevertheless, this too was a responsible measure, for it restored to the people the civil liberties which the senate had arbitrarily annulled by its decree in 64. Up till that time except for the case concerning the bacchanal clubs, the right of association had been left untouched by the senate.<sup>80</sup> As a

<sup>79</sup> Clodius also passed a law dealing with abuses of quaestors' scribes. This law, whose date is uncertain, restricted the private business of quaestors' scribes. This would prevent any conflict of interests on their part: Suet. Dom. 9.

<sup>80</sup> This view concerning Clodius' preliminary legislation is not shared by others. T. Mommsen, for instance, concludes that Clodius was a demagogue who was pursuing an ultra democratic policy through his four laws. He also thinks that such "demagogic agitation" was no longer a viable means of attaining power. Apart from this he finds neither rhyme nor reason in Clodius' conduct during 58. He states: "... we might as well seek to set a charivari to music as to write the history of this political witches' revel,": T. Mommsen, The History of Rome, trans. by W. P. Dickson, 7th ed. (London: MacMillan & Co., 1908), V, 111-12. M. Gelzer, M. Cary, L. R. Taylor and S. Perowne single out the laws concerning the collegia and the grain dole as being irresponsible demagogic measures: M. Gelzer, Caesar:

result of these four laws Clodius became a powerful tribune who was effectively backed by the plebs. This made him a political force in his own right. He could, therefore, pursue an independent course of action in defiance of the factio and the optimates.

Politician and Statesman, trans. by P. Needham (Oxford: Blackwell, 1968), p. 96. Cary, "The First Triumvirate," pp. 523-24; Taylor, Voting Districts, p. 146; S. Perowne, The Death of the Roman Republic (London: Hodder & Stoughton, 1968), p. 184. P. A. Brunt does not censure Clodius' preliminary legislation. He concentrates on the effects which this legislation had. He states that Clodius as a result of his first four laws had a following which made him a force in politics even when he laid down the tribunate: P. A. Brunt, Social Conflicts in the Roman Republic (London: Chatto & Windus, 1971), p. 135. A. W. Lintott agrees with this view: Lintott, Greece and Rome, 14 (1967), 167. Nor does E. S. Gruen classify this legislation as being irresponsible. He concludes that Clodius' first four laws effected sound and sensible changes: Gruen, Last Generation, pp. 228, 257, 386.

## CHAPTER III

## CLODIUS' ROLE IN CICERO'S EXILE

In the third week of March 58 Clodius' bill de capite civis Romani was passed into law.<sup>1</sup> The main clause of this law was: "qui civem Romanum indemnatum interemisset, ei aqua et igni interdiceretur."<sup>2</sup> This measure had the same aim as C. Gracchus' lex Sempronia, which enacted that no one should be put to death unless it was by the people's order: to prevent anyone from using the senatus consultum ultimum, the decree by which the senate ordered the magistrates and the people to undertake the steps necessary for the defence of the republic, as a means of justifying the death of a citizen before that citizen had been given the opportunity to exercise his right to trial and his right of provocatio.<sup>3</sup> Clodius' bill would reinforce these two rights which formed part of the citizen's libertas.

<sup>1</sup> For the dates of this law and the lex de exilio Ciceronis I have followed the chronology established by Shackleton Bailey, Cicero's Letters to Atticus, II, 227-232, Appendix I.

<sup>2</sup> Vel. Pat. 2.45.1.

<sup>3</sup> Cic. Cat. 1.4; 4.10. The lex de capite civis Romani and the lex Sempronia were not the only attempts to prevent the senatus consultum ultimum from being used to justify the execution of Roman citizens without trial or provocatio. In 120 Decius had prosecuted Opimius for his role in the death of C. Gracchus in 122. The defence attorney, Carbo, argued that Opimius was justified in doing what he did because he was acting on a senatus consultum ultimum at the time. Decius pointed out that the law did not permit a citizen to be put to death without trial. Then in 63 another attempt was made to limit the effects of the senatus consultum ultimum by the tribune Labienus and C. Julius

The bill de capite civis Romani also provided the means through which Clodius' sought revenge against the senate and especially Cicero for their attempts at undermining his political position in the past. The retroactivity of this bill clearly indicated that Clodius sought to exact retribution from them. This bill would do much to weaken the position of Cicero and the senate because on December 5, 63, Cicero, acting on a resolution of the senate which was supported by a senatus consultum ultimum that had been issued on October 22, had five of the Catilinarian conspirators put to death without trial.<sup>4</sup> Cicero, therefore, was clearly open to prosecution under the terms of Clodius' proposed law. Clodius' bill would also be detrimental to the senate because not only did it not

Caesar. Labienus, whose uncle had been killed along with Saturninus, brought the elderly and politically insignificant eques Rabirius to trial on the charge of treason for the part he had played in the death of Saturninus in 100. At that time Rabirius and others were acting on a senatus consultum ultimum. C. Julius Caesar and his kinsman L. Caesar, whose appointment as duumvirs in the case had been secured by Labienus, did not waste any time in showing their attitude towards the senatus consultum ultimum. Before Rabirius had a chance to present his case, he was pronounced guilty by the duumvirs. Cicero, as consul, stepped in and quashed the judicial proceedings. Labienus then brought formal charges against Rabirius before the Assembly of the people. At the new trial Labienus stated that the senatus consultum ultimum did not allow Rabirius to kill Saturninus in defiance of the latter's right to trial and his right of provocatio. Cicero, as one of the defence attorneys, claimed that it did allow Rabirius to do so, for it had been issued for the protection of the people. These judicial proceedings were prevented from going any further when the praetor Metellus Celer ran up the red flag on the Janiculum hill. Since this constituted a sign of distress, the Assembly was dismissed: Cic. De Oratore 2.106, 132; Partitiones Oratoriae 104-105; Rab. 1-4, 10-23, 26, 31, 34-35; Dio 37.26.1-37.27.3; 37.28.4; Livy Epitome 59; Suet. Iul. 12; Vel. Pat. 2.4.4; Gruen, Last Generation, pp. 278-79; C. Wirszubski, Libertas (Cambridge: Cambridge Univ. Press, 1968), pp. 58-61.

<sup>4</sup> Cic. Cat. 1.4; 1.8; Flacc. 102-103; Pis. 14; Sest. 53; Sulla 52; Sallust Cat. 29.1-3; Dio 37.31.2-3; 38.14.4-5.

recognize the senate's right to pass such a resolution in 63, but it also acted as a deterrent to anyone who would seek in the future to justify homicide on the grounds that it was done by virtue of a senatus consultum ultimum. In addition Clodius' measure ignored the senate's decree of 62 which gave immunity from prosecution to those who had participated in the proceedings against the conspirators.<sup>6</sup>

Inasmuch as this bill was directed against Cicero it would encounter no difficulty in securing passage into law. Cicero's activities as consul had been unwelcome to a substantial section of the Roman plebs. For instance, in the third Catilinarian Cicero admits that if Caesar's proposals that the conspirators be imprisoned and that their property be confiscated are adopted, he will have less popular disfavour to fear because Caesar is a popularis.<sup>7</sup> Cicero was taken to task several times for his role in the execution of the five Catilinarians. It was for this reason that the tribune Metellus Nepos, with popular backing, sought to prevent him at the expiry of his term of office from delivering the oath which the consul customarily gave at that time.<sup>8</sup> Cicero, however, managed not only to give the oath, but also to proclaim that through his efforts the republic had been saved. Shortly thereafter Metellus Nepos attempted to bring Cicero to trial for the death of the conspirators. However, it

<sup>5</sup> Cic Sest. 63.

<sup>6</sup> Dio 37.42.1-3.

<sup>7</sup> Cic. Cat. 4.7 -10,20; cf. Plut. Cato 22; Sallust Cat. 51; Suet. Iul. 14.

<sup>8</sup> Dio 37.38.2; Plut. Cic. 23.

is here that the senate stepped in and granted immunity to all those who had taken part in the proceedings against them. In the same year when Cicero was defending P. Sulla, the prosecutor, Torquatus, attempted to undermine Cicero's case by comparing his activities of December 5, 63, to those of a cruel tyrant.<sup>9</sup> The following year Clodius used the same theme to incite the people against Cicero and the senate.<sup>10</sup> Another factor, which indicates that the fate of the five conspirators was unpopular with a large portion of the populace, is that Cicero makes a considerable effort in his speeches to justify their execution.<sup>11</sup>

The bill de capite civis Romani would also secure passage into law because its main provision, which protected the citizen's right to trial, would appeal to the people. Cicero himself attests to the popularity of the bill. While he was in exile Cicero wrote to Atticus that his supporters should not attempt to have the law abrogated because it contained too many popular features.<sup>12</sup> Since this bill was likely to secure passage on its own merits, one must take with a grain of salt Cicero's state-

<sup>9</sup> Cic. Sulla 21, 23, 25-26, 30.

<sup>10</sup> Cic. ad Att. 1.14.5; 1.16.1.

<sup>11</sup> Cic. Flacc. 94-106; Sulla 21-23; 26-32.

<sup>12</sup> Cic ad Att. 3.15.5. In this letter Cicero distinguishes between the two laws, the lex de capite civis Romani and the lex de exsilio Ciceronis. In his speeches, however, he makes no such distinction. He attempts to obfuscate the issue by insinuating that it was the lex de capite civis Romani and not the lex de exsilio Ciceronis which was aimed solely at him. He does this because his departure before the passage of the bill de capite civis Romani was a tacit admission that he would be found guilty if he were brought to trial for his consular deeds: Sest. 25, 53.

ments in his speeches that the Concilium Plebis was packed with Clodian supporters when it and other Clodian legislation were put to the vote.<sup>13</sup>

Although Clodius' bill was likely to be well received he did not leave anything to chance. He held numerous meetings where, with the assistance of his supporters, he incited the people against Cicero.<sup>14</sup> He ensured that these were well attended by issuing edicts which closed the shops.<sup>15</sup> His main topic at these meetings seems to have been Cicero's role in the elimination of the Catilinarian supporters, because he branded Cicero as a tyrant and a destroyer of libertas.<sup>16</sup>

At these gatherings Clodius gave added importance to his measure by claiming that it was approved by the members of the factio.<sup>17</sup> They did not repudiate this claim, because it would not serve their interests at this time to alienate a powerful tribune of the plebs who had just established a solid base of political support among the plebs. In January, 58, two of the praetors, L. Domitius Ahenobarbus and C. Memmius, had referred Caesar's conduct as consul to the senate for discussion.<sup>18</sup> The senate took no action against Caesar. The probable reason for this was that Pompey, Crassus and Caesar could control a majority of the votes

<sup>13</sup> e.g. Cic. Dom 45,80; Red. Sen. 18; Sest. 34,53-57.

<sup>14</sup> Cic. Sest. 42.

<sup>15</sup> Cic. Dom. 54.

<sup>16</sup> Cic. Sest. 109.

<sup>17</sup> Cic. Sest. 39-42.

<sup>18</sup> Cic. Pis. 79; Suet. Iul. 23.

in the senate as a result of their combined auctoritas. Clodius however, was in a position whereby he could successfully pursue an attack on Caesar's consular activities through the Concilium Plebis, if the factio opposed his bill by disclaiming allegations concerning its support for it.

Another reason for the factio's neutrality with regard to Clodius' measure was Cicero's refusal of all offers that had been made during 60-59. At first he had declined the opportunity to be a member of the factio. Then, after Clodius had been transferred to plebeian status, at least partly in retaliation for his remarks at the trial of C. Antonius, he refused various posts which would extricate him from any possible dangers which lay in store for him during Clodius' prospective tribunate. These rejections meant that Cicero intended to remain independent and to stick to his constitutionalist principles. This posed a potential threat to the legislation, which had been passed in the interests of the factio in defiance of the senate, because Cicero might very well take steps to undermine it in an attempt to re-establish the auctoritas senatus. His oratorical ability would make him a force to be dealt with. Pompey, Crassus and Caesar, therefore, were not likely to take any action against the bill of an influential tribune for the sake of one whose previous behaviour towards them was not likely to change.<sup>19</sup>

Caesar and Pompey each had additional reasons for maintaining their neutrality with regard to Clodius' bill. Caesar

<sup>19</sup> Cic. ad Att. 2.3.4; Pis. 79-80; Prov. 25, 40-41, 43; Vel. Pat. 2.45.2.

could not resist Clodius' measure, because if he did so, he would place himself in a very compromising situation. At the trial of Rabirius, Caesar had shown that he was committed to the citizen's right to trial and his right of provocatio. During the debate concerning the fate of the Catilinarian conspirators he had shown himself similarly disposed. If he were now to defy Clodius' bill, he would betray the principles, which he had publicly espoused in 63, and thus deal a severe blow to his dignitas. Clodius, therefore, had employed Caesar's previous political behaviour as a means of securing his acquiescence with regard to the bill.

Pompey's attitude towards this bill was partly determined by the fact that the political amicitia, which he had formed with Cicero, proved to be fruitless. Ever since Pompey had established this amicitia with Cicero in 61, Cicero had been of little use<sup>20</sup>; he had severely criticised Flavius' land bill which was backed by Pompey; he had refused membership in the factio<sup>22</sup>; he had made disparaging remarks concerning the factio at the trials of C. Antonius and Flaccus<sup>23</sup>; he had seemingly failed to assist Pompey in establishing a link with the optimates which would have bolstered Pompey's sagging political position<sup>24</sup>. Pompey, therefore, would not oppose the bill of an energetic tribune like Clodius

<sup>20</sup> Cic. ad Att. 1.16.11; 2.1.6-7.

<sup>21</sup> Cic. ad Att. 1.19.4.

<sup>22</sup> Cic. ad Att. 2.3.3-4.

<sup>23</sup> Cic. Dom. 41; Flacc. 104-105; Suet. Iul. 20.

<sup>24</sup> Cic. ad Att. 2.14.1; 2.23.2

for the sake of a political amicus whose services to him since 61 had been minimal.

Another reason for Pompey's abandonment of Cicero<sup>25</sup> involves the latter's alleged plot to assassinate him. Cicero relates that his political enemies warned Pompey that he was planning to kill him. Pompey's belief in this information also caused him to become estranged from Cicero. In his speeches Cicero is not definite about who was responsible for this. In the In Pisonem he accuses Piso and his associates, while in the Pro Sestio he points his finger at Vatinius<sup>26</sup>. He also states that certain people, whom he refuses to name, were responsible for cooling Pompey's eagerness to be of assistance to him<sup>27</sup>. In his letters, however, Cicero relates that Pompey's behaviour towards him at this time was influenced by Caesar's wishes. Should one of the members of the factio oppose Clodius' bill, Clodius would attack the factio at its most vulnerable point: the legislation which Caesar had passed in the interests of the factio in defiance of the obnuntiatio of Bibulus. As it has been noted

<sup>25</sup> Cic. ad Att. 3.15.4; 7.3.4; 8.3.3; 9.5.2; Dom. 29-30; cf. Plut. Cic. 31; Pomp. 46.

<sup>26</sup> Vatinius would have done this at least partly out of gratitude to Clodius. Clodius had assisted Vatinius when he was brought before the praetor Memmius in February or March 58 for the illegalities committed during his tribunate. Vatinius sought to avoid standing trial by appealing to Clodius for auxilium. Clodius responded to his appellatio and broke up the trial. Clodius probably did this in order to exemplify his autoritas; to prevent optimates like Memmius from persecuting the popularis tribune of 59; to show his concern for the right of appellatio which formed part of the citizen's libertas: Cic. Sest. 135; Vat. 33.34; E. Badian, "The Attempt to Try Caesar," In Polis and Imperium: Studies in honour of Edward Togo Salmon (Toronto, Hakkert, 1974), p. 158, n. 40,

<sup>27</sup> Cic. Dom. 28; Pis. 75-76; Sest. 67, 133.

above, Clodius was in a position whereby he could successfully do so.<sup>28</sup>

Pompey did not openly desert Cicero. When a delegation of senators, which consisted of the praetor L. Lentulus, L. Torquatus the elder, Quintus Sanga, and M. Lucullus, went to his Alban villa and asked that he take some action against Clodius on Cicero's behalf, he replied that he would only take up Cicero's cause if it was officially espoused by the consuls.<sup>29</sup> He then sent the embassy to the consuls so that it might obtain their support for Cicero. Crassus adopted a similar attitude.<sup>30</sup> The consuls, however, did not assist Cicero: Clodius had

<sup>28</sup> Cic. ad Att. 7.3.4; 7.7.6; 8.3.3; 9.5.2; 10.4.3.

<sup>29</sup> Cic. Pis. 77-78.

<sup>30</sup> Cic. Sest. 40-41; cf. Cic. ad Fam. 14.2.2; ad Quint. 1.3.7; Dio 38.17.3; Plut. Cic. 33; Cras. 13. The only piece of evidence which would give a clear indication of Crassus' attitude towards Cicero at this time is hopelessly corrupt. This is in ad Att. 2.22.5. This passage can be amended to signify that Crassus is either friendly or hostile to Cicero in 59. Shackleton Bailey gives this rendering of the passage: "sed totum est in eo, si antequam ille ineat magistratum. puto Pompeium Crasso urgente ~~xxx~~ si tu aderis, qui per βούλιον ex ipso intellegere possis qua fide ab illis agatur, nos aut sine molestia aut certe sine errore futuros;": Shackleton Bailey, Cicero's Letters to Atticus, I, 262. W. S. Watt gives the following reading: "... Puto Pompeio et Crasso urgente si tu aderis...": W. S. Watt, M. Tulli Ciceronis Epistulae (Oxford: Clarendon Press, 1965), II, 81. Shackleton Bailey suggests that some words like vacillare, sed dropped out after "urgente". With respect to Watt's rendering of passage he thinks that it is graphically neat but historically unsatisfactory. He wonders why Crassus would put pressure on Clodius for the sake of Cicero and points out that Crassus was not usually a friendly influence by alluding to ad Fam. 14.2.2 which Cicero wrote from exile. In this letter Cicero states: "id erit firmum si Pompei voluntas erit; sed Crassum tamen metuo." Shackleton Bailey also believes that Crassus would not assist Cicero without first getting Caesar's approval. I would disagree with this interpretation on the grounds that Crassus with his formidable auctoritas was answerable to no one including Caesar. There is also the fact that at this time there is no solid evidence to show that Caesar was hostile to

secured their services for himself through the deal concerning the provinces.

Clodius had made a deal with the consuls whereby he would pass laws granting them important proconsular provinces, large numbers of troops and large sums of money for expenses in return for their cooperation in bringing about Cicero's downfall. Cicero alleged that Clodius also received bribes and bands of slaves from the consuls.<sup>31</sup> Furthermore, the bill de provinciis was to be put to the vote at the same time as the bill de capite civis Romani in order to prevent any double-cross on the part of the consuls.<sup>32</sup>

L. Piso received Macedonia while A. Gabinius was assigned Cilicia. Later, however, Clodius passed another law which gave Gabinius Syria instead of Cilicia. Cilicia was given to a praetor by yet another law.<sup>33</sup> In allotting these provinces to Piso and Gabinius, Clodius followed the practice established by Gabinius, Manilius and Vatinius. These had all passed laws through the Concilium Plebis, which conferred extraordinary commands on individuals, in defiance of the lex Sempronia, which enacted that the senate should determine which provinces were

Cicero. As for the allusion to ad Fam. 14.2.2, it can be countered with ad Quint. 1.3.7 where Cicero tells Quintus to seek the aid of Crassus, should there be any trouble after his return from Asia. In addition to this, the only piece of evidence which shows Crassus' disposition to Cicero before his exile is ad Att. 1.14.4 where Cicero depicts Crassus as praising his consular exploits.

<sup>31</sup> Cic. Dom. 55; Har. 58; Pis. 37; Prov. 7; Sest. 24.

<sup>32</sup> Cic. Pis. 21; Red. Sen. 18; Sest. 24-25.

<sup>33</sup> Cic. Dom. 23, 25; Sest. 55.

to be assigned to the consuls who would be elected for the following year.<sup>34</sup>

The fact that Gabinius and Piso owed their election as consuls to Pompey and Caesar also played a role in determining their disposition to Cicero.<sup>35</sup> Pompey and Caesar had taken a neutral stand with regard to Clodius' bill. This gave the consuls a free hand to make their deal with Clodius.

The bargain concerning the provinces need not be the only explanation for the opposition which the consuls offered to Cicero after the promulgation of Clodius' bill. Their hostility may have also resulted from his role in the execution of the Catilinarian conspirators. Gabinius, for instance, seems to have felt a genuine sympathy for the five men who were executed. As consul he held a meeting in which he vigorously condemned those who had been responsible for their death.<sup>36</sup> Piso, on the other hand, was related to one of the five conspirators: he was the cousin of Cethegus. This would provide grounds for Piso's hostility to Cicero.<sup>37</sup>

Gabinius may have had another motive besides the one mentioned above. At the meeting, which he held, he especially took the Roman knights to task for their role in the death of the conspirators. Besides this he banished Lucius Aelius Lamia, one

<sup>34</sup> Cic. De Lege Manilia 44, 58; Vat. 35-36; Dio 36.43.1-2.

<sup>35</sup> App. C. W. 2.14; Cic. ad Att. 2.9.2; Plut. Cato 33; Pomp. 48.

<sup>36</sup> Cic. Sest. 29-30; cf. Cic. Dom. 62; Pis. 20; Red. Sen. 10-11.

<sup>37</sup> Cic. Red. Sen. 10.

of the leading members of the knights, to a distance of two hundred miles from Rome because of his support of Cicero. If we combine these actions with the fact that he passed a law forbidding provincials to borrow money at Rome and the fact that in his proconsular province he dealt harshly with the publicani, it can be safely said that there was no love lost between Gabinius and the knights.<sup>38</sup> This being the case, he would relish the idea of bringing about the downfall of one of their champions and ex-members: Cicero.

The consuls cooperated fully in Clodius' attempt to bring Cicero's downfall by means of the bill de capite civis Romani.<sup>39</sup> This would have come as an unexpected blow to Cicero, because he had some reason to expect their support. In his speeches Cicero claims that he was related to Piso through his son-in-law and that he had taken up the brief of Gabinius on a capital charge.<sup>40</sup> Furthermore, the consuls had displayed a favourable attitude to Cicero in late 59 and early 58.<sup>41</sup>

After the promulgation of the lex de capite civis Romani, the consuls opposed all attempts to have it rejected. For instance, when the senate entreated them to bring in a motion

<sup>38</sup> Cic. ad Att. 5.21.12; Pis. 41; Red. Sen. 12; Sest. 28-29, 52.

<sup>39</sup> Cic. Pis. 17; Red. Sen. 4,32; Plut. Cic. 31.

<sup>40</sup> Cic. Red. Quir. 11. There is no evidence of a trial before 58 in which Cicero defended Gabinius. Cicero refers to his legal activities on behalf of Gabinius with the words: "causam capitis receperam." This can be taken to mean that Cicero had undertaken to defend Gabinius but that the case had never come to trial: cf. Gruen, Last Generation, p. 527.

<sup>41</sup> Cic. Prov. 42; ad Quint. 1.2.16; Red. Sen. 17; Sest. 20.

that would allow it to take up Cicero's cause, they refused to do so.<sup>42</sup> An embassy of knights, which was led by Q. Hortensius, and the group of senators, which had visited Pompey, received the same treatment when they besought them to assist Cicero.<sup>43</sup> When the senate, on the motion of the tribune L. Ninnius Quadratus, had voted to put on mourning as a sign of sympathy for Cicero and of opposition to Clodius' bill, the consuls reacted by issuing an edict which forbade it.<sup>44</sup> By another edict Gabinius ordered all Latins out of Rome in order to deprive Cicero of any assistance which they might render him.<sup>45</sup> In addition to these measures, the consuls gave their moral support to Clodius' bill by publicly censuring the proceedings of December 5, 63.<sup>46</sup>

Clodius himself dealt harshly with those who sought to put a stop to his bill. On more than one occasion he used his gangs to attack or intimidate Cicero and the senators, knights and young aristocrats who had taken up his cause. This discouraged any further attempts to have his bill rejected.<sup>47</sup>

After Clodius had stifled all opposition to his bill, it was approved along with the bill de provinciis by the Concilium

<sup>42</sup> Cic. Red. Sen. 16; Sest. 25-26.

<sup>43</sup> Cic. Pis. 77-78; Sest. 27, 30; Dio 38.16.3.

<sup>44</sup> Cic. Pis. 17-18; Red. Sen. 12; Sest. 26, 32.

<sup>45</sup> Cic. Sest. 30.

<sup>46</sup> Cic. Dom. 55; Red. Sen. 13; Sest. 28, 33; Dio 38.16.6.

<sup>47</sup> App. C. W. 2.15; Cic. Dom. 96-97; ad Fam. 1.9.13; Milo. 37; Red. Quir. 13; ad Quint. 1.3.5; 1.4.1; Sest. 27, 54; Dio 38.16.2-5; Plut. Cic. 30.

Plebis during the third week of March, 58.<sup>48</sup> Shortly before the bill de capite civis Romani was to be put to the vote, Cicero anticipating its passage into law, left Rome.<sup>49</sup> His position was too precarious for him to remain. Since Clodius' law was especially directed against him, he would be the first to be charged under its terms. His conviction was almost certain, for he would have to face the same opponents with whom he and his adherents had unsuccessfully contended in their bid to prevent Clodius' bill from becoming law.

After his return from exile Cicero attempted to justify his flight from Rome. He said that if he had stayed, he and his adherents would have had to fight the forces of Clodius and the consuls. He also insinuated that he would have had to contend with Caesar and his proconsular army.<sup>50</sup> In this argument Cicero assumes that large scale violence would have been used against him. However, in a letter from exile he points out that he did

<sup>48</sup> For the chronology of Cicero's departure see Shackleton Bailey, Cicero's Letters to Atticus, II, 227-232.

<sup>49</sup> Cic. Sest. 53. Cicero later alleged in his letters that his departure from Rome resulted from ill-founded panic and the treacherous advice of his friends. He believed that he should have remained and faced whatever measures were to be taken against him: ad Att. 3.7.2; 3.8.4; 3.10.2; 3.13.2; 3.15.4,7; 4.1.1. However, there was good reason to panic and to heed the advice of his friends. In a letter to Quintus, Cicero admits that his position was untenable: "Quid tu igitur? inquires. Quid? multa convenerunt, quae mentem exturbarent meam-subita defectio Pompei, alienatio consulum, etiam praetorum, timor publicanorum, arma.": ad Quint. 1.4.4.

<sup>50</sup> Cic. Dom. 5,97,131; Har. 47; Red. Sen. 6,32-33; Sest. 36,39,41-43,45,52. Caesar was in no position to interfere at this time because the bulk of his troops were stationed at Aquileia and the forces which he had with him were probably only recruits: Brunt, Manpower, p. 691; Lintott, Greece and Rome. 14 (1967), 165, 165, n. 2.

not anticipate that this type of violence would be employed against him after the passage into law of the bill de capite civis Romani.<sup>51</sup> Several years later, Laterensis, the prosecutor in the trial of Plancius, took Cicero to task for his exaggerated explanation of his departure from Rome. Laterensis asserted that there had been no cause to apprehend either murder or conspiracy at that time.<sup>52</sup>

Clodius did not waste any time in bringing about Cicero's total ruin. Shortly after Cicero had left Rome, he hastily promulgated the bill de exsilio Ciceronis. The fact that he later added an amendment to the bill indicates that it was promulgated in a hurry.

This bill enacted that Cicero be interdicted from fire and water immediately after its passage into law. The reason given for the infliction of this penalty was that Cicero had acted on an invalid senatorial resolution when he had the five Catilinarian conspirators executed. The exact wording of this clause of the bill was: "velitis, iubeatis ut M. Tullio aqua et igni interdictum sit quod M. Tullius falsum senatus consultum rettulerit."<sup>53</sup> Clodius subsequently added an amendment to the bill which outlawed Cicero to a distance of 400 miles from Rome.<sup>54</sup> The bill contained other harsh measures such

<sup>51</sup> Cic. ad Att. 3.15.5.

<sup>52</sup> Cic. Planc. 4, 71, 86-87, 95.

<sup>53</sup> Cic. Dom. 47, 50.

<sup>54</sup> Cic. ad Att. 3.4; cf. Dio 38.17.7 and Plut. Cic. 32 where the distance is given as five hundred miles.

as the confiscation of Cicero's property and the infliction of severe penalties upon those who harboured him within the limits of his outlawry.<sup>55</sup> Clodius also attached sanctions to his measure so that it might not be voided by the senate or a legislative assembly.<sup>56</sup>

Clodius was not the first to exile a political opponent through this type of law. In 123 C. Gracchus passed a measure of outlawry against P. Popilius, the consul of 132, who had presided over the court of enquiry which condemned the adherents of T. Gracchus. Then in 100 Saturninus used the same tactic against Q. Metellus when he refused to swear obedience to his agrarian law.<sup>57</sup> Despite these precedents it was later argued that Clodius' law was invalid on the grounds that all matters concerning the rights of individuals could only be dealt with by the Comitia Centuriata and that Cicero had been condemned without trial.<sup>58</sup>

The alleged unconstitutionality of Clodius' law did not prevent it from being effective. When Cicero read the bill, he immediately went into exile and did not return to Rome until the law was abrogated by a vote of the Comitia Centuriata on August 4, 57.<sup>59</sup> Cicero was not the only one to take this measure

<sup>55</sup> Cic. ad Att. 3.4; Dom. 51; ad Fam. 14.4.2; Planc. 97.

<sup>56</sup> Cic. ad Att. 3.12.1; 3.23.2; Red. Sen. 8.

<sup>57</sup> Cic. Dom. 82; Plut. Marius 29.

<sup>58</sup> Cic. ad Att. 3.15.5; Sest. 73-74; for Cicero's view of the law, see Dom. 33,43; Leg 3.44-45; Sest. 65.

<sup>59</sup> Cic. ad Att. 3.1; 4.1.4; Sest. 128-131.

seriously, for it was the reason why the propraeor of Sicily, Gaius Vergilius, and the propraeor of Macedonia, L. Apuleius, refused to assist him while he was in exile.<sup>60</sup>

The lex de exsilio Ciceronis designated Cicero as a public enemy. Clodius reinforced this notion by the action which he took with regard to Cicero's property. Shortly after the bills de capite civis Romani and de provinciis were passed into law, Clodius' gangs looted and destroyed not only his house on the Palatine, but also his villas at Antium and Formiae.<sup>61</sup> Clodius' destruction of Cicero's house on the Palatine is especially significant because the houses of public enemies had always been razed to the ground in order that no memory of them should remain.<sup>62</sup>

This was not the only measure which Clodius took in order to depict the civil status of Cicero. Cicero's house was situated on the side of the Palatine which faces north-east. The houses of Q. Seius, Clodius, Metellus Celer and Quintus Catullus were to the east of it, while to the west of it there was the porticus Catuli. These dwellings were probably placed below the Clivus Victoriae and above the Via Nova.<sup>63</sup> Under the terms of the lex de exsilio Ciceronis Clodius was empowered to confiscate Cicero's property and put it up for sale. Clodius

<sup>60</sup> Cic. Planc. 95,99; Schol. Bob. 153, Stangl; Plut. Cic. 32.

<sup>61</sup> Cic. ad Att. 4.1.3; Pis. 26; Red. Sen. 18; Sest. 53-54; Dio 38.17.6; Plut. Cic. 33.

<sup>62</sup> Cic. Dom. 101, 114.

<sup>63</sup> W. Allen, "Cicero's House and Libertas," T.A.P.A., 75 (1944), 1-3.

himself managed to buy the site on the Palatine through a middleman named Scato.<sup>64</sup> He also purchased the mansion of Seius.<sup>65</sup> After he had effected these transactions, he had the porticus Catuli demolished. He used its site for the construction of a promenade. On an adjoining section of Cicero's property he erected a shrine to Libertas.<sup>66</sup> Afterwards the pontiff L. Pinarius Natta, Clodius' brother-in-law, dedicated both the promenade and the shrine. This would attach a religious sanctity to the site which would prevent anyone from subsequently changing its use.<sup>67</sup>

Clodius' erection of a shrine to Libertas on Cicero's property would symbolize the freedom from the supposed tyranny which Cicero had exercised in 63 by the execution of the conspirators. The significance of this act would be understood by all, because Clodius and others had constantly taken Cicero to task for his behaviour as consul.

At the same time the shrine of Libertas would be representative of the laws which Clodius had passed in order to bolster those civil rights which formed part of the citizen's libertas.<sup>68</sup> The lex de capite civis Romani had confirmed the citi-

<sup>64</sup> Cic. Dom. 107, 116.

<sup>65</sup> Cic. Dom. 115; Har. 30.

<sup>66</sup> Walter Allen agreeing with R. G. Nisbet remarks that Cicero never calls the structure cella or sacellum or templum Libertatis and that the only time it is referred to as a temple is in Leg. 2.42 where it is termed a templum Licentiae. The word which Cicero most often uses to depict it is monumentum: Allen, T.A.P.A., 75 (1944), 4; R. G. Nisbet, ed., De domo sua (Oxford: Clarendon Press, 1939), p. 207.

<sup>67</sup> Cic. ad Att. 4.2.3-5; Dom. 51, 103, 108-110, 115-118, 121, 134, 137; Har. 58; Mur. 73.

<sup>68</sup> Clodius passed another law whose date is uncertain and

zen's right to trial and his right of provocatio, while the lex de collegiis had guaranteed the right of association.

There is another meaning which Clodius' shrine to Libertas may have had. During 59 and 58 Clodius showed himself to be hostile to the factio. His shrine to Libertas, therefore, may very well have also signified freedom from the political regnum which the factio had established during the previous year.

Clodius was chiefly responsible for Cicero's exile<sup>69</sup>. His desire for revenge against the senate and especially Cicero for their previous attempts to destroy his political career had

which seems to have been connected with libertas. This was the lex de iniuriis publicis. Cicero states that it was passed in favour of Menulla of Anagnia. In gratitude to Clodius for this law Menulla erected a statue to him in the sanctuary of Libertas. This strongly suggests that Clodius had done something through his law to protect the civic rights of Menulla: Cic. Dom. 81.

<sup>69</sup> This interpretation of Clodius' role in Cicero's exile is not shared by others. S. I. Oost believes that in exiling Cicero, Clodius was acting as the agent of the factio: S. I. Oost, "Cato Uticensis and the Annexation of Cyprus," Classical Philology, 50 (1955), 98. C. Babcock also interprets the law against Cicero as a measure taken for the factio. He adds that one does not need to assign too much independence of action to Clodius to point out that this step was also undertaken within the framework of Clodius' own plans. Babcock, A.J.P., 86 (1965), 26. L. G. Pocock, however, thinks that Caesar used Clodius to exile Cicero in order that he might not seduce Pompey to the constitutionalist cause: L. G. Pocock, "Clodius and Acts of Caesar," Classical Quarterly, 19 (1925), 61-63. M. Gelzer, F. B. Marsh, M. Cary, H. H. Scullard and L. R. Taylor also consider that Clodius removed Cicero from Rome at the instigation of Caesar. Gelzer, Caesar, p. 99; Marsh, History of the Roman World, p. 188; Cary, "The First Triumvirate," p. 525; H. H. Scullard, From the Gracchi to Nero, 3rd ed. (London: Methuen & Co., 1970), p. 121; L. R. Taylor, Party Politics in the Age of Caesar (Berkeley: University of California Press, 1966), p. 138. A. W. Lintott takes a more cautious view concerning Clodius' role in Cicero's exile. He maintains that it is impossible to ascertain whether or not the factio assisted Clodius in exiling Cicero. He states that the behaviour of Pompey, Crassus and Caesar was as symptomatic of neutrals unwilling to offend an ally as of enemies devoted to the overthrow of Cicero: Lintott, Greece and Rome, 14 (1967), 165.

been one of his main reasons for seeking the tribunate. He partially obtained this revenge through the lex de capite civis Romani, because not only did it deal a severe blow to the au-toritas senatus, but it also made Cicero liable to prosecution for his consular deeds. At the same time, however, the lex de capite civis Romani was a responsible piece of legislation, for it reaffirmed the citizen's right to trial and his right of provocatio. The measure encountered no serious opposition. The factio adopted a neutral stand with regard to the bill; it was not prepared to alienate a tribune, who had a solid base of political support among the plebs, for the sake of one whose previous behaviour had shown him to be unsympathetic to its interests. In addition to this, Caesar could not resist Clodius' proposed law without betraying the precepts which he had publicly espoused in 63. Pompey, on the other hand, maintained a non-belligerent attitude towards the bill because Cicero was an ally no longer worth saving. The rumours pertaining to Cicero's alleged plot to have him assassinated also played a role in determining his disposition towards it. Nor would the consuls attempt to have the bill rejected; Clodius had secured their services through the bill de provinciis. With their assistance Clodius neutralized all efforts to cancel his motion. As a result of this Cicero lost all hope and left Rome before the measure was passed into law. Shortly thereafter Clodius completed his revenge against Cicero through the promulgation of the bill de exilio Ciceronis. Clodius emphasized Cicero's civil status by uniting his house in the same fate as those of other public enemies. Then upon its site he erected a shrine to Libertas

which symbolized not only the freedom from Cicero's so called political tyranny, but also the citizen's libertas which he had enhanced through the lex de collegiis and the lex de capite civis Romani.

## CHAPTER IV

## CLODIUS' REMAINING LEGISLATION

It had traditionally been the senate's prerogative to deal with foreign affairs. Clodius had undermined the senate's rights in this field by means of the lex de provinciis. He further weakened the senate's authority in this area through three other bills that were approved by the Concilium Plebis. These were the bill de Cypro, the bill enacting that Cato carry out the provisions of the bill de Cypro and the bill de rege Brogitaro.<sup>1</sup>

The bill de Cypro was the first of these to become law. It enacted that Cyprus be annexed<sup>2</sup>; that its king be deposed;

<sup>1</sup> The lex de Cypro and the law concerning Cato seem to have been promulgated and passed within the same time period as the lex de capite civis Romani and the lex de provinciis because Plutarch states that shortly before Cicero left Rome Cato knew that the task of annexing Cyprus had already been assigned to him. Plutarch, however, does not mention whether or not the law entrusting Cato with the provision of the lex de Cypro had yet been passed; Plut. Cato 34-35. The only other piece of evidence pertaining to the passage of the bill is Sest. 60 where Cicero relates that Cato was still in Rome after his departure: cf. Cic. ad Att. 3.15.2 cf. Oost, Classical Philology, 50 (1955), 101, 110-11, n. 29.

<sup>2</sup> As Badian points out Cicero and the best of the later sources show that Cato's job on Cyprus did not involve its organization into a province. The only two sources which indicate that Cyprus was to be organized into a province by Cato are Livy Per. 104 and App. C. W. 2.23. Badian discounts both of these sources on the grounds that they are inaccurate: E. Badian, "M. Porcius Cato and the Annexation and Early Administration of Cyprus," J.R.S., 55 (1965), 112-13.

that all royal property be confiscated and sold; that certain Byzantine exiles<sup>3</sup> be returned to their city.<sup>4</sup>

<sup>3</sup> The inclusion of this unrelated clause made Clodius' law technically illegal under the terms of the lex Caecilia Didia which prohibited omnibus laws. In Dom. 52-53 Cicero shows that Clodius's justification for the inclusion of the clauses dealing with the Byzantines and Cyprus in the same law is that he entrusted the execution of both measures to Cato. S. I. Oost agrees: Classical Philology, 50 (1955), 109, n. 11. Badian has an equally plausible explanation of Dom. 52-53. He thinks that there were three laws: one for Cyprus, one for the Byzantines and one making Cato responsible for the execution of the provisions of these laws. According to Badian the infraction of the lex Caecilia Didia would be that Clodius had entrusted these two tasks to Cato by means of a single law: Badian, J.R.S. 55 (1965), 116.

<sup>4</sup> Cic. Dom. 20, 52, 65; Sest. 56-57, 62, 84; Plut. Cato 34-35; Dio 38.30.5. There are at least two other clauses which may have been included in this law. Firstly it may have provided Ptolemy with a priesthood at Paphos in compensation for the loss of his throne. After he had been assigned the task of annexing Cyprus, Cato offered this position to Ptolemy. Cato probably would not have made this offer unless it was included in the provisions of the law. If he exceeded the limitations placed on his propraetorian imperium by Clodius' law, he would leave himself open to prosecution on the charge of maiestas: Plut. Cato 35. Secondly it may have included a clause which united Cyprus to Cilicia and thus formed a new provincial unit. The evidence for the union of Cyprus to Cilicia is the fact that in 56, Lentulus Spinther, the consul of 57, was governing both Cilicia and Cyprus: Cic. ad Fam. 1.7.4. Under the terms of the Sempronian law, this proconsular command would have been chosen for one of the consuls of 57 by the senate in 58. Therefore, it is possible that Clodius may have included a provision in the lex de Cypro which joined Cyprus and Cilicia. However, it is equally possible that the senate in designating the proconsular commands for 56 had done so. The silence of Cicero supports the latter view. If Clodius had inserted a provision in the law which created a new provincial command, surely Cicero would not have hesitated to berate Clodius for this further infringement of the senate's prerogative of dealing in foreign affairs. Badian supports the view that Clodius was responsible for the attachment of Cyprus to Cilicia. According to his view, the fact that in 56 Cilicia and Cyprus were under the administration of a single governor indicates that this arrangement was foreseen when Cyprus' annexation was planned. He believes that this union is a sure sign that Clodius had at first intended to provide Gabinius with a suitable proconsular command: the governorship of Cilicia along with the annexation would without doubt appeal to Gabinius. As another argument for this interpretation Badian states that Cato had only been chosen for the mission sometime after the passage of the law concerning Cyprus. Clodius, therefore, would have had

Clodius was able to bring about the annexation of Cyprus because in 80 Ptolemy Alexander had supposedly bequeathed both

someone else in mind for the job: Gabinus. Badian points out that at the last moment it was decided that Cato should be the one to go to Cyprus because unlike the debt-ridden Gabinus he would not embezzle any money. This money was desperately needed for the treasury which had been seriously depleted by Caesar's agrarian legislation and Clodius' grain law. With respect to the decision to send Cato to Cyprus Badian comments that it is not known whether this was the decision of Clodius or his backers, "the three dynasts". He conjectures the latter because Gabinus like Clodius "meekly" obeyed. As a result of this change Gabinus would have been given Syria instead of the proconsular command from which the annexation of Cyprus was now removed: Badian, J.R.S., 55 (1965), 116-18. There are several objections to this reconstruction of the state of affairs surrounding the annexation of Cyprus. Firstly, as it is shown above, the senate and not Clodius may have united Cyprus to Cilicia. Secondly, if Clodius had already passed the lex de Cypro, did he intend to give Gabinus the power of executing its provisions by one law and to give him the governorship of Cilicia by yet another law? Thirdly, there is the fact that Gabinus was later given Syria instead of Cilicia. This need not necessarily imply that he was being compensated for the loss of the annexation of Cyprus in his proconsular command. Gabinus may simply have wished to obtain a more lucrative province than Cilicia in return for his services. The language of Cicero despite its invective shows that Gabinus sought and was not given Syria in exchange for Cilicia: Cic. Dom. 23. Fourthly, Clodius in passing the lex de Cypro at the beginning of 58 indicated that he wanted to secure the money, which would come from the annexation of Cyprus, as quickly as possible in order to offset the costs of his grain law. He would, therefore, have had no intention of recovering this only after Gabinus' term as consul had expired. Fifthly, as I have attempted to prove, it is extremely doubtful that Clodius "meekly" obeyed anyone in 58, including the factio. Finally, Badian claims that Clodius chose Cato after Gabinus had been disposed of in order to ensure that all of the money from Cyprus reached the treasury. When Clodius had passed the lex frumentaria he must have been preoccupied with recovering as much money as possible from Cyprus. This money would insure the continuation of the grain dole which was his main source of popularity. He would certainly not jeopardize this program by putting Cyprus in the hands of a proconsul who would seek to recover the money he had spent for his election. Cato, therefore, must have been Clodius' first and only choice. Cato's honesty would serve as certain means of furthering Clodius' political career.

Cyprus and Egypt to Rome in his will.<sup>5</sup> Ptolemy Auletes, who succeeded Ptolemy Alexander II in Egypt, had exempted himself from the terms of this will by purchasing his recognition as the lawful ruler of Egypt and as a socius to Rome from Pompey and Caesar in 59.<sup>6</sup> Ptolemy of Cyprus had not done so. Therefore, he was open to the proceedings which Clodius took against him.<sup>7</sup>

One reason which was given by Clodius for the action taken against Ptolemy was that he had assisted the pirates. This reason was plausible, for Clodius could charge Ptolemy with having done little in the way of helping him when he was held for ransom by the pirates in late 67 or early 66.<sup>9</sup>

There was a more important reason for this law than revenge. The lex frumentaria had put a great strain on the treasury. In 56 Cicero claimed that the corn dole took up a fifth of the state's revenues. Clodius' lex de Cypro would alleviate this situation.<sup>10</sup> The money, which would come from the sale of Ptolemy's property,<sup>11</sup> would do much to offset the costs in-

<sup>5</sup> App. C. W. 1.102; R. H. 9. IV; Cic. De Lege Agraria 1.1; 2.41-44.

<sup>6</sup> Suet, Iul. 54. This measure was later ratified by the senate; Cic. Sest. 57.

<sup>7</sup> Cic. Dom. 20; Sest. 57.

<sup>8</sup> Schol. Bob. 133, Stangl; however, cf. Cic. Flacc. 30.

<sup>9</sup> App. C. W. 2.23; Dio 38.30.5; Strabo 14.684.

<sup>10</sup> S. I. Oost adopts a view similar to Badian's with regard to Clodius' role in the deposition of Ptolemy as king. He holds that the factio used Clodius to depose Ptolemy because, unlike his brother, he refused to purchase Roman recognition of his position from it: Oost, Classical Philology, 50 (1955), 99; for Badian's view see above, p. 86, n. 4.

<sup>11</sup> Cato obtained 7000 talents through the sale of the royal property; Plut. Cato 38.

curred by the distribution of free wheat.<sup>12</sup> This would to a certain extent ensure the continuance of a program through which Clodius had obtained a great amount of popularity.

The lex de Cypro also contained a clause pertaining to the reinstatement in their city of certain Byzantines who had been exiled as a result of their conviction on capital charges. Clodius included this clause because he had probably been bribed to do so by the exiles.<sup>13</sup> The upkeep of his gangs and his network of collegia was costly. He, therefore, would have welcomed the opportunity to refill his coffers. Clodius likely gave a reputable reason for the inclusion of this clause in the law. Perhaps he justified it by claiming that the Byzantine exiles had been unjustly condemned. This would have been in keeping with the policy which he had pursued through the lex de capite civis Romani and the lex de collegiis.

Clodius' next law ordained that M. Cato carry out the provisions of the lex de Cypro as pro quaestore pro praetore<sup>14</sup>

<sup>12</sup> E. Badian points out that in adopting this measure Clodius was following the precedent which had been established by the senate in 75-74. At that time the senate had sent the quaestor Cornelius Lentulus Marcellinus to reorganize the finances of the province of Cyrene in order that a sufficient amount of money would be provided to relieve the famine which was causing widespread unrest among the populace. It is this money which enabled the consuls of 73 to pass the lex Terentia Cassia which allowed for the purchase of wheat from Sicily and its distribution at a reasonable price at the rate of five modii per man: E. Badian, Roman Imperialism in the Late Republic, 2nd ed. (Oxford: Blackwell, 1968), pp. 35-37, 76.

<sup>13</sup> Cic. Dom. 129; Har. 59; see below, p. 93, n. 30.

<sup>14</sup> Velleius Paterculus relates that Cato was sent to Cyprus as a quaestor: Vel. Pat. 2.45.4. E. Badian remarks that this must signify that Cato was sent to Cyprus in the capacity of a proquaestor because proquaestors in literary sources are spoken of as quaestors and because a magistrate such as a quaestor

with the assistance of a quaestor<sup>15</sup>. Clodius used this law to remove Cato from Rome because he posed a definite threat to his tribunician acta<sup>16</sup>. Cato had constantly opposed Clodius. In 73 he had berated him so severely for his accusations against the Vestals that he was compelled to leave the city<sup>17</sup>. Then in 61 he had played a leading role in the proceedings taken against Clodius for his alleged conduct at the Bona Dea sacrifice<sup>18</sup>. Cato, therefore, had been a formidable adversary. If he were allowed to remain in Rome he would express his animosity for Clodius by assailing his tribunician deeds. Before his de-

could not be appointed by a privilegium whereas a promagistrate could be. Badian also shows that Cato was only given the right to use his ius praetorium should the king offer resistance: Badian, J.R.S., 55 (1965), 108-10.

<sup>15</sup> Cic. Dom. 20-22; Sest. 60,62; Dio 38.30.5; Plut. Cato 34; Pomp. 48. According to Vel. Pat. 2.45.4 Cato was assisted by a quaestor. Oost believes that this is contradicted by ad Fam. 13.48 where Cicero hails Fufius as the first quaestor of Cyprus: Oost, Classical Philology, 50 (1955), 110, n. 26. Badian takes a different view of this letter. He indicates that Cicero in this letter is only stating that Fufius was the first quaestor on the island inasmuch as he was the first to fulfill a certain task which would be a precedent for other quaestors to follow: Badian, J.R.S., 55 (1965), 112-13. Plutarch mentions that two assistants were appointed to help Cato and that one of them was a client of Clodius: Cato 34. However, in describing Cato's activities on Cyprus, Plutarch makes no further mention of these two. Velleius' account is more probable. I incline to agree with Badian who remarks that Plutarch's story of the two scribae, one of whom was a thief and the other a client of Clodius, smacks of rhetorical romance: Badian, J.R.S., 55 (1965), 109, n. 11.

<sup>16</sup> W. C. Scott maintains that the factio assigned Clodius the task of promoting Cato to Cyprus because he would interfere with its plan for the state: W. C. Scott, "Cato and Catullus," Classical Philology, 64 (1960), 29. M. Gelzer, however, thinks that in expelling Cato from Rome Clodius was acting on Caesar's orders; Gelzer, Caesar, p. 99.

<sup>17</sup> Plut. Cato 19.

<sup>18</sup> Cic. ad Att. 1.13.3.

parture for Byzantium and Cyprus he had already given an indication of his disposition to Clodius' legislation by condemning the lex de provinciis<sup>19</sup>. Clodius was wise to expel him before he could offer any more resistance to his legislation, because Cato had shown by his past behaviour the extremes to which he would go in order to prevent the laws of his political adversaries from being passed. For instance, in 62 when Metellus Nepos was about to put a bill concerning Pompey's recall to Rome to deal with the Catilinarian forces, Cato stopped him from doing so despite the armed resistance of his retainers<sup>20</sup>. Then in 59 he opposed Caesar's legislation so vigorously that Caesar had him arrested by a tribune<sup>21</sup>. This type of behaviour combined with his hostility for him made it essential for Clodius to put Cato out of the way<sup>22</sup>.

Clodius' law concerning Cato provided a suitable means of removing Cato from Rome. Several factors induced Cato to obey the law. This law conferred an honourable mission upon him. If he were to refuse, he would seriously undermine his dignitas. His refusal would also probably cause Clodius to take some sort of retaliatory measure against him<sup>23</sup>. On the

<sup>19</sup> Cic. Dom. 22; Sest. 60.

<sup>20</sup> Cic. Sest. 62; Plut. Cato 26-27; Schol. Bob. 134, Stangl.

<sup>21</sup> Gellius 4.10.8; Plut. Caes. 14; Cato 33; Suet. Iul. 20.

<sup>22</sup> Clodius' approval of the letter, which he allegedly received from Caesar, points out clearly that he regarded Cato as an obstacle to his tribunate, because in that letter Caesar congratulates him on having disencumbered his tribunate of M. Cato: Cic. Dom. 22.

<sup>23</sup> Cic. Sest. 62-3.

other hand, his efficient administration of the island and the money<sup>24</sup>, which he would bring to the treasury as a result of the sale of the royal property, would do much to increase the Romans' opinion of him. In addition to this there was the fact that Cato was interested in provincial administration<sup>25</sup>. However, the most important factor which would have made him comply with the law was that one of his main political and moral precepts had always been adherence to the letter of the law<sup>26</sup>.

Clodius' law had a far more reaching effect than Cato's temporary expulsion from Rome; it made Cato a reluctant defender of his tribunate, because any attack on the legality of Clodius' tribunate was also an attack on the legitimacy of his actions in Cyprus and Byzantium. It is for this reason that Cato later maintained that Clodius' transfer to the plebs had been legally made when Cicero had questioned its validity on the grounds that it had been effected in defiance of the auspices<sup>27</sup>.

<sup>24</sup> Oost wonders if Cato may have helped himself to some of this money. He remarks that when Cato returned to Rome, he had to rely on the testimony of royal bailiffs, whom he had brought back with him, in order to preserve his reputation because both copies of his accounts had been destroyed: Plut. Cato 38. According to Oost although the lex Julia repetundarum, which required provincial governors to deposit copies of their accounts in two cities of their provinces, may not have technically applied to Cato, its existence must have made him think about leaving a copy of his accounts in Cyprus in order to be cautious: Oost, Classical Philology, 50 (1955), 105.

<sup>25</sup> Cic. ad Att. 1.17.9; Sest. 60.

<sup>26</sup> Cf. Cic. ad Att. 2.1.8. The best instance of Cato's adherence to this precept occurred in 52. In that year Pompey as consul had passed a law forbidding defendants from using character witnesses as a means of bolstering their cases. When Pompey, in defiance of his own law, gave testimony pertaining to the character of a defendant, Cato, who was a juror in the case, put his hands over his ears: Plut. Pomp. 55; cf. Cato 48.

<sup>27</sup> Plut. Cato 39-40; cf. Cic. Dom. 42; Prov. 45.

After Cato's departure from Rome Clodius passed the lex de Brogitaro<sup>28</sup>. It decreed that Brogitarus, the tetrarch of Galatia Trocmi, share the title of king with his father-in-law, Deiotarus, the tetrarch of Galatia; that the priest of the Magna Mater at Pessinus be deposed; that Brogitarus be given the sanctuary principate of Pessinus<sup>29</sup>.

Clodius probably bestowed these favours upon Brogitarus in return for a bribe<sup>30</sup>. Bribery, however, was not the only reason for the passage of the law. During May 58 Clodius had began

<sup>28</sup> Plut. Pomp. 48.

<sup>29</sup> Cic. Har. 28-29; Sest. 56,66,84. Deiotarus later expelled Brogitarus from Pessinus.

<sup>30</sup> Cic. Dom. 129; Har. 28; Sest. 56. In his speeches Cicero alleges that Clodius was only partially paid by Brogitarus and the Byzantine exiles in 58 and that he received syngraphae from them for the balance of what they owed him. If we had only the speeches as testimony for this, it could easily be discounted as a malicious invention on the part of Cicero. However, in a letter to his brother of 55, Cicero says that Clodius had asked for a legatio to Byzantium or to Brogitarus. He adds that there is plenty of money in it for Clodius: ad Quint. 2.8.2. It is highly probably that the money in question is the money which Clodius would receive when he cashed in his syngraphae. E. Rawson makes several very enlightening suggestions concerning the measures dealing with Brogitarus and the Byzantine exiles. She suggests that Clodius may have been motivated by other considerations besides money when he passed legislation in their favour. She proposes that Clodius may have also been induced to intervene in Eastern affairs in order to maintain and to extend the hereditary clientelae which had been built up by the Claudii in the Greek speaking world during the previous two centuries. With respect to the lex de Brogitaro she sees a possible connection between the Claudii and Pessinus. She wonders if Claudia Quinta's connection with the Magna Mater had anything to do with creating a Claudian interest in Pessinus, the place from which the cult originated: E. Rawson, "The Eastern Clientelae of Clodius and the Claudii," Historia, 15 (1966), 219, 235-37.

to oppose Pompey openly. This law would have been one of the steps which Clodius took to undermine Pompey's interests, for it interfered with his Eastern acta which had been ratified in the previous year.<sup>31</sup>

The type of measure, which Clodius brought in with regard to Brogitarus, was not unprecedented. In the previous year Pompey and Caesar had been responsible for a similar measure. They had Ptolemy of Egypt legally recognized as the ruler of Egypt and as a socius to Rome. In doing this they had been motivated by the same thing as Clodius: money.<sup>32</sup>

Clodius had used his preliminary legislation to place himself in a politically powerful position. These three laws were means of reinforcing that position: the money from the Byzantines and Brogitarus helped Clodius to pay for the upkeep of his gangs and network of collegia; the annexation of Cyprus and the sale of the royal property ensured the continuation of the grain dole which was one of his main sources of popularity with the plebs; the law concerning Cato removed one of the main obstacles to his tribunate.

<sup>31</sup> Cic. Har. 29; Plut. Pomp. 48. C. Babcock maintains that Clodius asserted his independence from Pompey through the lex de Brogitaro. At the same time, however, he sees Clodius as a rather petty official making good out of Brogitarus' ambition: Babcock, A.J.P., 86 (1965), 27.

<sup>32</sup> Cic. ad Att. 2.5.1; 2.16.2; Suet. Iul. 54.

## CHAPTER V

## CLODIUS: A FREE AGENT!

After he had removed Cato and Cicero from Rome Clodius adopted a campaign of intimidation with regard to Pompey. In late April or early May<sup>1</sup> he secured through trickery the release of Pompey's captive, Tigranes the younger, who was in custody of the praetor Flavius. When Flavius and other Pompeians attempted to recover Tigranes from Clodius' men on the Via Appia, they were no match for them; many of them were wounded and one of them, Marcus Papirius, was killed.<sup>2</sup> During the same time period Clodius passed the lex de Brogitaro, which interfered with the arrangements which Pompey had made in the East. Clodius also intimidated Pompey by bringing some of his friends to trial.<sup>3</sup> Pompey reacted to this intimidation, in either May or June, by calling Gabinius to his assistance. Gabinius complied

<sup>1</sup> In a letter dispatched on May 29 Cicero indicates that he is aware of the fact that Tigranes had been released. In this letter he is replying to letters which Atticus had dispatched on May 14 and 15. Atticus had very likely informed him in these letters that Clodius had secured Tigranes' release. This would have taken place in late April or early May: ad Att. 3.8.2-4. Another important aspect of this letter is that Cicero relates that Pompey after the release of Tigranes had not taken any retaliatory measures against Clodius.

<sup>2</sup> Cic. ad Att. 3.8.3; Dom. 66; Milo. 18; Sest. 67; Asc. 47, Clark; Dio 38.30.1; Plut. Pomp. 48.

<sup>3</sup> Plut. Pomp. 48.

with Pompey's wishes. Piso, however, remained loyal to Clodius. In the ensuing riots Gabinius' forces were overwhelmed by Clodius' gangs. Clodius added insult to injury by consecrating Gabinius' property to Ceres. L. Ninnius Quadratus, Clodius' colleague in office, countered this move by consecrating Clodius' property.<sup>4</sup> The last step in Clodius' campaign of intimidation involved his alleged attempt to have Pompey assassinated. On August 11 when Pompey was in the forum, one of Clodius' slaves, who was nearby, was found to have a concealed weapon. Pompey, believing that this was an attempt on his life, confined himself to his house for the remainder of Clodius' term as tribune. Afterwards Clodius' men besieged his house, while Clodius boasted at meetings that he intended to build a second shrine in the Carinae to correspond with that on the Palatine.<sup>5</sup>

Clodius had probably taken these actions against Pompey in order to assert his independence from him. In the previous year Pompey had dealt a severe blow to Clodius' Claudian dignitas; he had placed Clodius in a subservient position by constantly exacting from him the promise that he would do no harm to Cicero.<sup>6</sup> The elimination of Pompey from the political scene also permitted Clodius to display the extent of his political power in Rome. This demonstration of political strength would act as a deterrent to any of his inimici contemplating hostile action against him.

<sup>4</sup> Cic. Dom. 67, 125-126; Pis. 27-29; Sest. 67; Dio 38.30.2-4; Plutt. Pomp. 49.

<sup>5</sup> Cic. Dom. 67; Milo. 18; Pis. 28-29; Red. Sen. 4, 29; Sest. 69, 84; Har. 49; Asc. 46, Clark; Plut. Pomp. 49.

<sup>6</sup> Cic. ad Att. 2.22.2.

After Clodius had initiated his campaign against Pompey, Pompey gave him added reason for pursuing it. At some point during July Pompey had shown himself disposed to have Cicero's cause taken up by the senate as soon as he received Caesar's approval.<sup>7</sup> This posed a definite threat to Clodius' lex de exsilio Ciceronis. Clodius, however, managed to neutralize this threat. He brought Marcus Bibulus and some augurs before a contio. In reply to his questions, they stated that Caesar's legislation was invalid because the skies were being watched when his laws were introduced to the Assembly. Clodius showed Pompey and Caesar by this tactic that he would have sound grounds on which to attack the legislation, which had been passed in the interests of the factio, if they made any attempt to have his law repealed. He made certain that

<sup>7</sup> In ad Att. 3.18.1 which was written ca. September 10, 58, Cicero states: "Expectationem nobis non parvam attuleras cum scripseras Varronem tibi pro amicitia confirmasse causam nostram Pompeium certe suscepturum et, simul a Caesare ei litterae quas expectaret remissae essent, actorem etiam daturum ... etiam illud scripseras, eundem secundum comitia dixisse," This is a reference to ad Att. 3.14.1 which was written on July 21 where Cicero says: "Ex tuis litteris plenus sum expectatione de Pompeio, quidnam de nobis velit aut ostendat. comitia enim credo esse habita, quibus absolutis scribis illi placuisse agi de nobis." Since this letter was dispatched on July 21 and was probably in reply to a letter received the previous day, it is likely that Atticus dispatched his letter as late as July 7, for it took at least fourteen days for a letter to make its way from Rome to Thessalonica: Ibid., 3.14.2; see above, p. 95, no. 1. This signifies that Pompey was disposed to take up Cicero's cause with Caesar's approval at some time in early July. In the Pro Sestio Cicero attempts to insinuate that Pompey began openly to oppose Clodius on his behalf shortly before June 1: Sest. 67-68. In this passage, however, Cicero does not come out and say that Pompey took up his cause at this time. He only states that Pompey took up the cause of the state and complained of what Clodius had done. Pompey's attitude at this time would have resulted from the latter's campaign of intimidation.

this warning was heeded by holding further meetings where he denounced Caesar's legislation as being illegal. It seems that this measure was effective because Cicero indicates in his letters that Pompey's promised aid had failed to materialize and because Caesar apparently gave Sestius a very cool reply when the latter in late 58 asked his approval for the measures that were being taken on behalf of Cicero.<sup>8</sup>

In claiming that Caesar's legislation was illegal, Clodius was also indicating that his own tribunate was illegal, because Caesar had effected his transition to plebeian status while the skies were being watched. Bibulus pointed this fact

<sup>8</sup> Cic. ad Att. 3.14.1; 3.13.1; 3.15.1,3; 3.18.1; Dom. 40; Har. 48-49. L. G. Pocock takes a different view concerning Clodius' attacks on Caesar's legislation. He adopts the following argument. In May, 58, Pompey sympathized with the optimates' attempts to recall Cicero by declaring Clodius' tribunate null and void on the grounds that he was adopted contra auspicia. Clodius, however, who was acting on Caesar's behalf, made a sham attack on his legislation, which included several measures taken on behalf of Pompey, by pointing out that it suffered from the same defect as his tribunate. This would have driven Pompey back into alliance with Caesar, for it raised old matters of contention between Pompey and the optimates: Pocock, Classical Quarterly, 18 (1924), 60-61; L. G. Pocock, "A Note on the Policy of Clodius," Classical Quarterly, 19 (1925), 182-183. F. B. Marsh disagrees with Pocock's interpretation. He thinks that Clodius was Crassus' henchman and that both he and Crassus were to assist Caesar by keeping Pompey in line. He maintains that Clodius' attacks on the Julian laws were aimed at Pompey because these laws primarily benefited Pompey and not Crassus or Caesar. These attacks would have had the purpose of driving a wedge between Pompey and the nobles, who would have formed an alliance, because the nobles refused to support these laws while Pompey could not allow them to be questioned: F. B. Marsh, "The Policy of Clodius from 58-56 B. C.," Classical Quarterly, 21 (1927), 31-33. A. W. Lintott's view of the matter differs from those of Pocock and Marsh. He suggests that Caesar would not have brought Pompey back into alliance with him in the extreme manner that is posited by Pocock and that the only time there was any close relationship between Pompey and the optimates was in 52 when he accepted the sole consulship: Lintott, Violence, p. 192.

out at a contio which was held by Clodius' brother Appius. This situation, however, was favourable to Clodius; if anyone attempted to have any of his legislation repealed on the grounds that his tribunate was illegitimate, he would also have to condemn Caesar's laws as being illegal.

Clodius' attacks on Caesar's acta were well received by some optimates. These took the view that Clodius' law about Cicero was legal inasmuch as no one had observed the heavens before it was put to the vote. However, they maintained at the same time that Caesar's measures had been illegally passed. The legality of Clodius' tribunate, or any of his laws, therefore, was not put into question by the optimates.<sup>10</sup>

Pompey had not been the only one who menaced Clodius' lex de exilio Ciceronis. On June 1 the senate on the motion of the tribune L. Ninnius Quadratus had voted for the return of Cicero. The senate's resolution, however, was vetoed by the Clodian tribune Aelius Ligus.<sup>11</sup> This was not the only opposition which the law encountered. During July several senators expressed their views concerning the recall of Cicero despite the fact that Clodius had posted up a clause in his law forbidding any references to the subject. In addition, the consuls, as a result of the bargain they had made with Clodius, respected this clause of the law and refused to refer any motion pertaining to the recall of Cicero to the senate.<sup>12</sup>

<sup>9</sup> Cic. Dom. 40.

<sup>10</sup> Cic. Dom. 42, 129; Har. 46,48; Prov. 45-48.

<sup>11</sup> Cic. Red. Sen. 3; Sest. 68; Dio 38.16,3-4.

<sup>12</sup> Cic. ad Att. 1.12.1; 1.15.3; Dom. 70; Pis. 29; Red. Sen. 8; Red. Quir. 11; Sest. 69-70.

Another attempt to have the bill repealed was made in October and November. On October 29 Ninnius and seven other tribunes promulgated a law concerning the restoration to Cicero of his rank and citizenship. However, it contained a clause which proclaimed that the law did not enact anything in contravention of a prior enactment. This bill, therefore, respected the provision of Clodius' law which prohibited its repeal. As a result of this, the bill of the eight tribunes would be a very weak piece of legislation. In all probability the tribunes would have included this clause in their bill out of fear of Clodius' auctoritas. The bill, at any rate, did not secure passage into law. It was likely vetoed by Clodius or Ligus. This would seem to be the case because Clodius indicated by his behaviour on November 3 that the bill would be vetoed. On that day he informed the tribunes designate that the measure of the eight tribunes showed how far they might go in their bills concerning Cicero. Besides this, Cicero in a letter of November 29 relates that the bill was ill-fated. After this attempt failed no further effort was made to bring about Cicero's return till after Clodius' term as tribune expired on December 10.<sup>13</sup>

During the latter half of his tribunate Clodius eliminated Pompey from the political scene. This not only asserted his independence from Pompey, who had belittled him in 59, but

<sup>13</sup> Cic. ad Att. 3.23.1-5; Red. Sen. 4; Sest. 69-70.

it also served to exemplify his auctoritas. Clodius also exercised his auctoritas by successfully defeating all the measures, which were taken by Caesar, Pompey, the senate and the tribunes, to undermine his lex de exsilio Ciceronis. At the same time Clodius enhanced his political strength by acquiring the support of the optimates through his attacks on Caesar's legislation.

## CHAPTER VI

## CONCLUSION

P. Clodius Pulcher decided to seek the tribunate in either March or April of 61. Four factors contributed to his quest for the tribunate. Firstly, Clodius wished to use the powers of the tribunate in order to exact retribution from the optimates and the senate who had attempted through the Bona Dea trial to eliminate him from the political scene on account of his previous political behaviour which had been detrimental to their interests. Secondly, he wished to employ the tribunate to avenge himself against Cicero who had supported the judicial proceedings taken against him because he had publicly criticised his consulship. Thirdly, there was the fact that he would increase his popularity with the plebs by rejecting his patrician rank and acquiring the plebeian status that was necessary for eligibility to the tribunate. Fourthly, the political power of the tribunate itself would have appealed to Clodius, for it would provide him with the opportunity to broaden his base of political support among the plebs through the implementation into law of a series of popularis measures.

Clodius sought to attain plebeian status in 60, but he was prevented from doing so by Metellus Celer, the consul, who had the support of Pompey and the senate. In early 59 Caesar,

with the cooperation of Pompey, effected Clodius' transitio ad plebem. There were several reasons for this: it would silence Cicero's vocal opposition to the factio; it would serve to exemplify the power which the factio could wield against its opponents; it would undermine the auctoritas of the senate which had sought to prevent Clodius' acquisition of plebeian status the year before; it would probably put Clodius in the factio's debt. Clodius, however, showed no debt of gratitude to the factio. When it sought to fit him into its political plans by offering him a legatio to Tigranes, which would prevent him from seeking the tribunate in 59, he broke with the factio not only because the offer of such a minor post was probably an insult to his dignitas, but also because he would not allow the tribunate to be taken from his grasp after he had expended so much time and energy in order to attain it. The threats, which Clodius made against Cicero after his transitio ad plebem are indicative of his break with the factio, for Pompey and Caesar were both favourably disposed towards Cicero at this time; Pompey elicited from Clodius the promise that he would do no harm to Cicero either before or during his tribunate, while Caesar tried to win Cicero over to his side by offering him various posts which would extricate him from the dangers which lay in store for him during Clodius' term as tribune. During the same time period Clodius also voiced his hostility towards the boni for their role in the Bona Dea affair and their opposition to his acquisition of plebeian status.

When Clodius entered office, he quickly promulgated four bills which were passed into law on January 3, 58: lex de lege Aelia et Fufia, lex de censoria notione, lex frumentaria, lex de collegiis. These four laws made Clodius a politically powerful personage at Rome. His first two laws, lex de lege Aelia et Fufia and lex de censoria notione, brought about necessary reforms which would have given him the reputation of being a responsible legislator. The other two laws, lex frumentaria and lex de collegiis were designed to bring Clodius overwhelming popular support and to allow him to set up his own network of collegia. However, these laws were not purely demagogic, for they fulfilled certain basic needs of the people. Clodius was a realist. He responded to these needs and benefited from the popular support which resulted from that response. The lex frumentaria brought Clodius overwhelming popular support because it alleviated the living conditions of a large section of the plebs, whereas the lex de collegiis received a popular response because it restored the civil liberties which the senate had arbitrarily annulled through its decree of 64.

Clodius acquired through his preliminary legislation the political power which enabled him to bring about Cicero's exile. His desire to exact retribution from the senate, the optimates and especially Cicero was one of the principal reasons for his quest for the tribunate. He obtained this revenge in part by means of the lex de capite civis Romani which made it illegal to put untried citizens to death. This law dealt a severe blow

to the senate because not only did it not recognize the senate's right to put citizens to death without trial as it did in 63, but it would also do much to prevent anyone acting on a senatus consultum ultimum from using it to justify homicide. It also made Cicero liable to prosecution for the part which he had played in the execution of the five Catilinarian conspirators. Although the main purpose of this law was to undermine the positions of Cicero and the senate, it was, nevertheless, a responsible piece of legislation, for it reaffirmed one of the Roman citizen's basic rights: his right to trial.

No serious opposition was offered to the bill. The tripartite factio did not come to Cicero's assistance. Cicero had indicated by his past behaviour that he posed a potential threat to its interests. The factio, therefore, was not willing to oppose the bill of a powerful tribune in order to save him. Caesar and Pompey had additional reasons for assuming a neutral disposition towards the bill. Caesar was unable to defy it without being false to the policy which he had adopted in 63. Pompey, on the other hand, maintained a neutral attitude to the bill because since 61 Cicero's services to him as a political amicus had been at best minimal and because there were rumours that Cicero planned to have him assassinated. The consuls, whose services Clodius had acquired through the deal concerning the provinces, cooperated fully with him in undermining all attempts by Cicero and his supporters to have the bill repealed. As a result of the opposition of Clodius and the consuls and the neutrality of the factio, Cicero became discouraged and

departed from Rome before the bills de capite civis Romani and de provinciis were approved by the Concilium Plebis. Shortly thereafter Clodius fulfilled his revenge against Cicero by the promulgation of the bill de exilio Ciceronis which was later passed into law. The bill, which enacted that Cicero be outlawed as soon as it was passed, was effective, for Cicero went into exile immediately after he read it. Clodius stressed the fact that Cicero was outlawed by having his house razed to the ground. Upon the site of the house he set up a shrine to Libertas which represented not only the freedom from Cicero's political tyranny of 63, but also the laws through which he had bolstered those civic rights which formed an important part of the citizen's libertas: the lex de collegiis legalized the right of association whereas the lex de capite civis Romani reaffirmed the right to trial.

The fact that Clodius was able to effect Cicero's exile indicated that he was in a politically powerful position. The passage of the lex de Cypro, the law concerning Cato and the lex de Brogitaro strengthened this position: the annexation of Cyprus and the auction of all royal property would provide the funds necessary for the continuation of the grain dole which was Clodius' main source of popularity with the plebs; the money which he received from Brogitarus and the Byzantines would help to offset the costs incurred by the maintenance of his network of collegia; the law concerning Cato removed an influential politician who posed a serious danger to his tribunate.

During the latter part of his tribunate Clodius openly intimidated Pompey; he interfered with his arrangements in the East by means of the lex de Brogitaro; he secured the release of his captive, Tigranes; his operae defeated Gabinius and other Pompeians when they had taken up Pompey's cause; he secured Pompey's temporary retirement from public life by the apparent attempt which his slave made upon his life. Clodius' elimination of Pompey from the political scene not only served to exemplify his auctoritas but also asserted his independence from Pompey who had belittled him in the previous year by compelling him to promise that he would not harm Cicero either before or during his tribunate. Clodius also exercised his auctoritas by defeating all the attempts which were made by Caesar, Pompey, the tribunes and the senate to have Cicero recalled. At the same time he increased his political strength by obtaining the backing of the optimates through his attacks on Caesar's legislation. Clodius, therefore, was in an almost unchallengeable political position during the last half of his tribunate.

After Clodius laid down the tribunate he did not cease to be an influential politician. Although his position was undermined to a certain extent by the recall of Cicero, the appointment of Pompey as grain commissioner and the opposition of Milo's gangs, nevertheless, his network of collegia and the popularity which he had acquired through the passage of such measures as the lex de collegiis, the lex de capite civis Romani and the lex frumentaria provided him with a base of po-

litical support among the plebs which allowed him to be an important force in Roman politics until his death on January 18, 52.

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## RESUME

The first chapter of the thesis deals with the Bona Dea affair, the factors which contributed to Clodius' quest for the tribunate, Clodius' transition to plebeian status and Clodius' election as tribune.

In the following chapter the different features of Clodius' preliminary legislation are discussed. This legislation consists of the lex de censoria notione, the lex de lege Aelia et Fufia, the lex frumentaria and the lex de collegiis.

The third chapter is concerned with Clodius' role in Cicero' exile. Here, the main topics of discussion are Clodius' lex de capite civis Romani and lex de exsilio Ciceronis, the factors which induced the members of the tripartite factio to adopt a neutral disposition towards these laws, the co-operation of the consuls with Clodius in exiling Cicero and the departure of Cicero from Rome.

Clodius' three remaining laws are the main subjects of the next chapter. These laws are the lex de Cypro, the law enacting that Cato carry out the provisions of the lex de Cypro, and the lex de Brogitaro.

The fifth chapter shows how Clodius consolidated his political position in the latter part of his tribunate by eliminating Pompey from the political scene, by attacking Caesar's consular legislation, by acquiring the support of the optimates and by defeating all attempts to have Cicero recalled from exile.

The last chapter contains those conclusions which have been reached with regard to Clodius' role in Roman politics during his tribunate and the period immediately preceding it. The main conclusion is that Clodius pursued an independent course of action through which he sought to bolster his own political position.