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E. BADIAN

## The Death of Saturninus

### *Studies in Chronology and Prosopography*

It is too soon to attempt a full reinterpretation of the context of the events of 100 BC: in that, foreign affairs and imperial policy will have to have a prominent place – and in that field the decree found at Cnidus has revealed facets previously unsuspected and, as yet, not to be fully interpreted.<sup>1</sup> But in view of the continuing stream of literature, a preliminary discussion of a more limited kind may perhaps be profitably attempted. There is a risk that views not only mistaken, but likely to make comprehension impossible, may come to be accepted as a basis for further arguments; and, strange as that may seem, there are problems not yet faced, which ought to be pointed out, even if they cannot be solved. This series of connected studies aims at sorting some of the evidence regarding chronology and persons around the death of L. Saturninus and in the short period immediately following.<sup>2</sup>

### *I. The Date of Saturninus' Death*

As always, chronology is basic. In his edition of the first book of Appian's *Civil Wars*<sup>3</sup> (1958), EMILIO GABBA revived and expanded a suggestion that had been made by PARETI (and that, unknown to him, seems to go back to the nineteenth century), that Appian is mistaken in dating the final riot and the death of Saturninus and his associates to the first day of the new tribunician year (which would be December 10, 100): various indications suggest that these events took place earlier, and Appian will have confused the first day after the tribunician elections with the

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<sup>1</sup> See M. HASSALL, M. CRAWFORD, J. REYNOLDS, *JRS* lxiv (1974) 218 ff., with useful preliminary discussion and individual notes of historical interest. But we are still awaiting the final version of the text, and much more detailed work will be necessary by way of interpretation. For the moment, see, e.g., J.-L. FERRARY, *MEFR* lxxxix (1977) 619 ff.

<sup>2</sup> I shall be sparing in references to modern treatments. The oldest work still worth consulting is F. W. ROBINSON, *Marius, Saturninus and Glaucia* (1912). A. PASSERINI's extensive discussion of Marius in the thirties, though often wildly wrong on the sources (see *Gnomon* xlvi [1974] 421 ff.), is still worth reading on the year 100 (references *Gnomon*, l. c.).

<sup>3</sup> All references to Appian will be to Teubner sections in Book I of the *Civil Wars*.

first day of the tribunes' actual office – a confusion that can easily be documented elsewhere in that author. GABBA's edition appeared too late for the point to gain entry to the Supplement to *The Magistrates of the Roman Republic* (1960), but it was accepted by E. S. GRUEN and might have gained general recognition, had it not soon been vigorously controverted by R. SEAGER.<sup>4</sup> SEAGER, after arguing against GABBA's briefly sketched points in detail, concluded: 'Whether he be right or wrong, Appian must be allowed to say that Saturninus and Glaucia were murdered on 10 December',<sup>5</sup> and that there is no good evidence to prove him wrong. H. B. MATTINGLY soon concurred,<sup>6</sup> and although I have not found much comment since, G. V. SUMNER, after initially appearing strangely ambivalent, finally committed himself to whole-hearted acceptance.<sup>7</sup> T. P. WISEMAN, on the other hand, in a

<sup>4</sup> GABBA's view has a long history: it is already in E. BARDEY's Rostock dissertation: *Das sechste Konsulat des Marius* (1884) 14f., 50f. (but the arguments are unacceptable and the work is not worth consulting); GRUEN, *Historia* xv (1966) 32ff.; SEAGER, *CR* n.s. xvii (1967) 9f.

<sup>5</sup> It must be stressed that Appian does not give that date and probably did not know it. (See now TWYMAN, n.7 below). He reports that it was the first day of the tribunician year, which *we* know was December 10. Overestimation of Appian's knowledge of the Roman constitution has led to numerous errors, not only in this field.

<sup>6</sup> *CR* n.s. xix (1969) 267ff. His main purpose is to embrace SEAGER's date in order to support the date of 100 for the famous PISO-CAEPIO coinage. If SEAGER's case has to be abandoned, MATTINGLY's falls with it. Even apart from these premises, his actual conclusion is unacceptable. He arrives at a convenient chronology by putting Saturninus' grain law, literally, into the dying moments of his tribunate and life. Such a late date for what, after C. Gracchus, was a basic law for any *popularis* cannot be imagined. (It was of particular importance to Saturninus: see below.) For rejection, see M. H. CRAWFORD, *RRC* p. 73. Admittedly, expert numismatic opinion at present puts the coin in 100 (*RRC* no. 330). But it must be recalled that not long ago expert opinion put it in 96–94 (E. A. SYDENHAM, *CRR* no. 603) and that MATTINGLY himself has questioned CRAWFORD's arrangement of the coinage precisely around 100, even though not for this particular issue. (See *NC*<sup>7</sup> xvii [1977] 203ff.) Numismatists' hypotheses are no more inherent in the objects themselves, and no less liable to change, than historians': both are attempts to arrange evidence in a pattern.

Strictly speaking, we could question even the relevance of the coin to Saturninus' law, not to mention the identity of the quaestor Caepio on the coin, who could be merely related to Saturninus' opponent. (See, e.g., *RE* s.v. 'Servilius' 47.) For the historian, at any rate, 103 (the beginning of Saturninus' tribunician career) remains the only plausible date. We know from Cicero (*har. resp.* 43; *Sest.* 39) that Saturninus' quarrel with the oligarchy derived from his being ousted from the grain supply by the *princeps* M. Scaurus; he cannot have delayed his conspicuous revenge. (The date of this supersession, frequently given as 104 – G. V. SUMNER, *Orators in Cicero's Brutus* [1973] 119f., surprisingly hankers after it – cannot be later than 105. *Diod.* xxxvi 12, the relevance of which I pointed out long ago, is decisive in implying an extended interval between quaestorship and tribunate.) If the coins cannot fit into 103, they will have to be dissociated from the immediate context of the law; which would be possible (cf. above), though I feel sure it will turn out to be unnecessary. On all this see the judicious remarks by A. R. HANDS, *CR* n.s. xxii (1972) 12f.

<sup>7</sup> SUMNER, *Orators* 84 (ambivalent), 82 (rejecting GABBA); *GRBS* xix (1978), after TWYMAN's article, accepting SEAGER without argument (220 et al.); J. UNGERN-STERNBERG

book published in 1971, was not yet aware of the articles by SEAGER and MATTINGLY and followed GRUEN, i.e. GABBA's chronology, without question.<sup>8</sup> I myself had never committed myself on this issue,<sup>9</sup> since I had not yet given the matter the attention I knew it deserved. I have now, however, come to think that the dating popularised by Gabba is not only correct, but will alone enable us to embark on an attempt to understand the context of the events of that fatal day. We must therefore first examine SEAGER's objections to GABBA.

SEAGER was right in rejecting GABBA's explanation of the nature of Appian's mistake, however plausible it seems at first sight. Appian is indeed known to be frequently unaware of the fact that, in Rome, entry upon office did not immediately follow election. But SEAGER clearly showed that in this instance that explanation will not work, and there seems to be nothing further to be said on the point. His other arguments, against the dating as such, are, however, less sound, and must be scrutinised in detail.

(1) GABBA thought it unlikely that consular elections would be held as late as December 9 (the day before the final riot). SEAGER retorted (probably rightly) that it would be even stranger, at this time, for them to be held in summer. Indeed, it seems to have been Sulla who moved the date of the elections for curule offices back to mid-summer. We have no evidence for the date around 100. A few generations earlier, a date in autumn was usual, but not too long before the end of the year – perhaps not less than six weeks or so before.<sup>10</sup> In 110, when tribunician vetoes delayed the elections till near the end of the year (clearly some time after the tribunes went out of office), Sp. Albinus (*cos.* 110) could still leave Rome as consul after holding them, with the prospect of carrying on the war in Africa for some time; and the sortition of *provinciae* for 109 took place before the beginning of that

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v. PÜRKELE, *Untersuchungen zum spätrepublikanischen Notstandsrecht* (1970) 71 f., is non-committal: he is not interested in the historical aspects of his theme and never discusses the events in detail. The only attempt at a partial refutation is by B. L. TWYMAN, *Athenaeum* n. s. liv (1976) 279 ff.: in general uneven and inadequate, but good in discussion of Rab. perd. 20 (which, to complete my own argument, I shall nonetheless treat below). His thread of Ariadne, developed at length and rather indiscriminately in that article – that Appian confuses time of election with time of entry upon office – is obviously true in the case of C. Gracchus, where it was first advanced by E. MEYER, *Kl. Schr.*<sup>1</sup> (1910) 412 n. 3 (originally of 1894) and has been generally, though not universally, accepted. In the case here discussed, it does not turn out very useful, unless supported by further ad hoc hypotheses.

<sup>8</sup> WISEMAN, *New Men in the Roman Senate* (1971) 221, 233 et al.

<sup>9</sup> Pace GRUEN and (following him?) SEAGER, who give me undeserved credit for accepting GABBA. (But see, e.g., the index to my *Studies in Greek and Roman History* [1964] s.v. <Furius>.) I did frequently stress the *importance* of the suggestion, before realising its full implications.

<sup>10</sup> Cf. MOMMSEN, *StR.* i<sup>3</sup> 583 f. (<Belege fehlen so gut wie ganz.>) PARETI, *Storia di Roma* iii 512 n. 1, suggested that elections were always normally held in midsummer, but postponed if neither consul could be in Rome at that time. Even this, implausible though it sounds, cannot actually be refuted.

year. Unfortunately Sallust's incompetence has deprived us of the possibility of learning precise details; but the elections were presumably held straight after the tribunes left office, since it seems that tribunes could veto only the actual assembly, not the *promulgatio*.<sup>11</sup> No reports of any veto appear in our sources for 100. With attention concentrated on the actions of Saturninus, it is unlikely that a series of vetoes holding up the electoral process would have been entirely unrecorded.

(2) This brings us to the key phrase in *de viris illustribus* 73, 10, that the water to the Capitol was cut *maximo aestu*. SEAGER describes this as an emendation, and GRUEN follows him, adding a confused account of what are claimed to be the manuscript readings. According to the standard text (the Teubner text by PICHLMAYR, rev. GRUENDEL), *maximo aestu* is in fact the reading of the A class of manuscripts, which is on the whole the most important. It is only classes C and D which present obvious corruptions of this reading: the editor rightly ignores them in his text. The infelicitous *astu*, on the other hand, which SEAGER commends, is indeed merely an emendation; it makes little sense, since the textbook stratagem of cutting the water supply to a beleaguered garrison could hardly (especially where it was so easy to do) be described in such terms. (And – less important – *summo astu*, not *maximo*, would surely be expected.)

To paraphrase SEAGER's comment on another point: the anonymous author <must be allowed to say> that it was extremely hot at the time. And in this he finds support from an unexpected source. Appian, speaking of the same incident, records that Saufeius, ὑπὸ δίψης ἀπολλύμενος, advised setting fire to the Capitol, no doubt in order to bring matters to a head. Since the time between the cutting of the pipes and the final surrender (for his advice was ignored) can at most come to a very few hours, the phrase is intelligible only if we assume a very hot afternoon.

Appian, though he does not actually give us a date for the riot, certainly shows no sign of thinking that it was summer. Unless we assume (what cannot be disproved) that each author has added the relevant phrase on his own, in order to heighten the drama of the occasion, and that they both happened to fix on parallel devices, we shall have to believe that some sources (at least) commented on the heat of the day. This would suffice to exclude December. As anyone who knows Rome will agree, a hot afternoon in October is by no means excluded. I personally think the odd detail is true.

(3) Valerius Maximus (iii 2,18) says that, when Saturninus, Glauca and Equitius *designatus tribunus pl.* had been stirring up sedition, M. Scaurus both urged Marius to take action and himself at once (*protinus*) put on arms. SEAGER thinks that this <neither states nor implies> that Equitius was still *designatus* when that action was taken. But this seems to me special pleading. I think the reader approaching the passage without prejudice can hardly take it any other way. Of course, Valerius

<sup>11</sup> On the incident see Sall. b.J. 37; 39; 43, 1, with his well-known chronological blunder. For the veto see MOMMSEN, StR. iii 374 n. 2.

may (as often) be wrong, or at least inaccurate. But again, he <must be allowed to say> what he clearly does: that the Senate's emergency decree was passed when Equitius was still tribune designate.

(4) We now come to more serious points. Cicero (Rab. perd. 20), as always printed, tells us that the decree instructed the consuls to use the services of any tribunes and praetors they chose, whereupon the consuls *adhibent omnis tribunos pl. praeter Saturninum, <praetores> praeter Glauciam*. This again, of course, shows that Equitius was not yet tribune. The reason for the vague form of the decree was no doubt that the attitude of some of the other tribunes (e.g. Furius? – see below) was not known for certain and it was unwise to specify, to avoid either including a disloyal man or driving a potentially loyal man into opposition by omitting him. The consuls, no doubt after private soundings, decided that all except Saturninus and Glaucia were reliable, or ought to be treated as such.

SEAGER claims that the passage <unfortunately contains a lacuna; it is not certain that nothing else beside *praetores* has dropped out.> If there *were* a lacuna, that would be an important observation. It is an elementary point, sometimes indeed overlooked by editors and commentators, that, once a lacuna not specifically delimited in the manuscript must be postulated, its dimensions cannot be securely known: e.g., if one line has dropped out, then quite possibly two. Unfortunately, SEAGER has here misunderstood a basic point of textual criticism. There is no lacuna in this text. What was noticed (according to the OCT, by a sixteenth-century scholar) was that the word <praetores> is required by the sense before <praeter> and must be presumed to have been omitted by the scribe, owing to a well-known psychological error of jumping across from one word to the next, if they contain the same opening letters. Indeed, *praetores* and *praeter* would be almost identical in some manuscripts. This is not a lacuna. It does not give licence to postulate further omissions (except perhaps in the odd case where a third word shares the same letters, or *after* the word posited as omitted and *before* the similar one preserved). In particular, the (certain) omission of *praetores* before *praeter* does not justify the assumption that anything has been lost before *praetores*. No name of a tribune may be conjecturally supplied here after *Saturninum*. In fact, in this instance, it is as certain as such things can be that only *praetores* has dropped out: to put in any more would be plain fiction.

Cicero, our best source on this, therefore confirms what we have gathered from Valerius Maximus: that Equitius was not tribune on the day of the final riot. Thus, unless we choose to trust Appian against Cicero (which would be unwise), or unless we invent a quibble, such as spreading the final action over two days, which happened to be December 9 and 10,<sup>12</sup> it follows that Saturninus died before De-

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<sup>12</sup> Against this (if disproof be needed) see Cic. Cat. i 4: *simili senatus consulto C. Mario et L. Valerio consulibus est permessa res publica; num unum diem postea . . . mors ac rei publicae poena remorata est?*

ember 10. How long before, we cannot strictly tell; but once we see that Appian is wrong in the date he implies, we have no reason to put his death close to the end of the year. If we then accept the statement that it was a hot day, October (at the latest) will satisfy all requirements.

Finally, there is another point, furnished by Appian himself, that clinches the proof that the riot was not as late as December 10. The point was noted long ago, by F. W. ROBINSON, who however, for reasons unexplained and hard to understand, chose to ignore his own argument and follow Appian's implied date.<sup>13</sup> Appian (143) tells us that, on the day of the riot, Saufeius was quaestor. Now, quaestors began their year of office on December 5; moreover, as is well known, quaestors could not be elected until after consuls (and other curule magistrates) had been. But Appian himself tells us that the consular *comitia* (which saw the death of Memmius) had not been completed. Hence the quaestors for (nominal) 99 cannot yet have been in office. It follows that Saufeius was quaestor for (nominal) 100, and that the date of the riot precedes December 5. The logic is inescapable. And if we assume (as we might) that Appian is perhaps mistaken in calling Saufeius a quaestor, then we are equally entitled to assume that he may be mistaken in saying that the action took place on the day the new tribunes entered upon office; and the other arguments adduced in favour of this latter view cannot then be met by an appeal to his accuracy at this point in his narrative.

## II. The Comitia and the Capitol

It is well known (though often overlooked in actual reconstructions) that this is not the only issue on which Appian is contradicted by Cicero. There is a much more important disagreement between them. Cicero, in fact, contradicts an essential detail in Appian's account of the consular *comitia* on the day preceding the final riot. In Brutus 224 he states: *C. Servilius Glaucia . . . ex summis . . . sordibus in praetura consul factus esset, si rationem eius haberi licere iudicatum esset*. He goes on to explain that Glaucia had so much support that he would have been assured of election, and continues: *is praetor, eodem die quo Saturninus tribunus plebis, Mario et Flacco consulibus publice est interfectus*.

It will be clear the structure of Cicero's comment dissociates Glaucia's death from his consular candidature: it is presented as a mere adjunct of the death of Saturninus, whereas the attempt to gain the consulship had (so Cicero implies) been settled some time before. It was not Glaucia's death, but his disqualification, that prevented what would have been his certain election. This is so clear that editors who prefer writing fiction to acknowledging fact have tried to eliminate it: STANGL substituted *igitur* for *is* at the beginning of the last sentence quoted above. (Fortunately, he seems not to have persuaded anyone.)

<sup>13</sup> See ROBINSON (n. 2) 128 f. and cf. MOMMSEN, StR. i<sup>3</sup> 580 f.

Appian's account – and only Appian's, it turns out – is irreconcilable with this. In Appian, not only is Glaucia an active candidate at the consular *comitia* on the day before the final riot, but he is in process of losing to Memmius for second place, after M. Antonius has won uncontested first place: this, in fact, is the reason for Memmius' murder. Once more we are faced with the choice between Cicero and Appian; and even though Cicero got his reports on the year 100 at second hand, we must surely prefer him without any hesitation. Not only had he personally known and spoken to most of the chief participants (in some cases, no doubt, soon after the events, when moving in their circle during his early years in Rome), but he must have done careful research on those events for the case of his client C. Rabirius. We shall see that the Livian tradition does relate the election and connects it with the death of Memmius; but no other account contradicts Cicero explicitly, as Appian's does.

It is unlikely to be true that (as Appian claims) M. Antonius was duly and fully elected (ἀναμφιλόγως ἤρέθη). In ch. LVII, the *Lex Malacitana* – not incontestably relevant, but, as is generally and rightly thought, a very good source – at the point (line 57) where a candidate reaches a majority of voting units (which, in this case, would be when the vote of the 97th century for him had been announced), has the procedure of the election as such interrupted and the formalities of that candidate's *renuntiatio* are completed. Since no one opposed M. Antonius' election, this should have been done at the *comitia* described by Appian, before the process continued and then dissolved into violence. By the time the Assembly broke up, he should have been *consul designatus*. Yet Cicero knows nothing of this. When mentioning him as stationed outside the city *cum praesidio*,<sup>14</sup> he could hardly have avoided giving him that official title, had it been correct; and he would probably at that point have devoted a few words of detailed description to him, as he does to the actual consuls of the year.

However, we must now compare Appian and the Livian tradition – on which, of course, Appian himself may in part be based;<sup>15</sup> and we must first note the striking resemblances (especially if we allow for the multiplicity of compressing intermediate sources) between Appian and the most detailed of the Livian authors, Orosius, in the account of Memmius' death.

Appian: Μεμμίου δ' ὄντος ἐπιδοξότερου παρὰ πολὺ, δείσας ὁ Γλαυκίας καὶ ὁ Ἀπουλῆιος ἐπιπέμπουσὶ τινὰς αὐτῷ σὺν ξύλοις . . . οἱ τὸν Μέμμιον παίοντες . . . συνέκοψαν. (b. c. 142)

<sup>14</sup> Cic. Rab. perd. 26. This (incidentally) implies that Marius had asked M. Antonius to keep his skeleton force waiting for his triumph on alert. By an extraordinary error, DEGRASSI (Inscr. It. xiii 1, 562) puts the triumph in 102. Professor BROUGHTON informs me that he later, in a private communication, accepted a date late in 100.

<sup>15</sup> See further below. The tradition is found in Oros. v 17; Flor. ii 4 (= iii 16) – more compressed and without the concentration on atrocities – and possibly in vir. ill. at relevant points. Per. lxi has nothing relevant to our immediate point.



Orosius: [. . .] *Saturninus Memmium, uirum acrem et integrum, fieri consulem timens, . . . per P. Mettium satellitem informi stipite comminutum interfecit* (5. 17. 5).

The words I have omitted are based on the localisation of the incident at the actual *comitia* by Appian, but not by Orosius. Where the latter has *orta subito seditione fugientem*, Appian first has ἐν αὐτῇ τῇ χειροτονίᾳ, and then (reinforcing that same picture with a vivid touch) ἐν μέσῳ, πάντων ὁρώντων. We can at once see how Appian uses dramatic touches to reinforce the picture he is presenting, so as to give us a highly coloured interpretation. (This, in fact, is characteristic of his manner elsewhere as well.) Orosius, on the other hand, is uninterested in the technical details (in this case the election), even though fuller on other details. Where Orosius states that Saturninus was afraid of having Memmius elected consul, Appian (who has set the scene, as we saw, at the actual election, with Memmius leading for second place after Antonius' proclamation) converts this into fear that Memmius would defeat Glaucia on account of his greater eminence. Like Appian's statement that the deed was done in the midst of the Assembly, with everyone looking on, this must be regarded as no more than dramatic embroidery: we have already seen that Cicero shows it cannot actually be true.

If, so far, the basic picture has been recognisably the same, with explicable variation between the two authors, what follows is far more divergent. In Appian's dramatized account, there is a spontaneous concourse of the *demos* on the next day, and they are out to kill Saturninus; the latter, after collecting ἄλλο πλῆθος of men from the country, seizes the Capitol, together with Glaucia and the quaestor Saufeius. The Senate's emergency decree is now passed, and Marius, slowly and unwillingly, distributes arms to some people (τινῶς); finally others (ἕτεροι) cut the water-pipes to the Capitol and the rebels, against the will of Saufeius, surrender.

In Orosius, for one thing, there is far more happening. Marius, *fremente . . . senatu populoque Romano*, joins the *consensus bonorum* and *commotam . . . plebem leni oratione sedauit*. It is clear that this *commota plebs* was not out to kill Saturninus: it was on his side and had to be calmed and talked out of it. (The contrast with the *consensus bonorum* leaves no room for doubt on this.) In a sense, we might say that the basic structure is still like Appian's, but the 'parties' are quite different: in Appian, the *demos*, hostile to Saturninus, is opposed by the 'other crowd' of rustics; in Orosius the Senate and People (the *consensus bonorum*) by what must be the city plebs. (Orosius does not analyse the mob that was actually with Saturninus, but there is no reason to think that he saw this as essentially different from the mob out on the streets which Marius had to calm.) Appian now omits a great deal by compression. There is no mention of Marius' successful speech, which won the plebs over to the side of law and order. *How* successful it was is at once made strikingly clear by Orosius, where we next find Marius organizing that same plebs into military units (*manipulatum plebe descripta*: the repetition of the word *plebs* within a very few words makes it certain that Orosius indeed had the same people in mind). Next, in Orosius (with no counterpart in Appian), Marius sends his colleague

L. Flaccus to set up a garrison *in colle* (usually, and no doubt rightly, understood to be the Quirinal) and posts guards at the gates. Battle is joined in the Forum, Saturninus is defeated there and withdraws to the Capitol. We briefly rejoin Appian with the cutting of the pipes, but at once depart from him again with a *bellum . . . in aditu Capitolii horridum satis*, in which many are killed. Saturninus accuses Marius himself of being *auctorem omnium molitionum suarum*; then, at once, we have the death of the rebels.

I shall not pursue the insoluble problem of Appian's immediate source; it is extreme in its anti-Marian bias, which – unlike the high drama – Appian can hardly have contributed himself.<sup>16</sup> Ultimately (as we shall see), his account is related to the Livian tradition. But we have already seen, from the comparison of Appian with the most detailed Livian source, that whereas Orosius omits technical detail, but spreads himself on other matters, particularly slaughter and horror, Appian concentrates and dramatizes, omitting far *more* detail, but pointing up what he selects. In Orosius, the time-scale is more extended, and a great deal happens that Appian does not attempt to touch on. None of these details (Marius' successful speech to the mob; the arming of the plebs; the various skirmishes) should be regarded as fictitious, and some are independently supported. In particular, and against Appian's odd version of conflict between the city plebs and the country plebs, Saturninus' reliance on the plebs (which must be taken as being chiefly the urban plebs) is attested by a well-known quotation in the *Ad Herennium*,<sup>17</sup> which also implies their abandonment of him. We may take it that the man who had saved Rome from the barbarians and who affected to be a simple son of the people was, in his rough style of oratory, the only one who could have brought about that change of allegiance.

As we saw, Orosius omits the Senate decree, as he does the final surrender: Livy must have had both.<sup>18</sup> The decree must precede Marius' speech and military dispositions, which are clearly based on it. But the difference that has attracted most attention is that between the immediate seizure of the Capitol in Appian (no previous fighting is reported) and the 'battle in the Forum' preceding this in Orosius and confirmed as Livian by Florus. PASSERINI went so far as to call it a 'late inven-

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<sup>16</sup> Note that Appian's is the only account that expressly states that Marius was not responsible for the cutting of the water-pipes. Even in Plutarch's (on the whole) hostile version (*Mar.* 30), possibly based on P. Rutilius Rufus (cf. 28, 8), Marius himself orders this.

<sup>17</sup> *Ad Her.* iv 67: *noli, Saturnine, nimium populi frequentia fretus esse: inulti iacent Gracchi*. This passage, close to the events (whenever precisely we put the treatise), suffices to cast serious doubt on Appian's distinction between the city plebs as opposing and the *rustici* as supporting Saturninus: it tends to confirm the Livian version. At various points, as we have seen and shall note further, Appian's account invites grave suspicion. Wherever we have sources that ought to be better informed, they tend to contradict it in detail.

<sup>18</sup> Florus, in his much shorter epitome of an epitome, has both the Senate decree and (in non-technical language) the surrender.

tion› – though it is not clear who could have invented it, at what time and for what purpose: certainly not Livy, one would think, since Cicero, known to Livy and quite possibly one of his sources, stood firmly on record as basing the emergency decree on the fact of the seizure of the Capitol.<sup>19</sup>

It is in fact a mistake to dwell on that difference and base elaborate hypotheses on it. It is more likely to be due to the haphazard nature of our evidence, all of it incomplete and compressed. Appian, as we have amply seen, has throughout compressed and dramatized. His omission of a skirmish need not surprise us. Orosius, on the other hand, has omitted much of what did not interest him, but has fully presented fighting and slaughter. The general structure of these events therefore, in a sense, emerges more clearly in Appian, though we must allow, and beware of, the dramatic fictions with which he has overlaid it, whether these are due to himself (as I think most of them will be) or to his immediate source. The details of violence, on the other hand, are more accurate in Orosius. It has often been pointed out, and it must be insisted on – though it should not be taken as a reason for trusting Appian where he clearly cannot be trusted – that the Capitol must have been occupied at once. This is clear not only from the order of events as attested by Cicero, but for the intrinsic reason that otherwise Marius (to whom the Capitol would be perfectly accessible even if the Forum was occupied by Saturninus' hostile mob) could not have failed to post his own men there instead of on the Quirinal. Certainly, in a situation such as had developed, the Capitol could not be left unoccupied. Whatever late epitomators might do, Livy himself, who knew both Roman topography and the history of previous seditions, must have been aware of that elementary fact. Neither he nor any other Roman of his day should be lightly charged with having ›invented‹ an empty Capitol, waiting to receive the fugitives from a battle in the Forum fought – providentially – with their backs to it.

Orosius' account, which has much the greatest amount of detail, by no means excludes the occupation of the Capitol.<sup>20</sup> On the contrary: on any reasonable interpretation, although it is not mentioned, it is presupposed. Orosius, chiefly interested in fighting and killing, simply did not bother to report it: like the Senate decree and the negotiations surrounding the final surrender of the *seditioni*, it was not important for his purpose. But since the Capitol, as we saw, cannot have been unoccupied, his ›battle in the Forum‹ is most reasonably construed as a skirmish with an overspill (led by Saturninus himself, as Orosius tells it) from the mob that had occupied the Capitol and was at once driven back on it. In a similar manner, as we

<sup>19</sup> Cic. Rab. perd. 35. (The sense is clear despite a lacuna.) Cf. *ibid.* 20.

<sup>20</sup> Florus', however, does. He says that Saturninus, after his defeat, *Capitolium inuasit*. This must imply that the Capitol was at that point unoccupied – which, as we have seen, cannot make sense. We cannot be sure whether the error is his own or that of the epitomator who was his immediate source (perhaps unintelligently combining two different Livian contexts) or whether it comes from elsewhere. Florus' numerous errors should not be blamed on Livy.

noted, Orosius later reports a 'fearful war' at the foot of the Capitol before the final surrender – which he does not report at all. It too can only have been a small skirmish with an ill-armed overflow mob. Appian, concentrating and dramatizing, omits both these engagements.

Before we proceed with our study of the accounts of that day and the day preceding it, we shall have to turn our attention to a question that has never (as far as I know) been properly asked. Granted that the occupation of the Capitol must be presupposed as either explicitly reported or at least implied by the two most detailed versions – what was its purpose? Perhaps the reason why the question has not been asked is not only the tendency of scholars to concentrate on the details of our accounts and the differences among them, according to the usual (and necessary) technique of philological investigation, but also the fact that it could not profitably be asked until the misdating of the final riot had been decisively cleared out of the way. With this accomplished, we can now turn our attention to the question of substance.

The occupation of the Capitol was indeed demanded by the most elementary strategic considerations, which no Roman leader could be unaware of; it was also suggested by obvious and living precedent. Ti. Gracchus, too, before the end, had occupied the Capitol – or, on an apologetic version, had joined a mob of supporters there, who had occupied it for him during the night.<sup>21</sup> Again, the occupation had been strategically necessary; but, of course, for a specific end. The end must have been as well known in popular memory as the means adopted to achieve it.

It is reasonable to assume that this was the inspiration of Saturninus. The story that he was acclaimed *imperator* and *rex* by his followers, which (in different forms) we have in the Livian tradition, is surely true up to a point: it would be surprising if an overwrought mob had *not* produced some such enthusiastic acclamations. They were readily picked up and exaggerated by hostile propaganda, supporting the charge of *regnum* which was in any case a commonplace in such situations. All this is not very helpful, one would think. Surprisingly, it seems that scholars, rightly hesitant to accept such charges at their face value, have here proceeded to accept their implications without scrutiny. Perhaps (as argued above) there was no clear alternative. But there is in fact no modern account known to me that does not imply, almost as a matter of course, that Saturninus, with his motley crowd drawn from an essentially unarmed plebs, intended to stage a *coup d'état*: to take over the *res publica* and to govern the provinces of the Senate and People of Rome. This, of course, has only to be made explicit for its absurdity to become patent. The ambition as such is inconceivable at this point in the history of the Republic – even in a Marius, let alone in a Saturninus. But had there been any such purpose, there should at least be signs of serious preparation, such as may be found (up to a point) in the case of Catiline. Saturninus' aims, whatever they were, must

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<sup>21</sup> App. 64; cf. Plut. Ti. Gr. 17, 3.

be reconstructed on a realistic model, commensurate both with his past ambitions and policies and with the forces at his disposal and the preparations made on the actual occasion. He and the experienced politicians and (in the context of the Roman tradition) experienced soldiers who were among his supporters did not suddenly lose their reason, despite the fact that the terminology of insanity is another *topos* cheerfully employed on such occasions.

Once the question is asked, the answer is not too difficult to suggest. The Gracchan precedent, very much alive in popular tradition, makes it practically certain. Ti. Gracchus had occupied the Capitol in order to hold a packed *concilium plebis*.<sup>22</sup> This technique – the advance occupation of a voting area – which he had invented was to become a favourite device of politicians less than scrupulous about observing constitutional propriety.<sup>23</sup> There can be little doubt, once we attend to the matter, that this was what Saturninus had in mind. Since the tribunician elections were over, we need not even worry about the problem that scholars have recently raised as to the nature of Ti. Gracchus' last assembly.<sup>24</sup> Saturninus clearly intended to pass a *plebiscitum*.

Unfortunately, we have practically no precise evidence regarding procedure in elections for that particular period, so that the rest must inevitably be conjectural in detail. But once we have reached this point, the outline, at least, is clear enough. Let us now return to Cicero's statement that Glaucia was sure to win election to the consulship, had his candidature not been judged illegitimate (*iudicatum non licere*, to use the phrase implied).

We must first notice that this implies more than a mere pronouncement by the magistrate who would be presiding that, if X were elected, he would refuse to announce the result.<sup>25</sup> It implies some kind of formal process of consultation.<sup>26</sup> Now, it might be suggested that the matter was discussed in the Senate: Glaucia might have applied for a dispensation to allow him to stand for the consulship while still praetor, and it was presumably within the (generally conceded) powers of the Senate to grant this. But this is surely most improbable: he must have known quite well how the Senate leadership was disposed towards him, even if he misjudged the feelings of Marius. The only alternative would be a *professio* before the presid-

<sup>22</sup> See last note and compare my comments ANRW i 1 (1972) 723 on the gravity and importance of the precedent.

<sup>23</sup> See, e.g., Dio xxxviii 6, 2; xxxix 35, 4. Saturninus and Glaucia may themselves have used the device before: see App. 128, on the occasion of Saturninus' election in 101.

<sup>24</sup> See the debate on this between L. R. TAYLOR and D. C. EARL, with my comments op. cit. (n. 22) 720 f. (giving the references).

<sup>25</sup> Such as C. Piso's action towards M. Lollius Palicanus (Val. Max. iii 8, 3). Cf. E. S. STAVELEY, Greek and Roman Voting and Elections (1972) 148, with n. 266 (not clearly distinguishing among different techniques for disallowing a candidature).

<sup>26</sup> See TLL, s. v. *iudico*, init.

ing magistrate, at, or as soon as possible after, the promulgation of the *comitia*;<sup>27</sup> for the presiding magistrate had a great deal of discretion in this field,<sup>28</sup> and the presiding magistrate was clearly Marius: for this we actually have some presumptive evidence.

In *de haruspicum responso*, Cicero dilates before the Senate on the *topos* that abuse from a bad man is more creditable to the object of it than praise from such a man. The *exemplum* he adduces (51) is: *utrum tandem C. Marius splendidior cum eum C. Glaucia laudabat an cum eundem iratus postea uituperabat?* Now, down to Glaucia's candidature we know of no occasion when Marius laid himself open to the anger and abuse of Glaucia. Indeed, as we have seen, hostile sources could allege that his opposition to Glaucia and his friends was not whole-hearted even at the end, and all agree that he did not join the *boni* until the last phase. Yet Cicero cannot be referring to whatever Glaucia may have said during the last few hours of his life. The case is cited as parallel to Clodius' abuse of Pompey, and it is implied that, like the latter, it went on for some time. In the light of the evidence we have so far investigated, that time must surely be the time after Glaucia had been disqualified from standing for the consulship. In the light of Marius' support up to this point, and of the services that he and Saturninus had undoubtedly rendered Marius, he had applied to Marius as a candidate, hoping that Marius would accept him and use his *auctoritas* to prevent any doubts that might arise.<sup>29</sup> Cicero, at any rate, in a treatise in which he had no motive for expressing an opinion he did not honestly hold, judges that Glaucia would undoubtedly have been elected if his candidature had been accepted. Glaucia and his supporters had presumably thought the same. It all depended on Marius.

But Marius now had reason to worry about giving excessive power to his

<sup>27</sup> We need not enter into a discussion of the precise nature of *professio* at this time, to which MOMMSEN's comment quoted n. 10 would again apply. Even if it differed (as in some respects it almost certainly did) from what is attested in the late Republic, we may confidently assume that a formal statement of intent to the presiding magistrate was by now (at least) customary and expected. In the post-Sullan period, the time for *professio* began with the promulgation of the elections (see J. LINDERSKI, *Historia* xiv [1965] 440). It is to be presumed that, here as often elsewhere, Sulla was codifying custom. (On the development of custom into law, see the sensible remarks of EARL, *Historia* xiv [1965] 331.) Glaucia, of course, would want an official ruling as soon as possible.

<sup>28</sup> For discussion on the presiding magistrate, see LINDERSKI, *Historia* (cit.) 423 ff. Again, although we do not know how much of later practice is relevant to this period, it is very likely that the consul first elected had by custom long had charge of the elections, unless he was unable to act (e.g. through absence *militiae* while his colleague was in Rome). Even after Sulla his colleague would act when he himself could not (but rarely, of course, for the same reason): see LINDERSKI, l.c., and L. R. TAYLOR and T. R. S. BROUGHTON, *Historia* xvii (1968) 168 ff., adding details. In this instance, Marius was clearly the consul responsible (see text).

<sup>29</sup> For Marius' willingness to underwrite with his *auctoritas* what was technically illegal, cf. the enfranchisement of the Camertes (Val. Max. v 2, 8): a recent memory at the time. A little later, cf. the case of C. Matrinius (cf. my *Foreign Clientelae* [1958] 213).

«friends». Not only was he essentially eager for acceptance by the *boni* and due recognition for the position he had earned in the state, but Saturninus and Glaucia had shown that they were not content with having served as his tools: they were now using *him* as a tool and proposed to annex the successes they had won jointly with him for their own political benefit.<sup>30</sup> The prospect of Glaucia as consul, with (what he had been unable to prevent) Saturninus and Equitius as tribunes, was totally unacceptable to Marius. Such a team would control the *res publica*. He now seized the opportunity of garbing himself in constitutional propriety, summoned a *consilium* to examine the acceptability of Glaucia's candidature, and, on its advice, not unexpectedly rejected it as illegal.<sup>31</sup> It can only be after this action that there is a proper place for Cicero's comment on Glaucia's public abuse of Marius. Marius had embarked on the road of saving the state from its internal, as he had saved it from its foreign, enemies.

It is clear, as we saw, that the disqualification of Glaucia must antedate the death of Memmius. For one thing, even on Orosius' extended time-frame, it cannot be fitted into the crowded events of the last day. Above all, however, Cicero entirely dissociates it from the events that directly led to Glaucia's death: he implies (we may now add) that these events would not have taken place if Glaucia had been allowed to be a candidate and (as Cicero expected) had been duly elected. Appian, of course, is simply unaware of the disqualification: he provides neither time nor place for it, making Glaucia still an active candidate on the day preceding his death – and, contrary to Cicero's opinion, one about to lose.

What Livy reported is, as often, difficult to disengage from the fragments of the more or less arbitrary and incompetent selections that survive.<sup>32</sup> Of the accounts that presumably are based on Livy, Orosius and the *Periocha*, which certainly are, do not mention the consular election at all and do not ascribe the death of Memmius to fear that he would be elected in preference to Glaucia: this picture, contradicted by Cicero, is in fact confined to Appian. These sources suggest that Livy ascribed the murder to Saturninus' fear that Memmius would be a hostile consul. Florus, on the other hand, does mention the *comitia* (which the *de uiris illustribus* also implies) and describes Memmius as Glaucia's competitor: the motive for the assassination is the desire to eliminate him as such. Now, it is likely enough, from this state of the sources, that Livy did mention the election in connection with the

<sup>30</sup> I sufficiently discussed this *op. cit.* (last note) and need not do so here.

<sup>31</sup> For the actual procedure we may compare (though it is probably not a precise parallel) the action of L. Volcacius Tullus after Catiline's return from Africa (Asc. 89C: the problem apparently caused by the account in Sall. Cat. 18, 3 may confidently be taken as *due*, as many are elsewhere, to Sallust's having made a careless error). The law must have been much clearer in Glaucia's case than in Catiline's; nonetheless, Glaucia did not intend to withdraw.

<sup>32</sup> To Orosius and Florus (*cit. n.* 15) add, for this, Per. lxi, coinciding with Orosius. Florus does not imply that Memmius was the leading candidate.

murder (though, as we shall see, not necessarily as its actual location). But it might be argued that the ascribed motive may have entered Florus from a non-Livian source (possibly even the one on which Appian is also based), since other items in Florus, as is known, sometimes diverge from Livy. On the other hand, we must not ignore the possibility that Livy is in fact represented by both versions. Since he told the story at much greater length, and with far more details about its various phases, it is quite possible that different epitomators chose different phases for their summaries. What is clear, at a minimum, is that there is no trace in the Livian tradition of the dramatic version we find in Appian: the imminence of actual defeat as the motive for the murder; and that at some point he included a version that did not in fact set Glaucia against Memmius as a candidate at the actual *comitia* – a version that would fully coincide with Cicero's statement on the disqualification. (And Cicero, of course, whom Livy admired, may have been one of the sources he read.)

If Livy also described Memmius as Glaucia's competitor, even after the disqualification, we can only say that this, in a way, would be perfectly legitimate. For Saturninus and Glaucia, despite that setback, clearly had no intention of giving up. For the moment, Memmius was the only candidate apart from M. Antonius, as far as we know:<sup>33</sup> their election seemed certain. The problem was how to reinstate Glaucia as a rival – sure to succeed, as we saw – for Memmius. Appeal to the Senate (a theoretical possibility in such cases) was, of course, useless. There was only one real chance. A *plebiscitum*, long regarded as an expression of the will of the Roman People, could overturn the decision of a consul on the advice of his *consilium*. What the Populus had done – or rather (it seems), threatened to do – in the case of P. Scipio in 148 and again in 135<sup>34</sup> could no doubt be done for Glaucia by the Plebs. For demagogues not willing to give up, this was the only course to pursue.

In general terms, therefore, their path was mapped. Unfortunately there were technical difficulties that would have daunted a less determined man than Saturninus. Above all, the plebiscite would require due promulgation and, since the *comitia* had already been promulgated, this meant that even at the best it could not be passed until after the elections were over. Furthermore (in case Saturninus cared about that – and it would be wiser if he did), the *leges Aelia et Fufia* prohibited legislation before the elections were indeed over. The vote, therefore, could not be passed in time to be effective.<sup>35</sup>

Delaying the elections by means of the veto clearly would not help: even if he

<sup>33</sup> The sources mention no other candidate, and one would expect any there were to be named. In particular, the man who was to be Antonius' colleague (see below) is not mentioned and was presumably not at this point a candidate.

<sup>34</sup> See A. E. ASTIN, *Scipio Aemilianus* (1967) 64 ff., 183 ff. On these occasions the Senate seems to have accepted the situation with good grace – as indeed a man of Scipio's *dignitas* and background had a right to expect.

<sup>35</sup> On the *leges Aelia et Fufia*, see G. V. SUMNER, *AJP* lxxxiv (1963) 337 ff.; A. E. ASTIN,



ignored the legal prohibition, he could not be in two places at once; and since he had to deliver his veto in person, and the other tribunes were against him (as we learn from Cicero's roll-call), he would not be able to preside over the *concilium* at the same time. Admittedly, on December 10 he would have Equitius as a colleague. But it was improbable that Marius would allow the situation to drag on as long as that. His veterans, once used in Saturninus' support, were likely to be equally loyal to their commander in opposition.

Disruption was another possibility. But again, no consular election had ever been disrupted by armed force (we must again beware of anachronism), and Marius was not the one who would permit such a precedent to be set. It is noticeable, in fact, that down to the last day no one accuses Saturninus of surrounding himself with armed men – which helps to prove that he knew how far it was safe to go. The *res publica*, at this time, was essentially still functioning: the difference between Saturninus and P. Sulpicius (not to mention P. Clodius) and what they could respectively plan to do and hope to get away with is precisely parallel to that between Marius and Sulla (not to mention Caesar). It is only historical foreshortening that fails to recognise that difference.

There was, in fact, no *good* answer, unless Marius could be persuaded to relent. We do not know what happened during the period between the announcement of the elections and the actual *comitia*. In any case, since no source reports any earlier attempts at armed disruption, we must take it that the *comitia* took place on the appointed day, and that Glaucia's abuse of Marius did not transcend the limits of free speech. That negotiations were attempted may be taken for granted; as may the fact that nothing came of them. Marius had made up his mind, and he had too much to lose to give in at this stage. Again, we are not told that at the elections a veto was tried: our sources could hardly have failed to insist on it. It is clear that Saturninus did not bother. By the time the *comitia* began, the answer must have been decided on: Memmius' fate was sealed.

Although we have seen that Appian's dramatization – the candidate killed in full sight of the assembled People when he was about to defeat his competitor – must be discounted as literary technique, the basic fact that the murder was connected with the *comitia* receives strong support from the statement in the *de viris illustribus* that it took place *in campo Martio*.<sup>36</sup> That author does not say that it was at the

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Latomus xxiii (1964) 421 ff. That they prohibited the promulgation of legislation as well is an error of SUMNER's, corrected by ASTIN (438 n. 2): Schol. Bob. 148 St mentions only *ferri*, and SUMNER has misunderstood the other sources he cites. Cicero (Vat. 23) claims that no one before Vatinius had ever offended against these laws, and his catalogue of villains who had respected them explicitly includes Saturninus.

<sup>36</sup> Vir. ill. 73, 9 *Saturninus . . . ut satellitem suum Glauciam praetorem faceret, Mummius competitorum eius in campo Martio necandum curavit*. Naturally, *praetorem* (*consulem*) has been suggested, and (*tum*) might be added before. But the author may well be simply mistaken. If this derives from Livy, it would clinch the case for Livy's mentioning the *comitia*.

*comitia* as such, and this makes it advisable to combine his account with the Livian version (in Orosius), which (as we saw) is full of plausible and probably true detail and which has him killed *orta subito seditione fugientem*. Orosius, of course, does not mention the *comitia* at all: as we have seen, he concentrates on slaughter. The picture thus painted, therefore, is one of a sudden riot disrupting the *comitia*, no doubt unexpectedly; the candidate tries to escape, but is overtaken and killed. It has often been noted that it was done with makeshift weapons: as we have seen, Saturninus was unlikely to enter the *comitia* with a bodyguard and *cum telo*. But the murder of Memmius, though clearly an act of desperation, was not an accident, as that of P. Clodius was to be. Since Saturninus and Glaucia were determined not to give up, it was by now the only possible choice.

It was only the murder that, in the circumstances, made it possible for the *concilium plebis* to meet. With the elections abandoned and one candidate removed, it could even be claimed that the *leges Aelia et Fufia* no longer applied. Whether the claim was legitimate would be a meaningless question to ask: extreme cases were not provided for by *mos maiorum*, and the answer would depend on whom you asked. But the claim as such would at least not be unreasonable. At the same time, the *trinum nundinum* of the promulgation could now run its proper course: in both respects, the results would be safeguarded against later annulment. The act itself, of course, was risky – in a sense desperate, as we have seen. But it was not an act of mere madness. The question, for Saturninus' friends as well as for his enemies, was: what would Marius do in response? And in spite of the fact that he had now come out firmly and clearly against his former allies, the answer was far from certain. The detailed sources, even where they are not (like Appian) hostile beyond what can be accepted, agree on his hesitation. There were good reasons for it, by no means discreditable to him.

For one thing, Marius might be thought bound by his own precedent. In the previous year, A. Nunnius, a competitor of Saturninus for the tribunate, had been killed in the course of the elections. It is reported that Marius' veterans (no doubt expecting Saturninus to provide for them, as he had provided for their predecessors in 103) had had a hand in it. Certainly, Marius had done nothing to intervene – or to punish.<sup>37</sup> Whether or not he was personally involved in the deed (this we need not believe), there was good reason for this. For the issue was not only political, but (one might say) constitutional. The use of the Senate's emergency decree was never taken lightly in Rome, even when it had won practically universal recognition, to the point where even Caesar questioned not the principle, but its application in his case.<sup>38</sup> In 101–100 that development was still in its infancy: the principle

<sup>37</sup> On the murder of Nunnius see the sources listed by MÜNZER, RE s. v. 1, also discussing the form of the name. (MRR has <Nonius>, without discussion.) Inevitably, Marius was later charged with complicity by his enemies. That his veterans were concerned may be believed.

<sup>38</sup> Caes. b. c. i 5, 3. The discussion in UNGERN-STERNBERG (cit. n. 7) is sometimes useful on this.

itself was by no means uncontested. In the case of Ti. Gracchus, that learned and honourable man, the consul P. Scaevola, would not allow the Senate to empower him to take emergency action beyond what he thought the laws permitted: the *res publica* was saved by a *priuatus* cloaking himself in his priestly status, and the action ‹legalised› *post factum*. When Scaevola's successor condemned Roman citizens, under a mere Senate decree, the action was blatantly illegal, and C. Gracchus later saw to it that punishment was exacted and (if possible) a repetition prevented for the future.<sup>39</sup> His own case, two years later, was quite different. He was himself *priuatus*, and he had responded to a summons to the Senate by joining his armed followers on the Aventine. This was rebellion, and it would be widely accepted that emergency action was the only answer. C. Gracchus thus helped to legalise what he had tried to outlaw, and brought about the birth of an accepted emergency decree – one proposed by the consul Opimius himself, against rebellious *priuati*, and then used by him as a justification for a *quaestio crudelis* against *priuati* implicated. It was no doubt this *quaestio* that made it easier to challenge him before the People; yet even so, he was acquitted.<sup>40</sup>

There had never yet been an unchallenged use of the decree. But what must above all be stressed: there had never yet been a use of it against magistrates and tribunes. In 101 and 100, the situation was precisely as it had been in 133 (when Scaevola had refused to act): not as it later was in 121, when action, at least at the time, seemed unavoidable and justifiable. In 101, after Nunnius' death, repression would have had to be directed against the tribune C. Glaucia, who had presided over the elections. In 100, it would be against the same Glaucia as praetor and Saturninus as tribune. For this, there was no precedent. Or rather: the only act that might be appealed to in desperate justification was the *post factum* ‹legalisation›, for political reasons, of the action of P. Scipio's vigilante mob. Apart from personal motives for hesitation that Marius may have had, it must be said that even a conservative noble who took the *res publica* seriously would have been at a loss what to do, both after Nunnius' death and after Memmius'. Our sources, hostile to demagogues and writing from knowledge of the events of the late Republic, are not aware of this; and modern scholars, on the whole, have not shown sufficient awareness either, but follow the perspective of the sources.<sup>41</sup> C. Marius, unlike Cicero (a generation later), had to set a precedent. Not that he minded ignoring the

<sup>39</sup> On P. Scaevola's actions after Ti. Gracchus' death (all directed towards unity) see ANRW (n. 22) 726 ff. C. Gracchus' attack on Popillius: Cic. dom. 82 et al.; ORF<sup>4</sup> pp. 184 f.

<sup>40</sup> On these events see especially Plut. C. Gr. 13 ff.; App. 107 ff.; Oros. v 12; Cic. Phil. viii 14. On the *quaestio* see especially Oros. s. 10 (3 000 executed, most of them innocent). On the trial: Cic. de or. ii 132 ff. et al.; Livy, Per. lxi.

<sup>41</sup> See, e.g., the specialised investigation by UNGERN-STERNBERG (n. 7), who seems to be unaware of the precise circumstances in 100, as in the earlier cases he discusses. Failing to discuss the precise issues in any of them, he comes to regard the action taken in 100 as by then practically routine (43 f.). In this he merely follows numerous predecessors.

laws on a suitable occasion.<sup>42</sup> But to be the first consul in history to take up arms against a tribune of the Plebs, with the backing only of a *senatus consultum* – that was not an easy step for a man who, much as he hankered after the approval of the *boni*, had all the respect of a *novus homo* for the basic laws of the *res publica* in which he had succeeded, and no doubt still felt bound to the People by whose support he had done so.

This has not been clearly seen. The reports of Marius' hesitation are not, as such, to be dismissed as mere inventions by hostile sources, nor is the hesitation to be ascribed to indecisiveness or duplicity, as it tends to be in those sources. That he was amply endowed with the latter (the former is pure fiction) can hardly be denied, and his dealings with Saturninus and Glaucia are not untouched by it. But it was clearly not the real issue here. Basically, his *amicitia* with the demagogues, which he had just renounced, is irrelevant to the situation in which he now found himself. Quite apart from the personal aspects, he had turned against them (he might say) when they acted unconstitutionally, in order to prevent them from doing so. Was he now himself to take action for which there was no solid constitutional justification or precedent?

Saturninus and Glaucia, of course, were well aware of this, untouched as they were by the anachronisms that deceive us. They knew that, a year earlier, Marius had refused to take up arms against a tribune, even under an emergency decree, such as the Senate (under its *princeps* M. Scaurus) would no doubt as readily have provided then as it was to do in this case, and even though then too a candidate had been killed, and killed at the actual electoral assembly. Saturninus, therefore, though he could not be certain what the consequences of his action would be, had reason to be confident.

Our fuller sources agree that it was M. Scaurus, the *princeps*, and an old friend of Metellus Numidicus and enemy of Saturninus, who in the end made the difference. The *sententia*, the *gravitas* and the symbolic actions of the most powerful man of his generation, *cuius . . . nutu prope terrarum orbis regebatur* (Cic. Font. 24), supported (of course) by the other consulars, in the end overcame Marius' hesitation.<sup>43</sup> It is odd, and part of the misinterpretation with which this whole series of events has traditionally been afflicted, that Scaurus' decisive action – all the more remarkable because he had had no love for Memmius and was no doubt glad not to see him as consul – has often been ascribed to some personal connection with

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<sup>42</sup> See n. 29 above with text.

<sup>43</sup> For Scaurus' part, see especially vir. ill. 72, 9 and the graphic account in Val. Max. iii 2, 18 – ludicrously conflating Cicero's picture in Rab. perd. (already rhetorically exaggerated) with the pathetic description (ibid.) of Q. Scaevola Augur. Perhaps there is also a reminiscence of the pathetic incident at Q. Varius' prosecution of Scaurus when the latter was really an old man: see Asc. 22C.

Marius, which, even if it had at that time existed, would have been irrelevant.<sup>44</sup> It was M. Scaurus who, as *princeps*, created the precedent of the use of a *senatus consultum* for armed attack on a tribune of the Plebs.

Saturninus and his friends, meanwhile, had gone ahead with their plans for their *concilium plebis* on the Capitol, clearly on the optimum assumption regarding Marius' reaction to the death of Memmius. We have seen that, although they had in part been manoeuvred, and in part manoeuvred themselves, into a difficult and hazardous position, they were by no means an insane gang of desperadoes. They had reason to hope that their plan would be allowed to succeed. During the night the Capitol was occupied, as it had been by Ti. Gracchus' adherents a generation ago. Voters from the country had been streaming into the city, no doubt for some days, in preparation for the vote: if we may trust Appian (which is not certain<sup>45</sup>), they were more enthusiastic followers of Saturninus than the city people. Saturninus, after all, would prefer to win his vote with a *minimum* of force. Indeed, the summoning of these *agrestes* helps to make clear what Saturninus' plans were: it was a normal phenomenon, before an important vote. Nothing suggests that these people were armed, or organized for fighting. As is attested, Marius did not wait to summon his veterans against them. A tumultuary levy raised in the city and given arms was obviously thought to suffice, and did. There was no serious resistance. If Orosius' report that Saturninus was with the overflow of the crowd in the Forum is correct (i. e., if it is from Livy – as is quite likely, since Orosius is not given to fictional dramatization), Saturninus was still probably trying to negotiate rather

<sup>44</sup> On Scaurus' relations with Memmius see Cic. de or. ii 283. For the misinterpretation noted in the text, see (prominently) I. SHATZMAN, *AncSoc* v (1974) 200 f.: close to realising that both Val. Max. and vir. ill. report *ex officio* action by the *princeps senatus*, with added symbolism to reinforce it, he nonetheless goes on to spin a web of imaginary personal relations between him and Marius out of those same passages and concludes: 'there is no inherent reason for rejecting the evidence [*sic!*] of some kind of cooperation and understanding between Marius and Scaurus in 100.' (There is, of course, no evidence.) He misinterprets *alienus* (Cic. prov. cons. 19) as not implying enmity (in fact, it is freely used as an elegant variant for *inimicus*: see, strikingly, Phil. x 10) and suggests: 'it is probable that gradually in 104–101 Marius and Scaurus came to be on good terms' – though he concedes that this may have started suddenly in 100! (See 204 f.) The whole web of fancy collapses once it is noted (as it at one point is by him) that no source implies any personal relationship between the two men in connection with these events.

<sup>45</sup> Full discussion of this complex issue would bring up various problems in Appian i and would take us too far here. (But see, for a start, n. 17 above.) However, the influx of *agrestes* as such need not be doubted, even if Appian's misinterpretation is rejected. It implies neither any special love for Saturninus by them as a class nor any military aims (whatever they might be imagined to be) on his part. Everyone now knows that numerous voters from the country had to be brought in for *comitia* and *concilia plebis*, in view of the structure of those assemblies. It is quite possible that his report of special favour for Saturninus on the part of the *agrestes* (contradicted by better sources, as we saw) arose merely out of his attempting to explain a reported influx of those men that he did not understand. This could also apply to other instances where he constructs opposition between city and country people.

than fight. But it was all in vain. Marius was now fully committed. Even his scruples over killing a tribune of the Plebs, either in a riot or (worse still) later in cold blood, could not prevent the drama from proceeding to what seems its fated conclusion. *Mos maiorum* had given the Senate powers vastly beyond what had been seen in 133 and 121. This time, no one was left to challenge them: M. Antonius and his peers were to see to that.

Oddly enough, it was Appian, despite his confusion over the details of the actual events, who most clearly appreciated the outcome – certainly more clearly than his modern successors. οὐδένα ἔτι ὠφελούσης οὔτε ἐλευθερίας οὔτε δημοκρατίας οὔτε νόμων οὔτε ἀξιώσεως οὔτε ἀρχῆς (146). *Libertas* and *res publica, leges, dignitas* and *honos* – all the sacred concepts could now collapse as the result of a single Senate vote, accepted by a willing consul. Perhaps those who led the attack on Popillius and Opimius had seen it coming. They had not been able to prevent it. As it turned out, it was – paradoxically – C. Marius who, by his *auctoritas*, underwrote and permanently legitimised the oligarchy's unlimited power to override the law.

### III. Consuls and Consulars

There is no more to be said about C. Marius, now that his actual position and the background to his actions on that day have been clarified. Nor need (or can) much be said about L. Valerius Flaccus, hand-picked as Marius' <slave>, as P. Rutilius Rufus later wrote. Why Rutilius should have been so bitter over a man who had, after all, helped to save the *res publica* is puzzling. Of course, he would dislike any friend of C. Marius: the *inimicitiae* between those two, from their joint service under Q. Metellus Numidicus in Africa to Marius' part in the events that led to Rutilius' exile, were profound. But an item preserved only by Plutarch and clearly taken from Rutilius' account – an item sometimes noted, but not given due weight – furnishes the key. Marius' election to a sixth consulship had no doubt been inevitable, once it was clear that he wanted it – whatever the truth of Rutilius' report about lavish bribes.<sup>46</sup> But there was apparently a contest over the second place, be-

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<sup>46</sup> Velleius' remark that he was given his sixth consulship *ueluti praemium meritorum* (ii 12, 6), though no doubt his own comment, must be correct, in the sense that it would have been quixotic for anyone to stand against him at this moment, and no one is attested as doing so. Nor were bribes necessary to elect C. Marius, at the very time of his triumph; though he could well afford lavish generosity. (See T. F. CARNEY, A Biography of C. Marius [1960] 40.) What is reported as bribery should be regarded as a lavish distribution to the plebs in (very proper) connection with his triumph, after saving Rome from the barbarians. For its date, see DEGRASSI, *Inscr. It.* xiii 1, 562: the battle of the Campi Raudii took place on July 30; so the triumph cannot possibly be put before September and was most probably held late in that month or even after its end. This would bring it to about the time of the elections, and (of course) triumphs and elections were closely connected in Roman tradition. However, the money distributed presumably helped to get Marius' favoured candidate elected as his colleague (see text).

tween L. Flaccus and ‹Metellus›. Rutilius charges that Marius, picking Flaccus as his slave, won him the post by bribes. The ‹Metellus› is not more closely defined, but Plutarch obviously took him to be Numidicus (he never uses the *cognomen* alone for other Metelli); and since it was Numidicus who was most closely connected with Rutilius, and we do not find a Metellus as a candidate for 99, this should no doubt be accepted. (If Q. Metellus Nepos, the only other possibility, had been the man concerned here, his *agnomen* ought to have been mentioned; and we should expect him to try again in 100, in opposition to the *populares* C. Memmius and C. Glaucia.) In view of Marius' cumulation, Metellus Numidicus might well claim a second tenure. And the *boni*, who had to accept Marius, would gladly support him in order to obstruct any unacceptable plans that Marius, with the help of his demagogic friends, might have – especially after the way in which the election of Saturninus to a second tribunate had come about. It is not inapposite to remember those who, a generation later, were to put up M. Bibulus against C. Caesar, with (at least initially) full success. However, Marius was strong enough to get his supporter elected and keep his enemy out. But the whole affair must have greatly added to the prevailing bitterness: not only making Marius considerably less eager to save Metellus when the possibility of engineering his exile developed, but (as we saw) turning the friends of Metellus towards hostility to the successful L. Flaccus and, no doubt, making Flaccus himself unwilling to help Metellus when the time came.

It is possible that Marius' connection with Flaccus goes further back: he may have saved Flaccus from a *repetundae* charge after his praetorship.<sup>47</sup> If so, he would have very positive reason to want him as a colleague now; in any case, he was always willing to gain the support of worth-while *nobiles*, and the need to keep Metellus out would suffice to secure Marius' support for the only competitor of whom we hear. There is practically nothing further that we know about L. Flaccus, except that he was conscientious in carrying out his priestly duties as *flamen*.<sup>48</sup>

There is more to be said about M. Antonius, who will turn out to be one of the principal subjects of our investigation. Presented by Cicero, in his dialogues, as an amiable member of a circle of cultured Optimate friends, he can in fact be clearly shown to have been an *amicus* of Marius at the time, with all that this implies by way of hostility to some others. I set out the evidence long ago and need only sum-

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<sup>47</sup> See my Studies (n. 9) 101, with n. 98. Against: SUMNER, *Orators* (n. 6) 80 ff. The matter cannot be argued here, as its importance is marginal.

<sup>48</sup> Cic. Rab. perd. 27. Note, incidentally, that his conscientious fulfilment of those duties did not prevent him (as it surely would have the *flamen Dialis*) from engaging in battle: he was asked by Marius to occupy the Quirinal with an armed contingent, obviously prepared to fight. MÜNZER (RE, s. v. ‹Valerius› 176) comments on his ‹persönliche Bedeutungslosigkeit› and ‹politische Mittelstellung›. The latter is a misconception, based on Cicero's idealising picture, partly in his own apologies. But we need have no quarrel with the former, at least at this period of Flaccus' life.

marise it.<sup>49</sup> Quite apart from the manner of his death (for he died together with other men on whom Marius took a grim revenge for betraying him), there is, at this time, for a start a strong Arpinate connection, noteworthy in one who is not known to have had any direct links with that remote town. M. Gratidius, father of Marius' nephew whom (at an unknown date) Antonius defended, was killed serving under Antonius in Cilicia; L. Cicero, uncle of the *cos.* 63, served under him there through the whole of the campaign. There is more, outside Arpinum. At some time between 98 and 92 (I suggested 95, which is conjectural – but we shall have to come back to this point<sup>50</sup>), Antonius joined Marius in defending M' Aquillius, whom Marius had picked as his consular colleague for 101 after he had served as Marius' senior legate in Gaul, on an extortion charge arising out of his command in Sicily at the time of the slave war. It was clearly to a large extent Antonius' dramatic defence, which became famous, that saved Aquillius, despite massive evidence of guilt, made plausible by his later behaviour on a mission to the East.<sup>51</sup> At some time (presumably) in the nineties, Antonius' son became engaged to a Julia of the family of the Caesares, also close to Marius, who (presumably) helps to account for this connection. In 100, when Antonius stood *ad urbem* waiting for his triumph, his election to a consulship for 99 was apparently taken for granted: Saturninus and Glaucia (at that time on good terms with Marius) are not

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<sup>49</sup> See Studies (n. 9) 34 ff. The index to that book, s. v. <Antonius>, tells much of the story. I shall not repeat the references to the sources.

<sup>50</sup> For the evidence, see Studies (l. c.); for further discussion, p. 142 below. The date still sometimes appears (without question) as 98; thus SHATZMAN, *Senatorial Wealth and Roman Politics* (1975) 281 with n. 5. (The work is very useful within its field.) Against my view (Studies 45 f.), but without advancing any argument, he asserts that the trial <could have taken place before Marius left for Asia>, i. e. <in 98 after Metellus came back from exile>. For sufficient comment on this idea, see Plut. Mar. 31, 1 οὐχ ὑπομένων κατερχόμενον ἰδεῖν τὸν Μέτελλον. (For further discussion, see n. 91 below.) Livy, Per. lxx, relates the trial at the beginning of that book, whereas Metellus' return comes in lxix. Though the notice of the trial may have been attracted to lxx, *init.*, by the fact that Aquillius' victory concludes lxix, this can only mean that Livy may have related it later in lxx – not that it may have preceded Metellus' return in lxix! SHATZMAN's comment reveals failure to attend to the chronology offered by the sources. After the return of Marius, any date is technically possible. (I would now put this late in 97: see below.) However, for reasons still to be noted, 95 is the earliest *plausible* date. (But even 93 cannot be decisively excluded, as the next event in internal politics reported by the epitomator belongs to 92.)

<sup>51</sup> Cic. de or. ii 124; 194 ff., et al.; Livy, Per. lxx. Cf. Cic. Flacc. 98: *multis auaritiaie criminibus testimoniiisque conuictum*. Although he has reason to distort (the phrase clearly applies to his client), the pathetic defence by Marius and the flamboyant (and unprecedented) device that made Antonius' defence famous suggest a difficult case. For Aquillius' behaviour towards Mithridates, which helped to start the First Mithridatic War, see my *Roman Imperialism in the Late Republic*<sup>2</sup> (1969) 56 f. There is no record of any previous connection (e. g. by military service) between Aquillius and Antonius: had there been one, it could hardly have failed to appear, as (e. g.) in the case of C. Norbanus. The connection can only run via Marius.



reported to have <feared> it; and C. Marius himself, who had for years been actively promoting his *amici* to become his colleagues and who, in 100, was to disqualify Glauca, clearly did nothing to oppose Antonius as he had (e.g.) Q. Metellus Numidicus. The evidence is varied, and of diverse weight. GRUEN,<sup>52</sup> rejecting it without scrutiny, had little to set against it: chiefly quotations from Cicero's dialogues, showing love and harmony prevailing in the circle that Cicero chose to depict for the nineties. Of course, Antonius did, at some time (we cannot tell when), come round to the Optimates and later died for it; but it should be realised, as it was for the <Scipionic Circle> twenty years ago,<sup>53</sup> that the setting of Cicero's dialogues (as distinct from details of historical events, which he took endless trouble to get right) is – and is meant to be – pure fiction. Few nowadays would use (e.g.) the evidence of the *de senectute* as a basis for reconstructing the character and circle of friends of the Elder Cato. Yet the lesson seems hard to learn.<sup>54</sup>

M. Antonius' colleague is more puzzling. It has been forcefully argued by SUMNER, in support of BROUGHTON and against MÜNZER, that A. Postumius Albinus, *cos.* 99, is likely to be the disgraced legate of the Numidian War, who – contrary to MÜNZER's view, which is not supported by the evidence – had not been convicted by the *quaestio Mamilia* when his brother (who, as consul, was responsible) was.<sup>55</sup> BROUGHTON thought that, after the defeat of the Populares in 100, the reaction secured his election. This may be part of the explanation, but it omits consideration of C. Marius, the consul apparently presiding over the *comitia* and saviour of the Republic. He should have been able, if not (as in the preceding years) to get anyone he wanted elected, at least to keep out anyone he did not want. It is worth recalling, in this context, that the Postumii Albini cannot have had much love for Q. Metellus Numidicus. Whether the consul was himself the disgraced legate or closely related to him, he would not easily forget the events surrounding the *quaes-*

<sup>52</sup> JRS lv (1965) 67 f., attacking my interpretation in *Studies*.

<sup>53</sup> See (independently) H. STRASBURGER, *Hermes* xciv (1966) 60 ff.; A. E. ASTIN, *Scipio* (n. 34) 294 ff.

<sup>54</sup> GRUEN's assertion that my case for the association of M. Antonius with Marius <rests largely on the trial of C. Norbanus> is false, as both my treatment in *Studies* (cited as the basis for his statement) and the text of this investigation makes clear. I am now, in fact, less convinced of the relevance of Norbanus to this than I (admittedly) used to be. He is a puzzling figure – after a flamboyant entry, in 103, as a colleague of Saturninus and acting in his manner, he fades out (as far as our notices of political conflicts are concerned) until, after a successful administration of Sicily, he appears as *cos.* 83, supporting the government of Rome against the rebel Sulla. That there was an early connection with Marius, running via Saturninus in the first place and later confirmed by quaestorian service under Marius' friend M. Antonius, is very likely: it would help to explain his later loyalty to Marius' son and successors. His silence in the troubles of 100 may be easier to explain than might appear: he was probably serving as quaestor under Antonius in that year, hence waiting with him *ad urbem* for the triumph, at the time the troubles came to a head. (See *AJP* civ [1983] 156 ff.)

<sup>55</sup> See *MRR* Suppl. 50 f. and SUMNER, *Orators* (n. 6) 82 ff. (suggesting he was just over 50).

*tio Mamilia*. It was Metellus who had taken over the forces of the Albini in Numidia. He found them (we are told) in a state of what one must call literally unbelievably low morale and discipline; and he clearly reported all this to the Senate and (to judge by Sallust's account) used it as an explanation of his failure to make the expected quick progress in the war.<sup>56</sup> He, therefore, was undoubtedly in part responsible, if not for the *quaestio Mamilia* as such, at least – by providing evidence that one could not dismiss as tainted by <Popularis> bias – for the conviction of his predecessor Sp. Albinus.

We constantly see how little <party> labels like <Optimates> and <Populares> will at times mean. Though caught up, together with some generally hated *nobiles*, in the *quaestio Mamilia*, the Albini had no special grudge against popular leaders and had little to thank the Metelli for. This must surely be taken into consideration, when we try to explain why, towards the end of 100, the presiding consul agreed to (or perhaps himself suggested: we cannot tell) the choice of an obscure and perhaps disgraced Patrician to be the colleague of M. Antonius. It fitted in with Marius' personal policy of supporting weak members of the *nobilitas* and with what was at the moment his overriding aim: to prevent the recall of his enemy Metellus Numidicus.

Unfortunately it seems impossible to disengage with complete confidence whether his expectations in this respect were fulfilled, or whether A. Albinus, unlike his colleague, in the end allowed the prayers of half the *nobilitas* to sway him towards support of the motion for Metellus' recall. The facts are simple to set out. Cicero firmly assures us that, during the long debate over that motion, the matter was never once put before the Senate, and (this is repeatedly stressed) M. Antonius never spoke in public on Metellus' behalf.<sup>57</sup> The two items are obviously connected. The surprising fact that a matter of such great interest to most of the noblest men in Rome was never put before the Senate can only be due to the unwillingness of at least the more powerful consul to frame, or to allow, a *relatio* on the matter. This, indeed, is one of the strongest items of evidence in documenting Antonius' attachment to Marius; and once we are aware of that connection, it will cause no surprise. He certainly had no known personal *inimicitiae* towards Metellus.

His colleague Albinus, on the other hand, probably (as we saw) did have a

<sup>56</sup> See Sall. b.J. 44, 3 f.

<sup>57</sup> See Sest. 37; red. sen. 38; red. Quir. 9 ff. Velleius ii 15, 4 positively asserts that the Senate gave its support – a statement that must be pure fiction, spun out of the mere probability of such action. The case is instructive: had we lacked Cicero's specific and repeated evidence, we should have been compelled to accept Velleius. It would never have occurred to anyone even to doubt his statement, plausible as it is, and our whole understanding of the circumstances surrounding Metellus' recall would have been falsified. (See my analysis below.) It is salutary thus to note the value of late and inferior sources (many worse than Velleius), which, even in this relatively well-documented period, often provide all the evidence we have.

grudge against Metellus. He may be assumed to have joined Antonius at least for some time in doing nothing to expedite Metellus' recall. And Cicero's words make it clear that, right to the end, he did not actually frame a *relatio* on the subject in the Senate; but that could be explained by unwillingness to act against his stronger colleague's wishes. What he in fact did, however, is related (or rather, implied) by Cicero in a curiously contorted phrase,<sup>58</sup> which will need detailed examination. Unfortunately a consensus on what precisely Cicero meant (or was trying to suggest, or to conceal) is unlikely to be reached, and we must be content to leave the matter of whether Albinus was in the end persuaded by the prayers of the *nobilitas* to which he (unlike C. Marius and M. Antonius) belonged – and, if so, to what precise extent, short of framing a motion on Metellus Numidicus' return in the Senate – unsettled.<sup>59</sup>

In any case, A. Albinus, of distinguished Patrician family and soon to be consul, is not on the register of distinguished men whom Cicero actually names as rallying to the defence of the *res publica* on the day of the emergency decree, in the great roll-call in his speech on behalf of C. Rabirius (Rab. perd. 21). He was in any case not yet a consular, and almost certainly not yet a candidate for the consulship of 99.

Cicero lists eight names and at the end, after Q. Catulus (*cos.* 102), adds: *omnesque qui tum erant consulares*. The phrase is interesting – and again not entirely straightforward. We cannot help wondering how many other consulars were there; whether, in fact, Cicero knew of any others and decided not to name them; and if so, for what reasons. The possibility clearly arises that the phrase is added for mere rhetorical effect: that he did not in fact know of any other consulars present at the session on that day – and since he must have carefully enquired into the events of that day, that would mean that there were no others – but has used a phrase intended to be deliberately impressive and misleading. The possibility calls for investigation; and investigation of the consulars of that day will turn out to be useful in other ways in due course. Let us therefore start with the eight who are in fact named. RE numbers will be given in each case, and details will easily be found both in RE and in MRR.

1. M. Aemilius (140) Scaurus, *cos.* 115, *ensor* 109, *princeps senatus*. No more need be said about him at this point.
2. L. Caecilius (93) Metellus Diadematus, *cos.* 117, *ensor* 115 (see n. 96 below)? If so, one of the censors who removed Marius' friend Cassius Sabaco from the Senate.
3. Q. Mucius (21) Scaevola Augur, *cos.* 117. Cicero paints a 'Phantasiebild' (the word is MÜNZER's) of him at this time, of extreme old age and debility. In fact,

<sup>58</sup> Cic. red. Quir. 11.

<sup>59</sup> See Appendix to this article.

he was still alive in 91, when he is one of the characters introduced at the beginning of *de oratore*, and even in 88, when, defying Sulla's threats, he refused to vote for declaring Marius a *hostis* (Val. Max. iii 8,5).

4. Ser. Sulpicius (59) Galba, *cos.* 108. Brother of the C. Galba convicted by the *quaestio Mamilia* (Brut. 127). His success in the consular elections at this time is remarkable and we cannot explain it. We know nothing much else about him, except for an undistinguished command in Ulterior, c. 111–0.
5. C. Atilius (64) Serranus, the *stultissimus homo, fuit tamen nobilis* (Planc. 12) who defeated Q. Catulus to become *cos.* 106 with Q. Servilius Caepio. Nothing else is known about him.
6. P. Rutilius (34) Rufus, *cos.* 105 after a *repulsa* ten years earlier. (We do not hear of any attempts in the interval.) He, of course, is the hero of the later Socratic trial, and a historian of the period. As a friend and legate of Numidicus, he hated Marius and, it appears, L. Flaccus (see p. 121 below). As consul, he introduced important army reforms, on which Marius based his own and (using the army prepared by Rutilius in preference to his own African veterans) his German victories. He no doubt considered that Marius had supplanted him.
7. C. Flavius (87) Fimbria, *cos.* 104. An orator of moderate attainments, whom, according to Cicero, his character and diligence made a *bonus auctor in senatu*. He arrived at the consulate *longius aetate proeuctus* (Brut. 129). SUMNER (*Orators* [n. 6 above] 76) suggests he may have been fifty at the time; certainly no younger, if Cicero's words are to have any proper meaning. He was dead by 91 (*de or.* ii 91).
8. Q. Lutatius (7) Catulus, *cos.* 102. He was the man helped by Marius to a consulate after three *repulsa*e and allowed to share in Marius' German campaigns (the only colleague Marius permitted to do so) and in his triumph after. His insistence that he had played the major part in the victory of the Vercellae (he built the *porticus Lutatia* out of the spoils) led to a bitter quarrel with Marius.

Let us next add the names of consulars who were (either certainly or possibly) still alive, but who, for various reasons, could not be there.

9. Q. Fabius (111) Maximus Eburnus, *cos.* 116. A doubtful case. He may be the consular concerned in the strange incident in which a consular Fabius had his son executed by virtue of *patria potestas* and was then condemned and went into exile. If this interpretation is correct, he is the Fabius Maximus in exile at Nuceria (Cic. Balb. 28). The exile would date to around 105–4. Thus RE; but the whole matter is so obscure and the sources so difficult that not much should be built on it.<sup>59a</sup>
10. Q. Servilius (49) Caepio, *cos.* 106. Probably in exile after conviction in connection with the loss of the *aurum Tolosanum* and his defeat in Gaul.

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<sup>59a</sup> I have discussed this case in *Klio* 66 (1984) pp. 307 f.

11. Cn. Mallius (13) Maximus, *cos.* 105. Probably in exile after impeachment by Saturninus.
12. M' Aquilius (11), *cos.* 101. Still fighting in Sicily.
13. C. Porcius (5) Cato, *cos.* 114;
14. L. Calpurnius (23) Bestia, *cos.* 111;
15. Sp. Postumius (45) Albinus, *cos.* 110. These three went into exile after conviction by the *quaestio Mamilia*. How long they remained alive is not known, but is irrelevant here.

And this brings us to our next step. We must next look briefly at the other consuls of the years between 120 and 107, at least in summary fashion: there is no need for more, since details will be found in RE and MRR; and there is no need to go further back, since the oldest consulars securely attested as alive late in 100 are the consuls of 117; and no need to go past 107, as the consuls of 106–100 are by now all accounted for.

Dead, certainly or (in one or two cases) probably, were the following: C. Papius (33) Carbo, 120; L. Caecilius (91) Metellus Delmaticus, 119; M. Porcius (10) Cato, 118; M. Caecilius (77) Metellus, 115 (he is not attested after his triumph in 111 and, since he was not among the relatives who pleaded for Numidicus' return in 100–99, may be assumed to have been dead by late 100); Cn. Papius (37) Carbo, 113 (the member of that wicked family who, when accused, was *sutorio atramento absolutus*, which probably is a joke meaning he killed himself; but if not, as MÜNZER says, he <disappears from the stage>); M. Livius (17) Drusus, 112; L. Calpurnius (88) Piso Caesoninus, 112; P. Cornelius (355) Scipio Nasica Serapio, 111; M. Aurelius (215) Scaurus, 108; L. Cassius (62) Longinus, 107.

Marius, of course, was consul in this period, and present in 100; Numidicus was in exile. Of the remaining 27 consuls of these 14 years, one probably never even held the office and is certainly not heard of either before or after (Q. Hortensius [2], 108); and as we have seen, about half (14) were either dead or in exile. The disappearance rate had been exceptionally high, owing to the Jugurthine War with the trials it produced, and above all the wars in the north, which led to the death or (in due course) the exile of several consuls and consulars, including (as we saw) two of the years 106 and 105 as well. Even where a man escaped conviction, by whatever means, his career was ruined, and, it seems, he did not show himself in public after: such appears to be the case of M. Iunius (169) Silanus, 109, prosecuted in 104: if he survived his acquittal, we certainly do not know by how long.

In addition to Marius, 4 (as we saw) were present, along with their juniors, at the fateful session in 100. This leaves 7 more men to be investigated. In three cases, we do not know a single fact about them after their consulships and precious little altogether: P. Manilius (14), 120; L. Aurelius (99) Cotta, 119; M' Acilius (26) Balbus, 114. There is no good reason to think these three, two of them aged over sixty, were alive by 100. Q. Marcius (91) Rex, 118, is in a similar position: trium-

ping in 117 and perhaps acquitted after a prosecution, he is not heard of again. Since his consulship precedes even the earliest of the known survivors', we may presume his death as well. In only three cases, therefore, is there any reason to expect the man concerned to have been still alive. We must look at them individually.

C. Licinius (88) Geta, 116, is an odd case on any count. He became an *exemplum* (Val. Max. ii 9,9) as the only consular expelled from the Senate by censors (in 115, in fact) who ever, in the whole of Roman history, later became censor himself, without (so far as we know) having had to hold any other office to regain his seat. Since that was in 108, we are practically forced to assume that the censors of 109 managed to restore him to the Senate before one of them died and the other was forced to resign. (Other activities are, in fact, attested for that year, and the *album senatus*, of course, was a very early part of the censors' duties.<sup>60</sup>) This is literally all we know about him: he is one of the mystery figures of this period. We cannot even be quite sure of his censorial colleague's name, and we certainly have no record of a single action by this pair of censors, except that they apparently both survived the office and completed the *lustrum*. We cannot tell whether Geta died before long or simply decided not to be active in politics.

M. Minucius (54) Rufus, 110, was a much more distinguished man. He triumphed in 106, after a long war in Macedonia, and built the *porticus Minucia* out of the spoils, presumably after his triumph (though we do not know whether he dedicated it). We do not hear any more about him and have no idea how much longer he lived. However, as MÜNZER observed: in his case (that of a *triumphator*, with a building among the most famous in Rome to his credit) it can almost be taken for granted that he did not attend the Senate meeting that acted against Saturninus: Cicero could hardly have failed to mention him by name. MÜNZER thinks he was dead by then, and this is the most likely answer. But he may, of course, simply have been ill; or he may not have wanted any part in what was being planned. There is little point in guessing. What is most important, however, is that he can safely be assumed not to have been present at the meeting.

Our survey of *prima facie* eligible consulars has not produced a single one of whom we saw any reason to believe that his presence (unrecorded by Cicero) should be posited. The greater part of those not named were either dead or in exile; several others are not named for so long before that they should not be assumed to have been alive – but if they were, they were evidently not taking an active part in politics and would not have done so on that occasion.

Cicero, of course, must have known perfectly well who was in fact present on that famous occasion: as we saw, he must have done his research on this (he never took that duty lightly, in a major case), and the information would easily be available, even at the time, and even if he had not already had it for many years, through the conversations of his youth. His vague reference to *omnes qui tum erant*

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<sup>60</sup> See Mommsen, StR. ii<sup>3</sup> 420.

*consulares* has turned out to be rhetorical vacuity. This, of course, was only to be expected, on critical analysis of the list itself. The orator who named C. Atilius Ser-  
ranus, *stultissimus homo*, among those who attended would hardly be likely to omit anyone at all: there could scarcely be a less memorable person.

One more name, however, remains to be scrutinised, and I have purposely left it to the last: that is C. Caecilius (84) Metellus Caprarius, 113. He had been censor, with Numidicus, in 102, and he is mentioned again among those who pleaded for Numidicus' return – the only man of consular rank not listed among those at the meeting in 100 and mentioned (apparently) after that meeting. One thing of which we can be certain, surely, is that he was not anonymously present at the meeting: a Metellus, and a censorian, could not have been omitted on Cicero's well-prepared list. We must take it that he was indeed not present, so that he does not bestow minimal real content on Cicero's phrase about the other *consulares*. But it would be interesting to know *why* he was not there. Unfortunately, we cannot be sure. Discussion, however, will have to wait until we have threaded our way through the maze of sources regarding the return of Metellus Numidicus.

#### IV. *The Return of Metellus*

We have seen some of the important consequences of the correct chronology for the death of Saturninus, which Gabba brought to the general attention of scholars. We can now continue the survey of those consequences by looking at the dates of the tribunes associated with the struggle over the return of Metellus Numidicus. The first of them, of course, is P. Furius: was he tribune in 100 or in 99? We should now be able to reach a persuasive answer; and as is well known, the dates of other tribunes and other magistrates depend on that of Furius. The main facts known about Furius are simple enough:<sup>61</sup> after first supporting Saturninus and Equitius, he abandoned them, took part in the action against them, then passed a law confiscating their property and their adherents'; for reasons of his own (Metellus, as censor, had tried to deprive him of his horse), he then joined Marius in preventing a vote for Metellus' recall, presumably persevering in this until his tribunate ran out. In the following year he was prosecuted and lynched at his trial.

The matter of the prosecution is complicated and the evidence needs sorting out. Though the facts have frequently been discussed and the quality of our sources obviously does not permit certainty, it is important that the evidence be scrutinised according to reasonable criteria. Cicero and Valerius Maximus (apparently based on him) relate a prosecution by C. Appuleius Decianus – a relative of Saturninus who, in this very year, also unsuccessfully prosecuted a relative of the

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<sup>61</sup> Sources in MRR ii 2 and 4ff.; RE, s.v. 'Furius' 22. Older treatments in GRUEN (n. 4 above).

cos. 100 L. Flaccus. According to Cicero, he complained in a *contio* about Saturninus' fate, and that led to his own conviction later; according to Valerius Maximus, he lost his case and had to pay a penalty.<sup>62</sup>

Appian has a different story, of a prosecution by a C. Canuleius, because Furius had opposed Metellus' return; in the course of the trial, Furius was torn to pieces by the angry crowd. (This part is confirmed by Dio.) As has long been known, there are three possible resolutions of this difference:

- (1) there were two different prosecutions;
- (2) there was a single prosecution, but two men were associated in it;
- (3) there was a single prosecution and Appian has simply got the name wrong.

The last suggestion should at once be eliminated. (It has not recently been popular.) That either Appian or a scribe should substitute the unknown <Canuleius> for the very name <Apuleius> (thus in Appian) that had just been featured in a long narrative about Saturninus is more than anyone will readily believe. I have no doubt that this answer lacks even a marginal chance of being correct.

The second suggestion, which has recently been more popular,<sup>63</sup> seems to labour under rather similar difficulties, though admittedly they are not as extreme. It will indeed fit in with Cicero and Valerius, since Cicero was not concerned with the case as such, but merely with the personal fate of Decianus, and Valerius probably used Cicero as his sole source for the story. And although it is clear that Decianus was in fact trying to punish the traitor to Saturninus, whereas Canuleius is said to have tried to punish the opponent of Metellus, yet politics makes strange bedfellows, and their collaboration for a limited common aim is not to be excluded. In fact, Cicero tells us that the *boni* supported Decianus' prosecution (even though they must have known his background) until he voiced his feelings too openly.

The puzzle, however, arises over Appian. If the prosecution was indeed a joint one by two tribunes, why should he single out the name of one about whom he (and we, following him) clearly cannot know anything at all, while overlooking the <Apuleius> who bore a name prominent in his narrative over several sections? If he wanted to abbreviate at this point, surely he would have omitted Canuleius for his tailpiece. I can see only one plausible reason why he should do the opposite; and this is why the first of our three possibilities seems to me the only reasonable answer.

The reason must be that it was Canuleius who brought about Furius' death, in the spectacular manner described by Appian and confirmed by Dio, whereas Decianus' prosecution simply failed, and therefore (in Appian's brief attempt to tie up

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<sup>62</sup> On Decianus, see my discussion in JRS xlv (1956) 95 f. Valerius Maximus' statement on the outcome of the case, as GRUEN points out, is probably his own inference, since there is no good reason to think that he consulted any source other than Cicero.

<sup>63</sup> It was recently argued by GRUEN, *op. cit.*



a loose end regarding the fate of Furius) simply was not worth mentioning. It is mentioned by Cicero because, as we have seen, he was concerned solely with the person of Decianus, not with the fate of Furius as such, which would have been a mere distraction. But although Cicero does not actually say that Decianus' prosecution failed, nothing excludes this, as far as his text is concerned. If Valerius Maximus is indeed giving us merely his own inference from Cicero in his report on the outcome, the inference may well be correct, and indeed it is an obvious one. When Decianus openly deplored the fate of Saturninus, it became impossible for the *boni*, who had hitherto perhaps preferred to overlook his background for the sake of the use he could be to them, to support him any longer; and the same must be true of Marius and his friends. They therefore looked around for a more reliable prosecutor, and found one who concentrated on deploring the fate of Metellus instead of Saturninus. Decianus' remark is indeed very likely to have cost him his case, whether he in fact lost it (as Valerius reports) or merely abandoned it.<sup>64</sup>

It should be added at this point that this answer – that there were two prosecutions – was arrived at long ago and was long the *communis opinio*.<sup>65</sup> It is merely the turn of the wheel of fashion, bringing to the top those who prefer originality to plausibility, that reversed that opinion, and it should now be reinstated.

Appian states that Furius' death took place in the year following his tribunate, and we have no reason to disbelieve him. Decianus and Canuleius, therefore, belong to the college of Furius' successors, as indeed has always been seen. It is Furius' own date that is crucial and has been debated: was he a colleague of Saturninus in 100, or was he Saturninus' successor (i. e., would he have been his colleague and Equitius) in 99? SEAGER, citing CARNEY, rightly stresses that «there is nothing in the text [of Dio, regarding Furius' change of allegiance] to suggest that Furius was Saturninus' colleague». He develops an alternative chronology: Furius supported Saturninus and Equitius when he was a candidate in 100, as indeed they also were; he then turned on them (on December 10, by SEAGER's time-table) and after their death proposed the confiscation of their property (being by then tribune); and during the rest of his overlap with Marius' consulship (i. e., the rest of December 100) he joined Marius in opposing Metellus' recall.

On SEAGER's date for Saturninus' death, this makes sense. But since we have now seen that SEAGER's date for this is untenable, his case for putting Furius in the

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<sup>64</sup> GRUEN may be right in suggesting that Cicero's reference to the approval of the *boni* for Decianus' prosecution may be his own assessment. But it can readily be explained as fact (see text). GRUEN's refusal to entertain the thought of «double jeopardy . . . in that very year» is more redolent of an American background than applicable to the late Republic. We do not even know what the charges in the putative trial(s) were: they may not have been identical. (There are numerous parallels in the later Republic.) *Maiestas* should presumably be excluded, as GRUEN rightly points out: there was a special court for it now, and Furius was tried before the People.

<sup>65</sup> See RE, cit., and cf. GRUEN's selection of older treatments.

following year, even if still thought attractive in part, will have to be abandoned. The difficulty now is that, if we put Saturninus' death in (at latest) October, December 10 (the earliest date possible for a tribune of 99) is simply too late for his plebiscite ordering the confiscation of Saturninus' property. That vote (or at least its promulgation) must come immediately after the final riot.<sup>66</sup> It can therefore now be regarded as certain that Furius was also tribune in 100,<sup>67</sup> so that, of course, the overlap between his tribunate and Marius' consulship (giving them time for joint action) was in fact quite significant – not merely the space of less than three weeks permitted on SEAGER's calculation. The statement regarding their collaboration therefore gains considerably in significance.

With Furius anchored in 100, it follows that Decianus and Canuleius go in 99, and both 99 and 98 are now available for Q. Calidius, whose plebiscite in the end recalled Metellus.<sup>68</sup> It must not be assumed that this vote cannot have come in 99 because there were (admittedly) *popularis* tribunes in office who would have vetoed it – Decianus and, of course, Sex. Titius, whose date is secure and who has therefore needed no discussion here.<sup>69</sup> Even if these tribunes did veto the proposal (and we are not told that anyone other than Furius did), it is possible that they were persuaded by the immense pressure built up by the *boni* to abandon their opposition, as happened frequently in the history of the Republic. (The tribunes of 57 opposed to Cicero's return are an obvious example.<sup>70</sup>) There are few instances, at any time, of tribunes persisting in their veto against strong pressure and opposing what might be presented as the will of the Roman People.

We know that the pleas of Metellus' distinguished relatives began in 100, when Furius turned a deaf ear to them.<sup>71</sup> They were led by Q. Metellus Pius. Diodorus reports that discussions in the assemblies continued for two years after the exile,<sup>72</sup> and Appian is too vague to give us any firm chronology of the debate: perhaps he did not have one himself. Having said that <in the year after> his opposition to Me-

<sup>66</sup> Orosius actually mentions the confiscation between the death of Saturninus and Glauca and the death of some of their followers, apparently for reasons of composition (perhaps derived from Livy). It goes too far to conclude that <this proposal came between the deaths of Glauca and of Saturninus' relative Cn. Dolabella . . . Furius obviously wasted no time.> (Thus GRUEN 33 n.7.) But the report makes it clear that the confiscation followed immediately.

<sup>67</sup> GRUEN is right in claiming that, on his time-table (which is the one accepted and developed in the present investigation), Furius' actions can be made intelligible. But this should not be taken to mean that, in themselves, they cannot be on SEAGER's time-table. It is his time-table as such that is mistaken.

<sup>68</sup> Sources MRR ii 5. (Not all the passages cited are strictly relevant.)

<sup>69</sup> Sources MRR ii 2 and 3 n.7. The date is assured by Obsequens 46 and Cic. de or. ii 48.

<sup>70</sup> See (conveniently) MRR ii 201 f., on Sex. Atilius Serranus and Q. Numerius Rufus.

<sup>71</sup> App. 147; Oros. v 17, 11; Dio fr. 95, 2.

<sup>72</sup> Diod. xxxvi 16 περί της τοῦ Μετέλλου φυγῆς ἐπ' ἔτη δύο γινομένων λόγων ἐν ταῖς ἐκκλησίαις.

tellus' return Furius was killed, he then goes on to report that Metellus was allowed to return and did so to universal acclamation.<sup>73</sup> He does not make it clear whether both these events (the vote permitting the return and the return itself) happened in the same year, and whether they (or the first of them) happened in the year of Furius' death.<sup>74</sup> Diodorus offers the date of 98 for the vote, and we cannot use Appian to confirm or to contradict this. It can be given plausibility by the suggestion that Q. Metellus Nepos and T. Didius, as consuls, would provide suitable backing;<sup>75</sup> and further support has at times been drawn from an emended text. This, in fact, is so important (if correct) that it needs detailed investigation.

Near the end of the surviving part of the Bobbio Scholia, the text of the note on pro Archia 6 offers gibberish, as often.<sup>76</sup> STANGL reported it as hard to decipher, but as far as he could make it out, the comment on ET EIVS PIO FILIO reads

*hic Metellum exolantem* [this is already emended] *cum Pompilio Nepote* *co<sup>-</sup>.ere.at.* STANGL, here as too often elsewhere, clearly put a bad guess into the text, where the careless might regard it as fact; though the apparatus reveals the truth to the careful. He printed

*Hic Metellum exolantem cum Caecilio Nepote accersebat.*

This is not only fiction, but impossible fiction. First of all, it fails to explain the name «Pius», presumably the purpose of the whole note.<sup>77</sup> Next, the verb not only fails to fit in reasonably with the traces he reports, but is out of place in his own imaginary context: the passages he collected in his commentary for support do indeed refer to Cicero's recall from exile, but in every case the word is used in its proper sense of «summon» – a striking rhetorical figure. Such high style is out of place in our humble commentator. But above all, it is inexcusable to emend *Pompilio* to *Caecilio* without explanation (none is offered), and it is absurd to imply that the scholiast, who most of the time gets his names from Cicero and knows precisely what Cicero gives him, could have produced a monstrosity like *Caecilius Nepos* for a noble Metellus.

<sup>73</sup> App. 148 f. τοῦ δ' ἐπιόντος ἔτους Φούριον μὲν ἐπὶ τῷδε ἐξ δίκην Γάιος Κανουλήσιος δῆμαρχος ὑπήγε, καὶ ὁ δῆμος οὐδὲ τοὺς λόγους ὑπομείνας διέσπασε τὸν Φούριον . . . Μετέλλω δ' ἡ κάθοδος ἐδόθη. He goes on to report Metellus' enthusiastic reception.

<sup>74</sup> GABBA (114 f.) apparently took the first two of these three distinct items (Furius' death and the vote for Metellus' return) to be in the same year (99), the third (Metellus' return) in the following year. This appears to be factually correct, as we shall see. But it is not in Appian, and Diodorus does not (as GABBA reports) date Metellus' actual return in 98: Diodorus' wording refers to the time of the vote. (See discussion p. 137 below.)

<sup>75</sup> Thus GRUEN (n. 4): it is one of the bases of his interpretation. He is careful not to attach too much weight to the emended text of the scholiast (see next note).

<sup>76</sup> P. 176 St. In GREENIDGE-CLAY<sup>2</sup> (1960), though the passage is not accurately reproduced, it is at least made clear that the manuscript offers nonsense and is hard to decipher.

<sup>77</sup> STANGL's commentary (oddly) refers to vir. ill. 63 (which does precisely that) as a parallel to his suggested text. For a collection of other passages, see MÜNZER, RE, s. v. «Caecilius», col. 1221.

The apparatus shows that LEO recognised the fact which no intelligent reader could miss: the comment cannot be completed by the verb at the beginning of the next line. A lacuna must be assumed. Only thus can we get enough space for the explanation of Pius' name. LEO is quoted as restoring (no doubt *exempli gratia*)

. . . *cum Caecilio Nepote et consularibus Metellis revocare nitebatur, unde Pii cognomen ferebat.*

This makes the lacuna longer than it strictly need be; but that cannot reasonably be assessed, and LEO at least saw the general sense of what was needed. But excellent Latinist though he was, LEO did not really know the practice of Roman nomenclature: he seems to have tamely accepted *Caecilio Nepote*. A new start seems called for.

The passage is clearly so corrupt that one cannot hope to approach with real certainty to what the scholiast actually wrote. But LEO's attempt to get at the required sense is at least preferable to STANGL's <conservative> incompetence. The names remain. For *Pompilius* there is, in the history of the period, no likely substitute other than *Pompeius*. As it happens, a relevant Pompeius can easily be found. Orosius (v 17, 11) reports that straight after Saturninus' death *Cato atque Pompeius rogationem de reditu Metelli Numidici . . . promulgarunt*: that, in fact, was the motion that Marius and the tribune Furius united to defeat.

This Pompeius has always been recognised as Q. Pompeius Rufus, *cos.* 88 and at that time a close ally of Sulla and the Metelli. He would be the right age for a tribunate in 100. Cato is less certain: either L. Cato, *cos.* 89, or M. Cato, the father of Uticensis, who died before 91 without reaching even the praetorship.<sup>78</sup> The precise identity need not concern us. However, since we find Q. Pompeius Rufus in close association with a Cato descended from Cato Censorius, in a context integrally connected with the attempt to recall Metellus, the suggestion that this pair would fit the scholiast's context at once arises: Q. Metellus Nepos – arbitrarily introduced by a modern scholar, as we saw – can now be removed. Better sense is, in principle, not difficult to restore: read

*cum Pompeio (et Catone Censorii) nepote.*<sup>79</sup>

Though line division obviously cannot be certain, it is worth noting that the number of letters needed to fill the lacuna on this suggestion is about one line in length. It was the bill of these two tribunes, in fact, for which (Appian relates) Metellus the

<sup>78</sup> See RE, s. vv. <Pompeius> 39; <Porcius> 7 and 12. Cf. my Studies (n.9) 41, where, perhaps overreacting against the failure of RE even to consider M. Cato as possible, I preferred him to his brother, because friendship between him and Sulla is attested. His brother, of course, is likely to have been in the same circle.

<sup>79</sup> Unfortunately this does not help with the identification of Cato, since they were brothers and both grandsons of Censorius. It is possible that the scholiast had a *praenomen*: if so, we are singularly unfortunate in losing his original text. But it is as possible that he did not know it, or even know that there were two brothers to be considered. It would be rash to introduce a *praenomen* into a model of a text.

son tearfully pleaded with the low-born and obstinate Furius: ἰκετεύοντος αὐτὸν ἐν ὄψει τοῦ δήμου ... καὶ τοῖς ποσὶ προσπίπτοντος. Appian explicitly assigns the origin of the *agnomen* Pius to this striking occasion.<sup>80</sup>

On this, other sources are less specific, and it is quite likely that the name was the result of the young man's sustained activity over the next year or so. But it is clear that the occasion here described by Appian (the first major occasion) was chiefly remembered in connection with the name – the more so because of the (reputedly) servile origin of the tribune who haughtily rejected Metellus' humble prayers. It is surely this very occasion that the scholiast, choosing Metellus Pius' name for comment, has in mind. Whether (as LEO thought) there was some reference to his continuing activity on his father's behalf, we cannot tell. We are, however, entitled to reject LEO's suggested reference to other relatives: this, in the context of explaining the *agnomen*, would merely distract attention. In any case, much less than LEO put in is strictly needed; though there may have been more, of course. The following is offered *exempli gratia*, with only the names regarded as certain:

*hic Metellum exolantem cum Pompeio (et Catone Censorii) nepote cona (tus reuocare hoc nomen) ferebat (or merebat).*<sup>81</sup>

The importance of this is that the scholiast provides no support for any debate on Metellus' return in 98, and the passage should disappear from this discussion. We must confine ourselves to the other sources. The most important of them has not yet been introduced; and since GRUEN overlooked it, we must now turn to the evidence of M. Tullius Cicero.

In post reditum ad Senatum (37) and ad Quirites (6) Cicero gives a list of the distinguished relatives who pleaded with the Roman People on the exile's behalf. Prominent among them is Q. Metellus Nepos, *qui tum consulatum petebat*. The date, therefore, cannot be later than 99. Moreover, the context makes it clear that what Cicero is registering is not a long series of vain pleas, to the exclusion of actual success (such an idea would in any case be hard to believe). He is contrasting the circumstances that led to Metellus' recall with those that led to his own. But we need not rely on inference. Fortunately, when addressing the People, in substantially identical terms, he finishes his enumeration with the phrase *populum mouere poterunt*. Hence the prayers of the men he has listed in fact succeeded. And as we saw, among the men listed is Metellus Nepos the candidate, not Metellus Nepos the consul. The date, therefore, is still before 98.

With our choice now clearly defined as between Cicero and Diodorus, there can be no hesitation. As once before, when Cicero was contradicted by Appian

<sup>80</sup> App. 147.

<sup>81</sup> The length of line, of course, does not matter, since we cannot be sure of that of the original text from which ours was copied. But the line length here implied is a reasonable one and could (probably with advantage) accommodate a *praenomen* for Cato.

and, on a minor matter, by Velleius (see n.57), this instance again shows how helpless the historian is when relying (as he often has to) *only* on late and inferior sources. Accustomed to such material, some historians unfortunately fail to use proper rigour in excluding it when a better source happens to be available on the other side.

As a tailpiece to this discussion, we may now return to C. Caecilius Metellus Caprarius. It is usually assumed (e.g. by MÜNZER in RE) that the inclusion of his name in Cicero's list of relatives shows him to have been alive in 99. This would imply his absence from the Senate session in 100 which passed the emergency decree. The fact as such would not be surprising. We must remember that Caprarius, as colleague of Numidicus in the censorship of 102, had obviously not supported his colleague's attempt to expel Saturninus and Glaucia from the Senate or to deprive P. Furius of his horse. (Had Furius been deprived of his horse, he could almost certainly not have stood for the tribunate.) He was not a man of violent decisions.

It would be useful to have opposition (at least by implication) to the Senate's outrageous arrogation of power attested in the most eminent family of the time. Unfortunately, we cannot be quite sure that Metellus Caprarius was still alive when the decree was passed. Admittedly, the list of relatives pleading on behalf of Numidicus is dated for us at the time when Metellus Nepos was a candidate for the consulship, which he won in 99 for 98. It has been argued that this dates the whole matter firmly in 99. But that need not be so. As we have seen, it is well attested that Q. Metellus Pius himself was already pleading at a time when P. Furius was still tribune, i.e. by early December 100 at the latest. Nor should we assume that other relatives were more remiss. The point that needs stressing is that Cicero would certainly think of Metellus Nepos, the consul of 98, as a candidate by late 100. In the first preserved letter to Atticus (in our manuscripts, not in date), Cicero, in July 65, is already discovered pursuing, and reporting on, his candidature for 63. Whether or not things were in reality done the same way in 100 we do not know. But that hardly matters: Cicero would certainly *think* of the process as being the same, and we have only his description of it. His reference to Metellus Nepos' candidature therefore does not exclude 100, as it does exclude 98. We cannot be sure that Metellus Caprarius was still alive at the time of the emergency decree.

As for Numidicus' return, we must follow Cicero in putting Calidius' plebiscite in 99; but we ought to grant Diodorus that Numidicus did not actually return until 98. His figure of two (consular) years is not likely to be pure fiction. It must be taken to have originally referred to the time between Metellus' exile and his return, with Diodorus himself (or an intermediate source) drawing the mistaken conclusion that the vote recalling him must be of the same year as the return, and that the debate on it went on right up to that point. Once this is recognised, we can see that, long after the end of Furius' tribunate in December 100, the efforts of Marius and his friends succeeded in preventing discussion of the matter in the Senate.

With the leading *nobiles* lined up in its support, that was no mean achievement. Much of the credit, as Cicero indirectly makes clear (though he would never have wanted to say so), must belong to the consul M. Antonius. But the power of Marius after saving the *res publica* must not be underestimated, even though he was bound to lose in the end and, on a rational calculation, ought not to have staked his prestige on an ultimately hopeless cause. The common view that his action against Saturninus annihilated his power in the state turns out, on proper consideration of chronology, to be mistaken. What led to his political downfall was that he did not know where to stop: having gained what we can now see was a position of quite remarkable strength, he overplayed his hand by unwisely pressing his *inimicitiae* too far. It was not at the end of 100, but only in the course of 99, that he had to admit defeat and found himself isolated.

We have seen that the support of the consul M. Antonius was a vital element in his political strength, and that M. Antonius stayed loyal to the end (at least, in this instance), even if his colleague A. Albinus perhaps did not. Had a *relatio* been put before the Senate – had one of the two leading orators of the day spoken out in support of the cause – there can be no doubt what the outcome would have been. Attempts to deny Antonius' link with Marius at this time ultimately founder on recognition of the correct chronology of Metellus' recall.<sup>82</sup> Time, for the historian,

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<sup>82</sup> GRUEN accepted Diodorus' date of 98 for the vote on Metellus' recall, which allowed him to let the whole of 99 pass without positive action. Yet even that does not remove (perhaps it intensifies) the problem (for him) of Antonius' failure to act – in pointed contrast to his vigorous action against the demagogue Sex. Titius. GRUEN, trying hard to defend his Ciceronian vision of Antonius against the evidence of collaboration with Marius against the Metelli, is at a loss for solid arguments in <exculpation>. All he offers is (36): <Even the consul Antonius *wisely* made no effort to promote the recall of Metellus Numidicus.> A footnote (n. 25) adds: <This need not be seen as deference to Marius. The situation was still *too delicate* to press for Metellus' recall *at this point*.> (My italics throughout. The last sentence quoted is repeated by GRUEN almost verbatim in JRS lv [1965] 67.) <At this point> can only mean the whole of the year 99. The vagueness is obvious, and convenient for the thesis maintained. It would have been far more difficult to suggest a positive explanation, within the framework of the Ciceronian vision, of why <delicacy> prevented a consul of M. Antonius' *eloquentia* and *auctoritas*, who was at the same time vigorously opposing a demagogic tribune, from addressing Senate or People, throughout his year of office, on a major issue which dozens of the noblest men in Rome were clamorously and tearfully supporting – including even elected consuls for the following year.

It might be argued that any *relatio* before the Senate would have been vetoed, so that no record would have survived for Cicero to see. (This argument, however, though tenable as long as Calidius' law was put in 98, is practically destroyed by the correct dating of the law to 99: the law, clearly, was not vetoed.) Even if this were accepted, it would be very difficult to believe that Cicero and his contemporaries, not to mention men senior to him among his audience, had no oral information about Antonius' activities during his consulate. The fact that we can be sure that Metellus' return was never discussed in the Senate further helps to support the date of 99 for the vote on his return. Had the law not been approved yet, it is inconceivable that Q. Metellus Nepos, after entering on his consulship, would not have brought the matter up in the Senate. It is clear that he no longer needed to do so.

is of the essence. Far from its being impossible, or even difficult or <delicate>, to come out in favour of the bill for Metellus' recall in 99, it would have been the easiest and the most natural thing to do so – certainly by the time the bill was seen to be headed for acceptance. Yet M. Antonius chose not to associate himself with the winning cause, even though (as we saw) nothing points to his being personally on bad terms with Metellus Numidicus. No subterfuge can escape the implications of these facts. Once we shed *a priori* interpretations, the very fact of the election of Q. Metellus Nepos and T. Didius – known supporters of the exiled Numidicus and his friends – to the consulship, late in 99, can regain its proper significance, with all allowances made for the obvious differences between the Centuriate Assembly and the Plebs. The tears of all those *nobiles*, more united for that purpose than usual, ultimately could not fail.<sup>83</sup>

As for M. Antonius: it is a pity that we do not possess his speech at the trial of Sex. Titius in 98, when he explained *omnia consilia consulatus mei* to the jury.<sup>84</sup> It would be worth reading. But M. Antonius had a vanity different from that of some other orators: he left no speeches behind, caring not one whit about his literary immortality, but (it seems) a great deal about his personal reputation. (Cf. Cic. Clu. 14.)

Let us return to M. Calidius. Since we have now seen that the success of his bill must be put late in 99, and (moreover) we cannot be sure that it was his and only his bill that had provided the basis for the discussions over Metellus' return, we cannot fix the date of his tribunate with as much confidence as we have those of the other tribunes concerned in the events of these years. We cannot logically exclude the possibility that, elected tribune for 98, he promulgated his bill as soon as he entered upon office on December 10 and, with the mood of the People as it then was, succeeded immediately. Unfortunately, we cannot (it seems) even be quite sure whether it was legally possible to pass a law promulgated on December 10 by December 29.<sup>85</sup> Still: in view of this uncertainty, and the overwhelming statistical probability against the explanation just sketched, we should on balance assign Calidius to 99 rather than 98. In that case, he will have been one of those who – in this instance with the support of M. Antonius – opposed the agrarian bill of that mischief-maker Sex. Titius.<sup>86</sup>

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<sup>83</sup> GRUEN posits a change in his <delicate> situation at the beginning of 98, when <two enemies of the popular cause [*sic*: it is difficult to give a specific meaning to that phrase: enemies of Marius? enemies of Saturninus' adherents? and how would one classify Antonius?] . . . reached the consulship> (Historia, cit. n. 4, 37). He attributes no significance to the election of that same pair late in 99.

<sup>84</sup> Cic. de or. ii 48.

<sup>85</sup> See A. K. MICHELS, The Calendar of the Roman Republic (1967) 195 ff., especially 205 f.

<sup>86</sup> Obs. 46; cf. Cic. l. c. (n. 84).



In 98 Metellus returned. As Marius had foreseen, his return became the occasion for a spectacular display of support for the *res publica* and for what some called the *factio nobilitatis* of which he stood as the symbol. That was a point which, for reasons of his own, Cicero chose not to stress; but we can confidently accept it from the later sources.<sup>87</sup> Yet Metellus had had enough of politics. Although he can only have been about fifty-five, we never hear of him again. He probably preferred *otium cum dignitate* to the hazards of political activity in the changed *res publica*.<sup>88</sup> It would be interesting to know whether (as has been suggested, but not conclusively proved) he was an augur.<sup>89</sup> If so, it would follow that he agreed to the offer of an augurate to the absent Marius; and that would justly invite speculation. However, we do not know. We do not even know for certain how long he lived; though he probably died around 90, whether or not of natural causes.<sup>90</sup>

It was certainly in the year of his return, at any rate, that Marius, who had had to abandon hope of a censorship because of his insistence on his *inimicitiae*, was given that honour of election to an augurate in absence, which enabled him to join his enemy in Rome – by no means *fracto animo*, but eager to reassert his right to a leading place in Roman politics. With Sex. Titius and C. Decianus, the last self-confessed relics of the cause of Saturninus, eliminated, he could even think of aiming at the support of those from whom, at one time, he had saved the *res publica*. By the time he came back, censors had almost certainly been elected, and he could look forward and not back.<sup>91</sup>

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<sup>87</sup> See App. 149; Livy, Per. lxxix. As often noted, Claud. Quadr. F 76 P may be relevant to this. On the other hand, it may refer to another famous occasion in Metellus' life, his prosecution *repetundarum*, presumably after his return from Numidia: see MRR i 538 (putting it after his otherwise unattested praetorship – not a plausible time, in view of the *dignitas* and popularity the anecdote both presupposes and illustrates).

<sup>88</sup> Cic. ad fam. i 9, 16 denies, on a priori grounds, what was clearly – and, it seems, rightly – the accepted opinion in his day.

<sup>89</sup> On this complicated matter (which cannot be discussed here), see L. R. TAYLOR, AJA xlviii (1944) 352 ff. (first making this suggestion); accepted by CRAWFORD, RRC p. 738 n. 7, though with reservations on the coin (his no. 374) to which his comment refers; doubted by G. J. SZEMLER, The Priests of the Roman Republic (1972) 146: <without decisive reliability.>

<sup>90</sup> The Metellus whom Q. Varius was charged (only unofficially, it seems: there is no record of a prosecution on this charge) with having poisoned (Cic. n. d. iii 81) must be Numidicus. No other member of the family, to our knowledge, died about the right time, nor indeed could any other Metellus be thus referred to by his mere *cognomen* and assumed to be instantly recognised. As far as we know, Varius was not active before 91. 91 or 90 would be suitable dates for the death of Metellus Numidicus. (In Cicero, mention of M. Drusus' death, which occurred late in 91, precedes that of Metellus'.) The charge against Varius presumably derives from insinuations made and rumours brought up, in the usual Roman manner, at the trial of Varius on another charge, when he was convicted under his own law (Cic. Brut. 305).

<sup>91</sup> See Plut. Mar. 32, 1. We do not know when Marius returned and are reduced to con-

## V. The Censors

The election in which Marius chose not to take part is a fitting subject for our concluding investigation.<sup>92</sup> The first point to note is that the successful candidates, M. Antonius and L. Flaccus, were consulars of unusually short standing: in 97, when the election took place, they had only five years of consular standing between them. We can go back as far as 199, the first censorship after the Hannibalic War, without finding a comparable case. In 194, one censor has four years' consular standing and one three. Between 194 and 97, there are only seven cases of a censorship in which even one censor had less than five years' consular standing; and the two most recent (in 120 and 115) had been Metelli.<sup>93</sup> Down to the end of the *res publica*, the record in total consular standing held by Antonius and Flaccus in 97 is lowered only once, and not by much even then: to be precise, in that unusual censorship of 70, when both censors had been consuls as recently as 72. Even *their* total of four years, it must be emphasized, is only one less than the combined total of the censors of 97.<sup>94</sup> It should at least be clear how unusual the censorial election of 97 was in its outcome.

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jecture. In Studies (n. 9 above) 171 I was far too confident in dating his return early in 97. In view of the actual time needed by eminent men for travel both ways and within Asia (he met Mithridates in distant Cappadocia), and bearing in mind the official purpose of his trip, I am now inclined to think that date far too early. Since he would not be a candidate at the censorial elections, it is in any case reasonable to date his return after those elections. He would no doubt prefer not to witness them.

<sup>92</sup> For his decision not to stand for election, see Plut. Mar. 30,5 f. (with a quip – not necessarily authentic – rationalising the decision).

<sup>93</sup> I give a list of the other five, with minimal comment.

159 P. Cornelius (353) Scipio Nasica Corculum, *cos.* 162, *cos.* II 155. One of the most outstanding men of his generation, both by birth and through his legal and military distinction.

147 L. Marcus (46) Censorinus, *cos.* 149. No conspicuous achievements are known, but he was descended from the only man who was twice censor under the Republic and thus acquired a *cognomen*. (Censor 294 and 265: see RE, s.v. 98.)

142 L. Mummius (7 a: RE vol. xvi), *cos.* 146. The conqueror of Corinth, censor (surely not by accident) as colleague of the conqueror of Carthage in the same year.

125 L. Cassius (72) Longinus Ravilla, *cos.* 127. The author of a *lex tabellaria* and one of the most eminent jurists of his day (inventor of the question: *cui bono?*), related to (perhaps a son of) a censor of 154 (see RE, s.v. 55).

109 M. Livius (17) Drusus, *cos.* 112. Eminent lawyer and *triumphalis* and the man who, as tribune, defeated C. Gracchus.

<sup>94</sup> J. SUOLAHTI's lists and discussions in *The Roman Censors* (1963), especially 570 ff. (with table p. 557), though useful in various ways, are gravely impaired by errors and inaccuracies in details, and their arbitrary periodization often obscures, instead of illustrating, significant developments in social and administrative history. They are largely ill-organized compilations of data taken from the RE articles, which provide the contents of the individual biographies on which the tables and discussions are based.

All elections, of course, are limited by the availability of qualified candidates. Can we investigate that aspect? Fortunately, we are fairly well placed for this – surprisingly so, in view of the nature of our sources in general. We have seen that Cicero’s list of consulars present at the passing of the emergency decree in 100 can be safely said to have included all available men down to, and including, 102. The possible exception of Metellus Caprarius, who had already been censor, makes no difference to the present point. Even if M. Minucius Rufus, *cos.* 110, was still alive (and we certainly have no positive reason to suppose it), the very fact of his absence in 100 would suffice to demonstrate his lack of interest in active politics: he would not need to be considered a candidate for the censorship in 97. We shall be quite safe in taking the list as the basis for our discussion.

The only name that might be added is that of M<sup>o</sup> Aquilius, who had returned in good time from his victory in Sicily. In actual standing, he was a year ahead of L. Flaccus, two years ahead of M. Antonius. Moreover, he had celebrated an ovation that would be recent in memory. He would hardly threaten the Patrician *flamen* L. Flaccus, but one might have thought he could be a serious rival to M. Antonius, whose name was new to the *nobilitas*. It should be suggested, however, that it may already have been known, by the time of the election, that he was being (or might be) prosecuted for his behaviour in the province. In fact, 95 is the earliest likely date for his actual prosecution, and it is probably the correct one, as any further delay would be increasingly hard to explain. As we have seen, he cannot have been prosecuted until after Marius’ return in 97; and if we assume (as we probably should) that Marius came back after the censors had been elected, we must next note that M. Antonius is not actually called censor at the time when he acted as his defending counsel. We need not even ask whether he could legitimately have thus acted while in office: the simple fact that he is not given the title shows that he cannot have been censor at the time. And that brings us, in practice, to the very end of 96 at the earliest, and probably to 95.

However, this does not exclude the possibility that his behaviour in the province was known to have been such that prosecution was likely to follow: if it is true that he was, in due course, *multis auaritiae criminibus testimoniisque conuictus*, that might suffice to prevent his being a plausible censorial candidate a year after his return. In any case, we may take it, from the very fact that Antonius later defended him, that he had not been his rival for the office.

We therefore return to our list of 100 as the basis for discussion of available candidates. We must start by eliminating those who had been censors before: M. Scaurus and perhaps L. Metellus Diadematus; also, of course, Metellus Numidicus, not on the list, but now back in Rome. We can also eliminate Q. Scaevola Augur: he was never a candidate for that office.<sup>95</sup> About the two senior consulars on the list, Ser. Galba and C. Serranus, we know nothing – not even whether they

<sup>95</sup> Cic. Brut. 161.

were still alive. Cicero's characterization of Serranus makes it clear that he would not be a plausible candidate: he had clearly reached the level of his incompetence. Galba, being a Patrician, might have been. But it should next be noted that very few censors are men of no known distinction, in either war or domestic affairs. In fact, after 147 (i. e., in the preceding half-century) there is only a single man of that type whom we can find: C. Licinius (88) Geta, the *exemplum* of the consul expelled from the Senate who became censor. He (we must admit) is exceptional and puzzling on all counts. No action of his, during the whole of his life, is recorded for us – not even the reason for his demotion. He is a striking example of our ignorance of Roman history, even during a relatively well-attested period. The only other man of no major distinction is L. Caecilius Metellus Diadematus; but he, if censor, was at least the chosen candidate of the leading family of the day.<sup>96</sup> Even if

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<sup>96</sup> Diadematus calls for a note. He is in fact so undistinguished in his actions (though, of course, a Metellus by birth) that, until a fragment of the *Fasti Antiates* was interpreted so as to yield his name (see MRR i 532 f.), the censor of 115 was almost universally identified with the really distinguished Delmaticus. (Thus still, without question, SUOLAHTI, taking his data from RE, although MRR i, which he claims to have used, had appeared twelve years before his own work and contained the facts and references.) If the name is correctly restored in the *Fasti* (see below), then there can be no doubt that he was the <family> candidate and that (e. g.) Delmaticus himself agreed to his election. Although a generation later we can no longer speak of a unified Metellan policy, at this time there is no record of personal or political conflicts within the family – which, no doubt, helps to account for its prominence. It could be suggested that a son of Calvus yielded to a son of the great Macedonicus – both the elder brother, in his generation, and a much more distinguished man. That would be conceivable, as fitting into the spirit of the *nobilitas* at this time.

On the other hand, the identification of the censor in the *Fasti* with Diadematus has been too lightly accepted and deserves scrutiny. On purely historical grounds, it is astonishing that a Metellus of Delmaticus' eminence never rose to the censorship, even though less distinguished *aequales* of that family did: he was both *triumphator* and *pontifex maximus*. Moreover, he lived for another ten years or so after 115 (see RE, s. v.). So he could have been a candidate for the censorship of 109: a Metellus might have beaten M. Livius Drusus, even if the <Patrician> place was, for various reasons, not for him. (As to 108, we cannot say whether he could have beaten C. Licinius Geta, whose censorship, like his preceding expulsion from the Senate, is – as we have noted – an inexplicable puzzle on our evidence.)

In view of this, the actual record must now be carefully inspected. It should be regarded as particularly significant that the entry in the *Fasti*, at this point, contains an error. The name appears as L. METELLVS Q. F. N (Inscr. It. xiii 1, 165 f.), taken by DEGRASSI as not erroneous, but a deliberate short notation for Q. F. Q. N, since the grandfather's name was the same as the father's. However, he gives no other example of such <simplification>, and it is (to say the least) not usual. (Q. F. ET N, though also unparalleled, would at least be clear.) We should admit the fact that either the compiler or the engraver made a mistake. It is palaeographically easiest to assume that the mistake he made was to omit the Q before the N, because he had just written it before the F. If so, Diadematus would be intended. But in view of the historical background analysed above, I find it difficult to exclude the possibility that, since we do have an error, the corruption may have been more serious, with the Q transferred to the wrong place, to take the place of L, and the engraver then simply omitting it

Ser. Galba was still alive, he would not be a plausible candidate, in view of his lack of distinction.

This leaves us with three possible candidates senior to those actually elected: P. Rutilius, C. Fimbria and Q. Catulus. Whether Fimbria was still alive, we do not know. As we have seen, he was elderly when elected and was certainly dead by 91. His attainments, however, if we may judge by Cicero's characterization, were (though not negligible) rather modest – and for a new man that would not be enough. We may doubt whether he would even aim at what was evidently too high for him.<sup>97</sup>

There can be little doubt that the outstanding candidates would be P. Rutilius Rufus and Q. Catulus. Both had won distinction in war; one was a recent *triumphator* whose exploits (owing to his vanity) did not lack celebration, and the other, after solid service under Metellus Numidicus, had a major army reform to his credit, and could claim to have pulled the state together when it was reeling from the effects of Arausio. It is possible that Rutilius, as a serious Stoic, was not interested in the office – on the other hand, Stoicism, if anything, favoured public activity: it did not encourage mere reflection or the quiet life. Q. Catulus, at any rate, proud and vain, was a literary patron and had built a major monument. It is highly unlikely that neither of these men was interested in the highest distinction the *res publica* had to offer, so that two men junior to both of them in standing, indeed with their standing as consulars uniquely short for the office, were elected (as we should have to say) by default, once Marius decided to pull out.

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where it ought to have been. (Delmaticus would be L. F. Q. N.) Although I have reluctantly accepted the *communis opinio* in my text, I would advocate its revision and the restoration of Delmaticus to his rightful honour. It should be added that Cicero never refers to Diadematus as *ensorius*, even where this would be expected: DEGRASSI's revision of the *Fasti* entailed complicated hypotheses trying to explain that awkward fact. (See MRR, l. c.)

If Diadematus was *not* censor in 115, and if he was still alive in 97 (aged, presumably, about 62), as he certainly was late in 100, then he would naturally be a strong candidate for the censorship, because of his birth and seniority. In that case, he could presumably be added to the number of those who would be unacceptable to Marius, thus reinforcing the case here made. But I cannot properly make this suggestion.

<sup>97</sup> Of his consulship, MRR (i 558) states: 'Fimbria's acts are unrecorded.' (It is, incidentally, highly unlikely that his prosecution was, as MRR suggests, the result of that uneventful consulship.) His failure to do anything outstanding would exclude him from being a serious candidate for the censorship, and we may regard it as certain that he would not bother to stand. According to WISEMAN (n. 8) 169, no *nouus homo* was censor between Q. Pompeius (131, and himself the first since Cato) and the end of the Republic. By WISEMAN's sound criterion of *nouitas* (i. e., that it must be attested), this is correct. It would not be significantly affected if (as MÜNZER thinks, though it is not attested by any source) L. Gellius Poplicola, censor 70, was also a *nouus homo*. (His name, however, suggests a connection, no doubt on his mother's side, with the Patrician Valerii.) It was only a C. Marius who, at least for a time, could even think of reaching that office. (SUOLAHTI registers Q. Pompeius as of senatorial family, despite Cicero's two references to his *nouitas* [Font. 23 and Mur. 16] and, following MÜNZER without discussion, lists Gellius as a *nouus homo*.)

What Rutilius and Catulus had in common, of course, distinguished though they both were and ambitious as at least one of them was, was hostility to Marius. The pair elected, on the other hand, though no better qualified for the office (to say the least), shared loyal friendship for Marius: of this, by now, there should be no serious doubt. This can hardly be regarded as mere coincidence. I suggested long ago that Marius, though he had to give up the hope for a censorship as the crown of his own public career, at least succeeded in striking some sort of bargain: he would withdraw, but two of his loyal friends were to secure election, while his distinguished *inimici* should be kept out.<sup>98</sup> The suggestion, though (I think) a legitimate conjecture at the time, was not soundly based. The present investigation may fitly conclude by supplying an element of *akribeia* for that conjecture.

#### *Appendix: The Silence of Albinus*

In post reditum ad Quirites Cicero, as so often, stresses the great public interest in his recall from exile and compares it (to the latter's disadvantage) with the return from exile of Q. Metellus Numidicus: no great interest (we are told) could be mustered on behalf of Metellus, despite the large number of distinguished relatives who pleaded on his behalf (11):

*numquam de Q. Metello non modo C. Marius, . . . sed ne is quidem, qui secutus est, M. Antonius, homo eloquentissimus, cum A. Albino collega senatum aut populum est cohortatus.*

As regards M. Antonius, this is perfectly clear: he did nothing for Metellus. But what about A. Postumius Albinus? The construction is odd, not to say contorted. Of course, *cum* can at times be used more or less in the sense of *et*; and translators seem unanimously to have taken this passage to be equivalent to *ei qui secuti sunt, M. Antonius . . . et A. Albinus, . . . sunt cohortati*: if so, Albinus, like Antonius, did nothing on behalf of Metellus. This would not be surprising: unlike Antonius, who (as far as we know) had no grievance against Metellus, Albinus had no reason to love him, as we have seen (p. 124 above).

Yet second thoughts are indicated. This is not a simple case of *A cum B* as a kind of compound subject. Cicero stresses the singularity of M. Antonius (*ne is quidem qui secutus est*), and the negative is applied strictly to Antonius. In fact, if we translate the sentence as it stands and without preconceptions, we arrive at the following (I omit irrelevant parts):

. . . but neither did M. Antonius, his successor, a most eloquent man, exhort

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<sup>98</sup> See my *Foreign Clientelae* (n.29) 212; *Studies* (n.9) 47f. It should be added that, of course, neither L. Flaccus nor M. Antonius had, as far as we know, been active allies of Saturninus, and that neither of them had held more than one consulship. They were obviously far more acceptable to the *factio* than Marius himself could ever have been.

Senate or People (on Metellus' behalf) together with his colleague A. Albinus. The straightforward implication, surely, is that A. Albinus did exhort Senate or People, and that M. Antonius did not join him in this. I have certainly failed to find a parallel to the accepted meaning (which is the opposite of this) in Cicero's works. And the word *collega* eliminates what might otherwise have been a remote possibility: that *cum A. Albino* should be taken closely with *secutus est*, as a kind of consular date.

Nor can it be objected that, since there was no *relatio* before the Senate regarding Metellus (on this statement of fact we must believe Cicero), Albinus could not have exhorted the Senate on this. First, of course, he might have exhorted the People. Moreover, he might well have exhorted the Senate too, in speeches on any other *relatio* before it, just as M. Cato is said to have kept exhorting it to destroy Carthage.

I find it difficult to believe that, had Cicero really meant to say that *both* the consuls of 99 did nothing for Metellus, he would not have found an unambiguous way of saying so. The matter, after all, was of some importance in the context of his argument, where he tried to demonstrate precisely that there had been no such public activity on Metellus' behalf. He was not so deficient in oratorical skill as to shroud part of his 'evidence' in such ambiguity (to say the least) as we have noted in this sentence. He could easily have said something like *qui secutus est, M. Antonius, . . . aut A. Albinus collega . . .*, or (more simply) *ne ei quidem qui secuti sunt . . .* Why did he choose the contorted ambiguity?

Suspicion must inevitably arise. Cicero was very good indeed at throwing dust in the eyes of the jury (as he himself called it): at using ambiguity when he did not have much of a case. If we assume that he could not truthfully deny that A. Albinus had spoken on Metellus' behalf, what was he to do? He might, of course, have omitted all reference to him. Thus, he says nothing about Marius' colleague L. Flaccus – and not because Flaccus would damage his case, but merely because there was presumably nothing to say. Flaccus did not matter. Could A. Albinus – not a really eminent personage – not have been treated in the same way, whatever he did or did not say? There was perhaps one reason why he could not.

The family of A. Albinus was still active in politics. Not only would a few men who had been alive in 99 still remember what went on and note a suppression, but younger members of the family itself would know the facts from family tradition, going back a single generation. A consular father's or uncle's attitude to the burning questions of the day was not likely to fade from family memory as quickly as that. Let us note, e.g., D. Brutus Albinus, probably born in the late eighties and, although we cannot securely fit him into the stemma, certainly a close relative of the consul of 99.<sup>99</sup> It would not do to overlook A. Albinus, especially – we may now

<sup>99</sup> See RE, s. v. 'Junius' 55A (in Suppl. v); D. R. SHACKLETON BAILEY, *Two Studies in Roman Nomenclature* (1976) 118.

say – if he had indeed spoken on behalf of Metellus. There would (in that case) be only one way of coping with the unpleasant fact: wrap it in words that were in themselves ambiguous and that, while strictly speaking admitting the truth, might sound to the casual listener (or, later, reader) as though they could mean the precise opposite.

As regards Antonius, Cicero (be it noted) leaves us in no doubt whatsoever. If he chose not to do so in the case of A. Albinus, while yet mentioning him, his actual words deserve close scrutiny and his intentions invite suspicion. This should at least be pointed out, although I have not used it as the basis for further argument in the text.<sup>100</sup>

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