

*DE RELIGIONIBUS SACRIS ET CAERIMONIIS EST CONTIONATUS:*  
PIETY AND PUBLIC LIFE IN REPUBLICAN ROME

Presented in Partial Fulfillment of the Requirements for  
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By

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## ABSTRACT

This study explores how piety became a topic for public discussion during ancient Rome's middle and late Republican eras (264-31 B.C.). It examines public religious discussions in Rome, in particular the conflict between P. Clodius Pulcher (c. 92-52 B.C.) and M. Tullius Cicero (106-43 B.C.), who brought each other's piety to the attention of their fellow citizens as part of their public rivalry. It aims to understand what caused disputes over piety and how these disputes were resolved.

Public conflicts involving a person's piety tended to occur when some novelty or unforeseen element was introduced into Roman religious life, since in these situations tradition did not provide guidelines on what the community had to do to fulfill its obligation to the gods. Such disputes often had a political element to them, but this 'politicization' did not indicate corruption and decline. Instead, it was inevitable, given the link between religion and politics in Roman civic life, that politics would play a role in religious conflicts. Disputes over piety took place in a wide variety of fora: in the senate, before popular assemblies, in front of priestly colleges, and in the courts. The fragmentation of civic (i.e. religious and political) authority in republican Rome made it possible for a wide variety of individuals and groups to voice their opinions on religious

matters, and the very fact that so many people had a say in religious affairs encouraged disputes over piety to break out. Contests over piety were resolved only after the various groups with authority and the disputants reached some kind of consensus. In cases where this consensus could not be reached, the dispute was difficult to resolve, since an aggrieved party could find many venues in which to state his case. Finally, public debate was healthy for the civic cult, since it kept the Romans focused on and interested in the care of their religion.

To Mom and Dad

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1. J. C. Wells, B. T. Thompson, and J. G. Dillard, "The Effect of Surface Preparation and Exposure Environment on the Bond Failure Processes in Adhesively Bonded Sheet Molded Composite (SMC)," *J. Adhesion* 48 (1995), 217-34.
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## FIELDS OF STUDY

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## CHAPTER 1

### INTRODUCTION

Over the course of the last three decades a revolution has taken place in the perception of how the Roman civic cult developed during the republican era. Since the change in perception of Roman religion has been so profound and forced us to reevaluate so many things previously thought to be understood, I will begin my study by going down a very well-trodden path and reviewing how this revolution took place.

The scholars of the nineteenth and most of the twentieth centuries who examined religious affairs during the republican era (509 B.C. - 31 B.C.) concluded that Roman religion was in a sad state of decline by the middle of the first century B.C. They looked at the attitudes of upper class Romans and discovered a cynical group of unbelievers who had been seduced by Greek philosophy and who employed religion as a political weapon. Until the 1970s, few seriously questioned Gibbon's pithy summary of Roman polytheism: "The various modes of worship, which prevailed in the Roman world, were all considered by the people, as equally true; by the philosopher, as equally false; and by the magistrate, as equally useful."<sup>1</sup> Scholars concluded that the Roman nobility of the

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<sup>1</sup> Gibbon (1980), 1:31.

middle and late republican periods (264-31 B.C.) grew ever more cynical toward their religious system. Calculation of personal advantage replaced faith in the gods, and the Roman nobles began to manipulate religion for their individual or collective benefit. Victorious generals erected temples as monuments of their own glory rather than as offerings to the divine powers who protected the city. Politicians used religion to obstruct the election of rival candidates or to prevent passage of legislation. The civic cult became a collection of barren and empty rituals maintained only as a showpiece. As faith in the traditional cults evaporated, the elite looked to philosophy to provide some meaning to their lives, while the poor turned to new cults from the east for the same purpose. From Mommsen to Latte, scholars evaluated republican religion as if they were conducting an autopsy: analyzing causes of decay, pointing out signs of disease, and trying to figure out from the withered husk preserved in our late republican sources what the body looked like when it still had some semblance of youth and vigor.<sup>2</sup>

All of this changed, starting in the 1970s. Classicists and ancient historians, pushed on by anthropologists, sociologists, and scholars of religion, began to recognize that they had not been examining Roman polytheism on its own merits. Instead they had been judging it first from a Christian point of view that saw belief, not ritual, as the center of genuine religious activity,<sup>3</sup> and second from an Enlightenment point of view, which drew a sharp line between religion and politics and regarded penetrations of one into the

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<sup>2</sup> Classic discussions that evaluated Roman religion in this way include Cumont (1911); Fowler (1911); Wissowa (1912), 60-72; Rose (1948), 105-106, 124-144; Latte (1960), 264-293; Dumézil (1970), 526-550. Scheid (1998), 9-18 provides a convenient summary and analysis of the 'decline' school.

<sup>3</sup> This emphasis on belief and condemnation of ritual was especially strong among Protestants in Europe, who regarded the rituals of the medieval church as magic. See Thomas (1971), 256-257.

sphere of the other as evidence that one or the other system had malfunctioned.<sup>4</sup> Scholars began to argue that Roman public life could not be easily separated into different spheres and that religion and politics in Rome were inextricably linked. In the wake of this new outlook, a whole host of issues had to be reexamined. Classicists and historians concluded that the quest to understand the origins of Roman religion was more complicated than previously believed and that no pristine state of Roman religion could be discerned from our sources, since Roman religion was open to influence from the religions of neighboring peoples, including the Greeks, as far back as our sources will allow us to see.

John North wrote one of the studies that began to transform perceptions about Roman religion.<sup>5</sup> In it he points out that the conservative aspects of the Roman civic cult did not prevent it from changing in response to new circumstances, and he notes the business-like attitude of the Romans toward the gods. North's approach to his subject was as significant as his conclusions, perhaps more so: he called for an end to studies that impose value judgments on Roman religion instead of analyzing it. In response to North's call, scholars began to attack the starting assumptions of their predecessors. Liebeschuetz straddled the period between reign of the old interpretation and the revisionists. He approached his topic with many of the assumptions made by the earlier generation of scholars, but his careful analysis of the evolution of Roman religion put a few chinks in the armor of the old paradigm. Like North, Liebeschuetz for the most part

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<sup>4</sup> On the Enlightenment drive to keep religion out of government, see Gay (1969), 398-401.

<sup>5</sup> North (1976), see also North (1979, 1986, and 1995).

rejected the assumption that strong connections between religion and politics demonstrated that Roman religion had begun to decay. However, his discussion focused heavily on the subject of belief, which the revisionists argue should be put aside and replaced by a study of ritual.<sup>6</sup> One such study was made by John Scheid, who examined the consequences of ritual error in republican Rome. He noted the difference between voluntary infractions of religious law, which the Romans regarded as inexpiable, and involuntary ones, which could be corrected through the repetition of religious rites.<sup>7</sup> He scrupulously avoided judging Roman religion through a Christian or Enlightenment lens, and conducted a thoughtful analysis of the role of priestly officers in Roman public life. He also emphasized the civic aspects of Roman religion and promoted the idea that the study of Roman religion must have its foundation in an examination of ritual.<sup>8</sup> Alan Wardman studied how Roman religion incorporated new elements. Whereas his predecessors saw the Romans' adoption of eastern religious forms as a sign of corruption and decay, Wardman argued that Roman religion had a long history of assimilating religious elements from neighboring cultures. This, Wardman concluded, illustrated the adaptability and health of Roman religion rather than foreshadowed its impending death.<sup>9</sup> S.R.F. Price examined the imperial cult in Asia Minor. The introduction to his work points out the methodological flaws of his predecessors, who assumed that only those with no real faith in the gods would offer divine honors to an emperor. In particular he

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<sup>6</sup> Liebeschuetz (1979).

<sup>7</sup> Scheid (1981 and 1999).

<sup>8</sup> Scheid (1998 and 2001); Linder and Scheid (1993).

<sup>9</sup> Wardman (1982).

warned against evaluating Roman religion on the basis of belief, since belief was not as important in Greco-Roman polytheism as it is in Christianity.<sup>10</sup> Numerous other studies could be mentioned.<sup>11</sup> General texts on Roman religion written from the revisionist point of view are now available in French, English, and German.<sup>12</sup>

This study will examine how piety toward the gods became a topic for public debate and discussion in the republican period. Not long ago, there would have been no need for this study. Since scholars assumed that a political agenda was the only motivation for introducing the topic of religious behavior into a public discussion, they could skip discussing religion and focus on what was ‘really’ going on: Roman aristocrats jockeying for power and influence. But now that we have shed many of our assumptions about Roman religion and can no longer dismiss public conflicts over religious issues as simply more evidence of religious decay, a whole series of questions present themselves. Why did the leaders of the Roman community engage in public conflicts over whether they had fulfilled their obligations to the gods? In what venues did these conflicts take place? What issues were debated? What roles in these disputes were played by the magistrates, the senate, the priestly colleges, and other groups with authority over civic affairs? How were these disputes resolved?

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<sup>10</sup> Price (1984).

<sup>11</sup> See Rives (1998), for a relatively recent discussion of the state of the field.

<sup>12</sup> Scheid (1998); Beard, North, and Price (1998); Rüpke (2001). A reaction to the revisionists, or, as they are now sometimes labeled, the proponents of the ‘new orthodoxy’, has already begun. Bendlin (2000) argues against the civic model of religion that serves as the basis for the works of Scheid and North, and argues instead for a market model of Roman religion during the late Republic that emphasizes that a number of religious choices were available. King (2003) challenges S.R.F. Price’s conclusion that discussions of belief presuppose a Christian bias.

My study suggests some answers. Public conflicts involving a person's piety tended to occur when some new or unforeseen element was introduced into Roman religious life, since in these situations tradition did not provide guidelines on what the community had to do to fulfill its obligation to the gods. Such disputes often had a political element to them, but this 'politicization' did not indicate corruption and decline. Instead, it was inevitable, given the link between religion and politics in Roman civic life, that politics would play a role in religious conflicts. Disputes over piety took place in a number of fora: in the senate, before popular assemblies, in front of priestly colleges, and in the courts. The decentralized nature of civic (i.e. religious and political) authority in republican Rome made it possible for a wide variety of individuals and groups to voice their opinions on religious matters, and the very fact that so many people had a say in religious affairs encouraged disputes over piety to break out. Contests over piety were resolved only after the various groups with authority and the disputants reached some kind of consensus. In cases where this consensus could not be reached, the dispute was difficult to resolve, since an aggrieved party could find many venues in which to state his case. Finally, public debate was healthy for the civic cult, since it kept the Romans focused on and interested in the care of their religion.

It is difficult to render the Latin concept *pietas* into English, because whereas 'piety' encompasses only religious meanings, *pietas* describes relationships not just with the gods but also with relatives. *Pietas* was the state of having fulfilled all obligations owed to the gods and to one's kin by blood and marriage, and even to one's fellow



citizens.<sup>13</sup> The meaning of *pietas* appears to have evolved over the course of the first few centuries B.C., and the exact path of that evolution has been a matter of debate. The great philologist Georg Wissowa postulated that originally *pietas* referred to matters both familial and divine, but by the first century B.C. the word was applied almost exclusively to the former.<sup>14</sup> He based his conclusion on passages such as Cic. *Inv. rhet.* 2.66, which defines *religio* as pertaining to the gods and *pietas* as pertaining to family and country, which was perceived as essentially a large extended family.<sup>15</sup> Wagenvoort studied Cicero's use of *pietas* and, in direct opposition to Wissowa, concluded that *pietas* originally applied to the obligations owed to one's family and fellow citizens and only began to refer to obligations owed to gods at a late date, during the turmoil of the transition from Republic to Empire, as Romans tried to explain why they faced so many political and military crises.<sup>16</sup> He explained that in Cicero's earlier works, (such as *Inv. rhet.*) *pietas* was applied to relationships with family members, but when we examine later works, such as *De Finibus*, we first see *pietas* referring to relationships with the gods.<sup>17</sup> Koch's study resolved the scholarly conflict by showing that no dichotomy of

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<sup>13</sup> Scheid (1998), 26, see also Champeaux (1989) and Scheid (2001), 29-45. For a thorough survey of the shades of meaning of *pietas* and words related to it, see Tromp (1921), 3-37.

<sup>14</sup> Wissowa (1909), 2499-2500.

<sup>15</sup> '*religionem eam quam in metu et caerimonia et deorum sit, appellant, pietatem quae erga patriam aut parentes aut alios sanguine coniunctos officium conservare moneat.*' Cic. *Inv. rhet.* 2.66. Cf. Cic. *Part. or.* 78. Abbreviations of ancient works are formatted in accordance with the *Oxford Classical Dictionary*, 3<sup>rd</sup> ed., edited by Simon Hornblower and Antony Spawforth.

<sup>16</sup> Wagenvoort (1980b), 1-20.

<sup>17</sup> '*nec vero pietas adversum deos, nec quanta iis gratia debatur, sine explanatione naturae intellegi potest.*' Cic. *Fin.* 3.73. Wagenvoort explains away earlier (pre-45 B.C.) references to *pietas adversus deos* found in the *Orationes post reditum* by casting doubt on the authenticity of those speeches.

meaning existed. He argued that there was always a divine element in *pietas*, since obligation to family referred to not only to living kinsmen but also to the *di parentes*, the souls of dead family members who were honored as divine. By the late 3<sup>rd</sup> century B.C., he concluded, *pietas* had expanded in meaning to incorporate obligations not just to the *di parentes*, but to all gods.<sup>18</sup>

This study will focus specifically about disputes involving *pietas adversus deos*, or ‘piety’, as we understand the concept today. There have been some recent studies on piety in its other contexts.<sup>19</sup> But since it is the reevaluation of religion that has opened new questions and inspired this study, I have decided to study the religious form of *pietas* alone. Extending the scope beyond a study of how the Romans publicly examined each other’s relationship to the gods would make this work too broad and unwieldy.

This study has two parts. In the first part, which comprises the next chapter, I will examine contests over piety in the context of Roman civic structure, examining what roles the various organizations with religious authority played in disputes, and, along the way, I will explore the kinds of issues that were debated. I will focus most of my attention on the 3<sup>rd</sup> through the 1<sup>st</sup> century B.C., since the sources for the middle and late republican periods are much stronger than sources for the early Republic. The history of Livy is particularly valuable since it preserves the record of a number of religious controversies. We will see that the senate, which a recent study places at the center of

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<sup>18</sup> Koch (1941), 1222-1232.

<sup>19</sup> E.g., Garrison (1992); Raffaelli, et al. (1997); Bannon (1997).

Roman religion as the mediator between the Romans and the gods,<sup>20</sup> had an important but not necessarily decisive role in settling religious disputes. We will also see that debates over piety often occurred in the face of the new or the unexpected, and that the resolution of religious controversies through discussion and debate helped Roman religion adapt to change.

The second part, composed of chapters three through five, will explore in detail the role that contests over piety played in one particular public rivalry. We will look at the relationship between M. Tullius Cicero (106-43 B.C.) and P. Clodius Pulcher (c. 92-52 B.C.). The two men had a number of bitter public battles in the years between 61, when Clodius went on trial for an act of impiety, and 52, when he died. Our sources for this dispute are very good, allowing us to observe the rivalry between the two men in detail, so we do not have to reconstruct the conflict from only tantalizing fragments of information. Our chief sources for this section will be the letters and speeches of Cicero himself.

Chapter three will examine the Bona Dea affair. In 62 B.C. Clodius was discovered sneaking into the house where Roman matrons were conducting their annual sacrifice to the Good Goddess. His actions so offended Roman sensibilities that the Romans tried him for *incestum*, expanding the definition of the term to include Clodius' behavior. As a result he had to publicly defend his piety. We will see in this section that setting the boundary between piety and impiety could be difficult to accomplish in

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<sup>20</sup> Beard (1990).

republican Rome, but it was possible. The college of pontiffs did so when they ruled that it was impious for a man to be present at the rites to Bona Dea.

Chapter four will explore the dispute between Clodius and Cicero over the site of Cicero's house on the Palatine Hill, which Clodius had consecrated and dedicated to the goddess Liberty during Cicero's brief exile of 58-57 B.C and which Cicero was able to reclaim and deconsecrate after an assembly voted to call him back home. In this chapter, we will see how Roman aristocrats made displays of piety an important part of their self-image.

Chapter five examines the debate between Clodius and Cicero over how to interpret the response of the college of haruspices to the senate in 56 B.C. The haruspices were a group of Etruscan religious experts who provided advice to the senate on how to expiate prodigies. In 56 B.C. a rumbling was heard in the Latin Territory. The senate concluded that it was a message from the gods and asked the haruspices to explain why the gods had sent it. The haruspices replied that the gods were unhappy because of a number of problems in the civic cult and in Roman politics. Cicero and Clodius each presented their own interpretation of the haruspices' response to their fellow citizens, and, of course, they each accused the other of being responsible for causing the gods' anger. Cicero's conception of *pietas adversus deos* is particularly interesting in this speech, because he expands the traditional perception of piety to include not just actions taken during the rituals of the Roman civic cult, but also political behavior, thus adding another dimension to the link between religion and politics at Rome.

Chapter six will present my conclusions. We will see that debates about piety were healthy for Roman religion. Even if the actors in religious conflicts were motivated by political or personal reasons, public debates about religion kept the Roman community interested in its civic cult and gave the whole civic body another means to participate in religious life.

## CHAPTER 2

### POLITICS AND PIETY IN REPUBLICAN ROME

In 173 B.C., Q. Fulvius Flaccus wanted to make the temple he was building to the goddess Fortuna Equestris the most splendid in Rome. Flaccus was a Roman from a distinguished family who had been consul and proconsular commander in Spain and was at that time a member of the college of pontiffs and censor. He had vowed the temple in 180 B.C. after defeating the Celtiberians near Tarraco. Thinking that a marble-tiled roof would be more impressive than a traditional terracotta one, he had half of the marble tiles removed from the roof of the temple of Hera Lacinia, which was in Bruttium near the city of Croton. When he had returned to Rome with the tiles, he discovered that word of his desecration had spread, and an outraged senate was conducting a debate on what to do about it. Livy reports that the senators were stunned that a man entrusted by his fellow citizens with the care and maintenance of temples and shrines would endanger the entire community by risking the gods' anger through a religious transgression. They voted to return the tiles to Bruttium and to offer expiations to the goddess. Unfortunately, the technique of placing the tiles on the roof seems to have been lost, since no builder could

be found to do the job, and the tiles were dumped near the temple and left.<sup>21</sup> Years later, after one son had died in battle and the other was suffering a serious disease, Flaccus committed suicide, and the Romans believed the goddess was punishing him for his crime.<sup>22</sup>

A question becomes obvious: why would a Roman official commit so blatant an act of impiety? This is especially strange when we consider that Fulvius had held virtually every magistracy, almost all of which had some religious function, and was himself a member of the college of pontiffs. The answer seems to be that he did not perceive that what he had done was impious. He was acting to fulfill a vow he had made to a goddess, and providing the best possible roof for a temple would certainly seem to be a pious act.<sup>23</sup> Furthermore, Hera Lacinia was arguably not a Roman goddess. She was part of the civic cult of the Bruttians, so she was a foreign goddess whose interests would naturally (from Fulvius' point of view) have to be sacrificed for the betterment of the Roman civic cult. Roman generals often had no qualms about despoiling foreign

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<sup>21</sup> Livy 42.3.1-11; Val. Max. 1.1.20; Toynbee (1965) 2:631-632. Scullard (1973), 193-4; Scheid (1981), 140-142; Champeaux (1987), 133-140; Orlin (1997), 138-139; Mueller (1998), 247-252; Rosenberger (1998), 21-22. Val. Max. 1.1.20 places the temple of Hera Lacinia at Locri, but the temple was actually located near Croton, as is noted in Val. Max. 1.8.ext.18; see Mueller (1998), 248. The temple of Hera is otherwise noteworthy because Hannibal inscribed a lengthy account of his achievements in Italy on a bronze tablet at the site. It was also, apparently, famous for its sanctity. See Polyb. 3.33.18 and Livy 24.3. The fate of the tiles is informative. The Romans seemed willing to leave the tiles on the ground, judging that they had done everything they could to repay the goddess for Flaccus' sacrilege: the expiatory sacrifices had sealed any breach in the community's relations with Hera. As to the repair of the temple, they were willing to leave that up to the Bruttians.

<sup>22</sup> Livy 42.28.10-12; Val. Max. 1.1.20.

<sup>23</sup> One might argue that Fulvius was cynically manipulating religion for political benefit by using religion as a means to glorify himself, but it is hard at this distance to evaluate his motives, which might have been more complex. Even personal advancement was his chief goal, the relevant point here is that a Roman noble with his career and experience in civic affairs might be expected to know how his fellow aristocrats would react to his behavior, and it seems clear that he did not.

temples.<sup>24</sup> Sometimes, however, the Romans decided that special care must be taken when handling apparently foreign cults. The ambiguity in the status of temples outside Rome complicated the process of deciding what kinds of actions constituted pious or impious behavior. As a result, and what is the interesting point here, a Roman aristocrat and priest who had as thorough knowledge as anyone of what constituted proper behavior toward the gods could believe that he acted piously when many of his fellows thought he acted impiously. It was not always clear-cut whether someone had acted properly toward the gods, whether he had demonstrated *pietas adversus deos*.

### **Competition, Conflict, and Rome's Civic Structure**

Rome's political and religious institutions were structured in such a way as to prevent one single person from obtaining too much power. Thus authority was invested in a number of different persons or groups, whose spheres of influence overlapped. This fact has two implications relevant for our study. First, civic structure encouraged competition for influence, power, and authority within the community. Second, since multiple sources of religious authority existed, it was not always clear who had the right to decide religious disputes. Both of these meant that piety *adversus deos*, fulfillment of obligations to the gods, became a subject for public dispute. Since keeping the gods pacified often had implications not just for an individual but also for the community, *pietas* was a political as much as a personal issue. And because Rome's civic structure encouraged competition for power and influence, a citizen's religious actions were

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<sup>24</sup> Most famously, perhaps was the plunder of the Delphian temple of Apollo by L. Cornelius Sulla in 87 B.C.; see Plut. *Sull.* 12.4-5; App. *Mithr.* 8.54.; Diod. Sic. 38/39.7. See also the discussion of Q. Pleminius below, pp. 60-69.



observed by his neighbors, and if he failed to meet his obligations, an enemy would almost certainly publicize this fact. In addition, a public figure could believe that he had met all of his obligations, but if an argument could be made that he had lapsed, someone was going to notice and make the argument. Finally, multiple sources of religious authority meant that disputes over *pietas* could begin in a number of different places.

The structure of the *cursus honorum* also encouraged public contests over *pietas*. All Roman magistracies were governed by the principles of collegiality and annuality. Every magistrate had at least one colleague and had a term of office that lasted one year. The most prestigious offices, consul, praetor, curule aedile, and censor, virtually always had more candidates seeking them than positions available, making them the objects of fierce competition. Many magistrates had religious duties as well as political ones, and competitors for advancement would pay close attention to see if their rivals carried out these duties out in a proper manner.<sup>25</sup> The aediles, for instance, were entrusted with the responsibility of providing games and overseeing public festivals; in many ways they epitomize the connection between religion and politics in Roman civic life.<sup>26</sup> While the state allotted them a certain sum to pay for the festivals, ambitious office holders would spend vast sums of their own money in hopes that extra expense would encourage their fellow citizens to think well of them and elect them to higher office. The most famous practitioner of this was Julius Caesar, who borrowed heavily and spent liberally as aedile and reaped the reward: in the year of his aedileship he was elected *pontifex maximus*,

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<sup>25</sup> For a review of the structure of Roman politics, see Lintott, (1999), 17-30.

<sup>26</sup> For a discussion of the role of the aedile in Roman politics, see Lintott (1999), 129-133.

arguably the most important religious officer in the Roman state. M. Calpurnius Bibulus, Caesar's fellow curule aedile, complained that he shared expenses with Caesar but got none of the credit for the lavishness of the games;<sup>27</sup> yet we should not fail to note that like Caesar himself, Bibulus was elected to the consulship in his first attempt, so perhaps all of Bibulus' generosity did not go unnoticed. The expense of the aedileship was not just a display of generosity. Since these games were given on behalf of the community as an offering to the gods, they were also a display of both individual and communal piety.

The consuls also had an important religious role. Their first public act as consul was to seal the bond between Rome and Jupiter by presiding over the sacrifices to the god on the Capitoline, and after the sacrifice they attended a meeting of the senate and announced the date of the Latin Games.<sup>28</sup> In addition, consuls and praetors held *auspicium*, the right to seek the auspices on behalf of the community as a whole,<sup>29</sup> which they were required to do before taking actions of public import such as conducting elections, calling legislative assemblies, and fighting battles.<sup>30</sup>

There were Roman officials whose purview was chiefly religious; these were usually grouped into colleges. The three most important of these were the college of pontiffs, which had a variety of different religious duties and advised the senate on religious matters, the (*quin*)*decemviri sacris faciundis*, who kept the Sibylline Books and advised the senate on expiation of prodigies, and the augurs, who specialized in

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<sup>27</sup> Suet. *Iul.* 10.1

<sup>28</sup> Scullard (1981), 52-58; Graf (1998).

<sup>29</sup> On auspices, see below, p. 21.

<sup>30</sup> Lintott (1999), 102-104; Scheid (2001), 68-69.

divination. The authority of these colleges rested on two pillars: sacred texts, none of which survive and the interpretation of which was very likely a matter of debate among the members of the college, and on tradition, which depended on the authority of the older members of the college and which was again a matter open to debate.<sup>31</sup> Thus, when a college was called upon to render a decision on whether proper religious procedure had been followed, the decision was not necessarily easy to make. Furthermore, a college did not act on its own accord to intervene in disputes over issues which fell under its purview. It usually had to be asked by a magistrate, or, more frequently, by the senate. Finally, the priests were drawn from the Roman aristocracy, and membership in a priestly college did not exclude a career on the *cursus*, so a member of a priestly college was often also a magistrate or a senator.<sup>32</sup>

### ***The Pax Deorum***

Roman religion focused its efforts on propitiating supernatural forces using religious ritual. The Romans conceived of their gods as reasonable entities who had a vested interest in the preservation of the Roman state. Though the gods' approval and goodwill could never be taken for granted, they were receptive to bargains, and much of Roman religious activity revolved around the offering of sacrifices and vows designed to

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<sup>31</sup> See Linderski (1985) and (1986a), 2241-56; Beard (1991); and North (2000a) for discussions of texts in Roman religion.

<sup>32</sup> For a review of the functions of the priestly colleges, see Beard (1990) and Beard, North, and Price (1999), 18-30. For a discussion on the composition of the colleges see Hahn (1963); Jocelyn (1966); Szemler (1972). For thorough specific discussions on the pontiffs see Bouché-Leclercq (1871) and for the augurs see Catalano (1960) and Linderski (1986a).

win their favor. It was this complex series of offerings that bound the human and divine parts of the Roman community together.<sup>33</sup>

The perception that the gods, if not controllable, were reasonable, influenced how the Romans approached them. The Romans felt confident enough to give themselves wide latitude in formulating vows and in fulfilling their side of the bargain. For example, in 217 after a disaster at Trasimene, the Romans vowed a *ver sacrum* (Sacred Spring), which promised Jupiter all of the livestock born in the Spring season of a certain year in exchange for the protection of the community.<sup>34</sup> When the Romans proposed the offering to Jupiter, they gave themselves a lot of room in which to maneuver. For instance, they made certain that they could select the time and rite employed for the offering, and insisted that Jupiter not hold it against the Romans if some of the animals destined for sacrifice died or were stolen.<sup>35</sup> The way they approached the offering of the Sacred Spring indicates that the Romans perceived Jupiter to be flexible in his demands of them. The assumption that Jupiter was flexible also governed the operation of *auspicia de tripudiis*, the procedure for finding the auspices on the battlefield.<sup>36</sup> Roman religious practice required the Romans to make certain that they had the support of the

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<sup>33</sup> Beard, North, and Price (1998), 34.

<sup>34</sup> Livy 22.10.2-6; Heurgon (1957); Nock (1986)1:481-483.

<sup>35</sup> Nock (1986), 1:481-492 and North (1976), 4-6. Note that Beard, North, and Price (1998), 34 affirm that the Roman religious apparatus kept the gods supporting the community through ritual, but reject Nock's and North's interpretation that the gods were essentially contractually obligated to act in certain ways provided that the Romans carried out the proper rituals.

<sup>36</sup> Brennan (2000), 15-18 provides a convenient discussion of *auspicium*, the right to take auspices on behalf of the community. For a discussion of the *auspicia de tripudiis*, see Valetton (1891), 211-215 and Linderski (1986a), 2155-2156.

gods before they took a variety of communal activities such as conducting elections, passing legislation, or fighting battles. The process of ascertaining whether this favor existed is known as auspication. The Romans used the behavior of birds as an indicator of Jupiter's mood, most famously at the founding of the city, where Romulus and Remus (so the legend has it) each watched the sky for a sign that Jupiter approved of the creation of the new settlement.<sup>37</sup> The gods delivered with two flights of birds. Under augural law the sight of birds eating and causing crumbs of food to fall to the ground was a sign of divine approval. The Romans were not willing to take precious time before battles waiting for birds to provide signs, so they developed a convenient system. They brought the birds along in cages and kept them hungry so that they could be fed the proper food when the time for battle was at hand. In most cases, the birds acted exactly as hungry birds could be expected to act; they ate and crumbs fell on the ground, thus demonstrating that Jupiter approved of fighting on that day. This system allowed the greatest possible flexibility for the Romans, who had an easy and fast way to find a favorable sign, while it still allowed for communication with the divine. After all, Jupiter was powerful enough to intervene and prevent the birds from eating if he wanted to reveal his disapproval, and, of course, it was not inevitable that the birds would eat when fed by the *pullarii*, so auspication *de tripudiis* still contained the element absolutely necessary for forms of divination: the outcome could not be guaranteed.<sup>38</sup>

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<sup>37</sup> Livy 1.6.3-1.7.3; Levene (1993), 129-131.

<sup>38</sup> 'Quintus' in Div. 1.27-28 argued otherwise, stating that this kind of auspication did not really have an element of chance in it. But auspication *de tripudiis* could not guarantee that the birds would eat. It did stack the odds considerably in the Romans' favor, but this simply revealed the confidence the Romans' had in their relationship with the gods. M. Claudius Marcellus, cos. 222, displayed a similar confidence when, according to the story, he insisted on being carried around in a closed litter so he could not see unfavorable

The agreement between the human and divine members of the Roman community is known as the *pax deorum*.<sup>39</sup> The apparatus of the civic cult was set up to maintain the *pax*. While the Romans believed that the gods were reasonable and open to negotiations and that the gods were willing to allow the Romans latitude in constructing the terms of an agreement, they also believed that the gods expected exact and punctilious fulfillment of the terms once a bargain had been struck.<sup>40</sup> If the Romans failed to carry out one of the rituals in a proper fashion, then the agreement was broken and the gods could withdraw their favor. This could be disastrous for the community, given the scope of the gods' power. However, if something went wrong and the Romans made an error in making an offering, all that was required to repair the breach was an *instauratio*, a repetition of the rite in which everything was done properly.<sup>41</sup> This was usually done immediately to limit the damage to the *pax*, but not all ruptures of the *pax* were noticed immediately.

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signs (Cic. Div. 2.77; Pliny *N.H.* 28.17). In theory, Jupiter's power was such that he could get in touch with Marcellus if he really wanted to. Marcellus was merely making conditions for his ability to operate as a commander as favorable as possible for himself. Likewise Ov. *Fast.* 3.329-344, where Numa Pompilius stands before Jupiter and demands to know how to expiate the prodigy of a thunderbolt. When Jupiter orders him to cut off a head, Numa replies he will be happy to cut off the head of an onion. When Jupiter responds, 'a man's', Numa quickly interjects 'his hair'. When Jupiter demands a life, Numa offers the life of a fish. Jupiter, admiring Numa's presence of mind when communicating with the divine, accepts Numa's terms and calls him a man 'worthy to treat with the gods.'

<sup>39</sup> On the *pax deorum*, see Joceyln (1966), 92-96, 103; Goar, (1972), 12-14; Rosenstein (1990) 56-57; Rosenberger (1998), 17-25; Scheid (1998a), 125-126.

<sup>40</sup> North (1976), 6 makes an apt comparison between the gods' attitude toward the fulfillment of ritual obligations toward them and the Romans attitude toward the repayment of debts owed to them (as seen in Polybius 31.27.10-11): they expected to be paid the exact amount on the agreed-upon day: not a day later—but not a day earlier either. See also Beard, North, and Price (1998), 34.

<sup>41</sup> On the correction of ritual error see Tromp (1921); Scheid (1981 and 1999); Cohee (1994).

If the Romans failed to maintain the *pax*, the gods would send them warnings called *prodigia* that indicated the *pax* had been broken. Ominous signs, usually unnatural events such as monstrous births or rains of stones, would be reported to the senate. It was up to the senate to determine if a reported sign was in fact a message from the gods; if the senators concluded that reports indeed indicated that the gods had sent a *prodigium*, they could rely on two groups of religious experts to help them decide how to expiate it. First, the (*quin*)*decemviri sacris faciundis* had access to the Sibylline Books and the expertise to interpret them; these ancient prophetic texts could be consulted on how to placate the gods. Second, the Romans kept a college of religious advisors from Etruria, the *haruspices*, who were trained to ascertain the will of the gods and who could offer advice both on whether an event was a *prodigium* and on how to expiate it if it was.<sup>42</sup>

The gods also warned if they disapproved of a particular communal action, and the Romans kept a group of specialists trained to look for and interpret any possible sign of the gods' approval or disapproval. These men were the *augurs*, and their specialty was *auspication*.<sup>43</sup> *Auspices*, such as the *auspicia de tripudiis* mentioned above, were signs from the gods indicating that an action was acceptable or unacceptable. In some cases, such as before the meeting of an assembly or before a battle, a Roman magistrate with the right of *auspication* would actively seek favorable *auspices*; this kind of *auspication* has been classified as *auspicia impetrativa*. In contrast, those signs (such as a thunderclap

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<sup>42</sup> On the reporting and expiation of prodigies, see Bloch (1963), esp. 112-157; Liebeschuetz (1979), 7-29; McBain (1982); Beard, North, and Price (1998), 37-39; Rosenberger (1998); Scheid (2001), 69-72.

<sup>43</sup> Linderski (1986a) has the best recent discussion of augury and *auspication*, but see also Valetton (1891) and Brennan (2000), 15-18.

during the meeting of an assembly) which occurred without their being sought are known as *auspicia oblativa*. During many public occasions, augurs would be present to advise magistrates and help them interpret *auspicia oblativa*. Continuing a public activity in the face of auspices indicating the disapproval of the gods (or taking action without having received auspices which showed divine approval) could rupture the *pax deorum*. As we will see, a number of contests where *pietas* was the main issue revolved around whether an individual had acted even though he had failed to receive the auspices.

### **A Question of Authority**

Conflict over fulfillment of religious obligations occurred because Roman religion had no central authority. Mary Beard sums up the situation nicely:

Ancient civic paganism was a religion of no fixed centre, a religion whose centre was (in Derridean terms) constantly deferred. It consisted not so much in a defined and closed body of doctrine but in a series of interpretations and reinterpretations – satellites around an elusive and intangible core. The structure of religious authority followed much the same pattern.<sup>44</sup>

Roman religion did not have a fixed series of rules understood or agreed upon by all: questions of interpretation could thus easily crop up. The Romans did not have one institution that was empowered to decide religious matters; many different bodies could and did get involved in the process of making decisions. Since there was no single authoritative individual or group that controlled religion, the Romans used the same methods to solve religious disputes that they used to decide other civic matters.

Disputants tried to win the support of their fellow citizens and especially their fellow aristocrats. This required that they state their case in public, before the senate or before

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<sup>44</sup> Beard (1990), 42.



the populace *in contione*. Sometimes they had to argue their points before meetings of priestly colleges; sometimes the issue had to be settled judicially with either the *populus Romanus* or a *quaestio* acting as jury.

The structure of Roman religion makes analyzing contests over *pietas* difficult. The best way to start is to study the role the various institutions played in creating and resolving religious disputes, while keeping in mind that in Rome “religious authority in the general sense has to be located in the interaction . . . of magistrates, senate, and priests.” . . .<sup>45</sup>

### **The Limits on Senatorial Authority**

Recent studies have demonstrated that the senate played a central role in managing the Roman civic cult.<sup>46</sup> The *auctoritas* of the senate during the republican period was tremendous, and if it bent its will in a certain direction, the state almost always followed. Occasionally the senate was able to quash religious conflict by imposing that authority on the disputing parties. We have seen that when Fulvius Flaccus tried to defend himself, the senate almost unanimously condemned him for tearing the roof off of the temple of Juno Lacinia, and its decision to return the roof and make expiation to the goddess was quickly implemented. Yet if we examine incidents of religious conflict in the Roman state, very often the senate seems to yield its responsibilities to individual magistrates, groups of magistrates, priestly colleges, the

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<sup>45</sup> Beard, North, and Price (1998), 30.

<sup>46</sup> Beard (1990), 30-34, e.g., stresses that the senate acted as the body that mediated between the gods and the Roman community. Orlin (1997), 190-191 and *passim* argues that in cases where Roman magistrates vowed to construct temples, the senate had a wide-ranging authority to oversee the consecration and construction.

assemblies, or the courts. While the theoretical authority of the senate was very great, it occasionally happened that the body could not, or chose not to, employ that authority in religious disputes. The senate was not a monolithic body but was composed of aristocrats, each of whom competed with the others for political prominence and each of whom had political allies and opponents in that body. Unanimity could not always be obtained, and it was sometimes necessary or expedient for the senate not to get involved in religious conflicts, even when those conflicts were pertinent to state business. Furthermore, the senate's influence was limited by the fact that it could not legislate; unhappy disputants could take their complaints to a voting assembly, which could resolve the matter through legislation. In the late Republic (133-31 B.C.), the senate's authority was challenged more and more frequently, and disputants were more and more willing to bypass the senate and take their cases directly to the assemblies. A further complicating factor crept in during the last century of the republic as violence became more of a factor in politics, because senators could be cowed by fear of harm. Let us look at some examples of disputes over piety where the senate had only a limited influence on the course and outcome of the debate.

In 163 B.C., Ti. Sempronius Gracchus, consul for that year, was conducting elections for the consulship of the subsequent year. The man chosen to report the results of the vote (the *rogator*) of the first century dropped dead in mid-report. This might have been regarded as an ominous sign, but Gracchus ignored it and continued with the election. He perceived, however, that the public was disturbed by the incident and so referred the matter to the senate. The majority of senators decided to treat the matter as if

were a *prodigium* and, according to custom, referred it to the haruspices.<sup>47</sup> The job of the college of haruspices was to determine what had caused the breach and what steps could be taken to repair it. The haruspices replied that the election was vitiated.<sup>48</sup> A furious Gracchus denounced the haruspices as '*Tusci et barbari*' and asserted that because he was a Roman consul and augur who had carried out his duties under proper auspices, he had full authority to decide the fitness of the electoral procedure. On the way to his province, however, he wrote to the college of augurs and reported that he had had been reading some books on religion and realized that he had made a mistake when taking the auspices on the day of the elections. He had crossed the *pomerium* without having completed the auspices, did not take the auspices a second time when he reentered the city's boundary, and was thus acting *inauspicatus*.<sup>49</sup> The augurs referred the matter to the senate, the senate concluded that the consuls were *creati vitio*, and the consuls resigned.<sup>50</sup>

This incident provides an example of conflict between two branches of Roman religious practice: augural law and haruspical science, and it shows how such a conflict could paralyze the senate. The death of the man chosen to report the vote could, at Gracchus' discretion, have been interpreted as a message from the gods, a portent that there was something wrong with the electoral procedure, but he chose to ignore it and

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<sup>47</sup> '*Senatus quos ad soleret referendum censuit.*' Cic. *Nat. D.* 2.10.

<sup>48</sup> Cic. *Nat. D.* 2.10.

<sup>49</sup> Since the proper auspices had not been taken, the Romans could not be certain that any public business carried out that day had Jupiter's endorsement.

<sup>50</sup> Cic. *Nat. D.* 2.10-2.11, see also Cic. *Q. Fr.* 6 (II.2).1, Val. Max. 1.1.3, Plut. *Marc.* 5.1-3; Scullard (1973), 226-7; Linderski (1986a), 2158-2161 and n. 37, (1986b), 332-333.

proceeded with the elections. The elections were completed and consuls were selected. Public pressure, not the senate's initiative, seems to have persuaded Gracchus to look into the incident again, so he referred the matter to the senate, expecting that the senate would use its authority to support his decision to continue with elections. When the haruspices advised the senate that the *rogator's* death, Gracchus refused to accept their advice in spite of the fact that these men were trained to recognize and expiate prodigies. Instead he put his confidence in his own ability to take the auspices up against the authority of the haruspices. As consul and augur, he too knew what proper religious procedure was (or he thought he did), and he refused to yield to the opinion of outsiders and perhaps by implication to the senate who employed them as experts. In this case, the Roman system, which divided religious authority among many different individuals to keep it out of the hands of one man,<sup>51</sup> also led to a dispute between experts in two kinds of religious practice: auspication and haruspication.

The senate's reaction to Gracchus' bitter outburst is illuminating. It did nothing. Gracchus himself left for his province with the consuls still in place, and it seems they would have carried out the duties of their office for the full term had Gracchus not realized his error and written to the college of augurs about it. The senators left the ball in Gracchus' court. He, not the senate, ultimately took the steps that brought about the resignation of the consuls and resolved the dispute. The senate's refusal to act may indicate that it had been persuaded by Gracchus' arguments; he was an augur, and he did

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<sup>51</sup> Beard (1990), 43.

(apparently) receive favorable auspices before he conducted the election,<sup>52</sup> and neither he nor the assistant from the augural college who was present at the election chose to interpret the death of the *rogator* as a portent. In other words, two sources of authority from two different religious disciplines (augural and haruspical) had come into conflict, and many senators may not have known which to support. Political considerations also might have influenced the senate. In 173 B.C., the senate had to deal with only one aggrieved aristocrat (Fulvius Flaccus), but Gracchus' obstinacy undoubtedly gave heart to the two men who had been elected, and they and their allies may very well have discouraged the senate from acting on the haruspices' recommendation.

Only after the conflict between the religious experts ended did the senators act. It is important that we remember this, since Linderski used the affair of 163 B.C. to illustrate the wide scope of the senate's authority over civic issues involving religion and politics.<sup>53</sup> He correctly points out that once Gracchus had reported his mistake to the college of augurs and once the college advised the senate that the consuls had been *vitio creati*, the ball was entirely in the senate's court. It alone had the discretion to act. Yet if we analyze the issue only from a constitutional point of view we miss the big picture. The senate alone had the right to act, but it failed to do so until the conflict was essentially resolved by Gracchus and the college. Once the augurs had made their

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<sup>52</sup> Or at least the senate had to presume that he had received favorable auspices, because at this point they did not realize his error.

<sup>53</sup> "The procedure is clear: the augurs establish the occurrence of the *vitium*, and report their findings to the senate. Formally the *collegium* plays no role beyond that point. It was within the competence of the senate (but not within the competence of the *collegium*) to annul a law or to decree *ut abdicarent consules*." Linderski (1986a), 2160-2161. The point Linderski is trying to illustrate is that the augurs had a limited freedom of action that was circumscribed by the senate; they did not have the *iuris dictio* to order magistrates to declare laws or elections null and void on religious grounds.

recommendation, which agreed with the earlier judgment of the haruspices, the senate took the initiative, but by this point there was really only one thing the senate could do—declare the election null and void and order a new one.<sup>54</sup> The senate alone had the right to decide what to do, but its decision was essentially made by Gracchus and the college of augurs.

Senatorial inertia extended the career of another Roman aristocrat, C. Flaminius, cos. 223 and 217. In 223 he won a victory over the Gauls, but he did so after his election had been declared vitiated. He received a letter from the senate asking him to resign, but, apparently aware of its contents, he refused to read it. According to some traditions he also ignored unfavorable auspices before the battle. He led his troops out anyway and gained the victory. In spite of apparently numerous violations of religious procedure, the only action the senate took was to deny him a triumph, which he obtained anyway through a vote of the people.<sup>55</sup> Flaminius' popularity (as evidenced by the triumph he received in the teeth of senatorial opposition) made any attempts to censure him for impiety pointless. Again the senate chose not to intervene. Many senators doubtless felt that Flaminius had committed gross acts of impiety, but they did not attempt to punish him. Roman custom hindered any attempt to bring Flaminius up on charges, because while the Romans disapproved of public impiety it was not normally a crime.<sup>56</sup>

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<sup>54</sup> As Linderski himself noted: "The senators were not obliged to follow the opinion of the augurs, but at the same time it was in most cases rather impossible for them to disregard the *responsa* of the *collegium* for this could have meant great peril for the state." Linderski (1986a), 2162; cf. Linderski (1986b), 332-333.

<sup>55</sup> Sources for Flaminius' consulate in 223: Livy *Per.* 20, 21.63, 22.3, 22.6.3, 23.14.4; Sil. Ital. 4.704-6, 5.107-113, 5.649-55; Plut. *Marc.* 4.2-5, 6.1, *Fab.* 2.4; Flor. 1.20.4; Oros. 4.13.4; Zon. 8.20. See Scheid (1981), 143-144; Levene (1993), 38-40.

<sup>56</sup> For a discussion of the criminal and legal aspects of impiety, see below pp. 45-53.

Furthermore, the victory itself could be regarded as a divine sign that the gods supported Flaminius, whatever others asserted about the impiety of his actions. In a sense, the victory provided an alternative source of religious authority that Flaminius could set up against his detractors.

In the first century B.C. the senate could also be intimidated with the threat of violence. This occurred in 59 B.C., during Caesar's consulship.<sup>57</sup> After entering office in January, Caesar's first goal was to pass a law providing land for Pompey's veterans. This law was vigorously opposed by many senators and by Caesar's colleague Bibulus. Caesar was determined not to be stymied either by tribunician veto or by his colleague. Bibulus tried to stop Caesar through the traditional procedure of looking at the sky and announcing that an evil omen had been received, a means of obstructing public business known as *servatio* (*de caelo servare*).<sup>58</sup> When a magistrate announced that he was watching the sky for signs from the gods, public business stopped until he had finished, at least according to traditional political practice. This was not just custom; during the second century the process of *obnuntiatio* had been confirmed by a law governing voting procedure, the *lex Aelia*.<sup>59</sup>

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<sup>57</sup> We have a large number of primary sources for Caesar's consulship; for a full list see Broughton (1952) 2: 187-193. Modern surveys are equally large in number; for a thorough discussion of Caesar's consulship and legislation see Gelzer (1968), 71-101; Meier (1995), 204-223; Seager (2002), 88-100.

<sup>58</sup> *De caelo servare* specifically referred to an announcement by a magistrate that he was searching the sky for omens from Jupiter. *Obnuntiatio* was the technical term for the act of reporting any signs, if seen, to a public official, usually a magistrate presiding over a voting assembly. The announcement that a magistrate was searching the sky was usually enough to cause public business to grind to a halt, since it was presumed that if he was taking the time to look he would find something. For a review of the procedure see Valetton (1891) and Lindersky (1965). For a discussion of the use of *servatio* and *obnuntiatio* as means of obstructing public business, see De Libero (1992), 56-64.

<sup>59</sup> The problem of ascertaining the exact provisions of the *lex Aelia* is a tricky one. Our main sources come from the 50s B.C., mostly from Cicero's complaints about a law of Clodius passed in 58 modifying the

When Bibulus announced that he was watching the heavens, Caesar refused to call off the legislative assembly he had summoned. This forced Bibulus to obnuntiate, to make a public declaration to his colleague that he had observed a sign from Jupiter which indicated that the assembly would have to be postponed.<sup>60</sup> Caesar's supporters in the forum assaulted Bibulus as he tried to make the announcement, driving him away. While he was absent, the law was passed. The next day an outraged Bibulus demanded that the senate protest Caesar's behavior and declare the law null and void. The senate did nothing. Unable to find any other way to stop Caesar's controversial legislation and unable even to appear in the forum because Caesar used violent gangs to drive him out, Bibulus went home and declared all remaining days of the year sacral days, thus technically making it impossible to transact any more public business. He reinforced his obstruction by periodically issuing edicts announcing that he was watching the heavens.<sup>61</sup> This did not stop Caesar either.

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provisions of the law. Cicero was very hostile to Clodius, and he tended to make exaggerated claims about the destructiveness of Clodius' legislation, so piercing the rhetoric has not been easy. The best reconstruction has been made by Sumner (1963), who argues that the Aelian law gave formal legality to the obstruction of legislative assemblies through obnuntiation. For other views and opinions, see Lange (1887), 2: 274-341; Valetton (1891); Greenidge (1893); McDonald (1929); Weinstock (1937); Balsdon (1957); Bleicken (1957b); Astin (1964); Linderski (1965); Mitchell (1986); Tatum (1999) 125-135.

<sup>60</sup> Gelzer (1968), 74 suggests that Bibulus was trying to exercise his consular veto over Caesar's law, but the text of Suetonius (*Iul.* 20.1) demonstrates that Bibulus was not trying to invoke his power of *intercessio*, but to obnuntiate: '*Legem autem agraria promulgata obnuntiantem collegam armis Foro expulit . . .*'

<sup>61</sup> Dio Cass. 38.6.5-6; Vell. Pat. 2.44.5; Plut. *Pomp.* 48; *Caes.* 14; Suet. *Iul.* 20.1; Cic. *Fam.* 20 (I.9).7., *Vat.* 21; see De Libero (1992), 62-63 and n. 51 for an extensive list of modern discussions. Dio reports that Bibulus made all remaining days of the year sacral days through a process known as *indictio ferarium*, whereby a magistrate set aside a certain number of days exclusively for religious purposes. Sulla tried to do this in 88 B.C to stop the legislation of Sulpicius. (Plut. *Sulla* 8.). Tatum (1999), 293 n. 87 suggests that Dio confused *de caelo servasse* with *indictio ferarium* and that Bibulus did not, in fact, try to make every day in the year a ferial day.



Bibulus eventually gave up attempts to transact any public business and during the summer of 59 withdrew to his home,<sup>62</sup> all the while issuing edicts reminding the Roman populace that he was watching the heavens and drawing attention to the fact that Caesar was acting impiously because he was continuing to transact public business in the face of religious prohibition. Bibulus was spectacularly unsuccessful at getting Caesar to stop passing laws. He was, however, quite successful at undermining Caesar's and Pompey's popularity, which, according to Cicero, plummeted, while Bibulus became the toast of the town.<sup>63</sup> He had gained a great advantage over Caesar and Pompey, and he and Caesar's other enemies made every effort over the next few years to remind the Romans of Caesar's impious conduct. When Clodius was feuding with Caesar and Pompey, he invited Bibulus to appear before an assembly to recount how Caesar's legislation had been passed. Clodius took special care to get a statement from Bibulus that Bibulus had been watching the heavens while Caesar was passing laws. Bibulus gleefully obliged him.<sup>64</sup>

Bibulus thus did not make a public issue over Caesar's *pietas* because he wanted an immediate institutional victory. Unlike most examples of contested piety that we will observe, in this case there was no institution he could turn to after the senate had refused to intervene. Caesar's willingness to use violence to drive Bibulus and his other

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<sup>62</sup> The chronology is problematic. Cic. *Att.* 36 (II.16).2 indicates Bibulus was willing to come to the forum in May, and App. *B.Civ.* 2.12, Plut. *Pomp.* 48.4, and *Caes.* 14.6 all suggest that his withdrawal from public activity occurred during the summer. Dio Cass. 38.6.5 and Suet. *Iul.* 20.1, however, suggest a much earlier retreat.

<sup>63</sup> Cic. *Att.* 37 (II.17).2-3, *Att.* 40 (II.20).4, *Att.* 41(II.21).3-4.

<sup>64</sup> Cic. *Dom.* 40, *Har. resp.* 48.

opponents out of the forum made it pointless to appeal directly to the Roman people or to the priestly colleges, which were filled with the same senators who refused to challenge Caesar. By withdrawing into his home Bibulus made it clear that he would not challenge Caesar on the traditional political battlefields. Instead he was waging a war of attrition against Caesar, hoping to keep Caesar's impiety in the public eye all year as a means of destroying his political standing.<sup>65</sup> By doing this he would not only give himself the opportunity to wrest institutional control of Rome from Caesar's hands, but he would also stand a much better chance of persuading the senate and Roman people to support him. Bibulus thus provides one of the most interesting examples of how the shapeless nature of Roman religious authority made it easy to wage battles over piety. Even when every institutional avenue was taken away from Bibulus, the importance of the Roman people in deciding religious matters allowed him to contest Caesar's piety in the court of public opinion.

As the above examples show, senatorial authority over religious matters could be stymied in a number of ways, including the activities of individual magistrates. Ti. Gracchus' position as consul and augur and his initial confidence that he had fulfilled every religious obligation before conducting the election served as a counter to the expertise of the haruspices, leaving the senate flummoxed until the conflict between the two *disciplinae* was resolved. C. Flaminius used the prestige he acquired through his

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<sup>65</sup> The popularity of Caesar and Pompey was only restored by the Vettius affair, in which (so far as we can reconstruct from our sources) Caesar attracted sympathy by manufacturing evidence that his enemies were trying to have him and Pompey killed. That Caesar would resort to such desperate measures shows how low his popularity had fallen and how important he considered it to have it restored. Cic. *Att.* 44 (II.24).2-5, *Flacc.* 96, *Sest.* 132, *Vat.* 24-26; Schol. Bob. 139 St., Suet. *Iul.* 17, 20; Plut. *Luc.* 42.7-8; App. *B.Civ.* 2.12; Dio Cass. 37.41.2-4, 38.9.2-4; McDermott (1949); Allen (1950); Taylor (1950); Seager (1965).

military victory to stymie attempts to punish him for not immediately obeying the senate's command to resign his consulship. He even won a rare triumph in the teeth of senatorial opposition before he resigned the consulship. M. Bibulus created a religious controversy and used a conflict over *pietas* to make Caesar and Pompey unpopular after the senate refused to take action to overturn Caesar's legislation. Thus the authority of magistrates could be used not only supplement but to challenge or replace the authority of the senate in religious disputes.

### ***Vox Populi***

The 'deferred centre' of religious authority in Rome allowed the assemblies to get involved in religious conflicts. We have seen that the senate was not a monolithic body and that inertia or conflict could prevent the senate from resolving a dispute or make it unwilling to deal with the problem. Should the senate fail to act or choose not to act, the parties in a dispute still had avenues through which to pursue their conflict. Since the assemblies, not the senate, had the power to legislate, the assemblies could resolve religious disputes, especially those involving questions of religious procedure, by passing a law. In addition, before the creation of standing *quaestiones*, the assemblies functioned as important law-courts. They had the power to punish those deemed guilty of religious infraction and could remit penalties imposed by the *pontifex maximus*. In effect, the assemblies were another body with authority over religious matters, and because of their legislative and judicial powers it was common for disputants to take their case to the Roman people. Thus disputes over piety were not waged behind the closed doors away from popular view. They were virtually always public contests in which aggrieved

parties made their arguments to the assembled citizens. Thus religious conflicts were not waged only to win over one's fellow aristocrats but to win over the entire citizen body. A study of religious conflicts in republican Rome reveals that the popular assemblies were as integral to the waging and resolution of those conflicts as the senate.

'Popular assemblies' were not just voting bodies in ancient Rome. The Romans had two kinds of meetings of the assembled populace: voting assemblies and *contiones*. Magistrates summoned voting assemblies for two basic purposes: to elect magistrates (and in some cases religious officials) and to pass legislation. Rome had four voting assemblies: the *comitia curiata*, an archaic assembly which had authority over certain religious issues, the *comitia centuriata*, which was composed of the entire citizen body organized into voting groups based on wealth, the *consilium plebis*, which was composed of plebeians organized into 35 tribes distributed geographically around Italy, and the *comitia tributa*, the entire *populus Romanus* divided into the same 35 tribes. The *consilium plebis* had the power to legislate after 287 B.C. and also served as a court of law and a court of appeal until the creation of *quaestiones ordinariae* in the second century.<sup>66</sup>

Voting assemblies did not allow for any discussion. In legislative assemblies voters did not have the opportunity to debate laws or to amend bills. They met only to decide yea or nay. Likewise, in electoral assemblies the candidates did not speak to the voters. Discussion and debate were carried out in *contiones*. *Contiones* were assemblies

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<sup>66</sup> G.W. Botsford (1909) is still an excellent introduction to the function and role of the different types of assemblies in Republican Rome; see also Taylor (1966) and Mouritsen (2001). For a discussion of the existence of the *comitia tributa*, see Develin (1975).

at which the summoning magistrate could speak, or allow anyone else to speak, on whatever topic he wanted before whoever cared to listen. Unlike voting assemblies, which were scheduled in advance, *contiones* could meet on any day that allowed the transaction of public business; the only requirement was that a magistrate had to be present to introduce the speaker to the crowd. This was not a barrier to most aristocrats, who could get a friendly tribune or praetor to allow them to speak. *Contiones* were almost always held before meetings of legislative assemblies, because this allowed politicians in favor of and against proposed laws to woo the public.<sup>67</sup> *Contiones* allowed aristocrats locked in public contests to state their cases to the members of their community. Given the judicial and legislative powers of the *concilium plebis* and the *comitia centuriata*, public goodwill was important for any party in a dispute. This is true in cases of contested piety, where the chief issue was whether an individual had met his responsibilities to the gods. *Contiones* provided a forum for aggrieved aristocrats to protest the decisions of the *pontifex maximus*, priestly colleges, or the senate. A Roman politician could use the opportunity to speak to gain public support, making it easier for him to pass a law or to win a judicial decision in a voting assembly. Thus, because *contiones* provided a forum for debate and because voting assemblies were yet another authority that could decide religious disputes, debates over religious practice very often were waged before these assemblies.

Let us look at some specific examples in which an assembly played the crucial role in settling the dispute. In 209 B.C. a vote was held to elect the chief officer of the

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<sup>67</sup> On *contiones*, see Botsford (1909), 139-151; Taylor (1966); 15-33; Lintott (1999), 42-43; Mouritsen (2001), 38-62.

archaic and obscure *comitia curiata*.<sup>68</sup> The *curio maximus*, as this official was called, had mostly religious duties and was reckoned by the Romans as a *sacerdos* (priest). One of the candidates was C. Manilius Atellus, a plebeian aristocrat. A number of patricians protested because no plebeian had ever held the office. Manilius appealed to the tribunes of the people for support.<sup>69</sup> At this point, the issue became a political football; no one who had the authority to give an opinion wanted to do so. The tribunes were often willing to intervene in disputes of this kind,<sup>70</sup> and one would think that plebeian aristocrats would on principle be eager to defend the right of plebeian aristocrats to hold civic offices, but they referred the matter to the senate. The senate for its part decided not to intervene either, apparently recognizing the right of the *populus Romanus* to elect its own officials. In the complex relationship between senate and people, the senate had drawn a line and was reluctant to cross it. Instead, the senators let the election to go ahead and allowed the Roman voters to choose from among all possible candidates. As a result, Atellus became the first plebeian to be elected *maximus curio*.

The controversy over Atellus' election shows how interactions between the various components of republican government made it possible for religious disputes to occur. One consequence of having so many groups and individuals with a role in settling

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<sup>68</sup> Livy, 27.8.1-3.

<sup>69</sup> Livy uses the passive 'the tribunes, having been appealed to' (*tribuni appellati ad senatum rem reiecerunt*) which disguises who was doing the appealing, but it is highly unlikely that a group of patricians appealed for help to the tribunes of the plebs while trying to deny a plebeian's right to stand for an office, so we must assume that it was Atellus or his allies who made the appeal.

<sup>70</sup> See, for instance, Livy 27.8.4-10, the incident between Valerius Flaccus and P. Licinius that took place the same year. The tribunes' support for Flaccus was material to his success; once the tribunes gave Flaccus their support he earned the support of senate and people, and Licinius' objections came to naught.

disputes was that jurisdictional uncertainty, internal division, indifference, or, as in this case, institutional scrupulousness could make the senate or magistrates unable or unwilling to step in to settle issues. The tribunes and the senate both had tremendous moral force at their disposal and could have added their voices to the discussion. Since neither group chose to do so the matter devolved to the body that had the ultimate power to decide, a voting assembly.<sup>71</sup> Thus popular opinion in the form of the voters within the *comitia curiata* resolved the problem.<sup>72</sup> Atellus was elected, another barrier to plebeian participation in Roman civic life fell, and Roman religious practice continued to evolve. In this case the *comitia curiata* had the final say because no other group wanted to intervene.

If we assume that *contiones* and voting assemblies only had as much of a role in Roman religious life as the senate and priestly colleges wanted them to have, we risk misinterpreting the part played by the Roman people in Roman religion. The senate had much influence over Roman religious affairs because its opinion carried great moral weight with the Roman people. It was the Roman people, however, who had the power

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<sup>71</sup> Livy unfortunately does not tell us why the tribunes and senate were unwilling to intervene, but we can speculate. In 209 B.C. the Romans were engaged in a bitter war with Carthage. The tribunes perhaps did not wish to risk a serious conflict with the patricians while fighting the Carthaginians, particularly over an office whose role and influence in the state was so limited. The patricians and plebeians in the senate likewise seemed to have been unwilling to get into a dispute over the matter. The safest and easiest way to resolve the dispute was to kick the issue back to the *comitia*, and let the Roman populace decide whom to elect.

<sup>72</sup> Livy does not specifically say that the *comitia curiata* elected the *maximus curio*, and neither Botsford (1909) nor Taylor (1966) makes note of the office. It seems likely to me, however, that the archaic *comitia curiata* would be the most likely assembly to elect its own officers. Given that the other assemblies played a much more important role in civic government, the responsibilities and influence of the *maximus curio* were probably quite small when compared, say, to a tribune or consul, which perhaps explains the reluctance of the senate and tribunes to intervene: they did not want to get involved with what may have been a tempest in a teapot.

to legislate, and for most of the republic the Roman people also acted as a judicial court or court of appeal. Because the will of the *populus Romanus*, as expressed in the voting assemblies, had the power to resolve religious conflicts, the opinion of the *populus Romanus* was often a necessary component of a conflict's resolution.

An example of this occurred during the tribunate of Gaius Gracchus (123-122 B.C). Although almost all of the Gracchan legislative program provoked controversy, the founding of the colony of Junonia on the site of Rome's ancient enemy Carthage proved to be particularly contentious. Two-and-a-half decades earlier, when Scipio Aemilianus had conquered the city and sold its population into slavery, he had dedicated its site to the gods to prevent anyone else from settling on the area that had witnessed the birth of Rome's most bitter foes.<sup>73</sup> Gracchus intended the fertile region to become a place where Italy's poor could get farms and a chance for prosperity. He would also receive the prestige accorded to those who founded colonies. His enemies struck at him by attacking the colony he had founded. According to Appian,<sup>74</sup> after Gracchus had laid the foundations and had returned to Rome, reports reached Italy that wolves had torn up the colony's boundary stones. The senate called in diviners to determine what the report signified for the Roman community.<sup>75</sup>

There is some question as to which college of religious advisors the senate consulted. Since it is relevant to our discussion, we should spend some time examining

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<sup>73</sup> For a review of the sources, see Broughton, (1952), 1: 467.

<sup>74</sup> *B. Civ.* 1.24.

<sup>75</sup> Salmon (1970) 118-121.



the issues of debate. Appian describes these diviners as *manteis*, a Greek term that can refer either to augurs or haruspices. E. Rawson assumed that they are augurs,<sup>76</sup> while Thulin assumed that they were haruspices,<sup>77</sup> but neither defended their assumption. MacBain argued that the *manteis* were haruspices, because he believed the purview of the augurs was limited only to events at meetings of the assembly or to the activities of birds.<sup>78</sup> Linderski's rigorous study of augural activity has seriously undermined MacBain's arguments, since he shows that the scope of augural expertise was much broader than MacBain believed.<sup>79</sup> Gargola has taken a different track, pointing out the state/action dichotomy that separated the spheres of activity of haruspices and augurs. Augurs specialized in interpreting signs that indicated that the Jupiter had granted approval to an action, while haruspices interpreted *prodigia*, which indicated that something was wrong with the state of the relations between community and the gods. Gargola concludes from this that the senate consulted the augurs, not the haruspices, to advise on the signs reported at Junonia.<sup>80</sup>

It is hard to see how Gargola drew this conclusion. It is true that the signs Appian reported took place while the colony was going through the ritual process of being founded, and that this might be taken as a sign that the action of founding the colony was at issue, but it is equally arguable that the senate was worried about the overall religious

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<sup>76</sup> Rawson (1974), 197.

<sup>77</sup> Thulin (1909), 3:102.

<sup>78</sup> MacBain (1982), 105.

<sup>79</sup> Linderski (1986a), 2162-68.

<sup>80</sup> Gargola (1995), 166 and n. 79, pp 243-244.

health of the republic and summoned the haruspices. The situation is analogous to that which occurred in 163; the *rogator* had dropped dead in the action of reporting an election result, but the senate did not choose to summon the augurs. Instead they summoned the haruspices, perceiving, apparently, that the issue involved the general state of Roman religion and not the specific action of conducting an election. The state/action dichotomy was probably hard to differentiate in many cases, leaving the senate free to choose from which college it would seek advice.

The senate's behavior is consistent with the expiation of a prodigy.<sup>81</sup> The summoning of the *manteis* was the first step in assessing whether the mysterious occurrences at Junonia were signs that something had ruptured the *pax deorum*. The diviners concluded that the reports from Africa indicated that a rupture had indeed occurred, and perhaps advised the senate on a proper form of expiation. At any rate, the senate concluded that the cause of the rupture was the founding of the colony and passed a *consultum* calling for the recall of the colonists and the abandonment of Junonia. Gracchus became incensed, accused the senate (presumably at a *contio*) of lying about the omens, and prepared to challenge the senate's attempt to repeal the law.<sup>82</sup>

The senate's decision had a number of implications both political and religious. The *consultum* was an assault on Gracchus' *pietas*, since he was the chief supporter of the

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<sup>81</sup> This suggests the *manteis* were haruspices.

<sup>82</sup> Plutarch's narrative in *C. Gracchus* 11-13 differs slightly from Appian's in *B.Civ.* 1.24. Plutarch reports more than just one ill-omened event and has Gracchus present at the colony while the evil omens occur. The two sources are not so different that they cannot be reconciled. See Gargola (1995), 163-174 for a discussion.

foundation of the colony, an action that had led to the rupture of the peace.<sup>83</sup> If Plutarch's version is correct and the *prodigia* appeared while Gracchus was in Africa trying to establish the colony, then he was even more open to attack, since the reports indicated that he persisted in his efforts in the face of disturbing signs and portents. The senators might also have been defending the *auctoritas* of the senate as an institution and reminding their fellow citizens of the senate's traditional role in approving legislation. By choosing to recognize the reports from Junonia as *prodigia* and by concluding that the colony's founding had broken the *pax deorum*, they were sending a pointed message to both Gracchus and the *consilium plebis*: the natural order of things required the senate to endorse a proposed law before the assembly could pass it, since the senate had the expertise to what was appropriate and what was not.<sup>84</sup> From the point of view of many senators, the *prodigia* revealed that the *consilium plebis* had made a mistake because it had not consulted the senate. The senate was asking the plebeian assembly to concede it had erred by voting to repeal the law that allowed the colony to be founded.

So far it seems that the traditional view that all of the initiative rested in the hands of the senators is correct. On a closer look, however, the importance of the interaction between the senate and the people to resolve this matter is clear. The senate could not

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<sup>83</sup> Gracchus allowed Rubrius, a fellow tribune and political ally, to propose the law in the assembly; see Plut. *C. Gracchus* 9.2-10.1. Gracchus clearly had an important, if not the chief, role in getting the colony established since he was one of the triumvirs who established the colony. The sources also contextualize the struggle over the colony as an attempt by Gracchus' enemies in the senate to undermine Gracchus, not Rubrius. See also Plut. *C. Gracch.* 10, where Plutarch uses the founding of Junonia to contrast Gracchus' hands-on approach to overseeing his legislative program with Drusus' decision to avoid getting himself involved with the administrative details of the laws he proposed. Plutarch thus saw the founding of Junonia as Gracchus' law.

<sup>84</sup> It is almost certain that the Lex Rubria was passed without a *senatus consultum*. Our sources do not specifically state this, but Plut. *C. Gracch.* 8-9 indicates the majority of senators were implacably hostile toward Gracchus' legislative program, in particular to his plans for the founding of colonies.

simply impose its will on the Roman people. Though the senate had the right to decide whether the report truly did constitute an ill-omen for the colony and the state, it alone did not have the right to abrogate the law passed in the *consilium plebis* which had authorized the founding of the colony. It had to persuade the assembly that its interpretation was correct and convince the Roman public to repeal the law. It was by no means certain that this would happen. According to Appian, Gracchus believed that he had lost the struggle over the colony even before the assembly met.<sup>85</sup> But this might have been a case where the historian was influenced by Gracchus' ultimate failure and put his own thoughts into Gracchus' head. It may have not have been at all obvious to Gracchus that he was destined to lose, and he certainly decided to contest the matter before the *consilium plebis*.<sup>86</sup> Given his success at getting legislation passed in the teeth of fierce senatorial opposition,<sup>87</sup> he might have been able to prevail. With his popularity apparently in decline, the struggle might seem to be an uphill one, but we should note the senators did not wait for a vote in the *consilium plebis* to decide the contest. Instead, they armed themselves and attacked Gracchus, killing him and many of his followers before a vote could be taken. We should not allow the unorthodox political tactics of some of the senators to divert us from the key point here: the senate as an institution did not have final voice in the resolution of this matter. The fate of Junonia, and the decision as to whether the colony had to be abandoned in the face of an apparent prodigy, rested

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<sup>85</sup> App. *B.Civ.* 1.24.

<sup>86</sup> If Appian correctly reports that Gracchus took armed followers to the *consilium*, we need not conclude that he was desperate and intended to use violence to intimidate the voters; he may have been worried about his opponents and taken arms in self-defense.

<sup>87</sup> A convenient review of C. Gracchus' legislation can be found in Stockton (1979), 114-161.

entirely with the *populus Romanus*. In cases where religious conflicts intersected with (or could be resolved by) legislation, which occurred often given the inextricable link between religious and political life in Rome, the *vox populi* had to be taken into account. Magistrates and senate could apply their *auctoritates* to sway the will of the voters, but in the end it was the assembly vote that settled the issue.

The *vox populi* could even be cultivated to find ways to prevent religious conflicts, to refine the concept of *pietas*, and to help Roman religion evolve. As we saw above, in 59 B.C. Julius Caesar provoked a major controversy when Bibulus tried to obstruct his legislation on religious grounds. The senate did not step in to punish Caesar when he used violence to stop an *obnuntiatio*, and it did not condemn Bibulus for watching the heavens for the entire year. Thus because of senatorial inertia the question of the legality of Caesar's laws was not settled definitively. Bibulus' conduct, however, was addressed by a law of Clodius in 58 B.C. The assembly, at Clodius' request, modified the *lex Aelia* to limit the opportunities for a magistrate to obstruct the passing of laws through obnuntiation.<sup>88</sup> The law passed in 58 prevented someone from doing what Bibulus had tried to do, use Roman religion as a means to shut down all public business when one person felt aggrieved. The law demonstrates how legislation helped Roman religious practice evolve to meet new challenges. The late republican politician faced

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<sup>88</sup> Cic. *Red. sen.* 11, *Sest.* 33, 56, *Har. resp.* 58, *Vat.* 18, *Prov. cons.* 45, *Pis.* 9; Asc. 8 C.; Dio Cass. 38.13.6. On what follows, see Tatum (1999), 125-133. The exact nature of the Clodian reform of the Aelian law is a controversial topic, because (as we saw earlier) the provisions of the Aelian law are themselves little understood and because our best source for the *lex Clodia de obnuntiatione* (or as Tatum calls it, the *lex Clodia de agendo cum populo*) is Cicero's bitter invective. According to Cicero, Clodius destroyed completely the right of a magistrate to use obnuntiation as a means to prevent an assembly from voting, but Tatum's thorough analysis demonstrates that the intention of the law was much narrower and was designed to prevent a magistrate from trying to completely shut down Roman political activity by retiring to his home and announcing that he was watching the heavens.

increasing demands for public reforms but also had to deal with a constitutional system set up to make it easy for a few aristocrats to prevent innovation. The conflict between Bibulus and Caesar was partly political and partly religious, and Clodius' solution to prevent politicians from using Bibulus' tactics to stop legislation had consequences both political and religious. The law passed and was never repealed, but in republican Rome, of course, even the passage of a law did not necessarily end a contest over *pietas*. Cicero repeatedly accused Clodius and his allies of impiety for tampering with the Aelian law, which, he argued, undermined Roman religion.<sup>89</sup>

In 104 B.C. the tribune Cn. Domitius persuaded the *consilium plebis* to enact a law changing the process of selecting members for the main priestly colleges from cooptation by the members of the college to a vote of seventeen of the thirty-five tribes, the same method used to select the pontifex maximus. Apparently Domitius was passed over for membership in a priestly college, and in a fit of pique he proposed a revision in the selection process.<sup>90</sup> Thereafter election to priestly office became a public contest among aristocratic candidates in much the same manner as election to an office on the *cursus*. The issue over how priests should be chosen was not settled by Domitius in 104, because Sulla repealed the law twenty-five years later, and Sulla's resolution to the conflict did not last either, since in 63 B.C. a law of the tribune T. Labienus again made election the means of choosing priests.<sup>91</sup> The controversy over the appropriate manner

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<sup>89</sup> Cic. *Red. sen.* 11, *Har. resp.* 58, *Sest.* 56, *Vat.* 18, *Prov. cons.* 46, *Pis.* 9-10.

<sup>90</sup> Cic. *Leg. Agr.* 2.17.18; *Vell. Pat.* 2.12; *Suet. Ner.* 2; see Rawson (1974), Beard (1990), and Beard, North and Price (1998), 136-137.

<sup>91</sup> Dio Cass. 37.37.

of choosing members of a priestly college illustrates the complex interaction between various elements in the Roman civic body and shows how some disputes could last for years. It also shows how disputes could lead to an evolution of the Roman religious system. Often the resolution of a conflict led to the introduction of a new element into the way the Romans carried out the operation of the civic cult.

Thus the power to legislate made a voting assembly the ultimate stop for many religious disputes, but again the contests always involved interaction between aristocrat, senate, priest, and people. Only magistrates could summon voting assemblies, and the senate could exercise decisive influence by passing a *consultum* recommending for or against the passage of a law. Even a law might offer only a temporary resolution to a dispute, since any law could be repealed.

### **Contesting *Pietas* in the Courts**

Trials provided another public forum for settling religious conflicts. Before the establishment of standing *quaestiones*, trials were held before a voting assembly, which would determine if the accused aristocrat had in fact committed some act of impiety that injured the Roman state. In the second century it became more common for a legislative assembly to establish a *quaestio extraordinaria*, a special court, to investigate and try cases, including cases where the chief issue was religious. The outcome of these trials was never predetermined; the defendants always put up a vigorous defense, arguing that they had not committed acts of impiety. And as a consequence of the complex structure of Roman civic institutions, which had many bodies that had authority over religious affairs and many fora for discussion, the verdict often failed to end the contest. If an

aristocrat lost in the courts, he did not necessarily give up the struggle. He instead found another venue in which to fight the battle.

It should not surprise us that the Romans contested *pietas* in the courts, since they availed themselves of every other possible forum to conduct religious disputes. But one aspect of Roman religious practice made it difficult for the Romans to use the courts as a venue for charges of impiety: even though the civic cult was intimately connected with the life and welfare of the entire community, the Romans did not consider impiety to be a crime.

There was no law against impiety. The Romans reasoned that if humans acted in such a way that they did not fulfill their obligations to the gods, then it was a matter for the gods, not the state, to punish. This was generally true even if a magistrate or other official entrusted with the care of the civic cult acted impiously. The Roman system was set up so that if anyone made an error in ritual procedure, the problem could be solved simply by repeating the ritual. The technical term for the repetition of flawed rites was *instauratio*. Once a rite had been properly completed, the state and the community were off the hook. Even if an individual had deliberately committed an act of impiety, an inextinguishable offense as far as the Romans were concerned, then it was not the responsibility of the state to punish him. The gods would take care of meting out justice.<sup>92</sup> But the Roman system scattered authority among various groups and individuals and emphasized interaction between them to make decisions. As we have seen, one consequence of this was that conflict between the various groups occurred frequently, but another result was

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<sup>92</sup> For a discussion of the Roman attitude toward impiety and the correction of ritual error, see in particular Scheid (1981) but also Scheid (1999); Morgan (1990); Cohee (1994).



that the Roman system was very flexible. If an individual committed an arguable act of impiety and consequently earned the hostility of enough groups and individuals with *auctoritas*, then he could be certain someone would find a way to bring him to trial, even if impiety itself was technically not illegal. Let us look at some examples.

In 249 B.C. P. Claudius Pulcher lost most of his fleet in a naval battle against the Carthaginians. Reports spread that he had ignored the auspices before the battle.<sup>93</sup> After his defeat he was brought up on charges of treason because he had jeopardized the safety of his fleet, and indirectly the whole community, by going into battle without receiving favorable auspices. Pulcher was absolved of the charge not by the *populus Romanus* but by Jupiter: thunder was heard in the middle of the trial, which vitiated the proceedings.<sup>94</sup> This might have been taken as a sign that the gods reserved for themselves the right to judge Claudius, but Claudius' opponents did not allow this to stop them. They brought him up on other charges, convicted him, and had a stiff fine imposed on him.<sup>95</sup> Thus, the contest over Claudius' piety did not end with the first trial. Since there was no limit except the patience of the assembly to the number of times a politician could be hauled up before the people and tried, the contest continued until Claudius' career was ruined. We see that in spite of the fact that impiety itself was not a crime, religious behavior was

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<sup>93</sup> Pulcher's impiety was supposed to be especially egregious, since he was accused of getting angry and killing the birds when he could not get them to eat. Wiseman (1979) argues that many of the charges leveled against Pulcher were probably fabricated by his opponents, but for our purposes the validity of the charge is less relevant than the reaction to it.

<sup>94</sup> A thunderclap heard during any public assembly was an *auspicium oblativum* and signified that Jupiter did not approve of the Romans' conducting public business at that particular time. Thus the magistrate presiding over the assembly would have to dissolve the assembly until another day.

<sup>95</sup> Cic. *Div.* 1.29, *Nat. D.* 2.7; Val. Max. 8.1 abs. 4; Schol. Bob. 90 St.; Polybius 1.52.2-3; Linderski (1986a), 2176-2177 and ns. 107-111; Rosenstein (1990), 78-85 and ns. 80, 85.

so closely tied to public welfare that impiety among magistrates could and would be punished judicially if the offense aroused enough public anger.

In 114 B.C. three Vestal virgins were accused of breaking their vow of chastity. If a Vestal broke her vows, she endangered the entire community because the gods might punish not just the Vestals, but all Romans as a consequence of breaking the *pax*. Here was one circumstance in which the Romans did have a law for impious behavior: the law against incest (*incestum*) applied not only to sexual intercourse with family members but also to sexual intercourse with the Vestals.<sup>96</sup> The Vestals were under the authority of the *pontifex maximus*, and normal procedure in these cases required that the accused be tried before the college of pontiffs. The college of pontiffs investigated the matter and condemned the virgin Aemilia, while acquitting the two others, Licinia and Marcia. Popular opinion felt that the pontiffs had been too lenient and had therefore failed fully to perform their religious duties. The tribune Sex. Peducaeus passed a law in the *consilium plebis* that created a special tribunal (*quaestio*) to retry Licinia and Marcia and investigate the Vestals. The tribunal convened with L. Cassius Longinus Ravilla as judge and condemned Licinia, Marcia, and some others.<sup>97</sup>

This case shows how the various Roman institutions with authority over religious affairs could come into conflict. According to traditional practice, the pontiffs had the duty of overseeing the Vestals and the right to prosecute and punish them if they broke their vow of chastity. In theory, the *populus Romanus* should have respected the

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<sup>96</sup> For a discussion of the crime of *incestum*, see Cornell (1981).

<sup>97</sup> Cic. *Nat D.* 3.74, *Brut.* 122, 159, *Inv.* 1.80; Asc. 45-46 C.; Obseq. 37(97); Oros. 5.15; Plut. *Quest. Rom.* 83; Porphyrio ad. Hor. *Sat.* 1.6.30; Dio Cass. frag. 87.5; Macrob. *Sat.* 1.10.5; Millar (1986), 7.

*auctoritas* of the college. It was the pontiffs, after all, who had the expertise to judge the Vestals, since it was they who had access to Roman sacred writings and knew the religious traditions passed down from their predecessors. Furthermore, the *auctoritas* of the college as a whole was bolstered by the *auctoritas* of its individual members, who were prominent members of Rome's aristocracy. The *pontifex maximus* who had presided over the first trial, for example, was L. Caecilius Metellus Dalmaticus, who had been consul in 119 and was a triumphator.<sup>98</sup> But the Roman system was not set up so that one man alone or even a respected group of Roman nobles had final say in religious decisions. When popular opinion decided that the college had made the wrong decision, that they had not fulfilled the obligations of their college to the gods, then the matter was not over, because the *populus Romanus* also had the right to intervene: all that was needed was a magistrate to sense public opinion and propose a law setting up a special *quaestio* to investigate the matter. Sex. Peducaeus saw which way the wind was blowing, convened the *consilium plebis*, persuaded them to pass a law creating a special court, and the contest continued in another venue. Like the case of Pulcher, procedure provided guidelines but not absolutes. In Pulcher's case impiety was not a crime, yet that did not stop him from being tried and punished. In the case of the Vestals the traditional apparatus for trying *incestum* had operated exactly as it was supposed to operate, but the verdict was not accepted, and an extraordinary tribunal was created to decide the case.

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<sup>98</sup> Asc. 45 C.

Of course, even the second trial did not end the debate. Just as there were complaints that the pontiffs had been too lenient, Ravilla was criticized for the harsh verdict of his jury.<sup>99</sup>

Impiety was also the central issue of the trial of M. Aemilius Scaurus in 104 B.C. A year earlier the Romans had suffered a disastrous defeat against the Teutones and the Cimbri. Cn. Domitius Ahenobarbus, tr.pl. 104, the same man whose inability to get coopted into a priestly college drove him to propose a law that changed the procedure for selecting priests,<sup>100</sup> accused M. Aemilius Scaurus of impiety because he had improperly carried out the rites to the Penates at Lanuvium.<sup>101</sup> Ahenobarbus was apparently trying to link the ritual error to the defeat, arguing that Scaurus had caused a breach in the *pax deorum* that led to the military disaster.<sup>102</sup> At first glance the issues raised in this trial seem identical to those raised in the trial of Pulcher in 249, but there are two very significant differences. Pulcher was in military command when he ignored the auspices, while Scaurus was nowhere near the battlefield and had no military responsibilities that year. Second, Pulcher was alleged to have willfully and deliberately violated Roman religious procedure, while Scaurus' error seems to have been accidental.<sup>103</sup> The second fact was important for Scaurus personally, because, as we have seen, while the

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<sup>99</sup> Asc. 45 C.; Val. Max. 3.7.9.

<sup>100</sup> See above, pp. 44-45.

<sup>101</sup> Cic. *Deiot.* 31; Asc. 21 C.; Scheid (1981), 125; Millar (1986), 6.

<sup>102</sup> Though the sources do not explicitly link the prosecution with the defeat, the timing is very suggestive. See Rosenstein (1990), 62 n. 30.

<sup>103</sup> Even in our most detailed account of the trial, Asc. 21C., there is no evidence that Domitius accused Scaurus of deliberately violating religious procedure. Our sources for the trial, however, are few in number and short in length, so it is possible Domitius made such a charge.

community could always repeat a flawed ritual and restore peace with the gods, an individual could never redeem an intentional act of impiety.<sup>104</sup> The first had tremendous implications for the community as a whole, since every year the Romans carried out a large number of rites to the gods, and many members of the aristocracy played a part in those rites. Had accusations such as those made by Domitius become a common feature of Roman politics they might have seriously unbalanced the state, because every military defeat would become a political free-for-all as Roman politicians exploited the opportunity to blame their most bitter rivals by making hard-to-refute charges of impiety.<sup>105</sup> The reason that trials such as Scaurus' were rare was not because Roman aristocrats were reluctant to make charges of impiety but because Roman juries were reluctant to convict. The decade from 110-100 B.C. represented a low point in senatorial prestige and control over religious affairs,<sup>106</sup> as is demonstrated (among other things) by the Lex Domitia of 104 which took the right to choose priests away from the priestly colleges and gave it to the people. This fact and the fact that the Romans were demoralized by a major military defeat might have proved disastrous for Scaurus, but even with all of the cards stacked his way Domitius could not convict his opponent.<sup>107</sup> Given the reluctance of the Roman populace to convict when the political environment was most favorable to prosecutions, we should not be surprised that (so far as we can tell

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<sup>104</sup> Cic. *Leg.* 1.40; Scheid (1999), 335.

<sup>105</sup> Rosenstein (1990), 61-62 and n. 30, 161.

<sup>106</sup> Rawson (1974), 209.

<sup>107</sup> The vote however, was very close; According to Asc. 21 C., had three tribes swung the other way Scaurus would have been convicted.

from our sources) there were no other attempts to link a military defeat with a remote ritual error to create a criminal case.

Though the trial of Scaurus was unusual, it does provide a useful illustration of how an aristocrat might initiate a contest over *pietas*. Domitius was Scaurus' opponent; according to Asconius, Domitius carried a grudge against Scaurus because Scaurus had obstructed his co-optation into a priestly college.<sup>108</sup> Domitius was not the first Roman to use the public stage to avenge a personal slight.<sup>109</sup> We should not be surprised that Domitius chose to make Scaurus' religious behavior the point of attack; as we have seen, religious behavior was as much a part of a noble's civic life as his speeches in the senate or his conduct as a magistrate. When Domitius found that he could make a plausible case that Scaurus had incorrectly performed the rites to the Penates and that this had endangered the state, he did so. The forum for the dispute (a trial for impiety) was thus a relatively uncommon one, but the issue being disputed was not. Like other aristocrats Domitius desired to achieve honor and influence in his community by becoming a member of a priestly college, but found himself blocked by an opponent. When he found an opportunity to pay his enemy back, he took it by accusing his impiety of harming the community. As a result, religious issues became a topic for earnest debate. This hardly

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<sup>108</sup> Asc. 21 C. Exactly what priestly college Scaurus belonged to has been the subject of intense debate. Asconius reports that Scaurus was an augur, but this seems to be contradicted by Suet. *Ner.* 2.1, who states that Domitius had a grudge against the college of pontiffs because he was not coopted into that college. This suggests that Scaurus was a pontiff, because it was very rare for an aristocrat to be a member of two priestly colleges, and Asconius states the motive for prosecuting Scaurus was his anger at not being coopted. For a review of the problem, see Marshall (1985), 129-132. See Gruen (1964), 107-108 and Epstein (1987), 103-104 on the personal and political issues involved in the trial.

<sup>109</sup> To see exactly how far Romans carried personal grudges into the public sphere, see chapters two through five, when we review the rivalry between Clodius and Cicero.

illustrates that the civic cult was corrupt or decayed; in fact, the interest of the citizens in the health of the cult indicates just the opposite.

### **Adapting to Change: The Flexibility of Roman Ritual**

The trial of Scaurus illustrates one of the reasons why the Romans got into political disputes over whether obligations to the gods had been fulfilled: Roman ritual procedure could be complex and any error could vitiate the ritual. If a ritual were improperly performed, the Romans had not carried out their obligations to the gods, and the binding agreement between the Romans and their gods was suspended until they correctly performed the rite.

It was not always clear to the Romans what constituted proper religious procedure and thus what steps had to be taken to ensure that the Roman community fulfilled its religious obligations. The Romans could not consult a group of religious experts who had knowledge of religious texts that clearly explicated proper religious procedure. Even though the Romans had religious experts and sacred texts, from what we can tell about the disputes that arose, much of what constituted religious expertise was knowledge of formulae and custom, proper application of which was a matter open to interpretation. As we shall see, even those presumably most familiar with proper religious procedure often found their rulings challenged. A characteristic yet often overlooked feature of Roman ritual was that it was not a fossil, engraved in stone and calcified with age. Roman religious procedure could evolve, and, in its own way, it was flexible and malleable. This flexibility had its advantages, but it also led to uncertainty, and where

there was uncertainty there was debate over which actions were pious and which were not.

There is a further point of Roman religious practice that encouraged conflict but enhanced the flexibility of the Roman religious system. There was no recognized hierarchy in Roman religion, no place which provided a final court for religious conflicts that the Vatican offered to medieval Catholicism, no place where, as Harry Truman put it, 'the buck stopped'. The 'deferred centre' of religious authority in Rome helped Roman religion evolve because many different individuals or groups had the right to make judgment calls in the face of never-before-seen circumstances; this flexibility allowed the Romans to adapt their religious practices to deal with new problems.

A famous anecdote in Livy illustrates this flexibility. In 293 B.C. L. Papirius Cursor was preparing for a battle with the Samnites. The story has it that before battle he ordered his *pullarii* to take *auspicia ex tripudiis*. The chief *pullarius* reported to him that the chickens had eaten and thus the auspices were favorable. In fact, the chickens had refused to eat. Some of the cavalry overheard the *pullarii* bickering about the auspices and reported the dispute to the consul's nephew, who informed the consul. Calling the battle off at the last moment would have been difficult if not impossible, since the Samnites might have easily attacked and beaten his disorganized army. Even if the Samnites had refused battle, standing down just before combat would have had dire consequences for Roman morale. Papirius decided to risk battle in spite of the apparent problem, much in the same way Flaminius (as we have seen) risked battle in 223 in spite of having been made consul in a vitiated election. Papirius, so the story goes, chose to



regard the announcement as a sign of favorable auspices for the state and declared to the bystanders that since the auspices had been reported favorably to him in his office as commander of the Roman army and representative of the Roman people, the gods were favorably inclined to his and the army's actions. The negative auspices obtained when the chickens refused to eat redounded only to the *pullarius*, who had seen the chickens' behavior. To see that the gods gained an opportunity to vent their wrath on the *pullarius*, Papirius placed him in the front of the battle line, where he was killed by a random javelin.<sup>110</sup>

Papirius Cursor was playing with fire. Had he lost the battle there would have been an outcry because he had knowingly ignored the auspices and had lost the battle. We have already seen what happened to P. Claudius Pulcher, cos. 249, when he ignored the auspices and returned home; his fellow citizens ignored the fact that impiety was not a crime. Even if Cursor had not faced a criminal prosecution his public reputation would have been destroyed because his impiety had placed the lives of his fellow citizens in danger. But the Romans did not allow their ritual procedures to hamstring their military actions, and Cursor's victory—and the death of the conveniently placed *pullarius*—could be used as evidence that Cursor's interpretation was correct.<sup>111</sup>

Of course, one may legitimately question the historicity of Livy's account. The story about the *pullarius* does not appear in the other, admittedly brief, accounts of the

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<sup>110</sup> Livy 10.40.3-14; Levene (1993), 237-239; Linderski (1995b), 608-619.

<sup>111</sup> Livy 10.40.11; Rosenstein (1990), 80 n. 84.

battle.<sup>112</sup> Furthermore, as Levene points out, Livy's account of the battle of Aquilonia juxtaposed the apparent impiety of the Romans with the apparent piety of the Samnites, but the moral of the story was that appearances were deceiving: the Samnite piety was false while Papirius' piety was genuine.<sup>113</sup> The contrast seems too pat, and it is easy to believe that Livy's account has been fictionalized. Yet the story itself illustrates the main point of our argument. The Roman attitude corresponded to Papirius': the Romans could be flexible in how they fulfilled their obligations to the gods. Papirius asserted that he was acting piously in fighting in spite of apparently unfavorable auspices, he reinforced his assertion by a vow to Jupiter,<sup>114</sup> and his victory showed that he correctly assessed his responsibilities to the gods and had therefore acted piously.

A similarly flexible attitude can be seen in the creation and elimination of *dies atri*, 'black days,' which were days on which some military disaster had befallen the Roman republic or days that were otherwise inauspicious. On these days battle was normally avoided, since knowingly fighting on them was an inexpiable religious offense.<sup>115</sup> In 69 B.C. L. Licinius Lucullus was about to go into battle against the forces of Mithridates when someone pointed out that the day was *ater* because it was the anniversary of the disastrous battle at Arausio against the Gauls. Lucullus replied that he

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<sup>112</sup> Neither Val. Max. 7.2.5 nor Oros. 3.22.3-4 mentions the problem with the auspices. See Levene (1993), 238-239.

<sup>113</sup> Levene (1993), 237-238.

<sup>114</sup> Livy 10.42.7, Pliny *H.N.* 14.91.

<sup>115</sup> Rosenstein (1990), 81 n. 86, 84.

would win a victory that would erase the black mark, and he went on to do so.<sup>116</sup> Had he lost, Lucullus would have been guilty of impiety, but his victory rendered any charge of impiety pointless, since the victory itself indicated that Jupiter was favorable to Lucullus' actions.

Questions over proper religious procedure did not just arise in battles. In 200 B.C., only a year after the Romans had finally defeated Hannibal in North Africa and put an end to the Second Punic War, the Roman senate wished to punish King Philip V of Macedon for allying with Carthage in the moment of Rome's greatest desperation. Before entering into such a dangerous endeavor, the community, embodied in the consul P. Sulpicius Galba, made a vow to Jupiter of games and an indefinite sum of money to ensure their success. P. Licinius Crassus Dives, the *pontifex maximus*, who should have been the man who had the most authoritative opinion, ordered Sulpicius to make another vow, this time with a specific sum of money because otherwise the consul would not be able to fulfill the exact specifications of the vow.<sup>117</sup> According to Livy, Sulpicius was impressed by force of the argument and by the standing of its maker, but he was directed (presumably by the senate) to appeal the ruling to the entire college of pontiffs. The pontiffs met and decided that an indefinite sum was acceptable, so Sulpicius made a vow promising games and a sum to be decided by the senate at the time when the vow was fulfilled.<sup>118</sup>

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<sup>116</sup> Plut. *Luc.* 27.

<sup>117</sup> '*quod si factum esset* (if the vow were made without specifying an exact sum), *votum rite solvi non posse.*' Livy 31.9.7.

<sup>118</sup> Livy 31.9.5-10; Briscoe (1973), 79-82; North (1976), 6-7.

The question over unspecified vows illustrates the complex nature of religious decision-making in Rome. Sulpicius' vow was novel, demonstrating again the flexibility of the Roman system—Sulpicius reckoned that Jupiter would accept an I.O.U., given the poor state of Roman finances at the end of the Second Punic War. He was moving onto shaky ground, since he was acting without the weight of religious tradition to support him. Livy asserts that such a vow was without precedent.<sup>119</sup> Even though an indefinite vow had never been made before, in the absence of any hard-and-fast rule to the contrary Sulpicius concluded that necessity compelled and justified a well-meaning change in procedure. Crassus challenged the validity of Sulpicius' vow, relying on his own knowledge of religious affairs. The issue of novelty gave him grounds to intervene, but more than a firm respect for tradition may have impelled Crassus to object. He may have believed that maintaining a proper relationship with Jupiter required the Romans to spell out in exact terms the Romans' side of the bargain, otherwise Jupiter might find the room to wiggle out of the agreement.<sup>120</sup> Much of Roman civic religion centered on the reciprocal relationship between the community and the gods. The Romans believed that if they did their part, the gods would reciprocate. If the Romans failed to maintain their obligations then the agreement was null and void, and the favor of the gods could be withdrawn, with disastrous consequences to the community.<sup>121</sup> Crassus could reasonably argue that Sulpicius' new formula would not bind the god, since the Roman side of the agreement was vague. Though the financially strapped Romans might be able to justify

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<sup>119</sup> *'Ostiens ante ludi magni de certa pecunia voti erant; hi prima de incerta.'* Livy 31.9.10.

<sup>120</sup> Sage (1935), 28 n. 1.

<sup>121</sup> Scheid (1998), 125-126.

to themselves a delay in specifying how much they would offer the god, the potential danger was, so far as Crassus was concerned, too great to warrant tampering with the formula for making a vow.

Crassus' authority as *pontifex maximus* and the weight of Roman tradition stood behind his opinion, yet that did not prevent his opinion from being challenged. Another authority existed, the authority of the full college of pontiffs, which could offer a ruling that the senate could use to overrule the supreme pontiff. Here again we see the 'deferred centre' that divided authority among and prevented one person from having too much influence over religious affairs. The voice of the *pontifex maximus* carried great weight but it was not absolute. Because religious authority rested in so many different groups or individuals (in this case, the consul, the *pontifex maximus*, the college of pontiffs, and the senate all had a say in the process), conflicts over whether proper procedures had been carried out would arise in novel or unprecedented situations, since it was at these moments when the various groups who had authority over religious matters would most frequently find themselves at a loss about how to act.

We also see again that the flexibility of the Roman system led to disputes over what constituted proper religious procedure (and thus what constituted pious behavior). Had this been a simple question of 'are we going to carry out this vow the same way we have always done it?', then Crassus' ruling would be virtually impossible to challenge. But the Roman system did not work that way. Having so many voices making decisions, with the consequent discussions and conflicts, left the door open for Roman religion to evolve. Roman religious procedure was resistant to change, but the structure of Roman

religion, with its groups of competing individuals debating over what constituted proper behavior toward the gods, meant that Roman religion was not and could not be static. Unfortunately we do not know what arguments or precedents the pontiffs cited when they decided to make a procedural change by allowing consuls to make vows of indefinite amounts for the *ludi magni*, but they had no problem with allowing the innovation. Thus resolving questions of religious procedure could lead to new ideas and solutions for religious problems.

### **Shades of Gray**

The flexibility of Roman religion blurred the line between pious and impious behavior. As a result, a Roman would sometimes act in a way that seemed proper to him but impious to many of his fellow citizens; contests over *pietas* then arose. Recall from the introduction to this chapter the unfortunate Q. Fulvius Flaccus, who wanted to build as beautiful a temple as possible to fulfill of a vow and who from completely pious motives acted in such a way that he outraged his fellow citizens. Flaccus was as knowledgeable on religious issues as anyone, given his membership in a priestly college and his long career on the *cursus honorum*, but even his experience could not prevent him from making a huge blunder that wrecked his public reputation. Had the line between piety and impiety been clear-cut Flaccus would never have risked the public humiliation that he ultimately suffered, and he would have found another source of marble for his temple's roof.

A similar incident occurred more than thirty years before Flaccus ripped the roof off of the temple to Juno in Bruttium. In 205 B.C, during the Second Punic War, P.

Scipio Africanus and the Romans captured the city of Locri in Southern Italy, taking the city from Hannibal and a Carthaginian garrison. He garrisoned the city with a force commanded by his legate, Q. Pleminius, and then left for Sicily to prepare for an invasion of North Africa. Pleminius turned out to be a brutal overlord, and among his outrages was the plunder of the treasury of the temple of Proserpina. After two groups of Roman soldiers got into a squabble and Pleminius inflicted a serious punishment on two Roman military tribunes, a vexed Scipio returned to Italy to deal with the problem. There he was met with a chorus of protests over Pleminius' conduct. The Locrians informed Scipio of Pleminius' crimes against them, but Scipio ignored them. He listened to the grievances of the two military tribunes punished by Pleminius, decided they deserved punishment, and ordered them confined and sent to Rome for trial. He then returned to Sicily.<sup>122</sup>

Pleminius does not seem to have thought that there was anything wrong with plundering the temple of Proserpina. From the Roman point of view the Locrians did not make particularly sympathetic plaintiffs, since they had revolted from Rome and had gone over to the Carthaginians. There were probably many in Rome who would not have taken their complaints seriously. The Locrian cult was not, after all, part of the Roman civic cult. But the Locrians sent envoys to the senate and, according to Livy's account, made the plundering of the temple to Proserpina the centerpiece of their complaint against Pleminius and Scipio.<sup>123</sup>

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<sup>122</sup> Livy 29.8.8-29.9.9; App. *Han.* 55; Diod. Sic. 27.4; Val. Max. 1.1.12; Dio Cass. fr. 57.62; Zon. 9.11; Toynbee (1965), 2:613-621.

<sup>123</sup> Livy 29.18.1-20.

The Romans might have treated the complaints of the Locrians with slight concern, but, according to Livy, there was a larger debate shaping up in the senate. The complaints of the Locrians found the most enthusiastic hearers among those most interested in derailing Scipio's career. Deciding whether Plemenius had committed an impious act when he plundered the temple of Proserpina became tied up with a judgment of Scipio's strategy and even of his fitness to command. Livy reports that Q. Fabius Maximus in particular argued that Scipio's handling of this affair reflected a pattern of irresponsible behavior that demonstrated his unfitness to lead the Romans against Carthage.<sup>124</sup> The debate between Scipio's opponents and supporters grew quite heated.<sup>125</sup> Ultimately a compromise was reached between those calling for Scipio's head and those defending him. An investigative committee was appointed to look into the matter, and the opinion of the college of pontiffs was sought. Not only Pleminius' *pietas* was in question, but also Scipio's, since the committee had explicit instructions to investigate whether Pleminius acted with Scipio's knowledge and consent,<sup>126</sup> implying that had Scipio known and approved of (among other things) the pillaging of the temple, he would have been held responsible. Ultimately the investigators judged that Pleminius' actions were both impious and illegal but chose to exonerate Scipio. At the advice of the college

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<sup>124</sup> Livy 29.19.1-13.

<sup>125</sup> Livy 29.19.10.

<sup>126</sup> Livy 29.20.5.



of pontiffs the senate made restitution and expiated the sacrilege, and Pleminius was put on trial but died before the verdict.<sup>127</sup>

The process of ascertaining whether or not Pleminius committed an act of impiety illustrates several points we have been discussing. It shows that contests over *pietas* were closely linked with other civic issues. In this case, deciding the issue of Pleminius' impiety was bound together with a political issue—the competition between Scipio and Fabius for prominence in the community—and a military one—Scipio's fitness as a commander and the appropriateness of his strategy for defeating the Carthaginians. Scipio's opponents in the senate, particularly Fabius, tried to exploit the plunder of the Locrian temple to check Scipio's rapid ascent to the top of Roman public life. They also tried to use it as a pretext to remove Scipio as commander in Sicily—the investigating commission had the power to call Scipio out of Sicily if there was evidence that he condoned Pleminius' brutal behavior.<sup>128</sup> This is not an example of religion in decline; it is an example of the Roman religious system at work. All civic activity, including warfare, depended on the proper operation of the civic cult, so it was important for the senate to make certain that the *pax deorum* was maintained and any impiety expiated. And since the political system encouraged competition among aristocrats, it was inevitable that once Scipio's opponents saw a way to use the issue to damage his career they would do so.<sup>129</sup> We cannot see this as 'politicization' of religion—implying that

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<sup>127</sup> Livy 29.20.1-29.22.10; Val. Max. 1.1.21; Levene (1993), 72-73.

<sup>128</sup> Livy 29.20.11.

<sup>129</sup> Scipio's opponents did not let this issue die. In 187 B.C., when his enemies were preparing to bring him up on charges of taking bribes while acting as his brother's legate during the Syrian War (193-188 B.C.),

religion was being dragged into a sphere that it did not belong. All discussion of the civic cult was inherently political.

Second, we again see how many civic institutions had a role in deciding questions of piety and impiety. To determine whether Pleminius had committed an impious act, the senate, the college of pontiffs, an assembly (functioning as a jury), individual magistrates, and a special commission of magistrates all had a role in the decision. We also see how these various individuals and groups could work at cross-purposes and come to different conclusions about what constituted impiety. Pleminius had one interpretation, while the senate took the opposite view. And though on one level the senate resolved the issue when it took steps to expiate impiety and restore all lost funds to the temple, on another level the contest continued. Pleminius still had another venue to defend himself and another place to argue that he had not committed any impieties: before the assembly that was trying him. Furthermore, if we can accept Livy's reconstruction of events, he was beginning to make and win a case for acquittal.<sup>130</sup>

Which brings us to the final point: the line between pious and impious behavior was not always evident, even in apparently obvious cases such as Pleminius. John Scheid uses the plunder of the Locrian temple as an example of deliberate and therefore inexpiable impiety.<sup>131</sup> This presents a problem for anyone trying to understand what Pleminius was doing, since, as Scheid also points out, there were socially imposed

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they tried to undermine his public standing by reminding their fellow citizens of Pleminius' conduct. Livy 38.51.1.

<sup>130</sup> Livy 29.22.7-9; Val. Max. 1.1.21.

<sup>131</sup> Scheid (1981), 139-140; (1999), 335-336; (2001), 37-39.

punitive sanctions for the willfully impious,<sup>132</sup> sanctions of which Pleminius would certainly have been aware. The best explanation remains that it was not obvious to Pleminius that his fellow citizens would interpret the plunder of the Locrian temple as impious. The Locrians were enemies, the Locrian cult was not part of the Roman civic cult, and an argument could be made that Pleminius' plunder had not at all affected the *pax deorum*. Certain senators seemed willing to include the plunder of the Locrian temple among the list of things that were impious. Two groups of people saw the same incident in completely different ways.

An interesting parallel occurred nearly two decades later, while the Romans were involved in fighting in Greece. M. Fulvius Nobilior, consul in 189 B.C., won victories over the Aetolians and Cephallenians and attacked Ambracia. He returned in triumph two years later.<sup>133</sup> One of the consuls the year of his return was M. Aemilius Lepidus, whose relationship with Nobilior Livy characterizes as one of *inimicitia* because Lepidus blamed Nobilior for a two-year delay in reaching the consulship.<sup>134</sup> According to Livy, before Nobilior had returned, Lepidus met with Ambraciot ambassadors, who were already hostile toward Nobilior because of his treatment of their country. Lepidus gave them a list of charges that they should level against Nobilior before the senate, including illegally making war on them, plundering their city, carrying their people off into slavery,

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<sup>132</sup> Scheid (1999), 343-347.

<sup>133</sup> For the sources for Nobilior's consulship, see Broughton (1951), 1:360; for sources on his return and triumph, see Broughton (1951), 1:369.

<sup>134</sup> '*Inimicitiae inter M. Fulvium et M. Aemilium consulem erant, et super cetera Aemilius serius biennio se consulem factum M. Fulvii opera ducebat.*' Livy 38.43.1. For the sources on Lepidus' consulship, see Broughton (1951) 1:367-368.

and, the gravest charge, plundering the Ambraciot temples.<sup>135</sup> This pattern is familiar. A Roman politician has a grudge against a rival, and observes his public behavior. When he finds evidence of impiety, he takes steps to make this evidence public, forcing his rival to defend his behavior. And thus, a contest over piety began.

Nobilior was not present to defend himself, but Aemilius' fellow consul C. Flaminius, Nobilior's ally, defended the absent proconsul. Livy put an interesting speech into his mouth. Flaminius reminded the senators that this kind of charge was not new, since the Syracusans had made the same complaint against M. Marcellus, as had the Campanians against Q. Fulvius Flaccus. He also pointed out that similar charges might be leveled against T. Quinctius Flaminius by King Philip of Macedon, by Antochus III against the generals who defeated him, and even against Fulvius Nobilior by the Aetolians and Cephallenians, two other peoples whom Nobilior had defeated.<sup>136</sup> The implication was clear: stripping the ornamentation from the temples of defeated enemies was standard procedure, since such plunder rightfully belonged to the conquerors. Not every temple plundering should be treated as an impiety.<sup>137</sup>

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<sup>135</sup> Livy 38.43.2-5.

<sup>136</sup> Livy 38.43. 7-13.

<sup>137</sup> Flaminius' speech was probably a fabrication; we cannot know the extent to which it resembled anything actually said in the senate. It is within the realm of possibility, in fact, that the list of charges leveled by Aemilius was also fictionalized, though I tend to doubt that the conflict between Aemilius and Flaminius was entirely a fabrication. The potential fictionalization of the incident does not materially affect the argument. Livy seems to presume that the accusation of temple-plundering might be made in the course of a political squabble, and in fact, that it might be regarded as the most serious charge that could be leveled at a Roman commander. Furthermore, he presumes that a defensible argument could be made for that conduct, namely, that in times of war plundering the temples of an enemy was acceptable. Livy's text shows that a Roman reader would find it plausible that the propriety of temple-plundering could become an issue in a political contest.

Other examples could be mentioned. In 106 B.C. Q. Servilius Caepio, the consul, took the sacred treasures from Tolosa in Gaul. There was an outcry over this, not because he had taken the treasures, but because the treasure mysteriously disappeared on its way to Rome.<sup>138</sup> Caepio as proconsul lost his army the next year at Arausio and was put on trial in 103, convicted, and went into exile. The Romans did not seem to be unhappy with Caepio because he plundered Tolosa but because the plunder never made it into the treasury and, of course, because he had suffered a spectacular defeat. In 87 B.C., L. Cornelius Sulla gave orders that the treasures of Apollo at Delphi be seized and melted down. When it was reported that a mysterious lyre music had been heard in the temple and was being interpreted as a sign of the god's anger, Sulla responded that it was actually a sign of the god's joy at being able to hand his treasury over to Sulla.<sup>139</sup>

Which brings us back to Pleminius: since it was not always an impious act to plunder the temples of conquered peoples, why was Pleminius so harshly treated for his robbery of the temple of Proserpina at Locri? There appear to be a number features that distinguish this particular incident. Locri, though previously a Carthaginian ally, had surrendered to the Romans, putting them under Roman protection. Romans prided themselves on treating well peoples who surrendered.<sup>140</sup> In addition, Pleminius was not a

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<sup>138</sup> Dio Cass. frag. 90; Strabo 4.1.13; Justin 32.3.10; Oros. 5.15.

<sup>139</sup> Plut., *Sull.* 12; App. *Mithr.* 8.54.; Diod. Sic. 38/39.7. Keaveny (1984), 58-59, argues that we need not see this as a cruel jest on Sulla's part, since Sulla might have genuinely believed that he was receiving the god's support. Keaveny analyzes Sulla's actions in terms of belief, which is problematic since it is hard to for us to know exactly what Sulla believed, but the point here is that plundering temple treasures need not inevitably be seen as impious.

<sup>140</sup> As the admonition of Anchises' shade to his son illustrates: '*tu regere imperio populos, Romane, memento (hae tibi erunt artes), pacisque imponere morem, parcere subiectis et debellare superbos.*' Verg. *Aen.* 6.851-853

commander; he was only a legate. He was thus a less formidable target for accusation, since he had less prestige and thus fewer supporters. His patron Scipio was away from Rome, and thus unable to defend him in the senate. His outrages extended not just to the conquered peoples but also to Roman citizens. The temple itself was in Italy, not Greece, and thus, perhaps, more likely to be perceived by the Romans as within their purview.<sup>141</sup> All of these combined to make Pleminius' situation more precarious than that of Fulvius Nobilior. Yet even though there were a number of differences between the cases of Pleminius and Nobilior, the similarities between them are striking. In both cases political rivalry played an important part in creating the dispute; and in both cases the line between piety and impiety was not clear-cut; each side in the dispute could present an arguable defense for their actions. Finally the differences in how the cases were resolved again illustrates that the line between impious and pious behavior was blurry. In one situation temple-plundering was acceptable, in another it was not. But Pleminius did not seem to be able to see the line dividing impious behavior from acceptable behavior.

### **Bibulus and Caesar**

The rivalry between Caesar and Bibulus in 59 B.C. also demonstrates the blurred line between piety and impiety. Even though there is no doubt that Caesar had passed

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<sup>141</sup> In 200 B.C. the temple to Proserpina was robbed again. According to Livy the senate was angered that the example of Pleminius had not deterred plunderers, so they ordered an investigation and an expiation modeled after the procedure established in its investigation of Pleminius three years earlier. Those responsible were found out and brought to Rome for trial. Livy 31.12.1-5; 31.13.1; Toynbee (1965), 2:621-622; Briscoe (1973), 86-87. The senate's reaction clearly indicates that it perceived that it had the right to investigate and bring to Rome violators of a sanctuary far to the south of the city. In 186 B.C., the Bacchanalian scandal broke out. Gruen (1990b) argued that the senate's strong response, including an investigation of Bacchanalian activity throughout the Italian peninsula, was an attempt to demonstrate Rome's hegemony of the peninsula by showing that it could intervene in religious matters throughout Italy.

legislation while his colleague was watching the heavens, there has been some debate over whether Caesar actually violated religious law and thus whether he acted impiously. One view holds that through *de caelo servare*, Bibulus had managed to render all of Caesar's legislation technically invalid,<sup>142</sup> but Linderski has established as well as anyone possibly could given our evidence that a magistrate had to obnuntiate in person, not through a published announcement, so by preventing Bibulus from reaching the forum Caesar was able to escape a violation of religious law.<sup>143</sup>

For our purposes, it is not relevant who was right or wrong. What is significant is that it was not absolutely certain to the contemporaries of Bibulus and Caesar who was right and who was wrong,<sup>144</sup> and this very uncertainty helped fuel the dispute between them. Caesar could argue that he was not in violation of Roman religious law because Bibulus had not presented him with the announcement that something portentous had been seen, and, of course, Caesar could use the authority of his priestly office to his advantage.<sup>145</sup> Caesar's enemies did not let technicalities slow them down: they argued that he was violating Roman law and his legislation was therefore invalid.<sup>146</sup> Bibulus' tactics make sense only if large numbers of his contemporaries, even aristocrats, were

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<sup>142</sup> E.g. Seager (2002), 87.

<sup>143</sup> Linderski (1965), 425-426; See also Meier (1980), 192 and n. 437 and Mitchell (1986), 175. De Libero (1992) 62-63 and n.51, however, challenges Linderski's argument that an obnuntiation was binding only if delivered in person.

<sup>144</sup> Tatum (1999), 131-132.

<sup>145</sup> Unfortunately our sources do not give us Caesar's defense for his actions. However, as *pontifex maximus* he could claim to possess authority over and knowledge about religious affairs.

<sup>146</sup> Cic. *Dom.* 40, *Har. resp.* 48.

unaware (or unconcerned) that while Caesar could be accused of passing legislation *per vim*, he could not be accused of impiety, because Bibulus had failed to carry out the proper procedure for announcing that he had seen a sign: he had not presented it in person to the presiding magistrate.<sup>147</sup> Bibulus was either unaware of this technicality, or he realized that most citizens did not know about it, since he denounced Caesar for his impieties at a *contio* in 58 B.C. In that year Clodius gave him the opportunity to recount how Caesar had ignored his announcements as a way of proving that the *leges Iuliae* were invalid on religious grounds.<sup>148</sup> It would have been pointless to call Bibulus to speak if most Romans were aware of (or were concerned about) the technicality. The fact that Caesar had not actually violated religious law was immaterial to the issue; what mattered was that Bibulus could plausibly make a charge of impiety against his opponent. Bibulus was able to persuade many of his fellow citizens that Caesar had acted impiously because he had trampled on Roman law and Roman religion.

### **Debates about Responsibilities**

Because religious authority in Rome was entrusted to so many individuals or groups and because Roman aristocrats vied for positions in the *cursus honorum* at the same time that they held priestly office, there was occasionally conflict over whether an individual could hold some of positions on the *cursus*, which often required him to be far away from Rome, and still fulfill any priestly duties which required his presence in the city. The priests known as *flamines*, fifteen men under the authority of the *pontifex*

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<sup>147</sup> Linderski (1965), 425-426.

<sup>148</sup> Cic. *Dom.* 40, *Har. resp.* 48.



*maximus*, presented a special problem for their holders because they were not organized into a college. Each *flamen* had to perform the duties himself, since he had no colleagues who could take over in his absence. The *flamen Dialis*, sacred to Jupiter and the most revered of the *flamines*, had so many restrictions imposed on where he could go, how he could travel, and what he could see that a career on the *cursus* would be extremely difficult and holding the consulship all but impossible.<sup>149</sup> Yet *flamines* were drawn from noble families and their holders had the same desire to serve their community and receive the attendant honors that their fellows had. As a result, many *flamines* embarked on political careers, and when someone (usually the *pontifex maximus*) tried to intervene to block *flamines* from certain forms of public service which seemed to conflict with their religious duties, conflict occurred.

It was once the custom to see squabbles of this kind as screens for political ambition—rivals of the *flamines* would jump at the chance to get a choice military command or public office by hamstringing their opponents by any means necessary—cynical manipulation of Roman religion for political ends.<sup>150</sup> More recent studies have questioned this interpretation, e.g. that of Develin, who argued that the Roman aristocracy as a whole, and priestly bodies in particular, were composed of men generally friendly with each other who would not resort to cynical manipulation of the religious system for political advancement. Instead, conflicts over how priests carried out their duties had primarily religious motives: they were the result of a deep-seated and

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<sup>149</sup> Szemler (1972), 96.

<sup>150</sup> See, e.g., Bleicken (1957a).

traditional piety on the part of Roman officials.<sup>151</sup> Neither of these interpretations makes sense in light of the evidence. It was the fragmentation of Roman religious authority which itself contained the seeds of religious conflict—*flamines* and other religious officials who felt injured by the rulings of the *pontifex maximus* had easy recourse to other bodies with religious authority.

In 189 B.C. Q. Fabius Pictor, praetor for that year and also *flamen Martialis*, received as his province the island of Sardinia. Before he could leave Italy, however, he was stopped by P. Licinius Crassus Dives, the by then venerable *pontifex maximus* who had ordered Sulpicius Galba to vow a fixed sum of money to Jupiter in 200 B.C. Crassus argued that Pictor could not take up his province, since he could not fulfill his priestly duties so far from Rome. Fabius Pictor, who must have had as good an understanding of his obligations as anyone, did not agree with the supreme pontiff. He apparently saw no problem with a major *flamen* occupying a command outside of Italy. Pictor refused to bow to Crassus' authority, and the two men carried on a bitter dispute in the senate and before popular assemblies. Crassus as *pontifex maximus* fined Fabius for his failure to comply with the order, but Fabius appealed to the tribunes of the plebs and made a formal *provocatio* to the Roman people. The assembly found against Fabius, but generously remitted the fine against him. Fabius was so vexed that he tried to resign his praetorship, but the senate made him *praetor peregrinus* so he could hold his office and remain in Rome.<sup>152</sup>

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<sup>151</sup> Develin (1978).

<sup>152</sup> Livy 37.51.1-6; Richard (1968); Szemler (1972), 98-99; Briscoe (1981), 369-371. Livy's use of the passive voice obscures who exactly fined Pictor, but imposing a fine was well within the powers of the

It does not make sense to interpret the clash between Crassus and Pictor in terms of factional politics, as evidence of religious decline, or merely as a display of an excessive Roman concern for procedural correctness. Licinius Crassus was at the end of a long political career, so Fabius Pictor, who was still climbing the *cursus*, was not a rival. There is thus no need to see Crassus as a cynical manipulator of his religious position to hamstring the career of potential competitors. Develin's approach does not help us much either; if we argue that Crassus was motivated by a truly pious desire to see that proper religious procedure was followed, our analysis leaves too many questions unanswered. Pictor's conduct in particular becomes inexplicable: what motivated him? Impiety? Part of our problem when we study Roman religious attitudes is that it is very difficult to reconstruct motivation from a distance of more than two thousand years. Crassus may have had a personal dislike for Pictor, or he may have wanted to make certain that one of Pictor's rivals got the Sardinian command, or he may only have been concerned to see that all rituals were carried out in a proper manner, or he might have just been a crotchety man who reveled in using his position as *pontifex maximus* to cause conflict. It might have even been a combination of all the above motives, or none.

What is clear is that whatever they believed, Crassus could make a case that Pictor could not fulfill his obligations to the gods if he went to Sardinia, and Pictor could make a case that he could. Each of these men was an aristocrat and each held important Roman religious offices. If anyone should know exactly what obligations the *flamen Martialis* owed to the gods and to his community, it was Crassus the *pontifex maximus*

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*pontifex maximus* and we can assume an assembly did not fine him because the passage makes it clear that an assembly remitted a fine already imposed.

and Pictor the *flamen Martialis*. The fact that a dispute could arise demonstrated that the rules which governed priestly conduct were open to debate and were flexible enough that the Romans themselves treated them as open to interpretation. They were not hard and fast rules which allowed no room for quibbling; instead they were guidelines which governed conduct and which could be modified and adapted. In a novel situation like Pictor's, the absence of any clear tradition to guide a decision sparked a conflict. Thus, both Crassus and Pictor presented arguments to the senate and to the assemblies that they had validly interpreted the rules governing the office of *flamen Martialis*.

Again we see that the structure of Roman politics and religion encouraged debate over proper religious procedure. The *pontifex maximus* could discipline the *flamines* but was no more superior to them than he was to the other members of the pontifical college: he was the most influential and respected of the pontiffs but he was not technically their 'boss.' His word was not law and his rulings were subject to review. When Crassus ruled that Pictor could not take up a province away from Rome, Pictor was not obliged to meekly obey. Both the senate and the popular assemblies provided a forum for debate and had the power to resolve the issue—the senate could weigh in with its considerable influence on the assemblies, which could decide one way or another. In the end, Crassus' interpretation was judged to be correct, but assembly and senate went a long way to accommodate Pictor. An assembly remitted the fine imposed on him, and the senate devised a place for him, so he could be both praetor and *flamen Martialis*. This was a workable compromise that demonstrates the flexibility of the Roman religious system. The fragmentation of religious authority thus encouraged disputes over religious

procedure; the resolution of these disputes allowed the Roman system to deal with problems and evolve.

Two decades earlier another *flamen* had tried to overcome the limitations of his office and take a place in Roman public life outside the restrictive obligations of his priesthood. In 209 B.C. the *flamen Dialis* died and the same P. Licinius Crassus, the *pontifex maximus*, compelled a dissolute young wastrel, C. Valerius Flaccus, to take his place. Flaccus came from a noble family, and he greatly resented having the office imposed upon him. The *flamen Dialis* was bound by so many religious restrictions that it would be very difficult for him to hold elective office. Particularly crippling was his inability to look upon troops under arms or upon the dead, which made military service impossible. At the start of his career Flaccus sent signals that he would not be denied the honors that young nobles competed over, and, in fact, turned the flaminiate to his advantage. He began by reforming his life and became a model of rectitude, thus repairing his public reputation. When he had earned the public's esteem, he went to a senate meeting and took his place among the senators. The praetor P. Licinius<sup>153</sup> escorted him out of the senate. At this point a struggle began over whether it was proper for the *flamen Dialis* to attend meetings of the senate.<sup>154</sup>

Fortunately for us, Livy preserves some of the arguments made by Licinius and Flaccus to advance their arguments, and both appealed to precedent. Flaccus argued that in the past the *flamen Dialis*, in recognition of the prestige of the office and its holders,

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<sup>153</sup> Not the *pontifex maximus*. See Broughton (1951), 1:291.

<sup>154</sup> Livy 27.9; Val. Max. 6.9.3; Richard (1968); Szemler (1972), 97-98.

had been allowed to attend meetings of the senate and had even been granted the curule chair, which was otherwise reserved for the most important Roman magistrates. Licinius made his case on recent precedent. For him what was important in deciding questions of religious procedure was not stories dug up from old records but by current practice: no *flamen Dialis* had been allowed to witness senatorial debates for two generations.

According to Livy, Flaccus retorted that he should not be denied honors owed to him because his predecessors in the flamine had not been worthy of them.

Even if Livy embellished his account, the story reveals a dilemma which faced Romans when they tried to decide conflicts over obligations owed by (and to) priests: again, there were multiple sources of authority. Roman religious and political procedure was not static, it was evolutionary, and as a result practices changed over time. What was done in the past might conflict with what was done in the present, and when disputes arose, as they inevitably did, precedent could be found for multiple practices. In this case, both Licinius and Flaccus could find authoritative precedents for their arguments. And again, both could make sustainable arguments.

Flaccus appealed his case to the tribunes of the plebs, and the debate between Licinius and Flaccus was waged before the plebs. When all ten tribunes supported Flaccus, almost certainly guaranteeing him the support of the assemblies, then the praetor dropped his objections, and the *flamen* earned a place in the senate. Flaccus was thus able to effect a change in the role of the *flamen Dialis* within the community. We see again how an unprecedented situation in combination with Rome's fragmented religious

and political structure gave birth to a dispute. And again, resolution of the conflict introduced a new procedure into the system and allowed Roman religion to evolve.

Flaccus' career would continue to demonstrate the flexibility of the Roman system. In 200 B.C. he decided to begin a career on the *cursus*, in spite of the handicaps of his priestly office. He was elected curule aedile, but a problem arose. All magistrates were required by law to swear on oath to obey the laws before their inauguration, but as *flamen Dialis*, he could not take any oaths. This limitation must have been obvious both to him and to the electorate, yet he did not let this stand in the way of his candidacy. He seems to have assumed that a solution could be found if he were elected, and, in fact, a solution presented itself. He asked to be exempted from this law and to take up his office. The senate debated and instructed the consuls to find someone respectable who could take the oath on his behalf. They chose his brother Lucius, the praetor-elect, and Flaccus began his improbable climb up the *cursus*.<sup>155</sup>

Flaccus' career might have ground to a halt at this point, since his office prevented him from participating in military campaigns or even leaving Rome, but here a recent precedent and change in priestly practice opened a door for him: as we saw in the beginning of this section, the senate and the assemblies had resolved a dispute between the *pontifex maximus* and the *flamen Martialis* by allowing the *flamen* to hold a praetorship in Rome, so that he could both hold priestly office and an office on the *cursus*. In 184 B.C., Flaccus, seeing the possibility that he could advance on the *cursus* and win even more honor and prestige in his community, ran for a suffect praetorship

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<sup>155</sup> Livy 31.50.6-9; Szemler (1972), 166-167; Briscoe (1973), 164-165.

after one of the praetors had died.<sup>156</sup> A dispute over the candidacy of one of his rivals led the senate to cancel the interim election, but he stood again that year in the regular election and won a praetorship for 183. At the beginning of the year when it was time to decide provinces, the senate followed the process it had established for Pictor in 189 and made certain that Flaccus would be retained in Rome where he could fulfill the obligations of both the praetorship and the flaminiate.<sup>157</sup> Thus as a result of a dispute five years previously, the Roman political and religious system found a way to allow the *flamen Dialis* to have something resembling a traditional career on the *cursus*.

### Conclusions

The Romans did not have a simple, definitive means to separate actions that were pious and impious. Instead, the Romans had general rules that guided them in making a decision, but these rules were open to interpretation because the Romans allowed their religious system to be flexible. For example, piety required Roman generals to take *auspicia de tripudiis* and receive favorable auspices before battles to make certain that Jupiter was not opposed to their fighting on that day. However, the system was flexible enough to allow L. Papirius Cursor to go into battle after his *pullarius* lied and said that his augural birds had eaten and that favorable auspices had been received. The Romans interpreted Cursor's success (and the death of the *pullarius*) as a sign that Jupiter had indeed granted Cursor permission to fight, and they did not split hairs over what constituted proper augural procedure. Likewise, in 200 B.C. as they were preparing to

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<sup>156</sup> Livy 39.39.2.

<sup>157</sup> Livy 39.45.4.



enter a war of uncertain length that offered uncertain rewards, they did not allow tradition to hamstring their actions: they introduced an innovation by allowing a departing general to offer Jupiter a 'sum to be named later' in exchange for his aid against their enemies.

The Roman religious system was flexible because it was a system of men as much as it was a system of laws. Religious authority derived not just from written texts or traditions but also from individuals or groups who discussed and debated among themselves when they had to resolve a dispute over *pietas*. When C. Valerius Flaccus tried to secure a seat in the senate for himself because he was *flamen Dialis*, he could cite precedent showing that in the past the *flamen* of Jupiter was allowed to attend meetings of the senate. His opponent cited recent tradition and argued that Flaccus should be kept out. What decided the matter was not appeal to precedent, but Flaccus' own character. Because he had earned so much respect from his fellow citizens and from his fellow aristocrats he was allowed to go where the undistinguished *flamines* of the previous generations had not been allowed.

Roman civic structure placed authority over religious matters in the hands of the senate, the assemblies, individual magistrates, and the priestly colleges, providing many fora for religious disputes to be heard. The multiplicity of available fora made it easier for disputes to occur. It also made a dispute over piety a very public event, as each side tried make certain that it won over every possible group whose opinion could affect the outcome of the contest. As a result, these disputes were almost always carried out in the senate and before the *populus Romanus*, and very often before a priestly college.

Because resolution required the opinion of so many different groups, contest over what

constituted proper religious behavior could last quite a long time. If one side did not like the direction the debate was taking, it was not hard to take the fight to another venue. The dispute over whether it was correct to choose priests through cooptation or election lasted decades: the suggestion to allow election was aired but shot down in 145 B.C.,<sup>158</sup> Domitius' law was passed in 104 B.C., Sulla had it repealed around 80 B.C., and Labienus' law reinstated election as the 'proper' method in 63 B.C. The dispute over the propriety of Bibulus' and Caesar's conduct in 59 lasted for years and became fodder for Cicero in his personal rivalry with Clodius: Bibulus tried to watch the skies for an entire year, Clodius responded by having a law passed making this kind of obstruction illegal, and Cicero responded by spending the next few years accusing Clodius of impiety for passing laws which trampled on Roman religion. By 43 the dispute was resolved, not because any institution had settled it, but because all of the participants had died.

*Pietas* (and its opposite) were not absolutes, but were defined and redefined every time a dispute broke out about what constituted proper religious procedure and what constituted proper behavior toward the gods. This made Roman religion a living institution, but it also encouraged public debate, often bitter and divisive, about religious issues. This brings us to our final point. It was the structure of Roman politics and religion which created public contests about *pietas*; in other words, 'politicization' of religion was inherent to the operation of Roman public life, not a sign that a once pristine religious form had slipped into corruption and decline.

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<sup>158</sup> Cic. *Lael.* 96; *Brut.* 83; *Nat. D.* 3.5; *Rep.* 6.2.

## CHAPTER 3

### THE BONA DEA AFFAIR

In this chapter we will use the rivalry between P. Clodius Pulcher (c. 92-52) and M. Tullius Cicero (106-43) as a case study to explore further the ideas discussed in the last chapter. The rivalry between the two men was waged on religious as much as political grounds (a distinction that makes sense to a modern reader, who conceives of the two separately; the combatants themselves would have envisaged their rivalry as taking place in the context of the Roman *civitas*, in which politics and religion were so tightly bound as to be inseparable.) We will examine the Bona Dea affair of 62-61 B.C., which sparked the decade-long hostility between the two men. The Bona Dea affair began after Clodius violated the sacrifices to the Good Goddess and was prosecuted for *incestum*. The trial of Clodius is useful as a study because it reveals the mechanism through which contests over piety were waged. Roman civic structure turned the battle into an epic struggle: it was fought in the senate, *in contione*, before a priestly college, and before a *quaestio extraordinaria*. The trial of Clodius in 61 was a reaction to a new problem, one which the system very rarely had to address: a spectacular and apparently senseless violation of a civic rite. Furthermore the affair took place in a late-republican context, a

period in which the senate was particularly touchy about apparent threats to its authority. This raised the stakes of the contest.

The Bona Dea affair illustrates more than any other example the civic processes that the Romans used to conduct, and to attempt to resolve, a dispute over the issue of piety. When Clodius' outrageous behavior caused a public outcry, various groups who had authority over religious matters were consulted about what to do. When the senate resolved to treat Clodius' impiety as a crime, the novelty of their 'solution' prompted a reaction by senators who opposed how the majority of their colleagues were handling the matter. *In contione* a consul and tribune opposed the senate's *consultum*, which aimed to set up an extraordinary tribunal to investigate the affair. Clodius himself took advantage of electioneering tactics becoming more common in the late republic: he packed the *contiones* with gangs of rowdy supporters, and he undermined the integrity of the assembly's vote through intimidation and ballot-tampering. When a tribune's veto nearly brought the matter to an impasse, a compromise was arranged, a court set up, a trial conducted, and a verdict reached. Though this ended institutional involvement in the affair, the contest over Clodius' *pietas* did not end with his acquittal. Cicero made certain that neither senate nor Roman people would forget Clodius' behavior, by reminding them of the Bona Dea affair in every subsequent squabble with Clodius.

## The Incident at Caesar's House<sup>159</sup>

In early December 62,<sup>160</sup> the annual sacrifice in honor of the Good Goddess was held in the house of C. Julius Caesar. According to procedure the ritual was held in the house of a magistrate with *imperium*, and Caesar was praetor that year. By tradition, no men were present in the house. Aristocratic women conducted the sacrifice in secret.<sup>161</sup> On this occasion, however, the tradition was broken. P. Clodius Pulcher was discovered in the house dressed as a woman. He was chased out, and the sacrifice was performed again from the beginning.

The incident first enters our historical record on Jan 1., 61 when Cicero reports it to Atticus. Here is his statement:

*P. Clodium Appi f. credo te audisse cum veste muliebri deprehensum domi  
C. Caesari cum sacrificium pro populo fieret, eumque per manus servulae*

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<sup>159</sup> The chief ancient sources for the Bona Dea Affair are Cic. *Att.* 12 (I.12).3, 13 (I.13).3, 14 (I.14).5-6, 16 (I.16).1-6, 9-10; Suet. *Iul.* 6.2, 74.2; Plut. *Cic.* 28, *Caes.* 9-10; App. *Sic. frag.* 7, *B. Civ.* 2.14; Dio Cass. 37.45; Schol. Bob. 85-86, 89 St. The chief modern discussions of the Bona Dea affair can be found in Gentile (1876), 37-74; Gallini (1962); Piccaluga (1964); Balsdon (1966); Stockton (1971), 158-160; McDermott (1972); Lacey (1974); Wiseman (1974), 130-137; Rundell (1979); Scheid (1981), 130-133; Hillard (1982); Moreau (1982); Epstein (1986); Mulroy (1988); Brouwer (1989), 363-370; Tatum (1990); Mitchell (1991), 83-86; Tatum (1999), 62-86.

<sup>160</sup> The dating of the festival is problematic. We know from Plut. *Cic.* 19.4 that the celebration to the Good Goddess in 63, the year before the Bona Dea Affair, occurred on the night after Cicero had caught the conspirators trying to get the Allobroges to support an attack on Rome. (Dec. 3). However, Plutarch continues his discussion with the statement that Cicero called the senate to meet the next day to decide the fate of the conspirators, when, in fact the meeting was held on Dec. 5. Thus Plutarch has compressed time, and we do not know whether the celebration of 63 took place on night of the 3<sup>rd</sup> (the night after the arrest) or the night of the 4<sup>th</sup> (the night before the execution), but we can narrow the ceremony of 63 down to those two nights. If we assume, with most scholars, that the festival had a movable date, this information does not help us nail down a firm date for the festival of 62. A speculative date of early December before the 5<sup>th</sup> can be made, however, since we do know that Clodius committed his act of sacrilege while he was quaestor-elect, and quaestors entered office on Dec. 5<sup>th</sup>; see Brouwer (1989), 363-364; Tatum (1999), 270-271 n. 17. On the other hand, Wiseman (1974), 130 and n. 1, argues that the festival did in fact have a fixed date of Dec. 4<sup>th</sup>.

<sup>161</sup> For a discussion of the nature of the rites and its similarity to Greek religious ceremonies see Wiseman (1974), 130-137; Versnel (1992).

*servatum et eductum: rem esse insigni infamia. Quod te moleste ferre certo scio.*

I believe you will have heard that P. Clodius, son of Appius, was caught dressed up as a woman in C. Caesar's house at the national sacrifice, and that he owed his escape alive to the hands of a servant girl—a spectacular scandal. I am sure it distresses you.<sup>162</sup>

The interruption of the sacrifice required an *instauratio*, a repetition of the ceremony, which was duly carried out. At this point the state's interest in the matter normally came to an end, since from the community's point of view the successful repetition of the ritual repaired any damage to the *pax deorum* that Clodius had done through his intrusion. Clodius committed an act of willful impiety, which the Romans believed to be inextinguishable, but this was a matter between Clodius and the gods.<sup>163</sup>

### **Why did Clodius Violate the Rites?**

Let us first examine Clodius' motives for sneaking into the ancient rites. It may seem pointless to discuss this at all, given its apparent irrelevance to our subject and given the difficulty of reconstructing motivation from a distance of 2000 years. We must examine this issue, however, because some scholars argue that Clodius committed a deliberate act of impiety as a way of making a public political statement. He thus intended to start a contest over *pietas*. We will see that this theory is not tenable, and that while we cannot know what Clodius was planning to accomplish by violating the rites, it is certain he did not intend his activities to become a topic of public debate.

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<sup>162</sup> Cic. *Att.* 12 (I.12).3. Shackleton Bailey's Loeb text and translation.

<sup>163</sup> Scheid (1981), 130, (1999), 341-342.

The ancient sources almost unanimously assert that Clodius entered Caesar's house to have a tryst with Caesar's wife Pompeia.<sup>164</sup> Although this idea gained acceptance in antiquity, it has not gone unchallenged. Cicero never mentions Clodius' motives in *Att.* 12.3. We do learn, in his letter of Jan. 25, 61, that Caesar has divorced his wife Pompeia, possibly in reaction to rumors of her infidelity.<sup>165</sup> Caesar's actions probably fueled speculation and confirmed in the minds of some that Pompeia and Clodius were having an affair. However, Caesar refused to testify at Clodius' trial. Even though he was given the opportunity to destroy the man who ostensibly cuckolded him and though his own mother and sister were able to identify Clodius as the man who had broken in, Caesar claimed he had no knowledge of the matter.<sup>166</sup> Moreover, the night of an annual sacrifice does not seem to be a particularly convenient night to slip into Caesar's house, even if Caesar were guaranteed to be absent, and there certainly was more romantic attire Clodius could have chosen than his disguise as a woman.

Given the implausibility of adultery as a motive for Clodius' sacrilege, other alternatives have been proposed. H. Benner and C. Gallini have argued that Clodius initiated the scandal as a sort of political coming-out. Gallini argued that since the Bona Dea festival was conducted by aristocrats and since it was part of the state cult, Clodius' sacrilege would have announced his intentions to pursue a *popularis* policy that would

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<sup>164</sup> Cic. *Har. resp.* 3-4; Val. Max. 9.1.7; Plut. *Caes.* 9-10; App. *B.Civ.* 2.14; Dio Cass. 37.45.

<sup>165</sup> Cic. *Att.* 13 (I.13).3.

<sup>166</sup> Suet. *Iul.* 74.2; Schol Bob. 89 St.; cf. App. *B.Civ.* 2.14; Dio Cass. 37.45.

appeal to groups interested in religious innovation.<sup>167</sup> While Gallini's suggestion has intriguing aspects, and while her decision to focus on the religious components of the affair is admirable, the suggestion has several flaws. Although Clodius might have been willing to profane religious functions for political purposes,<sup>168</sup> it is highly unlikely that he intended to make any kind of political statement dressed in women's clothing. Being caught in such garb was an extreme embarrassment.<sup>169</sup> Clodius would have to have had no political sense at all if it were his intention to get caught dressed as a woman while violating religious rites, since such an action was not only bound to irritate a number of important members of the aristocracy but also to give them ammunition with which they might humiliate him and undermine his political support.<sup>170</sup> Furthermore, neither the starting assumptions Gallini makes about the role of the cult in Roman religion nor her perceptions of Roman politics hold water. Gallini assumes that the civic community was split nicely along *optimatus*/ *popularis* lines, which subsequent scholarship has called into question.<sup>171</sup> In addition, she assumes that the ordinary Roman perceived the December rite as 'aristocratic' because aristocratic women performed the rites. Given the prominent place of the Roman aristocracy within the whole Roman religious structure, the logic of

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<sup>167</sup> Gallini (1962). 259-262. Benner (1987), 38-40 makes a similar point. Benner, who sees Clodius setting out on a *popularis* path from the beginning of his public career, argues that Clodius intentionally caused a scandal as a way to provoke a reaction from conservative senators.

<sup>168</sup> According to Cicero, Clodius profaned the Megalensia in 56 by employing gangs of slaves to attack his political enemies (*Har. resp.* 22-25). Games, however, were traditional venues for public political display, and Cicero might be exaggerating the rowdiness of Clodius' followers as well as denigrating their social status.

<sup>169</sup> Manfredini (1985).

<sup>170</sup> Moreau (1982), 25-26.

<sup>171</sup> E.g. Seager (1972).



Gallini's argument makes sense only if she were prepared to assert that during the first century ordinary Romans were willing to reject much of Roman civic religion as 'aristocratic' and were seeking an entirely new religious system, an assertion that is not supported by the evidence. Gallini's ideas reflect the general tenor of the scholarship of her era, but they rest on the old assumption that late republican aristocrats employed religion solely for political ends. This idea has been thoroughly put to rest by recent scholars.

Other motives for Clodius' presence at Caesar's house have been proposed. Mulroy argues that Clodius did not believe that showing up at the festival was sacrilegious.<sup>172</sup> This is an intriguing suggestion. We have seen that in some cases a dispute arose over whether a person had acted piously or impiously; an individual could believe he was acting within the bounds of Roman tradition while some of his fellow citizens vehemently disagreed. Mulroy, however, fails to convince. He begins by arguing that Plutarch's account of the affair, which asserts that an adulterous relation with Pompeia impelled Clodius to sneak into Caesar's house, lacks credibility because it has too many fictionalized elements. This is a plausible beginning, perhaps, but he then proceeds to make the unlikely assertion that Clodius could have believed that no one would be bothered by his presence at the ritual. He argues that the December sacrifice was only recently installed in Rome and was not as hallowed as Cicero tried to portray it in his speeches. Following Wiseman, he argues that there was a close similarity between the celebrations to the Good Goddess and Dionysiac celebrations, but unlike Wiseman he

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<sup>172</sup> Mulroy (1988), 165-178.

concludes from this that transvestitism and erratic behavior were tolerated.<sup>173</sup> All of this, he proposes, would lead Clodius to assume that his attendance would not be objectionable. However, he forgets to study the earliest evidence, the testimony of Cicero's letters, in any detail. These letters were written before the dispute between Cicero and Clodius broke out, which makes them a comparatively better source than Plutarch or even Cicero's *post reditum* speeches, which were composed as rhetorical weapons to use against Clodius. Cicero pointed out in *Att.* 12.3 that the sacrifice was taken *pro publico*, and in several letters he implied that the presence of men was strictly forbidden.<sup>174</sup> Plutarch explicitly denied that men were allowed,<sup>175</sup> and if Mulroy has called Plutarch's version of the affair into question, we still have the testimony of the Bobbio Scholiast.<sup>176</sup> It is inconceivable that Clodius could have failed to know that this festival was being conducted on behalf of the community as a whole and that men were forbidden. We cannot assume, with Mulroy, that Clodius innocently blundered into Caesar's house looking for a good time, thinking that his presence would have been welcomed. If Clodius could have made an arguable case that his presence was acceptable, then he would almost certainly have done so at his trial; instead (as we shall

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<sup>173</sup> Wiseman (1974), 130-134. Wiseman compares the festival of the Good Goddess to eastern rites honoring Dionysus, Cybele, and Zeus Hypsistos, but sees it as an almost dignified ceremony where the women lounged on couches and drank wine mixed with honey. Mulroy envisions the celebration as a revel.

<sup>174</sup> Cicero implies the presence of men was forbidden in *Att.* 13 (I.13).3: '*Credo enim te audisse, cum apud Caesarem pro populo fieret, venisse eo muliebri vestitu virum.*' Cicero would later (*Att.* 27 (II.7).3, 59 B.C.) joke about Clodius' presence in Caesar's house— in spite of the fact that he was the only man there, he could not obtain a place on Caesar's board of 20 commissioners to administer his agrarian laws.

<sup>175</sup> Plut. *Cic.* 19 and *Caes.* 9.

<sup>176</sup> '*sacrificium viris omnibus inaccessum*', Schol. Bob. 85 St. It is possible, however, both the scholiast and Plutarch's accounts have derived from the same erroneous source. For a full discussion of the issue see Brouwer (1989) 255, n. 7-10.

see below) he chose to defend himself by claiming he was not even in the city on the day of the rites. Like many scholars of the last generation, Mulroy errs because he approaches the matter from the assumption that Roman ritual in the late Republic was in a state of ‘confusion and neglect’.<sup>177</sup> According to him, this confusion made it possible for Clodius to assume that no one would object if he dropped by the festival. The problem here is that work by scholars such as North and Scheid makes the assumption that late republican religion was in a state of ‘confusion and neglect’ doubtful.<sup>178</sup>

Other explanations for Clodius’ presence at the festival center on his reputation for licentious behavior. Moreau suggests that, in addition to the enticements of Pompeia, Clodius was attracted by the risk involved and the chance to break the rules. According to him, morals among the aristocracy had become somewhat lax during the late Republic.<sup>179</sup> Tatum adds that, since the rites were reputed to involve promiscuous conduct by the women present,<sup>180</sup> a “young man of dissolute nature might have been tempted to snatch at least a peek.” He also noted that Clodius “was not all deterred by the dictates of the civic religion, by the dignity of his office, or even by the anxiety over the senate’s censoriousness.”<sup>181</sup> This is probably the best line of argument—Clodius was intrigued by the salacious reputation of the festival and arrogant enough to put his prurient curiosity

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<sup>177</sup> Mulroy (1988), 173-174.

<sup>178</sup> E.g., Beard, North, and Price (1998), Scheid (2001). See chapter one for a discussion of current scholarly trends in the study of Roman religion.

<sup>179</sup> Moreau (1982), 24-26.

<sup>180</sup> Juv. *Sat.* 6.314-45.

<sup>181</sup> Tatum (1999), 86.

over the dictates of traditional respect for the civic cult. We must admit, however, than any attempt to ascertain Clodius' motives at this distance must ultimately lead to unverifiable speculation. The relevant point here is that no one can tenably defend either the argument that Clodius used the sacrilege to make a public political statement or the idea that he did not realize that he was committing a sacrilege when he went to Caesar's house.

### **Q. Cornificius**

Clodius probably hoped that the whole matter would blow over in a few days, but public opinion quickly turned against him. Though some scholars argue that the Roman public did not take Clodius' behavior seriously, our best evidence shows that the Romans regarded the violation of the sacrifices as a scandal.<sup>182</sup> The best gauge for evaluating the initial public reaction to Clodius' act of impiety can be found in Cicero's letters to Atticus. *Att.* 12.3 indicates that both Cicero and Atticus were deeply disturbed by Clodius' behavior. It was, however, quite a distance from public outcry to public prosecution. Clodius' behavior presented the Romans with a problem since his behavior was extraordinary. As we saw in chapter two, when the Romans were faced with unexpected and new religious issues, it often took public debate and even political conflict before Roman institutions developed a response.

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<sup>24</sup> Epstein (1986), 29-35 has characterized Cicero's reaction to the first reports of the incident as cynical amusement. He sees Cicero as a world-weary politician who has learned to expect the worst of human nature and who has adapted to the increasingly absurd events which dominated Roman political life in the last years of the Republic. As further evidence for Cicero's initial disinterest he cites *Att.* 13 (I.13).3, where Cicero admitted that he was losing interest in prosecuting Clodius. Tatum (1999), 65-66, however, takes the opposite line, arguing that Cicero seems to have no doubt that Clodius' actions would genuinely shock Atticus. He points out that Clodius' actions ruptured the *pax deorum* and violated the sanctity of the Vestals, two actions which Romans took very seriously. Furthermore, Cicero described his initial reaction in more detail in *Att.* 13 (I.13).3: he was as stern as Lycurgus in the beginning.

A concerned senator, Q. Cornificius, got the ball rolling by raising the matter in the senate. Normally after the Vestals had completed the *instauratio*, the state's interest would have ended, since the Romans usually left punishing impiety in the hands of the gods. Cornificius decided to keep the issue alive. It is hard to explain why he did this, since Cicero does not tell Atticus what motivated him. Tatum has provided what seems to be the best answer: Cornificius was a man of who prided himself on his scrupulous morality.<sup>183</sup> Consequently he pushed the senate to respond to Clodius' impiety. That it was Cornificius who brought the senate's attention to the matter warrants comment.

Recent scholarship has focused on the central role that the senate played in Roman religion, but Cornificius' action demonstrates the importance of individual initiative in creating disputes over *pietas* and reminds us that the senate was not a monolithic institution but was composed of hundreds of individuals with their own goals, ideals, and ambitions, all three of which could conflict with the goals, ideals, or ambitions of their fellows. Mary Beard has used the senate's role in the Bona Dea affair as an important piece of evidence demonstrating that the senate played the chief mediating role between gods and citizens in Roman religion. She reminds us that it was the senate that ordered the pontiffs to conduct an investigation and the senate that ordered the consuls to

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<sup>183</sup> Tatum (1999), 72. Tatum bases his evidence on several hints in the sources; according to Asc., 82 C., Cornificius was *sobrius et sanctus*. Cic., *Att.* 1 (I.1).1 treated Cornificius' candidacy for the consulship as a joke, probably because it was highly unlikely he would be elected. From this Tatum concludes that Cornificius' insistence that the senate discuss the Bona Dea affair was 'in complete accord with the source's portrayal of his strongly moral character and Cicero's opinion that he could sometimes stray out of his depth.' Tatum leaves the door open for the possibility that Cornificius acted as someone else's agent. Gruen (1966), 121 and (1974), 274 n 51 suggests Cornificius might have been acting for Caesar, who wanted the matter resolved without having to get his hands dirty. No such suggestion is necessary, since Gruen himself correctly observes that in the wake of the scandal 'feelings ran high against Clodius...' (1974), 248. Cornificius' anger at Clodius's sacrilege more likely drove him to insist that the senate discuss the Bona Dea affair; he need not have been acting as someone else's agent.

draw up a bill to prosecute Clodius.<sup>184</sup> Her analysis is fine as far as it goes but misses an important part of the picture: the senate need not have even considered the matter, and might not have, except for a stern ex-praetor who insisted that they discuss the issue. The consuls had the opportunity to raise the matter after their inauguration, since their first duty was to discuss religious affairs,<sup>185</sup> but they did not do so. There were many prominent consulars, some of whom Balsdon and Tatum label as Clodius' enemies, yet none chose to direct the senate's attention to the matter.<sup>186</sup> Cicero himself was quite clear on this point, telling Atticus that it was not 'one of us' who raised the issue.<sup>187</sup> It was Cornificius' prodding, not that of the senate, that forced the Bona Dea affair back into public domain.

The reluctance of the consuls to raise the matter for public discussion is easily explainable. The thought to do so might never have occurred to them. Though Clodius had endangered the state through his violation of the *pax deorum*, the Vestals immediately carried out an *instauratio*, which repaired the rupture between the Roman and divine communities. Although Clodius' actions were extraordinary, violations of the *pax deorum* occasionally occurred and once they were repaired, the Romans moved on.<sup>188</sup>

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<sup>184</sup> Beard (1990), 32.

<sup>185</sup> Scullard (1981), 53.

<sup>186</sup> Balsdon (1966), 68; Moreau (1982), 58-60; Tatum (1999), 73-74. For a full discussion of the composition of the senate in the late 60s, see Parrish (1972).

<sup>187</sup> Following Shackleton-Bailey (1999), 63 n.7, who argues that '*aliquem nostrum*' referred to the consulars, though Moreau (1982), 60 suggests that Cicero was referring to the conservative *boni* such as Hortensius, Lucullus, or Cato.

<sup>188</sup> Scheid (1981), 130, (1999), 341-342.

A further problem confronted the consuls, the consulars, Cornificius, and anyone else who wanted to make the affair a public issue: few public or legal avenues lay open to anyone who wanted to punish Clodius, especially if Caesar was unwilling to make an issue of the entry into his house.<sup>189</sup> Ultimately if a census were completed then the censors could (if they wished) strike Clodius off the roll of senators.<sup>190</sup> But, outside of this, the Roman state had no readily available means to deal with Clodius. Thus few in the senate probably regarded it as the senate's role to consider the matter.

What, then, motivated Cornificius? Cornificius was almost certainly not spurred on by political rivalry with Clodius. Cornificius was a praetorian *novus homo* who had reached the pinnacle of his career. Clodius was a well-connected political neophyte who represented no real threat to Cornificius and who was not competing with him for political office. The most common approach to understanding the development of the Bona Dea affair from a private scandal to a public fight is to see a small faction of die-hard opponents determined to use the matter as a pretext to destroy Clodius' career.<sup>191</sup> Even if one argues that this is what the prosecution of Clodius turned into, it seems clear that this is not how it began. It is very hard to find any evidence that *inimicitia* led Cornificius to raise the matter in the senate. Had Clodius' opponents intended from the beginning to use this issue against him in 61, it would have made more sense to bring out their most prominent members to lead the charge. Instead, they did not even make an

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<sup>189</sup> Moreau (1982), 83-89.

<sup>190</sup> Greenidge (1894), 41-87 provides a long discussion of censorial *infamia*.

<sup>191</sup> E.g. Balsdon (1966), 68-69; Benner (1987), 39-40; Tatum (1999), 73-74.

effort. Not Hortensius, not Cato, not Lucullus, but Q. Cornificius first raised the issue in the senate.

Cornificius' primary concern may not even have been to punish Clodius. The chief question in the debate may have been 'had the *res publica* done everything required of it to seal the breach in the *pax deorum*?' After all, Clodius' offense was quite unusual, and religious custom offered no guidelines on how to deal with him. Cornificius' aim in raising the matter for discussion might have been to start an inquiry on whether the *instauratio* had, in fact, ended the state's obligation to the goddess. And lest we forget the link between religion and other aspects of civic life, let us remember that the *sobrius et sanctus* Cornificius could have foreseen that his unusual<sup>192</sup> concern for the religious health of the community would have benefits for his public career. Cato the Elder, a famous *novus homo*, rose to a position of civic prominence, and his descendant Cato the Younger obtained a dominant place in civic affairs, in part because each made a point of acting as fierce defenders of public morality and the *mos maiorum*. Cornificius may very well have seen Clodius' sacrilege as an opportunity to make a display of his zeal for defending the civic cult.<sup>193</sup>

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<sup>192</sup> Cornificius' concern seems unusual when he is contrasted with his fellow senators, who did not make the effort to draw the senate's attention to Clodius' behavior.

<sup>193</sup> We must take care not to judge this kind of activity as 'exploiting religion.' Cornificius could genuinely be interested in defending the civic cults and the *mos maiorum*, while at the same time realizing the benefits of making certain that everyone noticed his zeal.



## The College of Pontiffs

After Cornificius called the senate's attention to Clodius' behavior, the senate made use of the religious experts available to it. The senate referred the matter to the College of Pontiffs and the Vestals.<sup>194</sup>

This consultation was both customary and extraordinary. It was not uncommon for the senate to consult with religious colleges; consultations of the college of augurs, the college *sacris faciundis*, and the pontiffs were frequent. This is the only known example, however, of the senate's consulting *both* the college of pontiffs *and* the Vestals for a ruling on a religious issue.<sup>195</sup> It is unfortunate that we do not know the exact question the *senatus consultum* decreed that the college and Vestals answer. It is possible that they were consulted on a general level and asked to provide advice about what action the senate could and would take; they may also have been asked to discuss whether any additional action other than the *instauration* needed to be taken to ensure that the breach in the *pax deorum* was sealed.

There does not seem to have been much opposition to the *consultum* that referred the matter to the pontiffs and Vestals. Since it passed, we know that no tribune interposed his veto, which merits comment since Clodius later had the energetic support of Q. Fufius Calenus, tr. pl. 61, who helped him prevent the passage of the *rogatio Pupia Valeria*.<sup>196</sup> Moreau speculates that Clodius did not fear the college's decision because he

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<sup>194</sup> 'postea rem ex senatus consulto ad virgines atque ad pontifices relatum'. (Cic. Att. 13 (I.13).3)

<sup>195</sup> Moreau (1982), 63.

<sup>196</sup> The bill that called for an extraordinary tribunal to be set up.

figured that the college as a whole would follow the lead of Caesar, the *pontifex maximus*, who wanted to put an end to the affair as soon as possible so he could get to Spain and take up his province.<sup>197</sup> We need not jump to this conclusion. The situation was unusual, and it is more likely that no one had any idea what the college would do. Clodius could just as easily have assumed that the college would conclude that no further institutional action was required, because the *instaurationes* conducted by the celebrants after he had fled the scene had put the universe back into its proper shape.<sup>198</sup>

Cicero reports the decision of the college and Vestals to Atticus: ‘*ab iis* [the college] *nefas esse decretum*.’ We must evaluate the meaning of the college’s pronouncement. *Nefas* could mean anything not considered permissible,<sup>199</sup> particularly in a religious context, but it could also be interpreted as meaning against the law.<sup>200</sup> Moreau, one of the few scholars who has tried to interpret the meaning of the pronouncement, concludes that the college was saying that Clodius had violated the universal order

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<sup>197</sup> Moreau (1982), 61.

<sup>198</sup> Moreau (1982), 63-80, reviews the known composition of the college of pontiffs and concludes that its deliberations were influenced by the number of optimates on the college. It is hard to say whether the college was biased against Clodius from the beginning because of personal or political *inimicitia*. There is no reason to suspect that ‘optimates’ on the college would have been opposed to Clodius, who was just beginning his career and who had, in fact, been one of Cicero’s supporters against Catiline in 63. Clodius was also of a very noble family, which might have helped his case among the ‘optimates’. We should keep in mind that personal feeling toward Clodius might not have been the sole consideration of the college while it was deliberating. Too often scholars have assumed personal or political feeling drove these debates, but we should not overlook the possibility that a chief or even the primary concern of the college was deciding on a religious matter, not settling a score with Clodius.

<sup>199</sup> ‘*quicquid non licet, nefas putare debemus*.’ Cic. *Part. or.* 3.2.25.

<sup>200</sup> Varro *Ling.* 6.4.

established by the gods.<sup>201</sup> The declaration that Clodius' actions had been *nefas* was not just a condemnation of a personal religious error; it had implications for the community as a whole. Since the rites to the Bona Dea were conducted on behalf of the state, Clodius' sacrilege might have ruptured the *pax deorum*, the bond between the Roman community and the gods that the Romans kept secure through scrupulous observation of religious ritual. This interpretation is confirmed through the account of Cassius Dio, who reports that the pontiffs ordered another *instauratio* to ensure that the breach in human-divine relations was sealed.<sup>202</sup> This did not mean that the pontiffs and Vestals were announcing that Clodius had committed a crime, since causing such a rupture was not a crime in and of itself. For example, it was considered an impious act to knowingly carry out public business on a *dies ater*, and the perpetrator would forever have to deal with the stigma of an inextinguishable religious offense,<sup>203</sup> but such actions were not normally prosecuted by the Romans.

The Vestals alone had already concluded that the *pax deorum* had been ruptured and had conducted the *instauratio* to repair it. The pontiffs and Vestals seem to be saying nothing new. However, what they were doing when they declared the violation of the rites to be *nefas* was drawing a clear line between pious and impious behavior; they

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<sup>201</sup> 'Ce terme de *nefas*, qui désigne l'atteinte portée à la norme cosmique, à l'ordre universel voulu par les dieux...' Moreau (1982), 79.

<sup>202</sup> Dio Cass. 37.46.1 There is a potential source problem here, since Cicero *Att.* 13 (I.13).3 and Schol. Bob., 89 St. both indicate that an *instauratio* was conducted immediately by the Vestals, without waiting for the pontiffs to weigh in. Moreau (1982), 80 makes the plausible argument that a state-endorsed, official *instauratio* supplemented the one that the Vestals carried out immediately after Clodius was expelled from Caesar's house.

<sup>203</sup> Varro, *Ling.* 6.30, Macrobian *Sat.* 1.16.10-11. Rosenstein (1990), 81-83 discusses instances where Roman generals knowingly fought on *dies atri/religiosi* yet who were not punished by the Roman state.

defined Clodius' behavior as impious. We must draw a distinction between the statement of the college in January 61 and the actions of the Vestals on the night of the rites. After Clodius interrupted them, the Vestals repeated the sacrifice, but this implied nothing about Clodius' *pietas*, since *any* interruption of the rite would force an *instauratio*. By declaring the violation of the rites to be *nefas*, the pontiffs and Vestals were stating it as a certainty that the interruption of the rites by a man was an act of impiety. In a sense we are watching Roman religion evolve in response to changing circumstances. The pontiffs had created a new kind of religious offense in response to a new kind of public behavior. And, in fact, the decision of the pontiffs to define as impious the presence of a man at the rites of the Good Goddess left a lasting impression on Roman religious practice: once they had defined it so, it remained thus for centuries. We know this because when Festus<sup>204</sup> in the late second century A.D. wanted to give an example of an impious act, the first thing he mentioned was the presence of a man at the rites to Bona Dea.<sup>205</sup>

As we saw in the last chapter, the line between a pious action and an impious action was sometimes hard to draw, and there was room for debate and discussion about what constituted pious behavior. One reason that the Bona Dea affair is so useful to those studying contests over *pietas* is that it provides an example of how the powers-that-were in Rome decided what was impious. In fact, we might even say that the discussions of the pontiffs and Vestals helped create a new category of impious behavior. It took a

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<sup>204</sup> Or his source, Gallus Aelius.

<sup>205</sup> Festus, s.v. 'Religiosus': '<Religiosum ait> Gallus Aelius quod homini ita facere non liceat ut, si id faciat, contra deorum voluntatem videatur facere. Quo in genere sunt haec: in aedem Bonae Deae virum introire...'

very complicated series of interactions between individuals and institutions for this definition to come into existence: the pontiffs and Vestals issued their ruling, but could not have done so had the senate not called them; the senate alone had the authority to refer the matter to the pontiffs, but the senate did so only after discussion and debate among its members and then only after an individual member brought the matter to its attention. Separately none of these could definitively declare the presence of a man at the rites to be an impious act. By scattering authority among various groups and by giving individual aristocrats the right to initiate discussion, the Romans made defining impiety a complicated business requiring the participation of a large section of the aristocracy—which is just how Roman nobles wanted every aspect of community life to function.

As a result of the statement by the pontiffs and Vestals, the focus of the dispute changed. Though the public struggle over Clodius' *pietas* continued, the central issue was no longer whether it was impious for a man to be present at the rites to the Good Goddess. Instead, the focus of the conflict shifted. Now the debate would center around what responsibility, if any, the community had to punish an act of impiety and whether the man they suspected was actually guilty of the crime.

### **The Senate Decides**

Once the pontiffs and Vestals had made their ruling, it was up to the senate to decide what to do next. The senate did not have an easy decision, and the complexities of their problem illustrate how public disputes that centered on an individual's *pietas* became intertwined with political issues, ranging from petty personal hostilities between

Roman aristocrats to larger issues involving the authority of the institutions that governed the community. I

The ruling of the college justified doing nothing as much as it justified taking action against Clodius. Impiety was not a crime. Furthermore there were numerous impediments, some institutional, some extra-institutional, which hindered further action.<sup>206</sup> Clodius came from a revered and respected Roman family; his elder brothers Appius Claudius (cos. 54) and Gaius Claudius (pr. 56) were rising politicians with powerful connections.<sup>207</sup> Clodius himself had a lot of support outside of the aristocracy, which he mobilized soon after the senate passed the *consultum* calling for the establishment of a special court.<sup>208</sup> In addition, there was no traditional procedure for dealing with activities like those of Clodius. His actions violated no obvious law. Those who wanted to use legal means to punish Clodius would have to find a crime to charge him with and set up a special court in the teeth of fierce opposition from him and his supporters. Clodius demonstrated his political skill soon after the senate's decree by weakening the resolve of the most prominent senators through sorrowful entreaty. Even Cicero began to soften his line after Clodius' performance.<sup>209</sup>

Given these obstacles, why did the senate press for a trial? The sources suggest a number of possible explanations. It is best not to take a reductionist approach that tries to

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<sup>206</sup> Tatum (1999), 67-72.

<sup>207</sup> According to Dio Cass. 37.45 Caesar realized that Clodius' powerful friends made an acquittal inevitable, and thus refused to jeopardize his political career by testifying against him.

<sup>208</sup> '*operae comparantur.*' Cic. Att. 13 (I.13).3.

<sup>209</sup> '*boni viri precibus Clodi remouentur a causa.*' Cic. Att. 13 (I.13).3.

find the one ‘real’ reason that prompted the senate to pass a *consultum* setting up a *quaestio extraordinaria*. A variety of complementary reasons pushed the senate to keep the Bona Dea affair alive in spite of the apparent opposition. Contests over *pietas* involved a number of complicated interactions between individual and community and between the various institutions that comprised the *res publica*.

First, Clodius had powerful enemies who would enjoy the derailing his career just as it was beginning.<sup>210</sup> Cornificius had provided an opportunity that these enemies quickly grasped. Tatum argues that “[i]n the end, the clash over Clodius’ future had little to do with religion, as Balsdon rightly saw. The issue quickly gave way to private feuds which, lacking adequate heft, soon exaggerated their gravity by adding to themselves the rhetoric of political principle.”<sup>211</sup> Scheid concurred, arguing that Clodius was tried not for any religious reasons, but among other things because the decision-making process which led to Clodius’ prosecution was highly politicized.<sup>212</sup>

We should not, however, reduce the Bona Dea affair into just another fight between groups of Roman politicians. I am not going to deny that personal enmity and political maneuvering played a role in the decision to try Clodius. However, if we distill Balsdon’s and Tatum’s argument down, the reductionism becomes apparent: Clodius was put on trial because he had political enemies. Of what late republican politician could this not be said? *Inimicitia* in and of itself tells us nothing, since it can be used to explain

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<sup>210</sup> Balsdon, (1966), 68-69; Rundell (1979), 303; Tatum (1999), 73-74.

<sup>211</sup> Tatum (1999), 74.

<sup>212</sup> Scheid (1981). 132.

the cause of many Roman trials. A large number of trials had political components, since politicians used the courts to settle political scores and make a name for themselves.<sup>213</sup> Personal rivalry with Clodius might have motivated some senators, but not the majority of senators, to bring Clodius to trial. *Inimicitia* was only one factor in the senate's decision.

The Catlinarian conspiracy may have influenced many senators to prosecute Clodius. In December, 63, almost exactly a year before Clodius had slipped into Caesar's house, the senate took a tough line against Catline's followers, voting to execute the most prominent among them. The successful show of strength against a recalcitrant politician seemed to be a triumph of the best elements in the city and a victory for the Roman aristocracy as a whole. Furthermore, Catiline's public image was characterized by aberrant moral behavior reminiscent of the lack of respect for the *mos maiorum* displayed by Clodius in December 62.<sup>214</sup> In the post-Catlinarian era many senators would be sensitive to scandals caused by their blue-blooded fellows and would wish to maintain the reputation of the order as a whole. Just as the senators had shown resolve when faced by Catiline, a senator of praetorian rank and long career, they would take a firm stance against Clodius, a junior politician with a much less impressive career. Even though Clodius had several important senatorial allies, he was facing an order of men

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<sup>213</sup> Gruen (1968 and 1974), *passim*; see also Epstein (1987), 90-126. Alexander (1993) has provided an important reminder that while trials did have a political component, not every Roman politician had to fight his way up to the top of the ladder through a series of court appearances. Being hauled in front of a jury was not necessarily frequent, but it occurred often enough that every politician had to keep in the back of his mind the possibility that he would be hauled into court by an enemy.

<sup>214</sup> See, e.g. Cic. *Cat.* I.13-14; Sall. *Cat.* 5, 15-16.



who were feeling their oats and who were determined to demonstrate that they could punish aristocrats whose immoral behavior undermined the prestige of them all.

Lest we lose ourselves in the political, careful analysis demonstrates that moral and religious factors also played an important role in the senate's attitude toward Clodius. While the *boni* might have softened in the face of Clodius' influence, Cato did not.<sup>215</sup> This might be ascribed to political reasons, but given Cato's life and career, moral considerations explain his involvement more convincingly. Cato was not the only one outraged. As we have seen, Cicero himself initially reacted with anger and expected Atticus to have a similar reaction. And we must remember it was not one of Clodius' known *inimici* who pressed the senate to look into the affair. It was Q. Cornificius, whose interest is most easily explained not by political interest but by moral and religious outrage. Clodius had senatorial allies and personal enemies, but the majority of the senate probably did not have strong feelings one way or another about Clodius himself before the affair began. His personally embarrassing behavior, however, had ruptured the *pax deorum* and had thus jeopardized the whole community. Many senators would have liked to put a stop to the kind of unprecedented and objectionable behavior displayed by Clodius, and making an example of him would be a nice lesson for future aristocrats who let prurient curiosity overcome their sense of civic responsibility.

The determination of most of the senate to prosecute Clodius stiffened after Clodius began to use violence to prevent a special court from being established. The Bona Dea affair, like so many others in ancient Rome, suffered a case of 'issue creep'.

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<sup>215</sup> Cic. *Att.* 13 (I.13).3.

On its face it merely concerned the impiety of a roguish young noble, but, because of the players involved, it could not help but expand into something larger. In the end, it turned out to be (or, rather, its protagonists turned it into) a conflict where the authority of the senate was at stake. The senate was more than just a deliberative body. It oversaw the state cult and had a responsibility to see that the cult operated properly. We have already seen the long list of reasons for letting the matter drop: Clodius' friends, uncertain legal grounds, and potential disruptions by Clodius' bands of followers. Yet in spite of this, the majority of senators voted for a *senatus consultum* that called for Clodius to be tried, and once they did so, they raised the stakes. If Clodius could prevent the assembly from implementing the senate's decision, the authority of the senatorial order as a whole would be undermined. At least, that is how many senators saw things. Cicero makes this clear in letter 16, written to defend his performance at Clodius' trial. Cicero claims to have opposed Clodius vigorously '*quam diu senatus auctoritas mihi defendenda fuit.*'<sup>216</sup>

Clodius' own actions raised the stakes even more. There is a stark difference in tone between Cicero's attitude toward Clodius in late January and his attitude in mid-February. In January Clodius had begun to win over many of those who had been appalled at his behavior; he had even begun to mollify Cicero.<sup>217</sup> At this point Clodius' political sense failed him, because at the same time he was putting on displays of remorse in the senate he was rumored to be preparing bands of followers.<sup>218</sup> These rumors proved

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<sup>216</sup> Cic. Att. 16 (I.16).1. Even earlier Cicero had worried that the Republic could be damaged if the *boni* did not act with more firmness against the *improbi*. See Shackleton Bailey's reconstruction of a difficult passage in Cic. Att. 13 (I.13).3.

<sup>217</sup> Cic. Att. 13 (I.13).3.

<sup>218</sup> '*operae comparantur*', Att. 13 (I.13).3.

to be true, as subsequent events showed.<sup>219</sup> Clodius was preparing to fight his battle in the assembly if he lost it in the senate. We should not be surprised at this, since, as we saw in the last chapter, conflicts over *pietas* shifted from one venue to another as the various organizations with religio-political authority in Rome grappled with how to resolve the conflict. The mobilization of gangs demonstrates that Clodius had the means to respond in various ways to the threats against his career. From his point of view, he was not going to simply lie down and let the majority of senators decide his political fate. From the point of view of many in the senate, however, Clodius was preparing to defy the senate's authority, and his tactics may have cost him support there. In early February, after passage of the *senatus consultum*, he openly resorted to violence to stop the senate-endorsed *rogatio* from becoming law. Consequently in the space of a few weeks he had lost all of the ground he had gained: a near-unanimous senate passed a bill exhorting the Roman people to set up a special court to try him.<sup>220</sup> Because he so blatantly resorted to extralegal political tactics to stop the senate's *rogatio* from becoming law, Clodius helped to enlarge the scope of the struggle; it was no longer solely about his own *pietas* but about the senate's *auctoritas*. This forced many senators to dig in their heels and rally around Clodius' enemies.

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<sup>219</sup> By February he had assembled a mob of thugs to intimidate people in the assembly: Cic. *Att.* 14 (I.14).5. Rundell (1979), 303 suggests that the *operae* mentioned in *Att.* 13 (I.13).3 and in 14 (I.14).5 were identical to the *barbatuli iuvenes* of *Att.* 14 (I.14).5. He thus concludes that the Bona Dea affair need not be analyzed from "the 'popular' angle" at all, and that we can understand the affair solely from the perspective of aristocratic infighting. I must reject his conclusions. While *Att.* 13 (I.13).3 might give no conclusive answer as to the social class of Clodius' *operae*, in *Att.* 14 (I.14).5 Cicero seems to distinguish between two different groups. The '*barbatuli iuvenes*' are asking the assembled crowd to reject the motion (*populum ut antiquaret rogabant*). The *operae*, on the other hand, appear to have taken control over the *pontes* and are distributing *tabellae* without any options for voting 'yes'. Since these groups seem to be doing two different things, we have to conclude that the *operae* were not the young aristocratic supporters of Clodius.

<sup>220</sup> Cic. *Att.* 14 (I.14).5.

Another immediate concern influenced the senate's decision to remain firm. Pompey was coming. The powerful general had reached Italy a few months earlier and, contrary to everyone's expectations, had laid down his army. He thus spared the senate the immediate fear that he would return from fighting Mithridates the same way Sulla had 20 years earlier—by marching on Rome and making himself its master. Instead of returning as a potential dictator he returned as 'merely' the most powerful and influential individual politician in the city.<sup>221</sup> The senate had an incentive to make an example of Clodius, showing Pompey and other potential *principes* that it could and would act to curb outrageous and dangerous behavior by the Roman aristocracy. Pompey seemed to sense what the nervous senators in Rome wanted to hear and understood the issues at stake in the struggle to prosecute Clodius. He arrived in January 61, and when Fufius called him before a *contio* and asked his opinion about the text of the senate's *consultum* regarding the establishment of a special court to try Clodius, he gave a long speech defending senatorial authority.<sup>222</sup>

### **The Charge of *Incestum***

A vexing problem presented itself to the senators who were determined to see Clodius punished. They had no clear grounds on which to indict Clodius. There was no standing court for 'breaking and entering,' and the resident of the house that Clodius sneaked into wanted the whole affair to go away. This meant that if the senate wanted to punish Clodius for sacrilege it would have to come up with a crime for which he could be

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<sup>221</sup> On the return of Pompey and its impact on Roman politics (and the Bona Dea affair) see Seager (2002), 75-79.

<sup>222</sup> Cic. *Att.* 14 (I.14).2.

charged. One possibility was *maiestas*, a catch-all term for anyone who jeopardized the welfare of the state; another was *perduellio*, a term for treason. P. Claudius Pulcher had been tried for *perduellio* in 249, after a naval defeat; among the charges which were leveled at him was that he had violated the *pax deorum* by ignoring the auspices.<sup>223</sup> There was thus some precedent for using *perduellio* in cases where religious violations had occurred. There was a problem here, however; Claudius' actions in 249 had already led to disaster for the state, whereas the actions of his namesake had as yet not had any negative consequences. Of course, this argument could have been used (and probably was) to dissuade the senate from taking any action at all. In the end, the senate decided against trying Clodius for *maiestas* or *perduellio*, and instead chose the crime of *incestum* and ordered the consuls M. Pupius Piso and M. Valerius Messalla to bring a *rogatio* before the assembly that called for an extraordinary court to be set up.<sup>224</sup>

So far as we can tell, before 61 B.C. Clodius' actions could not have reasonably defined as *incestum*. *Incestum* as a crime was restricted either to people who had intercourse with close relatives (which Clodius was often accused of, but which had no bearing at all in this case) or to Vestal Virgins (and their lovers) who had violated an oath of chastity.<sup>225</sup> Clodius was never even accused of the latter crime; as the sources

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<sup>223</sup> See my discussion on this incident above, pp 47-48. On the crimes of *perduellio* and *maiestas*, see Pesch (1995), 43-143; De Castro-Camero (2000), 28-32.

<sup>224</sup> Schol Bob. 89 St.; Val. Max. 8.5.5.

<sup>225</sup> For a general discussion of *incestum* see Cornell (1981).

indicate, he had been caught before accomplishing whatever he intended, and the rumored object of his affection was Pompeia, not a Vestal Virgin.<sup>226</sup>

Though incest does not at first glance seem applicable, in many ways it was the most reasonable crime to charge Clodius with, once the senate determined that it needed to take some legal action. Though Clodius had not actually violated one of the Vestal Virgins, he had interrupted one of their sacred rites carried out *pro populo*—with the same potential danger to the state that someone caused when he violated the chastity of a Vestal Virgin: a rupture in the *pax deorum*. As an additional convenience, the prosecution gained a number of advantages in incest trials, including the right to interrogate slaves and the ability to try magistrates without waiting for their year of office to expire.<sup>227</sup>

The application of the charge of *incestum* shows the flexibility of the Roman civic system and of the senate's response. As it had done when it had consulted the college of pontiffs and the Vestals, it handled a new problem by adapting an old solution. Once the senate decided that Clodius should be punished, it applied the charge that seemed most likely to fit—since the Vestal Virgins had, in a sense, been molested, the senate decreed that a special court be established to investigate a charge of *incestum*. And, of course, this too had precedent, since in 114 B.C. the Lex Peducaea had established a special court to try Vestals and their lovers on the charge of *incestum* when the college of pontiffs

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<sup>226</sup> Moreau (1982), 94.

<sup>227</sup> Moreau (1982), 95-96 and Tatum (1999), 74-75.

seemed to be too lenient.<sup>228</sup> The senators drew on precedent to guide their actions, but they did not allow precedent to render the senate impotent. The senate essentially decided to expand the public definition of *incestum* to include violating the rites of the Bona Dea,<sup>229</sup> and this was an innovation, even if its proponents could make a logical connection between *incestum* as it had been previously defined and Clodius' behavior. Like so many other contests over *pietas*, public procedures evolved as Roman institutions adapted traditional solutions to new circumstances.

### **The Fight against the *Rogatio Pupia Valeria***

Of course, what to some might seem a clever and flexible approach to handling Clodius' behavior might seem to others like trying to fit a square peg into a round hole. Clodius and his supporters were infuriated by the terms of the *rogatio* proposed by Piso and Messalla. Significantly the consul Piso and the tribune Fufius aided Clodius' attempt to stop the creation of the *quaestio extraordinaria*; Piso took the unusual step of opposing his own motion. The particular sticking point Clodius seized upon was the composition of the jury. Instead of the traditional practice,<sup>230</sup> the *rogatio* allowed the praetor who presided over the court to choose his own jury.<sup>231</sup> Clodius perceived that this would, in effect, turn the contest over his *pietas* into no contest at all: such a jury would be stacked against him.

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<sup>228</sup> Cic. *Nat D.* 3.74, *Brut.* 122, 159, *Inv.* 1.80; Asc. 45-46 C.; Obseq. 37(97); Oros. 5.15; Plut. *Quest. Rom.* 83; Porphyrio ad. Hor. *Sat.* 1.6.30; Dio Cass. frag. 87.5; Macrob. *Sat.* 1.10.5.

<sup>229</sup> Moreau (1983), 95.

<sup>230</sup> Roman Jurors were chosen from a pool of senators, equites, and *tribunii aerarii* and 'selected by a mixture of allotment and rejection by the parties.' Lintott (1999), 160.

<sup>231</sup> Cic. *Att.* 14 (I.14).2.

The novelty of the senate's approach to dealing with a new problem inevitably brought out criticism by those who resisted novelty and resented change. Clodius, in fact, challenged his opponents on the issue of tradition, a clever defense given that his opponents were chastising him for his untraditional behavior at a civic rite. So far as we can tell, Clodius did not attack the right of the pontiffs to define his behavior as impious or the right of the senate to set up a special court to try him. Instead, he and his allies attacked his opponents for being untraditional and emphasized the novelty in the procedure established to try him. The position of the elder Curio, who supported Clodius throughout the affair,<sup>232</sup> may be attributable not to his resentment of the politicization of religion, as McDermott argued,<sup>233</sup> but to his dislike of novelty in public practice. It is even possible that Q. Fufius Calenus' support for Clodius stemmed not from personal friendship or political loyalty to the quaestor but from opposition to the senate's tactics as it tried to punish Clodius. If he had desired, Calenus as tribune could have stymied any attempt to punish Clodius. However, during the entire process he exercised his veto only once: to prevent the senate from passing a decree encouraging the people to ratify the *rogatio Pupia Valeria*.<sup>234</sup> He also withdrew his opposition to prosecuting Clodius once

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<sup>232</sup> McDermott (1972), 397-404.

<sup>233</sup> "Perhaps he [Curio] felt early in 61 that the senate and the *pontifices* were using religion too openly as a political weapon." McDermott (1972), 404. Such statements reflect the general trend of the era's scholarship, which divided Roman civic life into religious and political spheres and saw any overlap of the latter into the former as corruption.

<sup>234</sup> Cic. *Att.* 14 (I.14).5.



the terms of the *rogatio* were changed to allow the traditional method of selecting a jury.<sup>235</sup>

It is thus misleading to categorize the fight over the *rogatio* as simply a squabble between two factions, one resolved to destroy Clodius, the other to acquit him. Had Calenus and Piso been resolved to see Clodius freed they could have prevented any attempt to prosecute him, but they did not do so. They allowed a trial to take place once the traditional means of jury selection were restored. The actors in the drama were thus motivated by real differences over the procedure used to try Clodius. Though most of the senate<sup>236</sup> wanted to allow a new procedure that let the presiding praetor choose his jury, a resolute minority was determined to oppose this, not necessarily to prevent Clodius from being brought to trial but to prevent a new form of jury selection from being used. Though the senate as a whole supported treating a new situation with a new remedy, the stubborn opposition of a few determined senators convinced Hortensius that the only proper way to bring Clodius to trial was to use the older method of choosing jurors.

The fight to bring Clodius to trial thus illustrates the pattern we observed in chapter one. A religious infraction led to a new situation, one where tradition offered no guidance on how to resolve the problem. A debate occurred over how to deal with the situation. The Romans hit upon a solution, Roman religious and political procedure evolved, and civic life continued. The dispute over the *rogatio Pupia Valeria* pitted one

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<sup>235</sup> Cic. *Att.* 16 (I.16).2.

<sup>236</sup> 400 senators (vs. 15 nays) and nine out of ten tribunes supported the bill that had the new system of jury selection, if Cic. *Att.* 14. (I.14).5 can be believed.

group of senators against another when a new procedure piqued the sensibilities of traditionalists.

The conflict over the *rogatio Pupia Valeria* illustrates yet again that the structure of Roman civic institutions resulted in contests over piety being waged in a number of different venues. In this case, once the senate had decided on a course of action and on the procedure that should be followed, the struggle was far from over: the assembly would have to pass the senate's bill before a trial could take place. In an earlier era the senate could confidently expect that an assembly would follow its lead and endorse any *rogatio* approved by a majority of senators, but in the late Republic assemblies were more and more willing to ignore senatorial recommendations.<sup>237</sup>

The multitude of venues provided the maximum possible scope for participants in a conflict to employ their political skills: if they were at a disadvantage in one arena they might be able to check their opponents through skillful operation in another. Before the senate Clodius was hopelessly outvoted, but he had a positive genius for getting the assembly to do what he wanted. During his career he relied as much on his talent for organizing rowdy mobs as he did on his skills of persuasion, and he got off to a running start in this, his first major legislative battle. He arranged to have only 'no' ballots distributed to the voters and stationed gangs on the *pontes* leading to the ballot-urns in order to intimidate voters who might be inclined to find 'yes' ballots and vote against him.<sup>238</sup> It is impossible to say what the verdict of the assembly might have been had a

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<sup>237</sup> Mouritsen (2001), 131-132; see also Millar (1998), 13-48.

<sup>238</sup> Cic. *Att.* 14 (I.14).5

vote on the original *rogatio* of Pupius and Valerius been taken, because the vote was called off and the issue was brought back into the senate for more discussion, where a large majority of senators voted to reiterate the senate's support of the *rogatio* and to return the bill to the people for consideration.<sup>239</sup>

Clodius' tactics reflect, unfortunately for the civic health of the Republic, the political practice of the first century. We should not let his unscrupulous abuse of the assembly divert us from the relevant point: the assembly was yet another civic institution with authority over religious matters, and no matter how many senators were aligned against him Clodius could still wage his battle there. In republican Rome the senate proposed, but the assembly disposed,<sup>240</sup> and if Clodius could get the assembly to support his case, it did not matter if all of the other senators and magistrates opposed him.

The dispute over the *rogatio Pupia Valeria* shows the importance of consensus in deciding religio-political disputes. In any system which had so many and varied sources of authority and so many ways to gridlock itself, compromise was vital for any public business to get done. In this case, the gridlock was removed only after all conflicting sources of authority got onto the same track. Two individuals, Hortensius and Fufius, worked out a compromise which, in spite of Cicero's opposition, received the support of the senate and was passed by the assembly. In a situation like this there were tremendous pressures for Clodius and Fufius to compromise. The aristocracy, according to Cicero,<sup>241</sup>

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<sup>239</sup> See note 80, above.

<sup>240</sup> Lintott (1999), 40-42.

<sup>241</sup> Cic. *Att* 14 (I.14).5.

was virtually united in its determination to set up a *quaestio* and was willing to shut down all public business, including the all-important allotments of provinces, until Clodius and his supporters ended their obstructionist tactics and allowed a bill to go through. Cicero hints at another reason why Clodius might be willing to end the impasse and risk a trial: so long as there was no resolution to the affair, his enemies could use the potential of a trial to harm his career.<sup>242</sup> The longer the trial was delayed the longer the issue remained in the public eye, and the longer the issue dominated public discussion the more difficult Clodius' political position would become. So Clodius himself might be seeking a trial, provided he stood a chance of defending himself.

There were also pressures on Hortensius to compromise. Cicero's suggestion that the process be delayed was not practicable given that the senate had decided to shut down public business until the assembly considered a *rogatio*.<sup>243</sup> Though this put pressure on Clodius, it was not a tactic which lent itself to undue procrastination, since in the long run shutting down all public business could backfire if enough aristocrats grew irritated at the tactic. If Hortensius lost the support of his fellow senators, and the senate abandoned its own obstructionism, all the momentum to punish Clodius might evaporate. Furthermore, Fufius presented a very difficult obstacle to get around. If he could not be induced to step aside he could, through his veto, block any attempt to pass legislation to try Clodius, and it seems Fufius was implacably opposed to allowing the creation of a court where the presiding praetor chose his own jury. Furthermore, it did not help Hortensius' cause to

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<sup>242</sup> Cic. Att. 16 (I.16).2.

<sup>243</sup> Cic. Att. 14 (I.14).5.

have to deal with a hostile Piso. Having the consul himself attack his own legislation undermined the credibility of both the bill and the senate in the eyes of the assembly. A compromise would remove the opposition of both Piso and Fufius and allow Clodius to face a jury.

Therefore the resolution of the fight over the *rogatio Pupia Valeria* demonstrates that contests over piety required complex interactions between individuals and groups to achieve resolution, a phenomenon which we observed in the last chapter. This phenomenon was caused by the complex structure of Roman civic life, which entrusted political and religious authority to different groups and institutions. In this case, it was two individual but influential men who brought about a resolution to the conflict. Fufius' veto power made his assent indispensable to any prosecution of Clodius. Hortensius' authority over these matters rested on no institutional basis. It was instead his influence over his fellow senators and his ability to negotiate with his fellow aristocrats which gave him a role in the affair. Together they managed to bring about a solution which was accepted by most of the aristocracy (though, as Cicero's reaction indicates, not by every aristocrat). Once the senate had achieved a consensus and was able to present a united front to the *populus*, the *populus* in turn was able to meet and authorize the establishment of a *quaestio*. And again, this 'resolution' did not end the contest, it merely shifted it into another venue.

### **Clodius' Defense**

Roman criminal procedure did not require that the participants confine their discussion to facts relevant only to the stated charge; orators could cast their nets widely

and attack every aspect of their opponents' lives as a means of undermining their credibility.<sup>244</sup> Curio spoke as Clodius' chief defender, and so far as we can tell from our sources, the defense was a simple one. Clodius argued that it was impossible for him to have sneaked into Caesar's house, since on the day of the festival he was ninety miles away at Interamna.<sup>245</sup> In other words, in spite of all of the evidence and the testimony of Caesar's mother and sister, it was not he who was caught at Caesar's house and chased out. This is a surprisingly weak defense, given the combined testimony of Caesar's relatives and of Cicero, who testified that he himself had observed Clodius in Rome the morning before the festival when Clodius arrived to greet him at his daily *salutatio*.<sup>246</sup> The significance here lies in what Clodius did not try to argue.

Clodius never tried to argue that he was at the festival, that his presence was acceptable, and that his actions did not endanger the state. Perhaps this was wise, given the stated opinion of the pontiffs and Vestals that violating the festival was *nefas*, and it illustrates how the community could establish a definition of *pietas/impietas*. We saw in chapter two that there was no clear-cut dividing line between piety and impiety, but misunderstandings were possible, opinions might differ, and ultimately the line would be established by communal consensus, which, of course, did not necessarily end the debate. Clodius decided that it would be fruitless to argue that he had been in Caesar's house but had not acted impiously, which indicates that he perceived that the *communis opinio*,

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<sup>244</sup> Moreau (1982), 167-194 discusses the potential topics Clodius' accusers might have brought into play.

<sup>245</sup> Cic. *Att.* 21 (II.1).5; Schol. Bob. 21 St.; Asc. 9 C.; Plut. *Cic.* 29.1. He had as his chief witness a friend and local notable of Interamna, C. Causinius Schola.

<sup>246</sup> Cic. *Att.* 16 (I.16).2, 21 (II.1).5, *Dom.* 80; Schol. Bob. 85, 89 St.; Suet. *Iul.* 74.4; Quint. 4.2.88.

combined with the institutional weight of a priestly college and the senate, had effectively drawn the line: a man appearing at the rites of the Bona Dea was definitely an impious act. It would be pointless to argue that he had been present at the rite but had not acted impiously. The system would not have prevented him from arguing the point, but it had already made it unlikely that he would have won over many of his fellow citizens to his point of view.

### **The Trial**

Clodius did not present the strongest defense. This would have boded ill for him, had the outcome of Roman criminal courts depended only on the strength of the cases presented. But Roman trials were as much spectacle as they were logical argument, and Clodius still had weapons in his arsenal. He had a vocal following among the assembled crowd,<sup>247</sup> so in spite of the apparent weaknesses of his case he was able to persuade many of his fellow citizens to support his cause. At his trial he formed them into a rowdy, obnoxious mob that heckled his opponents. Clodius' tactics were not just designed to intimidate the jurors; they were designed to show them that many of their fellow citizens had refused to accept the allegation that Clodius had committed an impious act.<sup>248</sup> Roman aristocrats measured each other's influence within the community partly through the number of ordinary citizens whose support each noble could command: aristocrats who could garner more supporters at their morning *salutationes* and their strolls through

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<sup>247</sup> Cic. *Att.* 16 (I.16).4. Millar (1998), 41 points out that one of the factors that influenced the jury's decision in trials was the reaction of the crowd which surrounded the tribunal on which the orators spoke.

<sup>248</sup> Note there is not a contradiction with the argument in the previous section. The community's chief religious institutions did decide that it was impious for a man to appear at the rites to the Good Goddess; but the community as a whole had not yet decided that it had been Clodius who had committed an impious act.

the forum, and those who could get the largest cheering sections at their *contiones*, were presumed to have a lot of influence over the Roman voter.<sup>249</sup> Through this display they earned more respect from their fellow aristocrats. That Clodius had a large number of vocal supporters present reminded the jury that the charges against him had not significantly damaged his prestige and influence, which gave the jury an incentive to acquit him.

Of course Clodius choose to rely neither on the merits of his defense nor on a demonstration of his support among the *populus Romanus*: he took the additional step of bribing the jury.<sup>250</sup> This too shows how resourceful individuals could be while they were engaged in conflicts over *pietas*, though in this case Clodius chose to rely on an unusual, extra-legal method to win over the jury. Yet bribing the jury did solve Clodius' immediate problem: another phase of this contest over piety came to an end. He was acquitted, and so far as Roman civic institutions were concerned, the matter was over. Clodius was not just judged 'not guilty' by the Roman system, he was judged 'not impious.'

### **Resolution?**

Of course, the debate over Clodius' *pietas* did not end with his acquittal. The court, empanelled according to a law of the Roman people, might arguably have given the verdict of the community as a whole, but there were plenty of individuals who were outraged at the outcome and who were determined to use Clodius' behavior at the festival

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<sup>249</sup> See for example *Comm. Pet.* 37, where 'Quintus' urges his brother to be seen with as large a crowd as possible around him.

<sup>250</sup> *Cic. Att.* 16 (I.16).5.



of the Good Goddess against him. Cicero in particular delighted in reminding the Romans of Clodius' scandalous and disreputable behavior, and the Bona Dea affair usually took center stage.

Cicero did not wait long to use the weapon against Clodius. In a speech before the senate on May 15, 61, which probably more than anything else made Clodius his bitter enemy, he denounced Clodius and Curio. Fragments of this speech, the *In Clodium et Curionem*, survive in the Bobbio Scholiast. The fragments indicate that Cicero took great delight in mocking Clodius for being willing to dress up in a woman's clothes and commit acts of impiety in order to facilitate an adulterous affair.<sup>251</sup> In response, Clodius stood up and tried to defend himself. He claimed that Cicero had been at Baiae. Cicero gleefully wrote Atticus the stinging reply he gave: 'are you saying that that is similar to being in a secret place?',<sup>252</sup> alluding to Clodius' violation of the rites.

Cicero did not let the matter rest. After he returned from exile he waged a bitter struggle to recover the property that had been lost under the terms of the *lex de exilio Ciceronis*. Speaking before the college of Pontiffs he used Clodius' impiety as a weapon against him, to undermine his credibility in the eyes of the college.<sup>253</sup> The year after his return an earthquake occurred, which the senate concluded portended something ominous for the safety of the republic. To ascertain what the portent signified, the senate consulted the college of haruspices. The haruspices responded with a lengthy

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<sup>251</sup> Schol. Bob. 85-89 St., in particular frags. 5, 12, 19 and 22.

<sup>252</sup> 'quid? hoc simile est...quasi in operto dicas fuisse?' Cic. Att. 16 (I.16).10.

<sup>253</sup> Cic. Dom. 35, 77, 105.

pronouncement indicating one of the reasons for the displeasure of the gods was the desecration of sacred places. In a speech before the senate, Cicero accused Clodius of being responsible for the gods' displeasure because he had violated the rites to the Bona Dea.<sup>254</sup>

Cicero found that he could use Clodius' reputation for impiety as a weapon not just against Clodius, but also against Clodius' political allies. In 55 B.C. in a speech denouncing L. Calpurnius Piso, consul in the year of Cicero's exile, he tried to taint Piso by pointing out his known friendship with Clodius, who, according to Cicero, everyone knew was guilty of incest, implying that no really respectable citizen would associate with such a man.<sup>255</sup>

Cicero even exploited Clodius' impiety to deflect criticism of his own public behavior. In a famous letter to P. Cornelius Lentulus Spinther, Cicero defended his working on behalf of Pompey, Caesar, and Crassus, who were despised by many aristocrats in the 50s B.C. because they dominated Roman politics, by reminding Spinther of how Clodius had driven him into exile and how Pompey had interceded to bring him back to Rome. To make his enemy seem as dastardly as possible, Cicero accused Clodius of *incestum*, and not just of the kind of incest of which he was acquitted. He claimed that Clodius had shown the Good Goddess no more respect than he had his three sisters.<sup>256</sup>

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<sup>254</sup> Cic. *Har. resp.* 4, 8-9, 12, 38, 44, 57. I will discuss the debate over the meaning of the response of the haruspices in more detail in chapter five.

<sup>255</sup> Cic. *Pis.* 95.

<sup>256</sup> Cic. *Fam.* 20 (I.9).15.

Even Clodius' death did not prevent Cicero from exploiting his reputation for impiety for his public benefit. After Milo's followers killed Clodius in 52 B.C., Milo, charged *de vi*, called upon Cicero to defend him. Cicero was too scared to deliver his speech, forcing Milo to admit defeat and go into exile. Even though Cicero never delivered the speech, he had the amazing gall to circulate a text of the speech that he would have given, had he bothered to defend his client. The *Pro Milone*, which would have been an excellent speech if Cicero had had the courage to deliver it, uses Clodius' nefarious career as a tool for defending Milo. In it he made certain to remind the fictional jurors that Clodius had violated public rites to the Good Goddess.<sup>257</sup>

Thus the conflict over Clodius' piety did not end with his acquittal. Once again, the public debate remained; only the issues changed. After the trial Clodius did not have to fear that the community's institutions would punish him for his act of impiety. However, his acquittal did not remove the stigma attached to his actions, and he would always have to endure stinging reminders of his conduct. He had, in a sense, made his *pietas* a key part of his public image, and he would have to defend it for the rest of his career.

### Conclusions

The Bona Dea affair reveals much about how the Romans made *pietas* a political issue, how public disputes over a person's *pietas* were handled, and how difficult they were to resolve.

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<sup>257</sup> Cic. *Mil.* 72-73, 86.

Because Roman civic religion was intertwined with every aspect of public life, when Clodius' *pietas* became a public issue, the issue did not and could not remain solely a religious one. Clodius' personal enemies used the controversy as an excuse to damage his career, many senators came to believe that the *auctoritas* of the senatorial order was at stake, and recent history and current political events soon played a role in the battle to convict Clodius for violating the rites to the good Goddess. Attempts to reduce the struggle to merely a factional dispute miss the complexities of the problem.

The structure of Rome's civic institutions, which placed authority over religious issues in the hands of a large number of different individuals and groups, also complicated the process of resolving public disputes which centered on *pietas* as a key issue. Clodius was almost not brought to trial because of an impasse between the majority of the senate and a few key magistrates. In the Roman system, various authoritative institutions had to reach a consensus through compromise before they community could give its verdict about Clodius' piety. In this case the senators who wanted to put Clodius on trial and the consul and tribune defending him had to compromise. Fufius stopped obstructing the creation of a special court and Hortensius modified the terms of the *rogatio* creating that court. The move to try Clodius reveals that late republican politicians were still capable of reaching such compromises and achieving consensus, in spite of the fact that the first century was more famous for occasions when the Roman system gridlocked and shut down than for the ability of its political leadership to work through the difficult process of making politics work.

The process of trying Clodius forced the Romans to decide whether a man's presence at the rites was an impious act, whether the state had any responsibility to pursue the matter, what was the proper charge on which to indict Clodius, what composition his jury should take, and whether to convict or acquit him. It is amazing given the complexity of Roman civic structure that answering all of these questions took only a few months. Even after all these questions were answered, the issue was not really resolved. Only the institutional involvement in the question was ended. No further attempt would be made by the Roman state to punish Clodius for his crime. However, Clodius' *pietas* never disappeared as a political issue. His enemies would always be able to use the Bona Dea affair as a weapon to undermine his credibility with his fellow citizens.

## CHAPTER 4

### THE DISPUTE OVER CICERO'S HOUSE

As we saw in chapter two, public contests involving *pietas* often occurred when there was a dispute over whether a religious ritual had been properly conducted. *Pietas* became an issue in such contests because piety required the complete fulfillment of all obligations owed to the gods, and in any situation where a rite was improperly conducted, an obligation was unfulfilled, since the gods would not accept a flawed offering. Furthermore, such conflicts usually arose in situations when there was some uncertainty about exactly what the Romans had to do to fulfill their obligations. In most cases, they could simply meet any such obligation by the proper performance (or re-performance) of ritual. Thus the Romans' ritual process had a built in system for correcting error that prevented reckless assignations of blame and charges of impiety.<sup>258</sup> But in situations where something unexpected occurred, the structure of Roman civic life and the nature of Roman religion often encouraged public debate and conflict. In situations like this the fragmented nature of religious and political authority meant that the conflict over how to best fulfill the community's obligations to the gods was resolved only after much

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<sup>258</sup> Rosenstein (1990), 59-63.

discussion among the many individuals and groups which possessed that authority.

Sometimes this fragmentation of authority meant that a conflict died out very slowly, as aggrieved parties found forum after forum in which they could state their case.

The paucity of our sources limits our ability to analyze most of these conflicts in any detail, but this is not the case with our present topic, the struggle over Cicero's house. Here we are not limited to one or two lines mentioned in passing by an annalist. Instead, we have real primary sources, including a complete speech before a religious body and letters reporting events almost as they occur. Because the speech and letters are those of Cicero, one of the two parties in the conflict, they naturally tend to present things from only his point of view, but we can reconstruct the arguments of his opponent Clodius because Cicero responded to them point by point, sometimes even quoting them. Thus we have more than just the bare outlines of the conflict: we can see what arguments each side gave to his fellow citizens to defend his position, and we can see how their dispute snaked its way through Rome's complicated civic hierarchy.

Yet having additional information does not require us to substantially modify the conclusions obtained in chapter two; instead it reinforces them. The dispute over Cicero's house allows us to see once again that religious disputes in republican Rome could become quite complicated. This particular battle between Cicero and Clodius, for instance, was fought before the senate, before Rome's populace, and before Roman religious officials. In this case, the debate did not end when the community's leaders pronounced the 'official' verdict. Moreover, this dispute illustrates again that it was not always immediately obvious to the Romans what constituted pious or impious behavior.

Even though their claims were diametrically opposed, both Cicero and Clodius had very strong arguments, so it was not a simple matter to determine whether Clodius had acted piously when he dedicated the site of Cicero's house to the goddess Libertas. Finally, as we observed in chapter two, we will see that conflict led to evolutionary change in religious procedure. The struggle over Cicero's house shows how flexible and adaptive the Roman religious system was.

Of course, having such a detailed account also gives us new insights into the connection between religion and politics in republican Rome. In this case, we see how religion provided another means for the Roman aristocracy to send messages to their fellow citizens, both supporters and enemies. Through Cicero's speeches and letters we can see how Clodius' temple acted as a form of communication. One of the reasons why Clodius put up such a strong fight to save the temple, and Cicero such a strong fight to remove it, was that each wished to control a vital means of communication in a world without mass media. The temple of Liberty thus illustrates how a Roman could make an act of personal and civic piety (the dedication of a temple) serve a political agenda.

We also see that the process of deciding whether to allow the temple to remain was not a trip through the minutiae of Roman religious law, nor was it an entirely political issue where the pontiffs exploited their religious authority solely to send a political message. Instead, the pontiffs evaluated every aspect of Cicero's and Clodius' civic lives while making their decision, and an integral part of this evaluation was an analysis of their *pietas*.



### Cicero and Clodius from 62-58 B.C.

The careers of Clodius and Cicero took divergent paths in the years following Clodius' trial for *incestum*.<sup>259</sup> Cicero failed to obtain the respect and prestige that he thought his consulship had earned him. He believed that his suppression of Catline's conspiracy would serve as a blueprint for the renewal of the republic. So long as Rome's elite, both senate and *equites*, remained united, the safety of the state could be secured. Unfortunately, Cicero soon watched a squabble over Asian tax contracts cause a rift between the senate and the *publicani* at the same time that the senate itself became divided over how to handle Pompey's eastern settlement and agrarian law. Cicero's moderate approach to these problems won him few friends among the aristocracy. He opposed Cato's treatment of the *publicani* but gave only lukewarm support to Pompey's land law. Since he did not have strong ties to either Pompey or Pompey's opponents, Cicero spent the years from 62-59 politically adrift, reduced almost to the role of observer. Pompey made an effort to establish closer ties with Cicero in 60 as the struggle over his agrarian law heated up, but Cicero opted to stand on principle and refused to support certain aspects of the law which he found objectionable. As a result, the next year Pompey made a deal with a more reliable ally, Caesar, and found that he could do without Cicero's help. Cicero thus had few real enemies among the senators, but there were few men willing to put their careers on the line to help him. Because he missed opportunities to forge alliances with the major players in Roman politics, he paid the price when Clodius became tribune.

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<sup>259</sup> For a review of the careers of Clodius and Cicero in the years between the Bona Dea Trial and the struggle over Cicero's house, see for Cicero, Mitchell (1991), 74-143, for Clodius, Tatum (1999), 81-184.

If Cicero spent the time in the aftermath of the Bona Dea trial resting on his laurels, Clodius made the most of the second chance offered to him by his acquittal. He created a secure and stable political base and put himself in the perfect position to strike back at Cicero, to whom he was now bitterly hostile. He first set his sights on the tribunate, a natural stepping stone to higher office,<sup>260</sup> but a seemingly insurmountable difficulty faced him: he was a patrician, not a plebeian, and so barred from the office. He decided to have himself adopted by a plebeian, but for an adoption to become valid, it had to be approved by the *comitia curiata*, which in matters such as this was presided over by Caesar as *pontifex maximus*.<sup>261</sup> In 59, after Caesar and Pompey had made themselves unpopular and needed allies, Clodius was there to offer his support in exchange for their aid in getting the adoption ratified. This did not mean that Clodius had become the triumvirs' pawn. In fact, after the triumvirs helped him obtain the adoption, Clodius tried to exploit their unpopularity to improve his own chances for election, claiming that if elected tribune he would repeal Caesar's legislation.<sup>262</sup> But Clodius and the triumvirs recognized the advantage of a good working relationship, and by the end of

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<sup>260</sup> Patricians faced a vexing problem in their climb up the *cursus honorum*; after the quaestorship they were forbidden to seek the tribunate and the plebeian aedileship, leaving only the curule aedileship as the only office available to them between the praetorship and the quaestorship, but since only two of these were elected every year and since they were available to plebeians, they faced a potential logjam if they wanted to move up. Tatum (1999), 98 suggests another reason: his mortification at the loss of face he had suffered drove him to accomplish something concrete to regain prestige. He may also have desired the tribunate because its legislative powers would allow him to strike blows against his opponents.

<sup>261</sup> Tatum (1999), 90-111 has an excellent discussion of the problems confronting a patrician who wanted to become a tribune.

<sup>262</sup> Cic. Att. 30 (2.12).2 For a discussion of Clodius' independence of the triumvirs, see the classic article by Gruen (1966). See also Pocock (1924, 1927); Marsh (1927); Seager (1965); Lintott (1967). There has been a lot of ink spilled trying to put Clodius into the orbit of one politician or another, but it is very difficult to pigeonhole him in this manner.

the year Clodius had been elected tribune and was back on board in support of the triumvirate.<sup>263</sup>

Clodius demanded a reward for supporting the triumvirs. He was determined to make Cicero pay for his testimony at the Bona Dea trial and for years of public insults after it, and the triumvirs had to agree to stay out of his way. He included in his legislative program a law against executing citizens without trial, which was aimed at Cicero because he had the Catilinarian conspirators put to death.<sup>264</sup> Pompey had stood surety for Clodius' good behavior, but by early 58, Pompey needed Clodius more than he needed Cicero, so he ignored the orator's pleas for help. Clodius won over the consuls, got his legislative program through, and then prepared to bring Cicero to trial. Cicero had a number of supporters, but many of the most important and influential senators did not want to deal with Clodius' violent gangs and perhaps even hoped to win Clodius as an ally. They persuaded Cicero to exile himself, and upon his departure from the city Clodius had a law passed banishing him from Italy. Cicero eventually went to Greece, where he resented his fate and, feeling betrayed, began to loathe those senators who had persuaded him to leave without putting up a struggle. His last act before he left the city was to set up a statue of Minerva on the Capitol.<sup>265</sup>

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<sup>263</sup> Tatum (1999), 112-113.

<sup>264</sup> We should keep in mind that, while there was a personal motive in having this law passed, it would be reductionist to assume that Clodius' only motive was personal. There were debates in Rome about legitimacy of the *senatus consultum ultimum*, which gave Cicero the authority to execute the conspirators, before Clodius' tribunate. See Lintott (1972).

<sup>265</sup> Mitchell (1991), 127-143; Tatum (1999), 150-156.

Soon after Cicero had left, mobs attacked and burned his house on the Palatine. Clodius arranged for the purchase of Cicero's house and some surrounding land under the terms of a law he passed after Cicero's departure. The law has become known to us as the *lex de exilio Ciceronis*, and in addition to interdicting Cicero from fire and water, it included a provision allowing seizure of the sites that contained the Porticus of Catulus and Cicero's house for the establishment of a shrine to Liberty.<sup>266</sup>

### **Displays of Piety as Political Statements**

Because Roman religion and Roman politics were so closely linked, it was inevitable that religious forms would be used to send political messages. This does not imply that every religious act in ancient Rome had political overtones nor that the religion of the late Republic was corrupted and exploited for political ends. But since Roman religion and Roman politics were aspects of a greater whole, that is, Roman civic life, religious forms, acts, and symbols could and would be appropriated to send political messages. Roman religion offered a convenient symbolic vocabulary which allowed Roman politicians to communicate a lot of information without having to make a speech. Furthermore, the public nature of Roman religion meant that this kind of communication would reach a wide audience, which was very important to the Romans, who lived in an age without mass media. A speech could reach the few thousand who gathered in the forum to witness it,<sup>267</sup> but a temple, altar, or other form of religious dedication would

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<sup>266</sup> Cic. *Sest.* 53-54, *Red. Sen.* 18, *Dom.* 59, 62, 102-122, *Leg.* 2.42, *Att.* 74 (IV.2).2-5; Dio Cass. 38.17.6. For a discussion of the terms of the law and the sources, see Sternkopf (1900), Gurlitt (1900), and Moreau (1987).

<sup>267</sup> For a discussion of how information spread in republican Rome, see Laurence (1994) and below, pp. 162-166.

usually stand for quite a while, and could thus potentially impart a message to many more people. In the same manner the institution of games, festivals, and other rituals that would be repeated yearly (or at some other interval) would also reach many more people than a speech, even if that speech were written down and published. The Roman audience for these messages would not think anything was amiss with using a religious act to impart a political message, since they were acculturated from childhood to see Roman politics and Roman religion operate as part of an interconnected whole.

The struggle over Cicero's house employed this kind of religious communication. Both men made displays of piety which contained a political message for their fellow citizens. Both men then proceeded to challenge the other's piety, undermining the other's message by questioning the propriety of their religious acts. The conflict over the house represented an attempt to control this kind of religious communication, since the issue at stake revolved around whether Clodius' temple to Libertas, with the political message imbedded in it, would continue to exist and would thus continue to impart Clodius' message.

Before we look at Clodius' temple, let us look at another example of a political message encapsulated in a religious structure: the temple of Concord. The temple, built originally in 304 B.C., was rededicated (for the second time) in 121 B.C. by the consul M. Opimius after he had crushed the Gracchi and thus 'restored' harmony to the *populus Romanus*. From his own point of view he had saved the state from a dangerous demagogue and restored civic unity, and he chose a pious act, the rededication of a temple, to advertise that fact. Of course, his opponents saw his act of piety in a

completely different light. They found it offensive that a man who was responsible for the deaths of so many citizens would chose a temple to Concord as the place to memorialize his deeds. As a result they appropriated the symbol for their own purposes, defacing it with graffiti that reminded any passers-by how Opimius had brought ‘concord’ back to Rome.<sup>268</sup> Opimius thus found a way to combine devotion to the gods with a political message, and his enemies attempted to undermine that message by attacking the structure he had chosen to impart it.

The temple of Concord continued to have symbolic value during the turmoil of the late republic. It was there that Cicero provided evidence to the senate that the Catilinarian conspirators were trying to seize control of the state, and it was there that the senate resolved to execute them.<sup>269</sup> The senate could meet in any inaugurated space; the choice was up to the presiding officer. Cicero clearly chose the temple of Concord for its symbolic value. The goddess represented harmony between all levels of Roman society, which Cicero hoped to restore by suppressing the conspirators. It also harkened back to Opimius, who had used what Cicero regarded as legitimate violence to restore order after the senate issued the *senatus consultum ultimum*, the same decree by the authority of which Cicero executed Catiline’s supporters.<sup>270</sup>

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<sup>268</sup> Plut. *C. Gracch.* 17.

<sup>269</sup> Cic. *Sest.* 28, *Phil.* 2.15, 19; Sall. *Cat.* 49.4.

<sup>270</sup> Some Romans might call into question the legitimacy of Opimius’ actions and of the *senatus consultum ultimum*, but Cicero certainly did not, see, e.g., *Planc.* 70, and more or less the entire *Rab. post.* For a discussion of the *senatus consultum ultimum*, which gave emergency powers to the magistrates in times of crisis, see Mitchell (1971).

We know that Cicero appreciated the political value of religious symbols, since, as we have seen, Cicero's last act before leaving the city was a display of piety that contained a political message. Because he would be leaving the city and would be unable to use his skill at oratory, he let a dedicatory statue on the Capitol do his speaking. Votive offerings were a central element of Greco-Roman polytheism, often made before a long journey as a prayer for safety or after a safe return as the contractually obligated form of thanks.<sup>271</sup> Cicero chose to make his offering 'to Minerva, protectress of the city',<sup>272</sup> an act which contained a number of messages for any viewer of his offering. By making the offering as he was leaving he was symbolically transferring guardianship of the city from himself to Minerva, thus reminding the Romans that he had protected the city during his consulship by saving it from the Catlinarian conspirators. Of course, he was also reminding the citizens that his absence meant that Rome was losing one of its most important human protectors. Furthermore, the presence of the statue reminded any who saw it that Cicero's chief concern, even in exile, was the safety of the city. All three of these messages might elevate Cicero in the minds of the Romans and undermine Clodius, who was chiefly responsible for removing a man whose prime concern (or so Cicero hoped the Romans would think) was Roman civic health. Thus the dedication spoke for Cicero when he himself was unable to be present to speak.<sup>273</sup>

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<sup>271</sup> Burkert (1985), 68-70; Scheid (1998), 87-89.

<sup>272</sup> Cic. *Dom.* 76, 92, 99, 144-45, *Sest.* 49, *Vat.* 7, *Leg.* 2.42; Plut. *Cic.* 31.5; Dio Cass. 38.17.5; Quint. *Inst.* 11.1.24; Allen (1944), 8-9.

<sup>273</sup> And perhaps also, as Mitchell (1991), 138 suggests, reminding them that he was saving it from further violence by removing himself from the city.

Cicero was not the only one who realized how well acts of piety could serve to impart political messages. As part of his *lex de exilio Ciceronis*, Clodius had Cicero's house, where Cicero conducted the rites of his family cult, confiscated by the community and its site dedicated to the goddess Libertas. He would thus in one stroke remove from the community, roots and all, a man who had trampled on the liberties of the Roman people (by executing citizens without trial) and at the same time honor the goddess who personified and protected those liberties. *Libertas* to the Romans represented both the personal freedom of an individual Roman (the fact that no one owned him) and the civic freedom of the citizen body as a whole. The goddess was even associated with the right of appeal,<sup>274</sup> on which Cicero had arguably trampled when he had Catiline's followers put to death. Clodius' message was clear. Cicero was not the guardian of the city but the destroyer of the freedom of his fellow citizens. Clodius thus had neither committed a crime nor endangered the state by having Cicero exiled. He had acted as champion of Roman liberty. The temple was a message preserved in stone, one which could speak for Clodius forever. So long as the temple stood, the Romans would remember Clodius' role in avenging Roman citizens executed without trial and (so Clodius hoped) see him as the true protector of the city. Cicero recognized the communicative potential of the temple to Libertas. Of course, he had a different idea about what the temple's message was. At his speech before the college of pontiffs after his return from exile, he asked the college, 'will you brook that this portico should stand on the Palatine, yes, in the city's fairest spot, to be an ineradicable memorial to all future generations of all races of a tribune's

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<sup>274</sup> Wirszubski (1968), 1-2; Tatum, (1999), 165.



recklessness, a consul's wickedness, the barbarity of conspirators, the ruin of the republic, and of my own grief?"<sup>275</sup>

Thus Clodius and Cicero each employed an act of piety as a way of communicating, Cicero by setting up an offering and Clodius by building a temple. When Cicero's exile ended, he tried to remove the temple, thus removing Clodius' message from the view of the Romans. Clodius was equally determined to see that the temple continued to stand. They had to make their case to the fellow members of the community, who would decide whether the temple would be torn down. The community would, in effect, judge whether the consecration of the temple genuinely fulfilled an obligation to a god and, at the same time, whether Clodius' message represented the will of the community.

### **Cicero's House**

Cicero's first goal upon his return in September, 57, was to regain his land and to rebuild his house.<sup>276</sup> The site on the Palatine was precious to him because the hill was the most fashionable, prestigious, and expensive neighborhood in Rome, and when he purchased the property and took up residence there, he was showing the entire community that he had reached the pinnacle of Roman society. Of course, the rebuilding of the house would also entail the destruction of Clodius' temple, so if he could regain his Palatine residence he would win a victory that was doubly symbolic.

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<sup>275</sup> *'Hanc vero in Palatio atque in pulcherrimo urbis loco porticum esse patiemini, furoris tribunicii, sceleris consularis, crudelitatis coniuratorum, calamitatis rei publicae, doloris mei defixum indicium ad memoriam omnium gentium sempiternam?'* Cic. Dom. 103. (Loeb trans.)

<sup>276</sup> See Mitchell (1991), 127-143 and Tatum (1999), 150-184 for a review of the political maneuvering that resulted in Cicero's return.

Because the Romans did not have a religious system based upon a centralized hierarchy, the process of deciding whether the temple would be deconsecrated and the land restored to Cicero was quite complex. By the time it was over, the senate, people, the consuls, and one of the religious colleges all had their say in the matter, and a decision was reached only after complex maneuvering by Cicero and Clodius. Fortunately, we have Cicero's speeches and letters to show how these various individuals and groups interacted to reach their decision.

Cicero had to face a problem: being recalled from exile did not mean that he would automatically regain his property. Cicero's had to convince his fellow citizens that the fate of his home was a matter of public interest. He set the stage immediately upon his return. On the September 5<sup>th</sup> he made two speeches, one before the senate and the other before the community as a whole.<sup>277</sup> He took care to thank by name all those citizens who had fought against his exile and had helped get him recalled.<sup>278</sup> He also took special care to emphasize his own personal piety and concern with the welfare of the gods, which he contrasted with the impiety of his enemies. This was an important step to take, since by advocating the removal of a temple he was opening himself up to criticism for impiety, which would hurt his public standing. If he could succeed in affixing the label 'impious' on Clodius and his allies, it would be easier for the community to have

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<sup>277</sup> A good general discussion and rhetorical analysis of the *post reditum* speeches can be found in Nicholson (1992).

<sup>278</sup> Nicholson (1992), 45-89 has an discussion of the social importance of repaying one's friends by giving thanks, as well as an exhaustive list of those whom Cicero owed, both those whom he thanked and those whom he did not.

Clodius' temple removed, since the Romans could rationalize the removal by arguing that the temple was not acceptable to the goddess, as its dedicant was tainted with impiety.

Therefore, one of Cicero's goals in the speeches *post reditum* was to set up a contrast between himself, whom he portrayed as respectable, pious, and civic-minded, and his opponents, whom he characterized as ruthlessly self-serving, violent, and impious. Much as a Roman's religion was intertwined with other aspects of his civic life, piety and impiety (or the perception thereof) was part of his public image. We should not be surprised to see Cicero advertise his piety in a speech aimed at displaying his civic virtues.

Cicero made certain that his *post reditum* speeches stressed his and his allies' respect for the gods. He began his speech to the senate by thanking everyone who supported him during his exile. Prominent among these were the immortal gods, 'since it is by their grace,' Cicero proclaimed, 'that we enjoy these blessings and others with which they have endowed us.'<sup>279</sup> He went on, thanking the senators for restoring 'to us the affection of our parents and the gifts of the gods, the distinctions conferred upon me by the Roman people . . . ' etc.<sup>280</sup> And again in the same passage he stated that 'to the immortal gods we owe everything.'<sup>281</sup> The cumulative effect of all this is clear. At the same time Cicero he was thanking the senators for ending his exile, he was demonstrating his personal piety by repeatedly and effusively thanking the gods, creating an image of

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<sup>279</sup> 'quorum beneficio et haec tenuimus et ceteris rebus aucti sumus...' Cic. *Red. sen.* 2. (Loeb translation).

<sup>280</sup> 'parentum beneficia, deorum immortalium munera, populi Romani honores...' Cic. *Red. sen.* 2. (Loeb translation).

<sup>281</sup> 'omnia dis immortalibus debeamus...' Cic. *Red. sen.* 2. (Loeb translation).

himself as a man who knew his religious obligations and who took seriously his relationship with the divine members of the Roman community. Cicero returned to this theme in his speech before the people. He thanked the gods for giving him children and many other blessings. He showed his esteem for the *populus Romanus* by comparing his gratitude toward them to the gratitude he felt toward his divine protectors. He proclaimed that he owed the Roman people as much as he owed the gods, since it was they who had restored all of the blessings that the gods had originally given.<sup>282</sup> Of course, Cicero had a rhetorical point that he wanted to make, but we should not dismiss the references to the immortal gods in his speech as empty verbiage. The Romans valued the concept of *fides*: a person who had *fides* recognized the importance of paying back what was owed.<sup>283</sup> Cicero crafted the *post reditum* speeches to display his *fides*, and so he repeatedly offered thanks for the benefits that the gods, his friends, the senate, and the *populus Romanus* had bestowed upon him. The Roman concept of *pietas* was linked with *fides*, since, like *fides*, it involved the scrupulous fulfillment of obligations, in this case obligations owed to gods and to family.<sup>284</sup> Displaying his *pietas* was part of displaying his *fides*. Piety was thus not just a trope; it was a central theme of these orations.

There was another side to the coin. In the *post reditum* speeches Cicero portrayed his enemies as self-interested instead of civic-minded, contrasted their lust for violence with his desire for peace, and claimed they dishonored the gods rather than

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<sup>282</sup> Cic. *Red. pop.* 5.

<sup>283</sup> Hellegouarc'h (1963), 23-25.

<sup>284</sup> On the relationship between *pietas* and *fides*, see Hellegouarc'h (1963), 276-279.

worshiped them.<sup>285</sup> In this way he put his enemies' impiety in sharp contrast with his own piety. For instance, Cicero got a lot of mileage out of Clodius' violent political tactics, which led to the destruction of Roman temples. Clodius had gotten a law passed that legalized most *collegia*, which were voluntary organizations usually centered on one craft, trade, or neighborhood.<sup>286</sup> In the wake of the Catilinarian conspiracy such organizations were outlawed as a threat to public order. In a city with no police, *collegia* could easily be mobilized as an armed gang. This is exactly what Clodius did in 58, and he had no qualms about using these groups to intimidate his enemies. Clodius' enemies followed his lead and mobilized their own gangs, and during the 50s Roman politics was fought in the streets as much as it was discussed in the forum. Cicero painted a vivid portrait of the violence: armed thugs seizing the streets, noble Romans attacked, and even temples to the gods put to the torch.<sup>287</sup> Thus Clodius' political tactics were not just unconventional; they were impious.

While speaking before the senate, Cicero also took special care to insult the two consuls of the previous year, whom he blamed for failing to support him against Clodius. He described their offensive personal habits, mocked their appearance, and attacked every aspect of their public and private lives. Their attitudes toward the gods did not escape notice. Cicero denounced Gabinius for permitting Clodius to pass his law on obnuntiation, which Cicero claimed trampled on traditional Roman religious

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<sup>285</sup> See Nicholson (1992), 90-97 for a discussion of Cicero's *inimici*.

<sup>286</sup> For sources and discussion, see Tatum (1999), 117-119 and the corresponding notes.

<sup>287</sup> Cic. *Red. sen.* 7, *Red. pop.* 4. The reference to burning temples may be rhetorical exaggeration, but, in fact some of Clodius mobs eventually did cause a fire to burn down a Nymphaeum. See below, p. xx.

procedure.<sup>288</sup> Cicero also denounced Gabinius' colleague Piso, pointing out that his bankrupt intellectual interest centered on Epicurean philosophy.<sup>289</sup> The most famous aspect of Epicurean philosophy, apart from the teaching that pleasure is the central aim of life, is the idea that the gods were not at all concerned with mortal affairs and did not deign to intervene in them. This view contrasted with Roman religious practice, which assumed the gods would and could intervene on the Roman's behalf or on behalf of Rome's enemies, depending on the state of the gods' relationship with the Roman community. Though many Roman aristocrats favored Epicurean philosophy, including Julius Caesar and his assassin C. Cassius, many others held the philosophy in disdain,<sup>290</sup> and its controversial assertions about the nature of the gods made it easy for Cicero to use Piso's philosophical outlook as a sign of his supposed impiety.

### **Pompey and Cicero**

The senate decided to discuss restoration of Cicero's property, and on the motion of Bibulus, it asked the pontiffs to give an opinion on the religious issues involved.<sup>291</sup> On September 29 the college of pontiffs met in accordance with the senate's request, and both Cicero and Clodius were allowed to make an address. Cicero published the speech he gave, the *De Domo Sua*. To a modern reader it seems very unusual, because the first

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<sup>288</sup> Cic. *Red. sen.* 11.

<sup>289</sup> Cic. *Red. sen.* 14.

<sup>290</sup> See, for instance, the criticism of Epicurean theology made by 'Cotta' in Cic. *Nat. D.* 1.57-124, in particular 1.115-119.

<sup>291</sup> Cic. *Dom.* 69, *Har. resp.* 11.

quarter of the speech<sup>292</sup> had nothing to do with the issue at hand. Instead, it discussed Cicero's relationship with Pompey and defends his friendship. At first glance this would seem to be irrelevant and thus rhetorically ineffective, but Cicero was responding to the address of Clodius, who made an issue of Cicero's support of Pompey. This merits comment, since it shows how contests over piety were connected to other aspects of civic life.

Although the college of pontiffs was summoned to discuss whether the temple of Libertas should continue to exist, they could not confine themselves to this issue, because no one present, not the members of the college, not Cicero, and not Clodius believed that the only thing at stake was the existence of a temple. The recommendation of the pontiffs would be part of the community's judgment of Clodius and Cicero as citizens and as community leaders. If the pontiffs decided that the temple should remain, they would be recognizing its establishment as a genuine act of *pietas*. They would be declaring to the community that Clodius had acted in the community's best interests, and they would be endorsing the idea that Cicero had trampled on the liberties of the Roman people when he executed the Catilinarian conspirators, since that was one of the messages Clodius had sent when he had built the temple. And by endorsing Clodius' past actions they would effectively give him a contemporary political victory, thus bolstering his career. If, however, they supported the temple's removal, they would be condemning Clodius and endorsing Cicero. Since the verdict of the college was a statement about the fitness of Cicero and Clodius to serve the Roman community, neither politician confined

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<sup>292</sup> Sections 3-31. Goar (1972), 46 argues that the primary purpose of this section is to emphasize that he is a conservative optimus just like the pontiffs, but this oversimplifies the political outlook of the college.

his discussion to the temple. Past and current political acts, personal, family, and public religious behavior, in fact, every aspect of private and public life was fair game.

Even though the college considered evidence that lay outside the immediate scope of their inquiry, we should not be tempted to dismiss the role of the pontiffs as ‘merely’ political. It was inherently political, but also inherently religious. Perhaps it would be better to say that the concerns of Cicero, Clodius, and the college were ‘civic’, since both politics and religion were part of Roman civic life. The problem we face if we focus on the political components of the speech is that we underrate the importance of the religious.

### **The Stakes**

We must now turn to the question of what each side stood to gain or lose by the pontiffs’ decision. At first glance, the question would seem to be easy to answer: if the pontiffs ruled in favor of Clodius, the shrine would remain; if for Cicero, the shrine would be demolished and Cicero could rebuild his house. A ‘vexed passage’, as Tatum calls it, in Cicero’s Letters to Atticus<sup>293</sup> forces us to reconsider. In a letter written in early September, 57, Cicero described the possible outcomes of his hearing before the college:

*qui (the pontiffs) si sustulerint religionem, aream praeclaram habemus, superficiem consules ex senatus consulto aestimabunt; sin aliter, demolientur, suo nomine locabunt, rem totam aestimabunt.*

If they (the pontiffs) lift the religious sanction, I have a splendid site and the Consuls, under senatorial decree, will estimate the value of the building. If not, they will pull down the temple, let out a contract in their own name, and make an estimate for the whole.<sup>294</sup>

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<sup>293</sup> Tatum (1999), 188.

<sup>294</sup> Cic. Att. 73 (IV.1).7, Shackleton Bailey’s Loeb translation.



Shackleton Bailey, following Nisbet, explains the meaning of this section:

“If the consecration [of the temple of *Libertas*] is nullified [Cicero] will have the site on which to rebuild and receive compensation for his demolished house; that Clodius’ structures would in this case be removed . . . is taken for granted. If on the other hand the consecration is upheld, he [Cicero] will be paid compensation for both site and building. The temple, as ‘a conspicuous reminder of the Senate’s defeat’, will none the less be demolished and another, not associated with Clodius, built in its room.”<sup>295</sup>

This would seem to indicate a win/win proposition for Cicero, or at least one that was win/not-lose. For Clodius, however, even a victory before the pontiffs would be a Pyrrhic one, since his own temple would be destroyed and replaced by one built under the senate’s guidance. Upon consideration, however, we cannot accept Shackleton Bailey’s interpretation of the passage.

First, there is a potential error in the text. Watt, following Schulz, argued that the received text is flawed, that something is missing between *demolientur* and *suo nomine*.<sup>296</sup> Shackleton Bailey’s text includes no lacuna, since he feels the text makes sense as it stands. If Watt’s assertion is correct, Shackleton Bailey’s and Nisbet’s conclusions would be erroneous, since the lost text might indicate that it was something else, not the temple, that would be torn down as a replacement site for Cicero’s house.<sup>297</sup>

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<sup>295</sup> Shackleton Bailey (1965), 169. The interior quote comes from Nisbet (1961), 240. Shackleton Bailey originally (1960), argued that Cicero was mistaken and that the consuls would never tear down the temple if the pontiffs found for Clodius, but Nisbet convinced him that it made perfect sense for the consuls to tear down the building, given the senate’s antipathy for what it stood for.

<sup>296</sup> Watt, *Att.* IV.1.7, followed by Tatum (1999), 188.

<sup>297</sup> It is hard to say what this ‘something else’ might be. Most likely another structure on the Palatine or in another important area in Rome so the senate could restore some of Cicero’s dignity even if they did not restore his original property.

Second, in spite of the assumptions of Nisbet and Shackleton-Bailey, the political context does not lean toward a conclusion that the senate had already decided to punish Clodius. Nisbet convinced Shackleton-Bailey that the senate so despised Clodius that it was willing to tear down his temple no matter what the pontiffs ruled. Tatum counters such assertions by citing Cicero himself. In a later passage of the same letter, the orator admits that own star had fallen since his return.<sup>298</sup> This makes it far from certain that the senate so opposed Clodius and so favored Cicero that they had already decided to tear down the temple. Tatum also notes that the grain crisis and Pompey's political maneuvers were influencing events, and suggests many in the senate were ready to stop flogging Clodius if they could use him as a counter to Pompey.<sup>299</sup>

Further analysis adds weight to Tatum's conclusion. Even if we conclude that the text is correct as it has come down to us, we do not know exactly what was said to Cicero to make him conclude that the shrine was destined to be demolished, and he may be giving a very optimistic view of the situation to Atticus, reporting the opinions of a few of Clodius' die-hard opponents. As we have seen, contests over religious issues were tangled and complicated affairs, and though someone may have suggested in the senate that the *aedes Libertatis* be removed regardless of what the pontiffs ruled, making suggestions in the senate was easy. Implementing this one in the face of a pontifical ruling would have been quite difficult. The key issue on which the fate of the shrine ultimately hinged was whether Clodius had received proper authorization from the

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<sup>298</sup> Cic. *Att.* 73 (IV.1).8.

<sup>299</sup> Tatum (1999), 188-189.

populace before consecrating the temple. Had the pontiffs concluded that Clodius had observed all necessary civic and religious forms when he consecrated the structure, they would have essentially declared the shrine a viable and integral part of the civic cult and given Clodius a strong weapon to use against anyone who wished to remove it. In this case Clodius could essentially argue that he had acted piously when he constructed the temple and that those who wished to remove his shrine were acting impiously. In addition, removing the temple in spite of the pontiffs' ruling would set up an interesting constitutional quandary, since it would pit the senate's traditional authority over many religious issues against the authority of the *consilium plebis*, which had authorized Clodius to act. We may also be certain that Clodius would put up a stiff fight and perhaps win a lot of support if the pontiffs were to rule in his favor. If Clodius had demonstrated one characteristic, it was his willingness to fight every political battle to its utmost, regardless of the consequences.<sup>300</sup> Finally, many senators who were willing to recall Cicero would draw the line at tearing down a properly-consecrated religious structure, and many others would not wish to be drawn in to a such a political quagmire in the middle of the other major issues the senate had to face, not the least of which was dealing with the grain shortage plaguing Italy.

Thus, it is best to conclude, with Tatum, that the letter cannot be used as proof that the temple to Libertas was destined to be destroyed regardless of what the pontiffs

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<sup>300</sup> For instance, he was willing to use every device, including violence, to prevent Cicero's recall in spite of the overwhelming support the bill had in the senate by August, 57. As Cic. *Red. Sen.* 25-26, 31, *Dom.* 30, *Sest.* 139-130, *Mil.* 30, and *Pis.* 34 indicate, Clodius was the only senator to oppose the bill calling for a law to recall Cicero. The fact that he delayed Cicero's recall over a year after it was first discussed in the senate was an achievement to his ability to get the system to work in his favor in the face of considerable odds.

decided. Its fate rested largely with the pontiffs and with the senate, and whichever party was able to influence those two bodies would be able to determine what happened to the site.

### **Clodius' *Pietas***

We have seen before, in chapter two, that Romans in general and the political elite in particular scrutinized each other's religious behavior. Since a person's *pietas* was part of his public character, if his enemies observed him taking actions that seemed arguably impious, they would be certain to call this to the attention of their fellow citizens, in hopes of undermining their opponent's civic status. Cicero's speech before the pontiffs provides another example of this. Cicero claimed that Clodius' whole career was one act of impiety after another, and he cited examples of supposedly impious behavior as a way of persuading the pontiffs to rule against Clodius. This again illustrates that the parties in this dispute did not believe that the pontiffs were going to be influenced only by the immediate issues of religious law, but were instead taking into consideration every aspect of their religious lives. Cicero, therefore, made Clodius' impiety the central theme of his speech. Let us look at some examples.

The Bona Dea affair, of course, did not escape Cicero's notice. Clodius was arguing that he had built and consecrated the temple of Liberty in complete fulfillment of religious law. Cicero mocked him and wondered that a man who had stripped the *pontifex maximus'* house of its holiness would have the gall to try to consecrate

Cicero's.<sup>301</sup> Cicero gleefully contrasted Clodius' concern for the civic cult when defending his temple with his behavior at Caesar's house. He sarcastically suggested that it might be wise for the pontiffs to make use of their religious expertise and remind Clodius that excessive religious scrupulosity was as much anathema to proper religious behavior as insufficient care.<sup>302</sup> Clodius, so Cicero claimed, was so eager to participate in the civic cult that he intruded on rites even though he was forbidden!<sup>303</sup> The point of the contrast is clear. No matter what claims Clodius made about his pious intentions in founding the temple of Liberty, his own history of irresponsible behavior belied those claims. He urged the pontiffs to decide whether the temple should stand after considering the character, in particular the *pietas*, of its founder.<sup>304</sup> This is significant because it shows that the fate of Cicero's house did not depend solely on questions of law and religious procedure. The temple was to be judged not only on whether the consecration had been legally valid but also on whether its founder really had the welfare of the Roman civic cult at heart. Cicero was arguing that since Clodius had shown such reckless contempt for the wishes of the gods in 62, he was not really interested in their welfare in 58 when he dedicated the temple. Therefore, the temple did not really

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<sup>301</sup> *Publiusne Clodius, qui ex pontificis maximi domo religionem eripuit, is in meam intulit?* Cic. Dom. 104. This is another example of how supposedly 'resolved' contests over piety could continue to be fought years after Roman institutions had given their verdict.

<sup>302</sup> Those who seemed to go too far in their concern with the religious part of their civic life were mocked as having *superstitio*. Whether one was superstitious or properly religious was in many ways in the eye of the beholder. The difficulty in separating *superstitio* from *religio* was another feature of Roman religious life which encouraged public debates over a person's piety.

<sup>303</sup> Cic. Dom. 105.

<sup>304</sup> Tatum (1993b) argues that Cicero's rhetorical strategy in the *De Domo* demonstrated that the Romans perceived a connection between religion and morality, because Cicero did not confine himself to the legal issues before the college, but attacked Clodius' character in every way possible.

supplement the civic cult, its foundation was not an act of *pietas*, it did not really fulfill a religious obligations owed by the Roman state, and it could therefore be removed without injury to the civic cult and the public safety.

Cicero likewise challenged Clodius' personal piety by attacking the adoption which allowed him to run for tribune. Clodius' adoption had a number of unusual features, which Cicero mocked. The man who adopted him was not childless and in need of an heir; he was younger than Clodius, married, and capable of having children. Moreover, Clodius did not follow custom and take the name of the man adopting him.<sup>305</sup> But Cicero did not assault the adoption primarily on the grounds that it was laughable. Instead, he argued that the adoption was wrong because it was an act of impiety, and by doing this he made Clodius' *pietas*, (or lack thereof), the central issue of the section. We must note the placement of the discussion of the adoption in the speech. The first thirty-two chapters were preliminary and were delivered in answer to Clodius' criticism of his support for Pompey. The real heart of the argument began in section 33,<sup>306</sup> with an attack on the adoption. Since the first part of the speech was an extemporaneous defense of his public policies in response to Clodius' attack, the discussion of the adoption was the first part of Cicero's prepared speech. And he began his prepared text with an assault on Clodius' piety.

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<sup>305</sup> Cic. *Dom.* 33-34, Goar (1972), 47-48.

<sup>306</sup> After, of course, a masterful piece of *praeteritio*, in which Cicero claimed that he is going to pass up the discussion of religious issues in favor of a discussion of political ones: '*quae cum sit in ius religionis et in ius rei publicae distributa, religionis partem, quae multo est verbosior, praetermittam, de iure rei publicae dicam.*' Cic. *Dom.* 32. Yet the next topic is the adoption, and his chief attacks on it focused on religious issues. We should not be surprised that Cicero cannot avoid referring to religion when discussing something that is supposedly political, given the difficulty of really drawing a line between the two in public life.

Cicero found many grounds on which to characterize the adoption as impious. First, frivolous adoptions of this kind threatened the religion of the family. Since a family cult could only be maintained by its members, transferring people from family to family, while understandable when used to reinforce a family that was threatened with extinction, reduced the number of people participating in the adoptee's original family cult, and so made it more likely that that *gens* and cult would die out. Cicero chose to cast this in the most negative way possible: he asked Clodius why he was trying to destroy his family's cult, to the extent that it was in his power to do so.<sup>307</sup> Cicero tried to convince the pontiffs that Clodius had recklessly put political ambition over the well-being of his family cult. In short, he was impious.<sup>308</sup>

There is another issue which caused the adoption to be an act of impiety. Clodius was a patrician, one of a very few families to whom a number of important priesthoods were reserved, and he was setting an uncomfortable precedent that threatened to destroy the whole structure of Roman religion. If there were no patricians, there could be no *rex sacrorum*, no *flamines*, and no *Salii*, since these priestly offices were exclusively reserved for patricians, and the patrician seats on the four major priestly colleges would be vacant.<sup>309</sup> Therefore Clodius again put his own personal ambition ahead of the good of

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<sup>307</sup> *'sacra Clodiae gentis cur intereunt quod in te est?'* Cic. Dom. 34.

<sup>308</sup> Cic. Dom. 36-37. It may seem that even if we accepted Cicero's premise, the impiety was a personal and not a civic one, since it was the family, not the civic cult being trampled on. The Romans however, thought it beneficial for the community to act as protector of family cults, as the process of adoption shows, since a public assembly had to grant approval before any adoption of a patrician could take place. Another example is the Parentalia, a feast in February where offerings were made to the family gods—this feast was part of the civic religious calendar. See Scullard (1981), 73-79.

<sup>309</sup> Cic. Dom. 37-38.

the civic cult, and thus ahead of the good of the community. Impiety and personal interest went hand in hand.<sup>310</sup>

### **Clodius' Potential Responses**

Defining piety and impiety was difficult in Rome, since authority to make such a definition was scattered among a number of different individuals and institutions.<sup>311</sup> Because of this, it was not always clear what constituted pious and impious behavior. This ambiguity encouraged the Romans to make piety and impiety a topic of public discussion, since in a civic-minded community such as Rome, a person's standing often hinged on whether he was perceived to possess or lack traditional virtues such as *pietas*. Cicero used the ambiguity inherent in Roman religion to his advantage in the speech on his house. None of the examples cited by Cicero was an act that was without doubt impious. Instead, he cited *arguable* acts of impiety. We must keep in mind that Clodius could counter the charges that Cicero leveled. This put the decision as to whether Clodius had acted impiously in the hands of the audience.

We do not have Clodius' speech before the college, but Cicero's speech gives us some clues about how Clodius defended himself, and we can perceive other potential counter-arguments to Cicero's attacks. We have already discussed Clodius' behavior at the festival of the Good Goddess.<sup>312</sup> In the course of the Bona Dea affair, the college of pontiffs had defined the presence of a man at the rites as an act of impiety. It would seem

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<sup>310</sup> Goar (1972), 48 suggests that the section on the adoption 'does not materially advance Cicero's argument', but even if this section did not discuss the house, it did, in fact, advance his argument because it put Clodius' impiety in the foreground.

<sup>311</sup> For a full discussion of this issue, see chapter 2.

<sup>312</sup> See above in chapter three, pp 76-77.



that on this point Clodius was sunk, and Cicero had his irrefutable proof that Clodius was impious. But Clodius had an easy reply to Cicero's charges; he had not committed an act of impiety, since the court to try him for that act had found him not guilty. Of course, given the widespread belief that Clodius had bribed his way to an acquittal, there were many in Rome who would have laughed at such an argument. Cicero appears to have sensed this, given the glee with which he reminded the Romans of the affair in this and other speeches.<sup>313</sup> For our purposes here, though, we have to recognize that even if many Romans would have rejected the claim that the acquittal proved his piety, many others would have taken Clodius' side. Clodius' popularity remained high in Rome in the years after 61,<sup>314</sup> so even if he was not able to convince all that he was innocent, he convinced some.

Furthermore, in spite of Cicero's attempts to portray the adoption as a monstrous act of impiety, Clodius could argue that it was perfectly proper. Because of the religious implications of adoption, which involved the abandonment of one family cult and the taking up of another, patrician adoptions had to be approved by the *comitia curiata*, a very ancient assembly.<sup>315</sup> Clodius could argue that his adoption had, in fact, been properly approved by the *comitia curiata*, in an assembly presided over by the *pontifex maximus* (Julius Caesar), in the presence of an augur (Pompey).<sup>316</sup> Furthermore, at no

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<sup>313</sup> For a review, see chapter 3, pp. 112-115.

<sup>314</sup> Clodius was able to keep the loyalty of the *collegia* and get elected to the tribunate and aedileship.

<sup>315</sup> For discussions of the *comitia curiata*, see Botsford (1909), 168-200, Taylor (1966), 3-5. For a good review of Roman law as it related to adoption, See Crook (1967), 111-113.

<sup>316</sup> Cicero recognized this potential objection and attacked the legitimacy of the adoption by calling into question the standing of the assembly that ratified it on two grounds (*Dom.* 39-41). First, he argued that the

time had the pontiffs made any objection to the adoption on religious grounds, and apparently they had the opportunity to do so, since they interviewed Clodius before he was adopted (as Cicero grudgingly admits), and found no reason to object.<sup>317</sup> Thus Clodius could argue that he had satisfied every religious requirement and had received the approval of every necessary civic institution before the adoption was completed.

### **A Conflict over Procedure**

After Cicero had implanted in the minds of the pontiffs the idea that the dedicant of the temple of Libertas was thoroughly impious, Cicero challenged the ritual procedure that Clodius employed to consecrate the Palatine site. He tried to convince the pontiffs that Clodius had recklessly disregarded the ritual procedures that maintained the bonds between the Romans and their gods and that as a consequence he had botched the consecration of the temple. This, combined for his contempt for the very goddess to whom he had dedicated the temple and even for the entire Roman religious system, made his supposed act of piety no act of piety at all.

Clodius defended the dedication of the temple by making a number of points to the college, which we can reconstruct from Cicero's speech. He emphasized that he had a legal right to make the dedication.<sup>318</sup> An appropriate religious official, a pontiff, was

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assembly was hastily called in violation of the *lex Caecilia et Didia*, and second, the assembly was held while Bibulus had been watching the skies. We have seen in ch. 2, pp 68-70, that (technically) the second objection did not hold water, and Tatum (1999), 107 convincingly argues that Cicero was distorting the terms of the *lex Caecilia et Didia* to strengthen his rhetoric.

<sup>317</sup> Cic. *Dom.* 35.

<sup>318</sup> 'Tuleram, (Clodius) inquit, ut mihi liceret.' Cic. *Dom.* 106.

present.<sup>319</sup> He pointed out that a dedication was a religious act, and therefore it would be impious to frivolously remove his shrine.<sup>320</sup> These points gave Clodius a very solid case, but none of them was beyond challenge, and that is what is relevant for our point here. Cicero attacked each one of these defenses individually and found a number of flaws in the process of sanctifying the shrine. We saw earlier<sup>321</sup> that Q. Fulvius Flaccus in 173 B.C. committed an act of impiety (removing the roof from the temple of Juna Lacinia in Bruttium) all the while assuming he was acting piously (constructing a temple to Fortuna Equestris in fulfillment of a vow), and he did not realize that his actions would be perceived as impious. Observers began to call Fulvius' activities into question, the senate concluded that he blundered, and it essentially defined as impious the removal of the roof from of a foreign temple. In 57 B.C., the college of pontiffs had to deal with a similar situation: Clodius dedicated the temple under the assumption he was being pious, and yet an argument was presented to the college that his supposed act of piety was, in fact, impious. It had to decide which of the two interpretations of Roman religious law was correct.

We should be careful to avoid oversimplifying the task of the pontiffs. We might conclude that the pontiffs were answering two separate (but related) questions: 'was the temple properly consecrated?' and 'do we as citizens and pontiffs object to Clodius' political behavior enough (or respect Cicero's enough) to find a loophole that would

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<sup>319</sup> *'Pontifex, (Clodius) inquit, adfuit.'* Cic. Dom. 117.

<sup>320</sup> *'Dedicatio magnam, (Clodius inquit), habet religionem.'* Cic. Dom. 127.

<sup>321</sup> See above, pp. 12-14.

enable us to uphold religious law and at the same time give Cicero his house back?’

Goar, for instance, saw Cicero’s rhetorical strategy in the speech as an attempt to ignore the former question by focusing attention on the latter. According to Goar, Cicero employed ‘moral ideas’ to combat the ‘formalism’ of Roman religion, which diverted the pontiffs from the legal issues in the case. He also employed his rhetoric to demonstrate his conservative and optimate political credentials, as opposed to Clodius’ *popularis* tendencies, which ostensibly put Cicero in good stead with the pontiffs, who would thus be inclined to ignore argument in favor of politics.<sup>322</sup> The latter point oversimplifies Roman politics and needs little comment. Tatum has refuted the former point. The moral issues raised by Cicero were not antithetical to the ‘formalism’ of Roman religion. Cicero’s rhetorical strategy, which makes Clodius’ moral behavior as much of an issue as his ritual behavior, assumes that moral and ritual behavior were closely linked, not antithetical.<sup>323</sup>

We can go further, however, than just noting the inseparability of the two sides of the question. If we step back from the immediate issue which concerned Cicero and Clodius, another question presents itself: what would the religious status of Clodius’ temple be if no one had challenged its dedication? It may seem trivial and absurd to ask, but the question is important for our study, because the answer reveals how blurry the line could be between sacred and profane. If no one had challenged the dedication, Clodius’ temple would have continued to stand as a properly consecrated temple. It had,

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<sup>322</sup> Goar (1972), 45-54.

<sup>323</sup> Tatum (1993b).

after all, stood for over a year by September 57, and no one had challenged its legitimacy, at least not formally before a body with religious authority. Tatum uses this fact as a prop for Clodius' case: there had been plenty of time to challenge the validity of the dedication, if anyone had seen fit to do so.<sup>324</sup> But this misses an important point: the consecration was in fact valid, so long as no person or group with religious authority called it into question. Only when Cicero raised the issue before the senate and the college and only after the college of pontiffs concluded that Clodius had erred when obtaining permission to build the temple, was the temple removed.<sup>325</sup> It may seem odd, but Clodius' actions were pious and proper until September 57, when the college of pontiffs defined them as improper and therefore impious. It is this phenomenon that merits attention, since it shows how difficult it could be to distinguish between piety and impiety in republican Rome.

Clodius could argue that he carried out the dedication in complete fulfillment of religious requirements as they had existed (or at least as Clodius had believed they had existed) in 58 B.C. We cannot assume that Clodius was a hack and did not know what he was doing. He was a skilled politician and could not help but recognize that one day the dedication might be challenged. Furthermore, even if one doubts that the dedication represented a genuine act of piety, Clodius knew that everything the temple stood for

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<sup>324</sup> 'Nor, apparently, was there any kind of obstruction [to the dedication of the temple] in 58.' Tatum (1999), 163.

<sup>325</sup> Goar (1972), 51 recognizes the issue: 'For a consecration by pontiffs had, in fact taken place, and the strict legalism of Roman religion would maintain that the former property was sacred until or unless the pontiffs decreed otherwise.' He does not, however, see anything profound in the dichotomy. For him it is just a problem Cicero had to overcome by using his rhetoric to appeal to the pontiffs' conservative political outlook and to get them to rule the site profane.

would be jeopardized if he made it easy for an opponent to have it removed because he had committed an obvious religious blunder. He could hardly have forgotten the example of Caesar's consulship, since he had attempted to take advantage of the perception that Bibulus' obstruction rendered all Caesar's laws invalid on religious grounds. And, paradoxically, Clodius himself later tried to prevent anyone from repeating Bibulus' performance by passing a law on obnuntiation which clarified the procedure for ritual obstruction.<sup>326</sup> Thus Clodius realized that a civic act could be annulled on religious grounds if attention were not paid to procedure. Clodius seems to have scrupulously fulfilled every religious requirement for the dedication, an argument that he made to the college.<sup>327</sup>

The task Cicero faced, then, was to convince the pontiffs to define as profane a site that had been defined as sacred up to the moment they were making the decision. His chief obstacle was the fact that Clodius' dedication had been accepted as proper for over a year. We should recognize that Cicero's task and the decision of the college had a

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<sup>326</sup> On this, see above, pp. 43-44.

<sup>327</sup> Tatum (1999), 164 suggests that Clodius was not scrupulous enough about religious custom when making the dedication, in part, at least, because he was in a hurry to get the shrine up before his enemies could stop him. As evidence for this lack of concern for custom, he cites the fact that Clodius did not invite the whole college, which was customary if not required. There are problems with his analysis. His only evidence that it was customary for the whole college to be present is Cic. Dom. 132. (*At si collegium pontificum adhibendum non videbatur, nemone horum tibi idoneus visus est, qui aetate, honore, auctoritate antecellunt, ut cum eo de dedicatione communicares?*) Cicero in this passage was harping on the age and inexperience of the pontiff Clodius chose to assist him, L. Pinarius Natta, suggesting to the pontiffs that some kind of flaw in the dedication was likely. It is a little much to conclude that it was customary for the entire college to be present at every dedication from this passage. As Tatum points out, many of the members might object to the dedication and refuse to be present, thus embarrassing Clodius. So they were not invited. It is hard to believe that similar situations had not occurred in the past, given the hostility and rivalry between members of Rome's civic elite. Thus the requirement that only one pontiff need be present. Cicero in Dom. 132 suggests that it perhaps might be best that more than one pontiff be present, but since the presence of the other members of the college was not required, we cannot assume that Clodius committed a blunder by not inviting them.

certain profundity given the difference between sacredness and profanity, yet the tension between sacred and profane was balanced by another tension: between Roman religious law, which was written down (literally engraved in stone in some cases) and the interpretive powers of the pontiffs, who had the right to judge how and when religious law was applied.<sup>328</sup> The law itself was fixed, but the interpretive powers of the pontiff made the Roman religious system itself flexible, and it was this flexibility that influenced how Cicero and Clodius presented their cases. Cicero had to find a way to convince the pontiffs to exercise their power and make the site of his house profane again, but he was not looking for loopholes in religious law in hopes that he would find one large enough for the pontiffs to allow him to wriggle through. Instead he was using religious law as the framework on which he could build his case. But it was only the framework, and Cicero did not need to make his case on law alone. He had the opportunity to bring in a whole spectrum of issues to the attention of the pontiffs.<sup>329</sup>

Therefore Cicero attacked every aspect of Clodius' civic life, and, given the nature of the debate and the venue of the dispute, he focused special attention on Clodius' religious life, as we saw above. Toward the end of his speech he concentrated his attack on the temple, offering the pontiffs a wide variety of reasons why the consecration should

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<sup>328</sup> Bergemann (1992), 41-43. Tatum (1999), 189-190. We must remember that the pontiffs had the right to take what was sacred and make it profane, but they did so within the context of Roman religious law. The Roman religious system was flexible, not arbitrary.

<sup>329</sup> Goar (1972), 55, noted this, but his interpretation was influenced by his preconception of Roman religion in the late republic as corrupted by barren formalism, in contrast with, e.g., Christianity: 'Cicero did, at least, attempt to combat the legalism of Roman religion with moral ideas. Perhaps this . . . puts him on a slightly higher plane than Clodius, who relied on this legalism in his campaign to harass Cicero.'

be declared null and void. This required him to tackle Clodius' defense of the shrine point by point.

He denied that Clodius had legal authority to consecrate the shrine because Clodius' seizure of the land itself had negated whatever authority the law supposedly granted to him. Cicero reminded the pontiffs that Clodius had (presumably) inserted the standard clause '*quid ius non esset rogari, ne esset rogatum*': 'if anything illegal was proposed, it should be held that it had not been proposed.'<sup>330</sup> Cicero asked the pontiffs to account Clodius' assaults on him as unjust, which made the seizure of his property unjust. Since the seizure was unjust, the law was null and void.<sup>331</sup> Cicero could thus give the pontiffs grounds under Roman law to declare the consecration improper. He did not base his case only on the text of the law, however. Cicero continued his argument by claiming that it was impious for Clodius to seize Cicero's home, as a home was sanctified by the presence of the hearth and the household gods. Cicero pointed out that Clodius was using religion as a means to destroy religion, which was impious.<sup>332</sup> By showing the pontiffs that the shrine was born through an impious act, that is, the removal of a citizen from his own home, Cicero hoped to convince them that the structure was not really sacred.

Cicero then attacked the goddess enshrined in the *aedes*. He wondered whether a man who had removed *Libertas* from the community could really make a proper

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<sup>330</sup> Cic. *Dom.* 106, Loeb translation.

<sup>331</sup> Cic. *Dom.* 106-108.

<sup>332</sup> '*ea iste non solum contra religionem labefactavit, sed etiam ipsius religionis nomine evertit.*' *Dom.* 109.



dedication to that goddess.<sup>333</sup> He also called into question the sanctity of the idol that Clodius placed inside the shrine. He described in great detail the supposed origin of the statue, giving it the most scurrilous of all possible backgrounds. After researching the matter thoroughly (*quaesivi enim diligenter*), he discovered that rumor had it that the statue was originally of a courtesan from the city of Tanagra in Asia Minor. This was bad. The statue was originally placed in a graveyard on a tomb. This was worse. The statue was stolen by Clodius' brother Appius, who plundered every statue he could find in Tanagra, even those from sacred sites, for his own benefit.<sup>334</sup> This was as bad as it could get. It is hard to say what the pontiffs would have made of this unsubstantiated accusation, but Cicero's intent is clear. He was undermining the sanctity of the shrine, first by linking the goddess with a courtesan, the most base and disreputable woman possible, and then by linking the goddess with a sacrilegious act. It would be easy to dismiss this as mere rhetoric, but Cicero was not taking random potshots and hoping to hit something that the pontiffs could seize upon. Instead he was building a foundation on which a decision to remove the shrine could stand. To get the site removed he had to make a case that, in spite of the apparent sanctity of the *aedes*, the structure reeked with profanity, and that the only truly religious decision the pontiffs could make was to restore the site's sanctity by returning it to Cicero. Again, this might seem like Cicero himself was cynically manipulating religion just to get what he wanted, but there was more at stake than just what Cicero wanted; linked hand-in-glove with the personal advantage of

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<sup>333</sup> Cic. *Dom.* 110-111.

<sup>334</sup> Cic. *Dom.* 112-113.

Cicero and Clodius was the issue of what was best for the civic cult and proper for the state religion. Cicero and Clodius each had a different conception of the temple of Libertas' role within Roman religion.<sup>335</sup> It was up to the community, working through the appropriate officials, to decide which conception was truly in line with the requirements of piety.

Once Cicero had finished casting aspersions upon the goddess that Clodius had enshrined, he then further tainted the shrine by associating its site with a murder. Cicero denied that the construction of the shrine was an act of piety on Clodius' part. Instead, it was a real estate scam designed to give Clodius the largest and most impressive house on the Palatine. According to Cicero, Clodius had already tried to get Q. Seius Postumus to sell him a piece of property adjacent to his house, and when Seius let Clodius know that Clodius would only get the property over his dead body, Clodius obligingly had him poisoned and got the house for a song.<sup>336</sup> With the removal of Cicero's house and the portico of Catulus, Clodius was able to connect the shrine of Liberty to his own home through an impressive colonnade, which linked him with the goddess even more closely.<sup>337</sup> Thus Cicero again gave the pontiffs another reason to authorize the removal of the shrine. What at first appeared to be an act of civic piety was in reality the private

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<sup>335</sup> Of course, the quest for personal advantage by each man could in itself be good for the civic cult, since it created discussion and debate over how best to manage the community's religious life. For a further discussion of this, see the next chapter.

<sup>336</sup> Or so Cicero claimed. Cic. *Dom.* 115.

<sup>337</sup> The connection of house and temple would be repeated by Augustus, who had his own house on the Palatine connected with the temple of Apollo by a ramp, thus making the temple almost a part of his house. Tatum (1999), 166 and notes.

scheme of one citizen to promote himself, one which did not impart any benefit to the community as a whole and one which involved the most heinous of crimes, murder.<sup>338</sup>

Cicero followed his attacks on Clodius' goddess and on his motives for constructing the temple with an assault on the qualifications of the religious officer who supervised the dedication. Cicero wondered why Clodius did not go out of his way to bolster the sanctity of the shrine by inviting the whole college of pontiffs to be present, or at least a pontiff of some public standing.<sup>339</sup> Instead, Clodius chose his brother-in-law L. Pinarius Natta to place his hands on the doorpost of the recently constructed temple and make the proper invocations, a questionable choice because Natta was (according to Cicero) only recently admitted to the college.<sup>340</sup> Furthermore, Cicero alleged that Clodius was not moved by public concerns when he chose Natta, but only personal and private ones.<sup>341</sup> Cicero's attack opened the door for the pontiffs to consider the possibility that the procedure had been vitiated by a religious error. Since Natta was young and inexperienced, he might have made a mistake in the formula, and any such mistake would have rendered the dedication invalid. In fact, Cicero asserted that he must have made

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<sup>338</sup> Cicero's arguments are interesting because they introduce the element of motivation into the conception of the propriety of a ritual act, something that current scholars generally argue was absent. In other words, the character of the official conducting a rite was irrelevant to the relationship between the community and the gods, provided that the celebrant conducted the ritual in the proper way; what the gods wanted was proper ritual behavior, not proper moral behavior. See Scheid (1998), 20-22. However, as Tatum (1993b), points out, Cicero in this speech linked pious behavior and moral behavior. We will explore the implications of Cicero's attitude in more detail in the next chapter.

<sup>339</sup> Cicero claimed (*Dom.* 117) that Clodius could actually compel the whole college to be present because he was tribune, but this is the only reference to this supposed power.

<sup>340</sup> During the dedication, Natta, the pontiff present, placed his hand on the doorpost of the structure and recited the proper invocation, whereupon the official dedicant, Clodius in this case, did the same. Nisbet (1939), 169.

<sup>341</sup> *Cic. Dom.* 117-118.

such an error, since no one of his youth and inexperience could possibly have been able to speak clearly and properly given that he had no colleague or senior religious official present and given that he was aware of the magnitude of the crime that he was committing by helping Clodius steal Cicero's home.<sup>342</sup>

Cicero's claims were not mere rhetoric; he was offering the college yet another reason to declare the dedication flawed and to restore his property. He was not going to be able to provide evidence that an error had occurred, but he did add another brick to the edifice that he was constructing. He was trying to show that Clodius had no respect for the civic cult and that he was willing to risk the wrath of the gods by carelessly conducting a religious ceremony. This would undermine Clodius' arguments that the dedication had been carried out with proper respect for Roman religious forms, and was clever given the kind of defense Clodius mounted. Clodius based his defense on his supposedly strict adherence to procedure in the dedication, and here Cicero went beyond merely asserting that the procedure had been violated. He argued that Clodius had no respect at all for the entire system which the procedures maintained, the maintenance of which system was partly entrusted to the college of pontiffs. The tactic is illustrative since it shows that Cicero, at least, reckoned the decision of the college would rest not just on specific evidence of religious malfeasance, but on the perceptions of the college of Cicero's and Clodius' religious behavior, and, indeed, on their entire behavior as citizens. The college was not mired in the minutiae of religious law, obsessively fixed on each individual tree and as a result losing sight of the forest. Instead, Cicero's rhetorical

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<sup>342</sup> Cic. *Dom.* 134-135.

approach assumes that the college was willing to go beyond the text of the law and evaluate the problem and the antagonists as a whole.

Cicero continued to treat the dedication as a personal exploit of Clodius rather than a public religious act sanctioned by the whole community. He argued that a few words muttered by a tribune while a pontiff held the door of an abode was not sufficient reason to cast a citizen out of his home, and he reminded the college that previous tribunes had been pontiffs themselves but had not dared to expel their enemies from their homes by pronouncing a dedication at their doorpost.<sup>343</sup> Clodius, however, had allowed neither religious scruple nor Roman tradition to influence his behavior, as demonstrated by his attempt to use the religious authority of the tribunate against Gabinius in 58 when he consecrated Gabinius' property to the goddess Ceres.<sup>344</sup>

Cicero's assertions would not seem to make a particularly strong argument. Clodius did not really, as Cicero alleged, simply call his brother-in-law, drop by Cicero's house, and pronounce a dedication at the doorpost for his own amusement. By the time he and Natta had acted, the house was gone and the *aedes* had been set up. Furthermore, Clodius could claim that he had implemented the provisions of a law and had carried out the dedication of the temple in full compliance with Roman religious practice. This section of the speech does, however, advance Cicero's goal of portraying Clodius as impious. Cicero was trying to show that at the broadest level Clodius' behavior had threatened the safety of the community, making it easier for the pontiffs to favor his

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<sup>343</sup> Cic. *Dom.* 122-124.

<sup>344</sup> Cic. *Dom.* 123-124.

interpretation of what constituted proper religious practice, not Clodius'. We therefore see again that interpreting what kinds of behaviors were pious was not simply a matter of consulting a rigid ritual and procedural tradition. Piety could be elastic.

Next, Cicero moved to an argument on which his case ultimately hinged. He claimed that Clodius had violated the *Lex Papiria*, which governed the dedication of religious sites, thus rendering the dedication null and void. The exact provisions of the law and the date it was enacted are part of an ongoing scholarly debate. Livy 9.46.6 (304 B.C.) mentions a law governing dedications that required that dedications receive approval from either the senate or the majority of the ten tribunes, and occasionally the argument has been made that the *Lex Papiria* was identical to this law.<sup>345</sup> This seems doubtful, however, and Tatum makes a reasonable case that the law should be dated later, to the first half of the second century B.C.<sup>346</sup> Cicero claimed the law forbade any consecration of temple, land, or altar without the approval of the *consilium plebis*.<sup>347</sup> Until recently most scholars have accepted that Cicero's formulation of the law was essentially correct. Ziolkowski, however, has argued that the law exempted those magistrates *cum imperio*,<sup>348</sup> while Tatum argued that the law probably exempted magistrates *sine imperio*. Tatum argued that Clodius technically was exempt from the law's provisions, since tribunes did not have *imperium*, and concluded that Cicero's

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<sup>345</sup> E.g. Willems (1878), 308-9.

<sup>346</sup> Tatum (1993a), 325, cf. Broughton (1951) 2: 471.

<sup>347</sup> 'video enim esse legem veterem tribuniciam quae vetet iniussu plebis aedes, terram, aram consecrari.' Cic. Dom. 127. Also, Dom. 128: 'Lex Papiria vetat aedes iniussu populi plebis consecrari.'

<sup>348</sup> Ziolkowski (1992), 229-31

arguments in the *De Domo* gave the college of Pontiffs an excuse to change Roman procedure, since a ruling in Cicero's favor would have impelled all future dedications by tribunes to be approved by the *consilium plebis*, even though up until 57 they had never had to do so.<sup>349</sup> This is an interesting suggestion, but unfortunately Tatum's conclusion is hard to prove from the text. Cicero clearly spelled out the terms of the law several times, and while he was known to play fast and loose with the exact phrasing of laws when it suited his rhetorical purpose,<sup>350</sup> if he had claimed that Clodius had violated the terms of the *lex Papiria* when Clodius could have easily shown that he had not, he would make it simple for Clodius to cut the legs out from under his case. As Orlin suggests, Cicero's point was more likely that the *lex de exilio Ciceronis* failed to state explicitly enough that Clodius had the right to consecrate a temple to Libertas on Cicero's house.<sup>351</sup> Since the law did not spell out in exact language that it was Clodius who had the right to make the dedication,<sup>352</sup> Cicero hoped that the pontiffs would be inclined to see the dedication as made without proper authorization and thus rule it invalid. This approach gave plenty of room for the pontiffs to interpret Roman religious law, as was their right, and it allowed them to recommend that Cicero get his property back without undermining the state cult.

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<sup>349</sup> Tatum (1993a), 320-322.

<sup>350</sup> E.g. (as we have seen) the terms of the *Leges Aelia and Fufia* and the *Lex Clodia de obnuntiatione*. See Tatum (1993a) 321 and n. 9 for a discussion and bibliography.

<sup>351</sup> Orlin (1997), 168-172.

<sup>352</sup> 'Ubi te isti rei populus Romanus praefecerat?' *Dom.* 127.

Since the *lex de exilio* was central to Cicero's (and Clodius') case, Cicero included a lengthy attack on it in his speech. If he could convince the Pontiffs that the law that provided for the seizure of the property and the erection of a shrine was invalid, he went a long way in convincing them that Clodius did not really have the permission of the plebs when he made the consecration. Therefore, he did not base his attack on it solely on an interpretation of the *lex Papiria* alone. Instead, he tried to find all possible grounds on which to declare it invalid. He argued to the pontiffs that it was a *privilegium*, since it applied to him alone, and laws of this kind were forbidden by the Twelve Tables.<sup>353</sup> He argued that the law was invalid because it violated the *lex Caecilia et Didia*, which forbade the inclusion of multiple measures in the same bill.<sup>354</sup> He argued that it was invalid because it had been passed *per vim*.<sup>355</sup> He cited the opinion of L. Aurelius Cotta, cos. 65, who had stated in the senate at the beginning of 57 that it was not necessary to pass a law recalling Cicero, as the law exiling him was invalid because it was formulated incorrectly and had been passed unconstitutionally through violence.<sup>356</sup> None of these arguments by Cicero was beyond challenge, and the college of pontiffs would not seem to be the place for Cicero to make such arguments, since it was not in the college's purview to evaluate the constitutionality of laws, but, again, Cicero was trying to make it easier for the pontiffs to rule in his favor by making as broad an assault as possible on the law which gave Clodius the authority to create the shrine. And, of course,

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<sup>353</sup> Cic. Dom. 43.

<sup>354</sup> Cic. Dom. 50-53.

<sup>355</sup> Cic. Dom. 53-58.

<sup>356</sup> Cic. Dom. 68.



he did not miss the opportunity to impugn Clodius' character while attacking the validity of his law—his criticism of the *lex de exilio* is sprinkled with assaults on Clodius' public behavior. This added nothing to the strength of his argument, but since the decision of the pontiffs was going to be made not just on the logic of the evidence given but also on their perceptions of the presenters as citizens, this was a valuable rhetorical tactic.

### **The Decision of the Pontiffs**

After hearing both sides give their testimony, the pontiffs gave their ruling, which Cicero reported to Atticus in a letter of early October, 57. The pontiffs ruled that the site could be restored to Cicero, *if* the *consilium plebis* had not expressly, by name, given Clodius the authority to consecrate the temple.<sup>357</sup> The decision is carefully phrased and potentially ambiguous. The pontiffs are not granting Cicero the right to have his house back; by themselves they did not have the right to do this. Yet the ruling seems to have been a clear victory for Cicero; that, at least, is how most of the audience reacted.<sup>358</sup> There was good reason for their reaction, since, as we will see, the senate overwhelmingly voted to restore Cicero's property to him and give him funds to rebuild his house. What the college of pontiffs had done was to set the terms of the debate in the senate, distilling the conflict between Cicero and Clodius down into one issue: did the *lex exilio de Ciceronis* give Clodius specifically and by name the right to dedicate the temple. This was a severe blow to Clodius, because it framed the terms of the debate in

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<sup>357</sup> 'si neque populi iussu neque plebis scitu is qui se dedicasse diceret nominatim ei rei praefectus esset neque populi iussu aut plebis scitu id facere iussus esset.' Cic. Att. 74 (IV.2).3

<sup>358</sup> 'mihi facta statim est gratulatio (nemo enim dubita<ba>t quin nobis esset adiudicata). . . .' Cic. Att. 74 (IV.2).3.

such a way as to exclude all of Clodius' arguments that the dedication was carried out according to the proper procedure. It was now irrelevant that he had followed proper procedure and had gotten a plebiscite to authorize seizure of the property and construction of the temple. It was now irrelevant that he had followed proper procedure and had a pontiff present to lay his hand on the door and recite the formula to him. All that mattered were the terms of the *lex de exsilio*. If the law did not say that *Clodius* was authorized to dedicate the temple, then the temple could be removed without danger to the civic cult. The senate's ultimate decision for Cicero makes it a virtual certainty that Clodius did not include in the terms of the *lex de exsilio* a provision that designated him by name as the dedicator.<sup>359</sup>

When the college made its ruling on the religious issue, its job was over. It had no authority to hand Cicero's property back to him; all it could do was present its decision to the senate. The senators actually had the power to give Cicero his property. Of course, the pontiffs who were senators themselves recognized this fact, since when they were asked to explain their ruling, they made certain their fellows understood that so far as they were pontiffs, their job was over, and when they gave their opinion on what to do about Cicero's property they were speaking as senators, not as priests.<sup>360</sup> Many scholars use evidence like this to emphasize the centrality of the senate in Roman religious affairs, relegating the priestly colleges to a lesser and advisory role.<sup>361</sup> This

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<sup>359</sup> See also Cic. *Dom.* 127-129; 136-138, where Cicero denied that Clodius had dedicated his temple under the terms of the *Lex Papiria*.

<sup>360</sup> Cic. *Dom.* 74 (IV.2).4.

<sup>361</sup> E.g. Beard (1990) 30-43, esp. 38.

underestimates the influence of the priestly colleges. The pontiffs' ruling shows how powerful the influence of the colleges could be over the senate. The pontiffs carefully crafted their decision to make it easy for Cicero to win his case. It was still possible for the senate to find for Clodius, since the ruling did not mandate the transfer of the property, but by setting the terms of the debate on grounds so obviously favorable to Cicero, the college could push the senate in the direction it wanted.<sup>362</sup> Though the senate had the power to decide, the college of pontiffs could exercise tremendous influence over the senate's decision.<sup>363</sup> Their ruling made it a virtual certainty that the senate would authorize the removal of the temple.

### **Rumor, Authority, and Perception**

Clodius' response to the pontiffs' decision illustrates the complexity of religious conflicts. The pontiffs dealt him a blow, but this did not end the debate. Again the battle continued, but its venue shifted. Clodius made a direct appeal to his followers among the urban populace. So long as he was able to mobilize them to continue the fight, the conflict would continue. Clodius was able to do this because of the way information passed from person to person in a large pre-industrial city like Rome.

After the *pontifices* gave their verdict, Clodius' brother summoned a *contio*, at which Clodius made an astonishing announcement: he claimed the pontiffs had ruled in his favor and that Cicero was planning to illegally seize control of the site by violence.

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<sup>362</sup> There is no doubt that the college, or at least its senior members who were senators, favored Cicero's side, since the pontiffs present at the senate meeting on October 1 all argued that Cicero should have his property restored. Cic. *Dom.* 74 (IV.2).4.

<sup>363</sup> In virtually every known case where the senate consulted the opinion of a priestly college, it followed that opinion. But see below note 113 for an exception.

He exhorted the crowd to rally to him and to Appius and to defend their own *libertas*.<sup>364</sup> Cicero reported that even the lowest (*infimi*) members of the crowd were dumbfounded and some of them laughed openly at Clodius.<sup>365</sup> The reader may wonder what Clodius was thinking, but the nature of communication in the pre-industrial world made Clodius' strategy far from absurd. Cicero's assertions to the contrary, it is not likely that many members of the crowd openly laughed at Clodius, particularly since for many Clodius' speech was the first news they had of the pontiffs' decision. Ray Laurence has examined the role of rumor and person-to-person communication in republican Rome, and concluded that one of Clodius' political strengths was his ability to utilize *collegia* and *vici* to pass along information,<sup>366</sup> an important and difficult task in a city of several hundred thousand, particularly since only a few thousand could reasonably be expected to hear a speaker who did not have modern technological means to project his voice. According to Laurence, it was partly Clodius' ability to exploit the rumor mill that made him such a formidable popular politician, because he could get the word out to his followers, and thus mobilize them quickly, with relative ease.

Clodius, therefore, took the opportunity to provide his own interpretation of the pontiffs' response. The text of the response did not mandate that Clodius concede defeat. In fact, it could be used as an opportunity to proclaim a victory. Clodius could argue, as

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<sup>364</sup> *'nuntiat [iam] populo pontifices secundum se decrevisse, me autem vi conari in possessionem venire, hortatur ut se et Appium sequantur et suam libertatem ut defendant.'* Cic. Att. 74 (IV.2).3

<sup>365</sup> *'hic cum etiam illi infimi partim admirarentur partim riderent hominis amentiam...'* Cic. Att. 74.(IV.2).3.

<sup>366</sup> Laurence (1994). Many of Laurence's conclusions are speculative, and I am not persuaded by all of his assertions, but in general he has done a good job of evaluating how information about political processes would travel in republican Rome. Oddly, in spite of the extensive space he gives to his discussion of Clodius, he does not mention Clodius' handling of the pontiffs' response.

he had done in his speech before the pontiffs, that the *lex de exilio Ciceronis* had, in fact, given him a proper mandate to dedicate the temple.<sup>367</sup> Even if many of the pontiffs would disagree with Clodius' assessment,<sup>368</sup> their response had not specifically stated that Cicero would get his house back. Therefore, there was still wiggle-room for Clodius, and there was still the possibility that he could prevail on his fellow senators to interpret the response in his favor. He took the room he was given and continued to wage his battle, defending his piety, arguing he had properly consecrated the temple, and claiming victory in the struggle.

In situations like this, where a crowd or an individual is given different interpretations of the same event and has to decide which to believe, the *auctoritas* of the source and the receptiveness of the listener play a role in deciding which speaker he or she chooses to believe. We might suppose the decision would simply be a matter of contrasting the relative *auctoritates* of Clodius and his brother the praetor (who had called the *contio*, so we must assume his presence added weight to Clodius' assertions) versus the *auctoritates* of Cicero and others who might provide alternative interpretations of the pontiffs' conclusions. Given the nature of the way information traveled in Rome, however, evaluation of messages was a more complex process. Few would initially have heard either Clodius or his opponents speak, and most Romans would hear about the pontiffs' decision in conversations such as 'I heard Clodius say. . .' or 'I heard that Clodius said . . .' and counter-claims by Clodius opponents in similar fashion: 'Oh? I

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<sup>367</sup> Tatum (1993a), 322.

<sup>368</sup> And we know that the senators who were pontiffs, in fact, supported Cicero's side of the argument. See *Cic. Att.* 74 (IV.2).4.

heard so and so say. . .'. In this situation evaluation of the accuracy of Clodius' interpretation of the pontiffs' decision took place simultaneously with an evaluation of the trustworthiness of the person's immediate source of information, and thus the spread of information took on the atmosphere of a 'he said, she said' conversation. Ultimately, the hearer's own perceptions of Clodius and his opponents would greatly influence what the hearer chose to believe, and thus Clodius could count on his loyal followers to accept Clodius' interpretation of the response. They would thus perceive that Clodius was acting piously when he continued to defend his temple and perceive that Cicero was acting impiously by trying to tear it down.

We see from this example that Roman institutions were not the only organization that evaluated piety and religious behavior. Popular opinion also played a role. In this case a Roman religious institution had given a ruling that seriously jeopardized the civic status of Clodius' temple. But they had not, and could not, make a final decision on the issue, and the ambiguity of their response meant that Clodius still had lines of defense that were open. His efforts were persuasive, since after the reconstruction of the portico of Catulus had been started, he persuaded an angry mob to attack the workmen working on the project, drove them away, and then proceeded to demolish the restored construction.<sup>369</sup>

There is a second reason why Clodius would try this ploy: he still had hope that the senate would allow the temple to remain. It is unlikely that the senate would ignore

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<sup>369</sup> Cic. *Att.* 75 (IV.3).2

the ruling of the pontiffs, but it was not unprecedented.<sup>370</sup> Clodius was not afraid to go after political long shots, as his stubborn opposition to Cicero's recall in the face of near unanimous opposition demonstrates. He might have hoped that a massive public outcry over the temple would convince the senate to allow it to stand or at least delay authorizing its demolition.

### **The Senate Decides**

On October 1, 57, the senate met to consider the implications of the pontiff's ruling. It would seem that Cicero had all of his ducks lined up: he had obtained a favorable ruling from the pontiffs and had the support of the majority of the senators. But the fragmentation of civic authority in Rome kept Clodius' hopes, and the conflict, alive.<sup>371</sup> The senate did not have to go in the direction that the pontiffs were driving it. But any hope Clodius had that the senate would vote in his favor evaporated when the opinions of the senators were made known. The senators who were pontiffs were asked to speak on their ruling, but chose not to do so, pointing out that the pontiffs were the judges of the issues of *religio*, while the senate was the judge of *leges*.<sup>372</sup> Speaking in his

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<sup>370</sup> See Frontin. *Aq.* 1.7.5 and Morgan (1978) for an example of the senate rejecting the recommendation of a priestly college.

<sup>371</sup> Nowhere does the political/religious dichotomy make less sense than in the case of Cicero's house, so rather than say here that 'religious' or 'political' authority was fragmented, it is better to discuss 'civic' authority which incorporates both.

<sup>372</sup> '*M. Lucullus . . . respondit religionis iudices pontifices fuisse, legis <es>se senatum; se et collegas suos de religione statuisset, in senatu de lege statu<ur>os cum senatu.*' Cic. *Att.* 74(IV.2).4. This might seem like proof that there was a clear dichotomy between religion and politics in Rome, but this would be misinterpreting the evidence. The senate clearly had religious functions, and deciding the fate of the temple was clearly a religious issue as much as it was a political one. The dichotomy here is one of office and function, not of religion and politics. Lucullus and his colleagues had already given their opinion on the aspect of the matter that concerned them as *pontifices*. Now the discussion had shifted on aspects of the matter that concerned them as senators, and it was as senators that they were preparing to speak.

role as a senator, the pontiff Lucullus gave Cicero his hearty support, and his fellow pontiffs who had seats in the senate concurred. It soon became obvious to Clodius that the senate was about to vote to remove the temple, but he had a few tricks up his sleeve.

First, it was possible to delay the senate's proceeding by filibuster. The senate could not meet after the sun had set, and Clodius tried to speak out the session.<sup>373</sup> After three hours, however, his fellow senators shouted him down. Therefore he moved to his second plan. He used a friendly tribune, Serranus, to gum up the works. The power of the senate was not infinite. A tribune could always interpose his veto, which would prevent discussion of the matter until another day.<sup>374</sup> Again we see how the fragmentation of Roman civic authority made resolution of a religious conflict difficult. But maintaining a veto in the face of near-unanimous opposition from one's fellow aristocrats was not an easy position for a tribune to take. In the face of fierce protests Serranus maintained his resolve. The October 1<sup>st</sup> session of the senate ended with a stalemate, but the senate met again the next day and Serranus decided to abandon his lonely stand.<sup>375</sup> During the October 2<sup>nd</sup> session of the senate, a resolution was passed that ordered the temple removed and the portico of Catulus restored, and Cicero received HS 2.75 million as recompense for his lost property. This was a tremendous victory, but Cicero characteristically decided to regard his glass as half-empty and grouched about the paltry

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<sup>373</sup> For a discussion of this kind of filibuster, known as *longa oratio*, see De Libero (1992) 15-22.

<sup>374</sup> Thommen (1989), 207-240, De Libero (1992), 29-48.

<sup>375</sup> Cic. *Att.* 74 (IV.2).4-5.



sum the senate awarded him, blaming his back-stabbing enemies among the *boni* for his troubles.<sup>376</sup>

The process of deciding what to do about the temple of Liberty shows how complex it could be for the Romans to resolve their religious conflicts. The pontiffs had cleared away much of the underbrush and left the senate a very clear issue to decide: did Clodius seek proper authorization to dedicate the temple? If he did not, the senate could authorize its removal and give Cicero back his property. The senate for its part was ready to say that Clodius had not formulated the *lex de exsilio* properly, and virtually all of the senators were prepared to authorize the temple's removal. But because it was so easy to obstruct the decision-making process, some kind of consensus had to be reached among the Roman civic elite before the crisis could be resolved. In this case, Serranus' support for Clodius presented a potentially insurmountable problem for Cicero and his supporters. He could prevent the senate from even discussing Cicero's house, and this would mean that Clodius' temple would continue to survive. The final judgment on Clodius' *pietas* could be delayed until the end of Serranus' tribunate, and Clodius would have another chance to woo and win one of the ten new tribunes who would take office in December. Thus, the climactic scene in the senate on October 1<sup>st</sup>, when in the face of Serranus' veto an outraged senate declared that it would deem any person exercising a veto responsible for any violence that broke out over the issue of Cicero's house.<sup>377</sup> The senate tried to force Serranus to face political and social isolation, a potentially terrifying prospect for a

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<sup>376</sup> Cic. Att. 74 (IV.2).5.

<sup>377</sup> 'si quae vis esset facta, senatum existimaturum eius opera factam esse qui senatus consulto intercessisset.' Cic. Att. 74 (IV.2).4

young *pedarius*. Familial pressure was also put on Serranus; his father-in-law Cornicinus tore off his toga and threw himself at Serranus' knees.<sup>378</sup> What is important to note is that the issue of whether the dedication of the temple was a pious act has taken on another aspect: a test of the authority of the senate,<sup>379</sup> and it was resolved only after social pressure—pressure from both fellow aristocrats and family members, encouraged Serranus to abandon his opposition. Religious conflicts were not just embedded in Roman politics, but Roman society as well.

### **The End of the Battle?**

The senate's decision ended the debate, so far as Roman civic institutions were concerned, but the dispute did not end there. Even though the senate had decided that Clodius had not properly dedicated the temple, Clodius still had another forum to make his case, one outside the control of Roman civic institutions. He could appeal to his own followers directly and ask for their help.

Violence was one of the characteristic features of late republican politics, one often cited as a contributing factor in the revolution which brought about the empire.<sup>380</sup> Clodius had found new ways to mobilize Rome's populace and did not hesitate to use violence to intimidate his political opponents. Thus we should not be surprised that Clodius did not abandon the struggle after the senate had ruled against him. On November 3, after the property was restored to Cicero and reconstruction had begun on Cicero's house and the *porticus Catuli*, an angry mob stirred on by Clodius attacked the site, drove away the workmen restoring Cicero's house, and knocked down the

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<sup>378</sup> This was apparently something of a ritual with him, he had done it so often. '*Cornicinus ad suam veterem fabulam rediit; abiecta toga se ad generi pedes [Serrani] abiecit.*' Cic. Att. 74 (IV.2).4

<sup>379</sup> *senatui placere . . . auctoritatem ordinis ab omnibus magistratibus defendi. . . .* Cic. Att. 74(IV.2).4.

<sup>380</sup> On violence and self-help in republican Rome, see Lintott (1968) and Nippel (1995); for an alternative view on the effect of late republican violence on the Roman constitution see Gruen (1974), 405-448.

*porticus*.<sup>381</sup> And so the struggle continued even after Roman institutions had declared the matter resolved.

### Conclusions

Our study of the debate over Cicero's house has been very instructive. First, it confirms many of the observations made in chapter two. A conflict where *pietas* was the central issue arose when there was an uncertainty in religious procedure—in this case evaluating the status of a temple dedicated by a tribune, the first such temple ever dedicated. The fragmentation of religious authority in Rome encouraged conflicts over religious issues, and at the same time made resolution of those issues a lengthy and complex problem. The conflict was discussed and debated among a variety of groups with authority over civic affairs before a resolution was reached. The status of the temple was discussed in the senate, *in contione*, and before a religious college. Senators, magistrates, and priests all got a chance to state their opinion on the matter. It was resolved only after consensus was reached among the Roman aristocracy. The resolution helped clarify the ambiguity that had led to the dispute, and Roman religion changed and evolved. In this case, the college insisted that explicit mention of the dedicant in a plebiscite was the only way to guarantee that religious law would be fulfilled and the temple properly dedicated. This was probably more than a clarification. It was probably a new interpretation of the law, since it is highly unlikely that Clodius would have risked his temple by making an obvious blunder. And again, even after the community's leaders declared the issue resolved, the hostility and emotion it inspired continued to fester.

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<sup>381</sup> Cic. *Att.* 75 (IV.3).2

We also get to see religious conflicts in greater depth in this case than in any other, and they reveal a number of new things. First, they confirm that piety was an integral part of a politician's public life. Roman aristocrats carefully observed one another's religious behavior, and when they noticed potential religious lapses in their rivals, they made certain that these lapses came to the attention of their fellow citizens. Cicero reminded the pontiffs that Clodius was notoriously impious, calling their attention to the Bona Dea scandal and the adoption as proof of his impiety. Cicero realized that he stood a much stronger chance of winning his case if he could undermine Clodius in the eyes of the pontiffs, so he took the opportunity to characterize him as an impious villain who did not concern himself with religious propriety if it obstructed his own political advancement.

Since *pietas* was a civic virtue, displays of *pietas* could carry civic messages. Roman religion had a rich symbolic vocabulary that made it possible for Rome's leaders to send messages that would reach larger audiences across longer periods of time than any speech could. So before Cicero left to go into exile, he placed a dedicatory statue on the capital that had both religious and political messages. This allowed him to remind any viewer of the dedication and any subsequent viewer of the state of his role as Rome's guardian. Clodius used the temple of Liberty in a similar fashion. It was a message in stone declaring to all who saw it that Clodius had defended the liberty of the Roman people and would continue to do so in the future.

We also see how important the interactions were between various groups and individuals with authority when it came to deciding contests over piety. Before it was

decided that the dedication of the temple of Liberty was not a genuine act of piety, so far as the Roman community was concerned, the senate had to meet three times to discuss the issue, the college of pontiffs had gotten involved, appeals were made to the assembled populace, and a supposedly grief-stricken father-in-law threw himself at the feet of a tribune to beg that he abandon his obstruction. It required all of these groups and individuals to resolve their differences before the Roman state could act. Thus, even though the power to make the decision rested with the senate, since (as Beard argues)<sup>382</sup> the senate served as mediator between the Roman gods and the community, the senate did not act *in vacuo*. First, the opinion of the pontiffs exercised a great amount of influence on that body, and the pontiffs had crafted their decision so as to make it very easy for the senate to remove the temple. Second, the senate had the right to make a decision, but they could not actually do so as long as a tribune was willing to interpose his veto.

Furthermore, the conflict over Cicero's house also reveals the relationship between Roman civic institutions and extra-institutional powers in religious conflicts. The senate as an institution had no right to stop Clodius' from talking out the session on October 1<sup>st</sup>, but the pressure brought on him by his fellow senators made him abandon his efforts to continue speaking: their *auctoritates*, not the power of the institution to which they belonged, prevailed on him to yield the floor. In a similar fashion Serranus abandoned his veto in the face of near unanimous opposition from his fellow aristocrats and because of appeals from a member of his family. Thus social pressure played as

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<sup>382</sup> Beard (1990), 38.

important a role as institutional power in bringing the matter of Cicero's house to a conclusion. We should also not forget the power of Clodius' supporters among the plebs, who attempted to get Clodius the victory through protest and violence. They did not succeed, but they influenced the progress of events and certainly managed to delay the reconstruction of the Porticus Catuli.

Our analyses of the Bona Dea affair and the battle over Cicero's house have been very instructive. Let us now turn our attention to our final example, the dispute over the meaning of the response of the college of *haruspices* to an inquiry of the senate, made in 56 B.C. and preserved in Cicero's speech *De Haruspicum Responso*.

## CHAPTER 5

### THE RESPONSE OF THE HARUSPICES

Our final study concerns an incident in 56 B.C. An extraordinary event occurred: a strange rumbling sound was heard near Rome in the Ager Latiniensis. Like many other phenomena which defied explanation, news of this ultimately reached the senate, which had the authority to declare any unexplained phenomenon a *prodigium* for the Roman community. The senate called upon the haruspices, the college of Etruscan diviners whom the senate often consulted for help in interpreting prodigies, and asked them to explain the significance of the noise. The haruspices reported that the noise was indeed a *prodigium*, and it indicated to the Romans that the gods were not pleased about various impieties that had been committed.<sup>383</sup> Clodius and Cicero immediately entered a public contest over the meaning of the response: Clodius claimed that Cicero had committed the impieties that had drawn the anger of the gods, while Cicero, of course, asserted the opposite. Cicero published his speech on the matter, *De Haruspicum Responso*, which has survived for our perusal. The contents of this speech, as well as what it illustrates about contests over piety, will be the subject of this chapter.

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<sup>383</sup> For the text of the response, see below, pp. 178-179.

Conflicts such as the one between Cicero and Clodius over the meaning of the haruspices' response were the result of Roman religion's structure and were a not uncommon feature of civic life. As we have seen in previous chapters, ambiguity was an inherent feature of Roman religion. Religious law might be engraved in stone, cast in bronze, or written on papyrus, but interpretation of that law was in the hands of humans, and the system allowed for a significant amount of discussion and debate before laws were implemented. Even when the exact texts of religious law were known and understood (and this was not always the case),<sup>384</sup> new and unfamiliar situations could arise, making it unclear whether or how Roman religious law should be implemented. Fragmentation of religious authority could increase this uncertainty and make it more difficult to reach a decision on religious matters. Within this system, conflict was inevitable, and since Roman civic religion was both public and an integral part of the Roman state, we would expect religious conflict to have political implications. We have also seen an ambiguity where piety was concerned. It was not always clear to the Romans what constituted pious and impious behavior. A Roman politician might believe that he had perfectly fulfilled all of his religious obligations, yet an observant rival might challenge that assumption, and be able to make an arguable case. It was up to the various civic institutions that had a say in religious affairs to sort out the conflict.

In this case, the spark that produced the conflict was the ambiguity in an interpretation of an interpretation. Cicero and Clodius fought over the meaning of the haruspices' interpretation of the senate's interpretation of the noise in the *Ager*

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<sup>384</sup> As we saw in chapter two, pp. 63-64.



*Latiniensis* as a *prodigium*. The haruspices' response explained the reason for the gods' anger, but it did not fix the error that had caused it. It was thus up to the Roman community to decide if blame needed to be ascribed to any one, and if so, whom to blame. The response of the college was vague enough that Clodius could plausibly ascribe to Cicero the impious actions that had induced the gods to send the prodigy, and Cicero could do the same to Clodius. Thus we have the beginnings of a contest whose main issue was the piety of the contestants.

Cicero's interpretation of the response illustrates another, little noticed feature of Roman religious life. Piety towards the gods, that is, the proper carrying out of all obligations owed by the Roman community toward its divine protectors, did not consist only of proper ritual behavior. We will see that Cicero argued that the Romans owed the gods more than just the carrying out of certain rituals. He claimed that the gods evaluated the Romans on their political behavior as much as on their ritual actions, and that if the Romans wanted to regain the support of the gods, the Roman aristocracy had to change its ways, putting aside internecine squabbling and focusing on the good of the whole community rather than the benefit of a few individuals. This goes against the grain of contemporary scholarship, which sees expiation of *prodigia* entirely in ritual terms. A *prodigium* was a message to the Romans that they have failed some ritual obligation, which can be therefore remedied by compensatory ritual offerings.<sup>385</sup>

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<sup>385</sup> For example: 'An essential feature in the working of Roman divination is that the diviners provided very little factual information other than in the field of ritual. Their basic function was to proclaim divine approval, or its absence, and to suggest *ritual* [italics mine] by which it could be maintained or regained.' Liebeschuetz, (1979), 7-8.

### The Prodigies in 56 B.C.

56 B.C. was a strife-filled year. Elections for the aedileship were delayed by obstruction and violence, but when they were finally conducted in early January; Clodius won the office. In February, Milo went on trial for instigating political violence. Pompey and Cicero supported him, while Clodius prosecuted, and to the surprise of no one the trial itself caused fighting to break out.<sup>386</sup> These, however, were just peripheral parts of a larger struggle: the conflicts among the triumvirs and the conflicts between Pompey and the *boni*. Scholars have extensively culled the sources looking for hints as to the motives and aims of the players in the political maneuvers that took place in late 57 and early 56.<sup>387</sup> By the beginning of 56 Pompey's relations with Crassus and Caesar were strained because he suspected one or both of them of supporting Clodius' relentless assault on him during the previous two years. Cicero hoped to exploit the tension among the triumvirs by bringing about some kind of understanding between Pompey and the *boni*, who were trying to overturn Caesar's Campanian land law. Caesar was threatened by the candidacy of his enemy Ahenobarbus for the consulship of 55, because Ahenobarbus wanted to end Caesar's proconsulship in Gaul. In early April a meeting between Pompey and Caesar at Luca resolved the differences between them.<sup>388</sup> Pompey and Crassus would stand for the consulship of 55 and get important proconsulships after their year of office. Caesar would

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<sup>386</sup> Cic. *Att.* 4.3, *Q.Fr.* 5 (II.1).3, *Sest.* 88-89, *Mil.* 40; Plut. *Cic.* 33; Dio Cass. 39.7-8.

<sup>387</sup> Good recent surveys of the political maneuvering in Rome that culminated in the conference of Luca in April 56 can be found in Mitchell (1991), 166-181; Meier (1995), 265-273; Tatum (1999), 196-213; Seager (2002), 108-119.

<sup>388</sup> Cic. *Fam.* 20 (I.9).9; Suet. *Iul.* 24.1; Plut. *Caes.* 21.5, *Crass.* 14.6, *Pomp.* 51.4; App. *B.C.* 2.17.

have his command in Gaul extended. Pompey seemed to be back in a dominant position in Roman affairs.

It was in the middle of this politically unstable situation that a number of prodigies were reported to the senate: an entire temple of Juno changed face ninety degrees, a blaze of light was seen in the sky, a wolf entered the city, some citizens were killed by lightning, there was an earthquake, and a subterranean noise was heard in the Latin territory.<sup>389</sup> As we saw in chapter two, the senate had the responsibility of deciding if any reported signs were actually prodigies about the religious health of the Roman community. If it decided that a sign was a *prodigium*, it referred the matter to the proper experts and decided what to do about the recommendations of these experts. In this case, they referred the matter to the haruspices, the college of Etruscan diviners who regularly advised the Romans on expiation of prodigies.<sup>390</sup> The haruspices consulted their texts, which guided them in their interpretations of their subject,<sup>391</sup> and presented their opinion to the senate.

The haruspices' response can be pieced together from Cicero's speech on the subject. Their verdict was as follows:

‘Whereas in the Ager Latiniensis a loud noise and a clashing has been heard, whereas expiations are due to Jupiter, Saturn, Neptune, Tellus, and the heavenly gods, whereas games have been incorrectly performed and profaned, whereas sacred and hallowed places have been profaned,

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<sup>389</sup> Dio Cass. 39.20.1-2 preserves the full list.

<sup>390</sup> On the reporting and expiation of prodigies, and the role of the haruspices therein, see Thulin (1905-1909), esp. (1909) 131-154; Bloch (1963), 112-157; Liebeschuetz (1979), 7-29; McBain (1982), Beard, North, and Price (1998), 37-39; North (2000); Scheid (2001), 69-72. One of the specialties of the haruspices was the interpretation of prodigies where lightning was involved.

<sup>391</sup> On these texts, see Thulin (1909), 1-3, 57-75.

whereas orators have been slain in violation of the laws of men and of gods, whereas good faith and oaths have been neglected, whereas ancient and secret sacrifices have been incorrectly performed and profaned, beware lest, through discord and dissention among the best men, slaughter and danger be created for the senate and its leaders and they be without aid of the gods, as a result of which the state may pass into the power of one man and . . ., beware lest the state be harmed by secret schemes, beware lest honor be increased for the worse sort and those who have been rejected, beware lest the condition of the state be changed.<sup>392</sup>

Most of these clauses are quite vague and general, and would almost be expected: they state that the gods have sent a portent because some rites were being neglected or were improperly conducted. The gods, after all, sent *prodigia* to warn the Romans that the *pax deorum* had been broken, and since the *pax deorum* was maintained by the carrying out of sacrifices and games, a *prodigium* meant that something had gone wrong with a sacrifice, game or some other rite. The clause on the breaking of *fides* and sworn oaths also lacked specificity, since Roman officials swore a fairly large number of oaths in the course of their duties; under scrutiny there were probably a number of officials who could arguably be accused of breaking their *fides*. The clause referring to the slaying of orators (i.e., ambassadors) was more specific; it was not common for ambassadors in Rome to be assassinated. Here the response probably refers to the death of representatives of the Alexandrians who were in Rome to lobby against the restoration

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<sup>392</sup> ‘quod in Agro Latiniensi auditus est strepitus cum fremitu, postiliones esse Iovi Saturno Neptuno Telluri dis caelistibus; ludos minus diligenter factos pollutosque, loca sacra et religiosa profana haberi, oratores contra ius fasque interfectos, fidem iusque iurandum neglectum, sacrificia vetusta occultaque minus diligenter facta pollutaque; <videndum esse> ne per optimatum discordiam dissentionemque patribus principibusque caedes periculaque creentur auxilioque divinitus deficientur, qua re ad unius imperium res redeat exercitusque fapulsus deminutioque accedat†, ne occultis consiliis res publica laedatur, ne deterioribus repulsisque honos augeatur, ne rei publicae status commutetur.’ The text and translation are taken from Tatum (1999), 216; cf. Wissowa (1912), 545, n.4.

of their king.<sup>393</sup> The last two clauses refer to the political turmoil of the 60s and 50s, where politicians from across the spectrum employed violence against their opponents and where boundless ambition appeared to many to be leading the state into a crisis. Many might argue that the response referred to Pompey when it warned that the state should not pass into the power of one man, given his strong political position in Rome after Luca, but other candidates were available.<sup>394</sup> In summary, the haruspices basically told the senate that the earthquake in the Ager Latiniensis indicated that the Roman nobles should spend more time taking care of religious affairs and less time using unscrupulous means to advance their personal careers at the expense of the community.

The latter part of the admonition merits comment: at first glance it might not appear that the haruspices should concern themselves with the behavior of Roman politicians outside the sphere of religion. In republican Rome, of course, it was not so easy to separate religion and politics, but the haruspices were relatively specialized: so far as the state was concerned their expertise was confined to the interpretation and explanation of *prodigia*, signs that the *pax deorum* had been violated, and their job was to advise the senate on how to expiate the prodigies and restore the relationship between community and gods to its proper state. Normally this involved repeating flawed rites or making supplemental offerings, or both. The college here would seem to have gone far beyond this. Many scholars have suggested that the haruspices worked hand-in-hand

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<sup>393</sup> Though Cicero, *Har. resp.* 34 suggests other possibilities.

<sup>394</sup> As we will see below, pp. 203-204., Cicero will have another idea about the ‘one man’: the gods were warning the Romans about Clodius.

with the senate (or certain senators) to support either a particular group's political agenda or to work as a prop for aristocratic control over the community.<sup>395</sup>

It is not, however, necessary to see the response as a political manifesto. The college was unusual in that it was not controlled by the old Roman nobility, as were the other priestly offices. Instead it was composed of Etruscan nobles who passed down from generation to generation the knowledge required to perform their tasks. Originally the Etruscans were foreign diviners, giving them an unusual place in Rome's religious system.<sup>396</sup> By 56, however, the Etruscans had received citizenship, so they were no longer foreign experts advising the leaders of another community. Instead they were advising their own leaders about problems affecting their own community. They were very interested in the health of that community. Furthermore, the Romans did not perceive the problems of the late Republic in political terms alone; the violence and turmoil in the city sparked a crisis of confidence that was perceived in cosmological terms.<sup>397</sup> Not just the political system had gone awry, but the entire structure of Roman life, including Roman religion, was in flux. In other words, the Romans perceived that political upheaval was a symptom of a larger problem. We should not be surprised that Roman citizens would look at the chaos in their communal life and perceive that the gods

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<sup>395</sup> Rawson (1991) 293-294, 302-312; cf. Thulin (1905-1909) I. 70-71, III.134-136; Bloch (1963), 52; Lenaghan (1969), 35; Goar (1972), 69; Tatum (1999), 216-217.

<sup>396</sup> MacBain (1982), 43-79 argues that the Romans made use of the haruspices in order to bind the Etruscan aristocracy closer to themselves, particularly when Etruscan help was needed during the Second Punic War.

<sup>397</sup> Alföldi (1997) gives a lengthy discussion of this phenomenon, illustrated through late republican numismatics. Verg. *Ecl.* 4, with its hope-filled prediction of a new golden age of peace and prosperity, provides the most famous literary example.

were punishing them for some transgression.<sup>398</sup> The Romans perceived a connection between political and divine health. The college of haruspices, in turn, perceived the earthquake in the Ager Latiniensis to be a divine warning about the poor state of Roman rites and of Roman politics.

After they gave their explanation and, presumably, suggested (unrecorded) specific, ritual ways to restore the gods' favor, the duty of the haruspices was finished. It was left for the senate to decide what to do about their interpretation and recommendation. In many cases the senate would simply follow the haruspices' advice, conduct rituals to propitiate the gods and consider the matter resolved. Not every instance of reported *prodigia* caused a public brouhaha in which politicians exchanged charge and countercharge of impiety. If it did, Roman public life would have devolved into hopeless gridlock. Rosenstein noted that Roman religion had the potential to cause public affairs to become bogged down if defeated generals could attribute their defeat to a ritual error made by a rival aristocrat. This did not happen very often because ritual procedure made it difficult for *vitia* to happen unnoticed and made it easy to correct them when discovered.<sup>399</sup> Similar features made expiations of most *prodigia* a matter of routine. Once the haruspices or (*quin*)*decemviri* made their recommendation, the senate

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<sup>398</sup> It was for this reason that Augustus made a religious revival a key part of his civic program when he became emperor. He took especial care to make certain that religious rites were properly conducted, revived archaic religious organizations such as the Arval Brethren, and managed to find someone to fill the office of *Flamen Dialis*, which had been vacant for nearly sixty years. Beard, North and Price (1998), 181-210.

<sup>399</sup> Rosenstein (1990), 55-77.

would carry out their advice and the breach in relations with the gods was restored.<sup>400</sup> If an individual were responsible for committing the impiety that caused the problem, in most cases the Romans left their punishment in the hands of the gods.<sup>401</sup>

So we have to explain how this unusual, though not unprecedented, struggle to assign blame occurred. Our earlier investigations give us the answer: it was difficult for the Romans to put an end to religious conflicts. The debate about the meaning of the haruspices' response was the continuation of the struggle over Cicero's house, and, in fact, a continuation of the Bona Dea affair. The Bona Dea affair wended its way before the pontiffs, the senate, and a jury before Clodius could claim vindication, but so long as Cicero could use it to undermine Clodius' public image, the Bona Dea affair would never go away. Likewise, the *consilium plebis*, the college of pontiffs, and the senate all had their say in the matter of Cicero's house, and even though Cicero got back his property, Clodius could still argue that he had committed an impiety by having the temple to liberty torn down. The response of the haruspices provided the two antagonists another excuse, and more ammunition, to continue their conflict. If Clodius had been able to convince his fellow citizens that his interpretation of the prodigy was correct, he would vindicate himself and his piety, since he would have evidence that Jupiter regarded the Temple of Liberty as properly consecrated and was unhappy that it had been torn down. If Cicero were successful, he would be able to show the opposite, that the construction of

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<sup>400</sup> MacBain (1982), 82-106 provides a complete list of all known republican and early imperial prodigies and (if known) the means of expiation.

<sup>401</sup> Scheid (1998), 26.



the temple was not really a pious act and that it had been proper for the Romans to remove it.

### **Clodius Interprets the Response**

Some time after the haruspices delivered their response, Clodius summoned a *contio* and spelled out for the Romans his explanation of the haruspices' response, blaming Cicero for inciting the gods' anger.<sup>402</sup> Clodius' behavior reflects the pattern of religious conflicts that we observed in chapter two. Several clauses in the text were congenial to Clodius' interpretation, so he could make a coherent argument that his interpretation was correct. The clauses regarding the desecration of religious sites and the murder of the ambassadors in particular were, as Elizabeth Rawson put it, 'very convenient for Clodius', because they allowed him to tar Cicero with one side of the brush and Pompey with the other.<sup>403</sup> Clodius could plausibly argue that the desecrated religious site referred to the temple of Liberty and that the mention of the slain '*oratores*' referred to the Alexandrine ambassadors, whom Pompey's ally Ptolemy had killed in order to advance his plans to regain the throne of Egypt.<sup>404</sup> After Clodius had made his case to his fellow citizens, it was up to the community as a whole, and the various groups who had authority over religious matters, particularly the senate, to decide whether Clodius' interpretation should be accepted. Even though debates like this over the

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<sup>402</sup> Cic. *Har. resp.* 8.

<sup>403</sup> Rawson (1991), 306. Rawson in fact suggests the possibility that some of the members of the college were supporters of Clodius.

<sup>404</sup> Cic. himself, *Har. resp.* 34, concedes that the Romans thought the haruspices were referring to the Alexandrine ambassadors. There may, in fact, have been rumors that Pompey was in on the plot to kill the ambassadors; Strab. *Geog.* 17.1.2 states that Pompey was involved.

interpretation of haruspical responses were rare, the general pattern is one we have seen many times in the previous chapters. Something potentially ambiguous or uncertain is encountered during the course of religious life, in this case the meaning of the response, and one voice of authority, in this case Clodius', presented its interpretation to the public. Since the interpretation included an assault on Cicero, we should not be surprised to find that Cicero soon responded.

### **Cicero Answers Clodius**

Cicero could not afford to let Clodius' attack on his piety go unchallenged. Instead of speaking *in contione*, he chose to make his case in a speech before the senate. This was a comfortable setting for Cicero, who could expect to find a receptive audience, and, since he was not a magistrate, he could not summon a *contio*. Furthermore, Clodius' main base of support was the urban plebs, who could most easily be reached by a speech in the forum. Cicero chose to speak in the senate, which indicates he was mainly concerned about the opinions of senators. He defended himself against the charge that his tearing down of the temple had caused the gods' anger and made a point-by-point attack on Clodius, using the text of the haruspices' response as his chief weapon.

Not surprisingly he began his assault by continuing an old fight, the Bona Dea affair. Conflicts involving piety defied easy resolution, as opportunities to resurrect them frequently presented themselves. Cicero made Clodius' speech at the *contio* into a joke, trying to get a laugh out of the senators, assuming (for purposes of rhetoric) that they would find it hilarious that the notoriously impious Clodius would be discussing religion in a speech. He exploited Clodius' reputation for sexual adventurism, which he had

worked so hard to create, by comparing his impiety with his lack of self-control.<sup>405</sup> He told the senators that he was looking forward to the (famously unchaste) Clodius' next lecture, on the subject of chastity.<sup>406</sup> The juxtaposition of piety and chastity was clever rhetorically, since it distracted the audience from a key point: Clodius could defend his conduct in the Bona Dea affair. He had been acquitted. But, of course, Cicero did not want to get mired in uncomfortable facts when he could glide along on convenient innuendo. So far as civic institutions were concerned, Clodius was innocent of sneaking into Caesar's house, but, as we saw in previous chapters, institutions were not the only players in Roman religious conflicts. Cicero wanted to bolster his own public image and undermine Clodius', because the senators' decisions could be influenced by the perception of the character of the antagonists.

The assaults on Clodius' character, including his piety, had a logical sequel, a defense of Cicero's own piety, in particular of his efforts to get the temple of Liberty removed. Here, of course, the facts were convenient, and Cicero placed them on center stage, reminding the senate of all the various civic institutions which had concluded that Cicero's house could be rebuilt without any sacrilege.<sup>407</sup> He started, interestingly enough, with the *comitia centuriata*. The Roman people, he claimed, had already decided that no impiety had redounded to Cicero because he had had the temple of *Libertas*

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<sup>23</sup> For a discussion of the relationship in Roman politics between religion and morality, see Tatum (1993b), which goes against the grain of recent scholarship and argues that Roman religion did have a strong moral component. See also Liebeschuetz (1979), 38-53.

<sup>406</sup> Cic. *Har. resp.* 9.

<sup>407</sup> Cic. *Har. resp.* 11-19.

removed.<sup>408</sup> It had, of course, done no such thing. What the *comitia centuriata* had done was recall Cicero from exile. Cicero would like his hearers to assume that since he had been recalled, the restoration of his property and the removal of the temple was a mere formality, one which stemmed from the centuriate law that had called him home. We have already seen it was anything but. Cicero was attempting to bolster his argument that he had not committed an impiety by putting the weight of the *populus Romanus* behind it, since, as he pointed out, the power of the Roman people was supreme over every matter. We might dismiss this as the usual Ciceronian shading of the truth when it suited his rhetorical strategy, but the strategy is worth noting. We have seen how disputes involving piety could become very complex, and how hard it was to resolve them. In the open-ended debate between Cicero and Clodius, where it was hard to gain a final and decisive victory, the best the combatants could do was try to build cases as unassailable as possible. Since so many groups in Rome had religious authority, Cicero tried to show that all of the relevant institutions had come down on his side of the issue. It was quite a stretch to claim that the *populus Romanus* had ruled in his favor on this issue, but it was necessary given the importance of the assemblies in Roman public affairs. If he had not made the argument, he would be exposing a weakness that Clodius could exploit.

The rest of his argument had a stronger foundation. He pointed out that the college of pontiffs had ruled that the site of his house was not properly consecrated, so it

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<sup>408</sup> ‘*deinde eamdem domum populus Romanus, cuius est summa potestas omnium rerum, comitiis centuriatis omnium aetatum ordinumque suffragiis eodem iure esse iussit, quo fuisset.*’ Cic. *Har. resp.* 11.

was perfectly pious to rebuild his home there.<sup>409</sup> This too was a stretch, but one not quite as large as the previous claim had been. The pontiffs did not really declare that no *religio* remained attached to Cicero's house. Instead they advised the senate that it was proper under religious law to remove the temple, provided that Clodius had erred in the way he worded the law authorizing the destruction of Cicero's house. In Cicero's favor, the pontiffs who were also senators *had* supported his side of the argument, and the college *had* made the wording of its decision very favorable to Cicero's case. Cicero is again glossing over procedural minutiae for rhetorical effect, but he did so to strengthen the defense of his piety, since the opinion of the college as a whole carried more weight than that of individual pontiffs.

Cicero concluded his argument with his strongest piece of evidence: the decree of the senate restoring his property. Here he did not need to ignore unpleasant procedural details, since here it was impossible for his argument to get any stronger. The senate had the authority to act, it acted decisively, and it gave Cicero the right to remove the temple and put his house back up.<sup>410</sup>

The rhetorical strategy Cicero used to defend his piety against assault reflects the fragmentation of religious authority in republican Rome. Cicero knew that any credible defense of his conduct during the dispute over the temple of Liberty required him to marshal the support (real or merely plausible) of as many of the various groups who had a say over religious affairs as possible. Thus he repeatedly cited the many institutions that

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<sup>409</sup> 'At vero meam domum . . . omni religione una mente omnes [pontifices] liberaverunt.' Cic. *Har. resp.* 12.

<sup>410</sup> Cic. *Har. resp.* 14-16.

had issued decrees and made laws regarding the sanctity, or lack thereof, of his Palatine property: *‘Nego ullo de opere publico, de monumento, de templo tot senatus exstare consulta quot de mea domo, quam senatus unam post hanc urbem constitutam ex aerario aedificandam, a pontificibus liberandam, a magistratibus defendam, a iudicibus puniendam putarit.’*<sup>411</sup> This fragmentation made conflict over religious issues so difficult to squelch once they had broken out, but a resolution could be obtained if all the various groups that did have a say in civic affairs could be brought over to one side. Thus this section of Cicero’s speech was his attempt to claim victory once and for all in the matter of his house by arguing that all sources of authority had supported his side of the case.

Having undermined Clodius’ credibility through vicious personal assault and bolstered his own by an appeal to the *auctoritas* of hallowed Roman institutions, Cicero shifted his attention to the response of the haruspices, giving his own interpretation of it that blamed Clodius for the gods’ anger.

### **Cicero’s Interpretation of the Response**

The ambiguity of the response allowed Cicero to expound at length on it, explaining to his audience how Clodius was responsible for causing the Romans to fail to fulfill their obligations to the gods. He took the same source material that Clodius had used but offered a completely different interpretation of it.

The response lists several problems that have caused the gods to send the Romans a warning. The first was that the Romans owed sacrifices to Jupiter, Saturn, Neptune,

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<sup>411</sup> Cic. *Har. resp.* 16.

Earth, and the heavenly gods.<sup>412</sup> The reason that the Romans owed these sacrifices, so Cicero claimed, can be found in subsequent clauses in the response. The next clause went as follows: ‘Whereas games have been incorrectly performed and profaned.’<sup>413</sup> There were any number of mistakes that might be made in games and other rituals. Sometimes these were noticed immediately and were corrected, at other times they went unnoticed, and might be corrected only after a *prodigium* called the lapse to the attention of the community.<sup>414</sup> Cicero suggests that one error in particular was never expiated: at the Megalensia (the games to the Great Mother) in April 56, Clodius had staged a demonstration which had disrupted the ceremonies.<sup>415</sup> Cicero claimed that Clodius had unleashed a group of slaves on the unsuspecting Romans as the games were being celebrated, and that this disruption angered the gods. Clodius’ behavior might seem inexplicable, but it was common for public demonstrations to be held at games. Romans used them to cheer leaders that they favored and to boo those they did not. In 59 B.C., during a low point in Pompey’s popularity, the audience interrupted a play being performed as part of the *ludi* to Apollo Diphilus by clamoring for the actor to repeat the

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<sup>412</sup> ‘[*postiliones*] (for the *postulationes* in the manuscripts) *esse Iovi, Saturno, Neptuno, Telluri, Dis Caelestibus*.’ Cic. *Har. resp.* 20. *Postilio* was an archaic word, and late antique and subsequent copyists tended to replace it with *postulatio*. See Lewis and Short, *A Latin Dictionary*, s.v. *postilio*; Lenaghan (1969), 111.

<sup>413</sup> ‘*ludos minus diligentes factos pollutosque*.’ Cic. *Har. resp.* 22; Goar (1972) 62-63.

<sup>414</sup> See Cohee (1994) for a discussion of repairing ritual error through repetition of the rite.

<sup>415</sup> Cic. *Har. resp.* 22. Bruwaene (1948) suggests that Cicero could plausibly connect the Megalensia with the gods listed earlier as demanding a sacrifice because there were close connections between Tellus and Cybele, but Lenaghan (1969), 115 correctly argues that that level of connection was unnecessary. All Cicero was trying to do was to find an arguable case where Clodius profaned some games. The ‘slaves’ referred to by Cicero were probably freedmen or lower-class plebs, whose low birth Cicero exaggerated for rhetorical effect.

line, 'by our misery, you are great' over and over again.<sup>416</sup> In 43 when the conspirators who had killed Julius Caesar were seeking to return to Rome, they had agents bribe part of the crowd assembled at the Ludi Apollinares to demand their recall, in hopes that the whole assemblage would take up the cry. At that moment, citizens opposed to Brutus and Cassius burst into the theater and staged a counter-demonstration opposing the recall, a display that must have been reminiscent of that at the Megalensia of 56.<sup>417</sup> Thus, in spite of Cicero's attempts to compare Clodius' demonstration at the Megalensia with a slip of the tongue in a prayer before a sacrifice<sup>418</sup> or a *prodigium* comparable to a swarm of bees,<sup>419</sup> public displays like the one at the Megalensia were not really all that uncommon in the late Republic.<sup>420</sup>

But again, Cicero's goal is to find arguable examples of impiety. Technically Clodius may not have engaged in behavior that was all that unusual, but the religious setting exposed him to a charge of impiety. If the charge made by Cicero was completely laughable, he would not have included it in his speech. He expected that his listeners would find his arguments plausible. He was, however, stretching the definition of impiety to an unusual extent. There was no evidence that Cicero's fellow Romans regarded

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<sup>416</sup> 'nostra miseria tu es magnus.' Cic. Att. 39 (II.9).2.3. Pompeius' chosen cognomen, Magnus, proved unfortunate for him in this circumstance.

<sup>417</sup> App. B.Civ. 3.23-24.

<sup>418</sup> Cic. Har. resp. 23.

<sup>419</sup> Cic. Har. resp. 24.

<sup>420</sup> Yavetz (1969), 18-24.



Clodius' activities as the cause of a *vitium*.<sup>421</sup> Therefore Clodius, according to the normal operation of the civic cult, had not committed an act of impiety. Cicero's rhetorical strategy indicates that he, at least, was willing to consider definitions of piety which lay outside the traditional scope of the word, or that he perceived that certain kinds of behavior usually tolerated by his contemporaries were in fact impious because they could lead to a breach of the *pax deorum*. He was attempting to get his audience to change how they viewed these kinds of behavior. Clodius, of course, could challenge Cicero's definition and claim that he had conducted a political demonstration in a public forum where such demonstrations frequently occurred and perhaps even were regarded as completely proper.

Cicero's next line of attack again shows how important it was for politicians to scrupulously maintain a reputation for piety, since any arguable case of impiety could be brought into public light at an inconvenient moment. Cicero tried to strengthen his argument by giving evidence that Clodius was serially impious. He reminded the senators how Clodius had treated the cult of the Great Mother at Pessinus. During Clodius' tribunate there was a controversy in Pessinus between Deiotarus and Brogitarus over who was rightfully priest at the shrine of the Great Mother, the same shrine from which the Romans had imported their own cult of the Great Mother, whose games Cicero had just accused Clodius of desecrating.<sup>422</sup> Deiotarus was ruler of a little tetrarchy in Asia Minor

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<sup>421</sup> There is no suggestion that most Romans thought it necessary to conduct an *instauratio* of these games, and Cicero did not deign to mention Clodius' behavior at the games in a letter to his brother from May, 56 (*Q. fr.* 11 (II.7)); Goar (1972), 63.

<sup>422</sup> *Har. resp.* 28-29, 58, see also *Dom.* 129, *Sest.* 56-7, *Mil.* 73.

whom the senate, at Pompey's urging, had recognized as king and ally and whom it had made high priest of the cult of the Great Mother at Pessinus.<sup>423</sup> According to Cicero, even though Deiotarus held the priesthood and had been recognized as king, Clodius had a law passed in the assembly which recognized Brogitarus, Deiotarus' son-in-law and fellow tetrarch, as the high priest in Deiotarus' place. Cicero even gives Clodius' motivation for such strange behavior—he was bribed. Clodius may have been guilty of accepting a bribe,<sup>424</sup> but even if innocent, his tampering with the cult hierarchy gave Cicero the opportunity to make charges of bribery and impiety.

Of course, Cicero's audience might question his claim that Clodius had been impious when he replaced Deiotarus.<sup>425</sup> Even though the Pessinus cult had been the ancestor, as it were, of the cult of the Great Mother at Rome, replacing a priest there might not be regarded as impiety, given that the cult at Pessinus was not part of the Roman civic cult. Yet the senate's purview over religious affairs could be quite expansive. We have already seen how, quite unexpectedly to Q. Fulvius Flaccus, the senate chose to regard a temple in Bruttium as within its purview and how Pleminius was brought back to Rome and tried, for among other things, his treatment of a temple in

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<sup>423</sup> Deiotarus and Cicero would eventually become closely connected. Deiotarus' little kingdom in southern Asia Minor bordered on Cicero's province in Cilicia, and Deiotarus gave Cicero help during his governorship. Deiotarus also got involved in the civil war between Pompey and Caesar, and both he and Cicero supported Pompey. Finally, Cicero defended Deiotarus before Caesar when the victorious Caesar was deciding Deiotarus' fate. See Gotoff (1993), xxxviii.

<sup>424</sup> Of course, the financial motive need not have been the main reason for the arrangement with Brogitarus. Tatum (1999), 168-169 argues that Clodius primarily wanted to strike at Pompey by ruining his eastern settlement, which he had worked so hard to get ratified.

<sup>425</sup> Goar (1972), 63 suggests that Cicero introduced a discussion of Pessinus to cover up the manifest weaknesses in his discussion of the Megalensia in sections 22-4, but Cicero's discussion was relatively clever, given the connection between Pessinus and Rome, if one is willing to accept Cicero's interpretation of the kinds of actions that can be defined as impious.

Locri.<sup>426</sup> Cicero was asking the senators to consider actions taken in regard to the cult at Pessinus as if they concerned the Roman civic cult. He was asking the senators to reshape their definition of impiety.

### **The Destruction of Sanctuaries**

Cicero next moved to the subject that was most damaging to him personally, the desecration of sacred sites.<sup>427</sup> To provide a plausible defense to Clodius' charge that the removal of Liberty's temple had broken the *pax deorum*, Cicero needed to find other plausible candidates for the desecrated sites mentioned in the response. He began by discussing the fate of Q. Seius, whom Clodius supposedly had killed in order to gain possession of his property on the Palatine.<sup>428</sup> He claimed that he was prepared to prove that, before Clodius seized Seius' house and had it torn down, there were shrines on the site. Thus Seius' murder was more than just a land grab; it was an act of impiety.<sup>429</sup> First, the murdered man's property became part of Clodius' shrine to Liberty, and, second, by destroying the house, Clodius destroyed shrines ensconced within it.

Next, Cicero referred to some impiety involving the Temple of Tellus, the exact meaning of which is obscure. Apparently someone has blamed Cicero for opening up a *magmentarium*,<sup>430</sup> but Cicero's only involvement seems to be that, for whatever reason,

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<sup>426</sup> See above, pp. 60-68.

<sup>427</sup> Goar (1972), 59-61.

<sup>428</sup> Cic. *Har. resp.* 30, *Dom.* 115, 129.

<sup>429</sup> Of course, we only have Cicero's word that Seius was murdered at all; Clodius, no doubt, would have had a very different story to tell.

<sup>430</sup> Emended for the text, which has *acmentarium*. A *magmentarium* was a storehouse for meat leftover from sacrifices. See Lenaghan (1969), 143.

he had *curatio* over the religious site that was ruined.<sup>431</sup> Cicero claimed that Clodius' brother, Appius Claudius Pulcher, had actually been the one to violate the sanctuary.<sup>432</sup> Cicero further argued that the desecration of the *magmentarium* was related to the grain shortage that recently troubled Rome, a particularly important point for him, since Clodius had blamed him for the shortage which had afflicted the city in the last half of 57.<sup>433</sup>

Cicero pointed out other desecrations of religious sites. He accused L. Calpurnius Piso, consul in the year of his exile, of destroying a shrine of Diana located on the Caelian hill. It was apparently well known, since Cicero claimed that many senators had conducted rites there.<sup>434</sup> He also claimed, without getting into specifics, that Sex. Atilius Serranus, the tribune who had vetoed the senate's resolution to restore Cicero's property, had been guilty of numerous violations of sacred sites.<sup>435</sup> Cicero despised both men for their support of Clodius, and we should not be surprised to see their names crop up. What Cicero's attack illustrates is how easy it was to bring accusations of impiety against a fellow citizen. Rome was a minefield of religious sites; every crossroad and every home contained shrines. The territory within the *pomerium* was littered with sites of

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<sup>431</sup> Courtney (1960), 98-99.

<sup>432</sup> Cic. *Har. resp.* 31; Courtney, (1960), 99.

<sup>433</sup> He had to defend himself repeatedly against complaints that he was responsible for the shortage. See *Red. sen.* 34, *Red. pop.* 18, *Dom.* 15-17.

<sup>434</sup> 'L. Pisonem quis nescit his temporibus ipsis maximum et sanctissimum Dianae sacellum in Caeliculus sustulisse? Adsunt vicini eius loci; multi sunt etiam in hoc ordine, qui sacrificia gentilicia, illo ipso in sacello, stato loco anniversaria factitarint.' Cic. *Har. resp.* 32. Nothing is known about this shrine other than what Cicero says about it. Plattner and Ashby (1929), 150 suggest that it was a private construction.

<sup>435</sup> 'A Sex. Serrano sanctissima sacella suffossa, inaedificata, oppressa, summa denique turpitudine foedata esse nescimus?' Cic. *Har. resp.* 32.

religious import. Many of these were probably private or familial sites, and destruction or alteration of these was probably inevitable as properties were bought and combined and houses built or rebuilt. Cicero had already used this fact as part of his arsenal against Clodius. In the *de Domo* he reminded the pontiffs that by tearing his house down to make way for Liberty's shrine, he had uprooted the altars to his family's gods.<sup>436</sup> Technically, of course, private shrines such as those in Cicero's house and, if Platner and Ashby are correct, the shrine of Diana on the Caelian that Piso was supposed to have destroyed, were of limited interest to the state, but even though there was an important distinction between state-sanctioned and private religious sites, the ease with which public and private were convertible in Roman oratory meant that there would be plenty of opportunities for watchful Roman politicians to find evidence of impiety. The nature of Roman public life meant that there would also be plenty of opportunities to bring these impieties to the notice of one's fellow citizens. Just as Cicero had expanded the definition of impiety in his discussion of the games that were violated, in this section he expanded the definition to include treatment of private religious sites.

Cicero concludes this section by going back to the subject of his house. He argued that it was absurd for anyone as notoriously impious as Clodius to claim to have sanctified the site on the Palatine. The only reason that his house would have any aspect of '*religio*', meaning in this instance that it would be dangerous to approach, was the fact

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<sup>436</sup> E.g, at *Dom.* 108.

that it abutted Clodius' home, and so was in visual range of the 'rites' (Clodius' notorious impieties and lapses in morality) that Clodius performed there.<sup>437</sup>

Cicero had to stretch his argument in this section to distract his audience from the fate of the Temple of Liberty, but he was able to find plausible examples of impieties committed by Clodius, a fact that merits our attention. Roman life was filled with rituals: personal, familial, and civic, and the possibility of committing ritual error was very large. It was probably because of this that the Roman system developed easy ways to correct ritual error. But because Roman civic life interwove religion and politics, there was a danger that charges of impiety could, as Rosenstein described them, become 'something of a loose cannon on the quarterdeck of the Republic.'<sup>438</sup> In this particular case, the availability of material for discussion certainly made it very difficult to bring the conflict involving the piety of Cicero and Clodius to an end. There were simply too many opportunities to drag the Bona Dea affair or the Temple of Liberty back into public view, bolstering charge and counter-charge with newly discovered examples of impiety. The number of fora for public discussion and the absence of any authority that could absolutely settle the matter made it extremely difficult to end a contest over piety if the disputants were determined to keep fighting. And the world of Roman rhetoric, which allowed hyperbole, and perhaps even outright invention, further complicated the process.

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<sup>437</sup> Cic. *Har. resp.* 33.

<sup>438</sup> Rosenstein (1990), 61.

## Clodius and the Ambassadors

Cicero's discussion of the next clause, which deals with the slain *oratores*, also illustrates the permeability of the line between religion and politics as well as the breadth of the concept of *pietas*, at least as it appeared in public discourse. It seemed impossible to accuse Clodius of impiety based on this clause of the text, since no one would credit any suggestion that he had anything to do with the murder of the Alexandrines, yet most Romans believed this clause referred to them.<sup>439</sup> Yet Cicero was able to make an argument that, in fact, not only Clodius, but another of his enemies, had committed impious acts by harming ambassadors.<sup>440</sup>

What to do about Egypt became a civic nightmare for the Romans in the 50s. Egypt was the last of the great Hellenistic successor states to maintain something resembling independence. A Macedonian monarchy still ruled, though of course the Egyptians were very careful to respect the power of Rome, which held the rest of the Mediterranean. Egypt offered wealth beyond dreams of avarice to an invader; the fertile Nile provided a huge bounty of grain, which would be irresistible to any power, but it was particularly important to Rome, which had grown beyond the power of Italy to feed.<sup>441</sup> In 57 B.C. King Ptolemy Auletes had made himself so odious to the citizens of Alexandria that they had revolted and driven him from the throne. He fled to Rome, offering a huge bribe to whichever politician could see to getting him put back in his

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<sup>439</sup> Cic. *Har. resp.* 34.

<sup>440</sup> Goar (1972), 64-65.

<sup>441</sup> Rickman (1980), 113-118.

rightful place. Unfortunately the magnitude of the potential bounty gridlocked the system as powerful nobles mustered all of their resources in attempts to gain the commission to bring the king back home. At the same time many among the aristocracy moved to prevent anyone from restoring Ptolemy, fearing that the potential wealth that such a person could command would make him beyond challenge. The consul for 57, P. Cornelius Lentulus Spinther, whose efforts on Cicero's behalf during the exile had won him the orator's gratitude, was the favored candidate. He was due to become proconsular governor of Cilicia and Cyprus, so Egypt fell more or less within his purview, and he left Rome before the end of the year to take up his post. His hopes would soon be dashed, however, because Pompey coveted the job and tried to get it for himself, all the while publicly maintaining support for Spinther. Pompey's involvement raised the stakes of the affair, since Pompey, while powerful, had a large number of powerful enemies, and the obstructionism made so easy by the republican constitution ensured that at the end of the year nothing had been decided. In January 56, the senate received reports that lightning had struck a statue of Jupiter on the Alban mount. It judged the report a *prodigium* and called upon experts to interpret it. Normally the *haruspices* would be called in to give their verdict on this affair, as they were renowned for their wisdom on the subject of portentous lightning, but in this case the senate chose to call in the *quindecimviri sacris faciundis*, a college which was comprised of Roman, not Etruscan, aristocrats. The *quindecimviri* had access to the Sibylline Books and concluded that the *prodigium* showed that the gods were unwilling to allow Egypt to be invaded with an army. This threw a monkey wrench into the entire process, and the question of what to do about



Egypt was delayed.<sup>442</sup> For our purposes, the importance of this convoluted affair lay in the fact that in 57, after the king had reached Rome to ask for help, he was soon followed by emissaries from the Alexandrines who were sent to undermine the king's mission. The king responded by having the emissaries assassinated.

Cicero mentioned that the 'general opinion' (*sermo*) was that the clause in the haruspices response referring to the '*oratores interfectos*' referred to the murder of the Alexandrines.<sup>443</sup> It is interesting that there was 'general opinion' about this subject. The text of the response had apparently been made public, and far from being an abstruse topic of interest only to a few, it was apparently being discussed by the man on the street. This is not the only example of a divinatory pronouncement being discussed publicly. Earlier that very year, when the *quindecimviri* wanted to report their interpretation of the lightning strike on the Alban mount only to the senate, C. Cato insisted that they make it public so that everyone would know their findings.<sup>444</sup> In both cases personal and political rivalries played a part in ensuring that the whole community would play a role in deciding matters relevant to the civic cult. The competition between Cicero and Clodius helped keep the response of the haruspices in public view, while Cato's opposition to Pompey made it inevitable that not just the senate but the citizen body as a whole would be able to evaluate the opinion of the *quindecimviri* as to the significance of the *prodigium* on the Alban mount.

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<sup>442</sup> Mitchell (1991), 162-164 and Tatum (1999), 194-196, 199-201 both provide good surveys of the Egyptian imbroglio, with sources.

<sup>443</sup> '*De Alexandrinis esse video sermonem.*' Cic. *Har. resp.* 34.

<sup>444</sup> Tatum (1999), 200.

Cicero's rivalry with Clodius played a similar role in keeping the health of the civic cult in the public eye. Cicero did not concede that the general opinion was the end of the story, and found other examples of impiety that warranted the public's attention. Cicero argued that the response did not refer only to the murder of Alexandrines, but to the actions of Clodius and of L. Calpurnius Piso, another of his enemies. He blamed Clodius for conspiring with the Chian Hermarchus to kill Theodosius, a legate sent to Rome to meet with the senate.<sup>445</sup> He made a similar accusation against Piso. He claimed that while governor in Macedonia, Piso lured Plator of Orestis to his provincial residence and, even though Plator had the status of an ambassador, Piso had his doctor slowly and brutally put the man to death.<sup>446</sup>

It might be tempting to dismiss Cicero's invective as merely exploiting religion, in this case by making accusations of impiety, for political purposes. Yet there is more going on here than political one-upsmanship. First, it is entirely possible that Cicero was genuinely outraged by the fates of Theodosius and Plator and disgusted at how Clodius and Piso treated ambassadors whose protection was guaranteed by the gods. Furthermore, this is clearly an issue that merited public attention. Once the haruspices had indicated that the gods were unhappy with the way the Romans had been treating ambassadors, it was legitimate to discuss what kinds of behavior had angered the gods, so that this kind of behavior could be avoided. This discussion of religion had relevance for the political health of the Roman community as a whole. It was certainly of interest to all Romans

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<sup>445</sup> Cic. *Har. resp.* 34. Unfortunately we know nothing of this incident except this one reference.

<sup>446</sup> Cic. *Har. resp.* 34, *Pis.* 83-84.

that they make proper choices about who should be placed into positions of community leadership. By turning each other's personal piety into a public issue, Cicero and Clodius were giving all of their fellow citizens a chance to discuss whom they should trust with political and religious leadership.

### **The Bona Dea Affair Redux**

The text of the response gave Cicero the opportunity to raise the issue of the Bona Dea affair again, an opportunity he could never resist. Even if some of the early clauses in the text were congenial to Clodius, Cicero must have taken heart when he got to the middle of the text. The last two transgressions mentioned in the response were that 'good faith and oaths have been neglected, [and] ancient and secret sacrifices have been neglected and profaned'. Cicero argued that these warnings referred to Clodius' behavior in 62 and 61.<sup>447</sup> The sworn oaths neglected, so Cicero claimed, were the oaths taken by Clodius' jurors when he bribed them to acquit him of *incestum*.<sup>448</sup> This struck the jurors with the forehand and Clodius with the backhand, since Clodius' best argument that he had not committed any impious act in 62 was his acquittal by those very jurors.<sup>449</sup> By arguing that the acquittal was invalid, and more than invalid, an act of impiety itself, Cicero undermined Clodius' defense of his piety.

Furthermore, Cicero concluded that the section of the text referring to the pollution and neglect of 'ancient and secret sacrifices' alluded to Clodius' profanation of

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<sup>447</sup> Goar (1972), 64.

<sup>448</sup> *Har. resp.* 36.

<sup>449</sup> As Cicero himself points out in *Har. Resp.* 37: '*Nisi forte tibi (Clodius) esse ignotum putas, quod te iudices emiserunt excussum et exhaustum, suo iudicio absolutum, omnium condemnatum, aut quod oculos, ut opinio illius religionis est, non perdisti.*'

the rites to the Good Goddess. The rites to Bona Dea were very ancient, nearly as old as the city,<sup>450</sup> Cicero claimed, and they were certainly secret and not to be profaned by Clodius' presence.<sup>451</sup> Cicero then dealt with Clodius' potential responses. He asserted that Clodius could not claim that the goddess had forgiven him, arguing that neither his acquittal nor his escape from being blinded, the punishment traditionally inflicted by the gods on desecrators of the rites, proved that he had received forgiveness.<sup>452</sup> Cicero pointed out that though the gods did not strike Clodius blind, they clouded his vision in another way by making him lust after his own sister.<sup>453</sup> Cicero, therefore, continued to argue that Clodius acted impiously, while he displayed his own faith in Rome's religious system by confidently asserting that the gods had, in spite of the appearances, punished Clodius for those impious acts. Cicero absolved the gods from blame for Clodius' career, arguing that the gods had struck him down with a different form of blindness.<sup>454</sup>

At the risk of being repetitive, let us note that Cicero's arguments again demonstrate the difficulty in bringing contests over piety to a resolution. Over five years had elapsed since Clodius acquittal of *incestum*, yet even though Roman institutions had given their verdict, the issue refused to go away.

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<sup>450</sup> Brouwer (1989), 259-260 disagrees with Cicero's assessment of the age of the Roman cult to the Good Goddess, but Cicero was probably not being intentionally deceptive; he may not have known exactly how long the cult had been in Rome, and, in any case, Cicero's testimony is the earliest we have on the subject.

<sup>451</sup> Cic. *Har. resp.* 37.

<sup>452</sup> Cic. *Har. resp.* 37. Clodius, of course, would hardly claim that he needed to be forgiven.

<sup>453</sup> Cic. *Har. resp.* 37-38. And note the connection between piety and morality which some contemporary scholars deny existed in Roman religion, e.g. Scheid (1998), 22: "C'est un religion qui ne comporte pas de code morale; le code éthique qui la régit est la même que celui qui régit les autres relations sociales." For a dissenting view, see Tatum (1993b).

<sup>454</sup> 'deorum tela in impiorum mentibus figuntur.' Cic. *Har. resp.* 39.

### Clodius' Career: Discord and Impiety

The next clause in the text gave Cicero an opportunity to indict all of Clodius' public career as an act of impiety,<sup>455</sup> which reveals the blurriness of the line between religion and politics in Roman public life. For the response of the haruspices was not just explanatory. It was prescriptive: it warned the Roman people to avoid certain kinds of public behavior if they wanted to maintain the goodwill of the gods. The clause, which Cicero emphasized that he was reciting verbatim, read as follows: 'Beware lest, through the discord and dissention among the best men, slaughter and danger be created for the senators and its leaders and they be without the aid of the gods, as a result of which the state may pass into the power of one man.'<sup>456</sup> This prescription implied, or so Cicero alleged, that the gods were unhappy with civil dissention in Rome. Though his prime targets in this section of his speech were those among the *boni* who were willing to squabble among themselves instead of uniting against Clodius, Clodius himself did not escape censure. Cicero labeled Clodius as the author of civil discord<sup>457</sup> and took the opportunity to review his life, arguing that Clodius committed one act of civil discord after another, which had brought down upon the Romans the wrath of the gods. The text of the response enabled Cicero to link piety and political style. This link would not seem obvious, but in Roman public life the connections between religion and politics emerge in places that often seem unusual to a modern observer.

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<sup>455</sup> Goar (1972), 66-67.

<sup>456</sup> Cic. *Har. resp.* 40.

<sup>457</sup> 'Quis igitur optimatum discordiam molitur? Idem (Clodius) este....' Cic. *Har. resp.* 40.

To drive his point home, Cicero provided a number of examples of Clodius' supposed impieties and efforts to promote discord. Clodius conspired to undermine the loyalty of the army to their general during his military tribunate, and after he returned home he conspired with Catiline to overthrow the state.<sup>458</sup> Then he reminded the senate of the egregious impiety at the festival to the Good Goddess. For Cicero, this particular horse would never be too dead to flog, so he again took the opportunity to paint a picture of the effeminate Clodius dressed up in woman's garb and violating Roman sacred rites.<sup>459</sup> Then Cicero described Clodius' subsequent career, emphasizing his attempts to destroy civic harmony. The culmination was Clodius' tribunate, wherein the master of discord vented his fury first against Cicero, the suppressor of internal revolt, then against Pompey, the victor against foreign enemies.<sup>460</sup> It was important for Cicero to defend Pompey, since Pompey's dominant position in Roman politics in 56 B.C. made him the most likely referent of the clause that warned about power coming into the hands of one man.<sup>461</sup> Cicero interpreted the passage as referring to Clodius, however. At the climax of this section of the speech, Cicero wondered aloud to whom other than Clodius the gods could refer, when they warned about civil discord and monarchy in the text of the response.<sup>462</sup>

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<sup>458</sup> Cic. *Har. resp.* 43.

<sup>459</sup> Cic. *Har. resp.* 44.

<sup>460</sup> Cic. *Har. resp.* 45-52.

<sup>461</sup> Goar (1972), 69.

<sup>462</sup> '*Quas ego alias optimatum discordias a dis immortalibus definiri putem.*' Cic. *Har. resp.* 53.

Cicero's rhetoric demonstrates how difficult it can be to distinguish between religion and politics, particularly when we examine the connections between the two in public life. Clodius' political tactics, Cicero argued, had attracted the wrath of the gods, who were warning the Romans not to allow him to continue to disturb the harmony of the *optimates*.<sup>463</sup> There was a certain logic to Cicero's argument. Impiety, as it was normally defined, consisted of ignoring obligations owed to the gods (or family).<sup>464</sup> The consequence of impiety toward the gods was a fracture in the *pax deorum*, which would have tremendous implications for civic life, since without the gods' aid, any civic activity could turn out to be a disaster for the community. Cicero was inferring that since the consequence of impiety was the wrath of the gods, Clodius' career, based on fomenting discord, was impious, because the text of the response clearly indicated that the gods were displeased by those who fomented discord. A further inference could be drawn by his listener: if civil discord were impious, then pious behavior consisted of maintaining public harmony, or at least the harmony of the *boni*, the elite men whom Cicero hoped would dominate public affairs. Thus, Cicero enjoined the senators to wipe discord out of the community. The result, he promised, would be the same as if they had expiated a flawed rite: all fears of those things portended would evaporate.<sup>465</sup> Cicero's conception of piety extended beyond just fulfillment of ritual obligations. According to Cicero, the

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<sup>463</sup> Cic. *Har. resp.* 53-54.

<sup>464</sup> Review the discussion in the introduction, pp. 7-8.

<sup>465</sup> 'Tollatur haec e civitate discordia. Iam omnes isti qui portententur metus extinguuntur.' Cic. *Har. resp.* 55.

gods wanted more than just sacrifices. They wanted the Roman nobility to conduct their political lives in an appropriate manner.<sup>466</sup>

Cicero continued along these lines. The next two clauses in the response warned that the Republic should not come to harm through secret schemes<sup>467</sup> and that neither the baser nor the rejected should be more honored.<sup>468</sup> Finally, the Romans were warned not to change the status quo.<sup>469</sup> Cicero interpreted these clauses as referring to Clodius, making him out to be the object of the gods' warnings, and thus again equating Clodius' political behavior with impiety. It was Clodius, so Cicero claimed, who was hatching conspiracies. Apparently he recently demanded a cessation of public business, which Cicero argued was proof of some kind of conspiracy because such could only happen with the support of a number of people.<sup>470</sup> He further argued that '*repulsi*' did not refer rejected office holders but instead to those who were willing to engage in any kind of behavior in order to advance their own personal careers.<sup>471</sup> Cicero asserted that there was nothing to fear from the *repulsi*, since the Romans had already taken steps to deal with

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<sup>466</sup> Goar (1972), 73 sees Cicero as proposing 'an ethical religion as against one that is purely formalistic', of which he approves, since he sees the formalism of Roman religion as somewhat empty of real meaning.

<sup>467</sup> '*Ne occultis consiliis res publica laedatur.*' Cic. *Har. resp.* 55.

<sup>468</sup> '*Ne deterioribus repulsisque honos augeatur.*' Cic. *Har. resp.* 56.

<sup>469</sup> '*Ne rei publicae status commutetur.*' Cic. *Har. resp.* 60.

<sup>470</sup> Cic. *Har. resp.* 54. Cicero really stretched his argument here, so, wisely he did not belabor this point, but instead quickly moved to the next section of the response.

<sup>471</sup> Cic. *Har. resp.* 55.



them even before the response was issued.<sup>472</sup> The *deteriores*, however, still threatened the community, and Clodius was their leader.<sup>473</sup>

Cicero continued, invoking the immortal gods and reminding his audience of Clodius' impieties, then juxtaposing his impieties with his political behavior.<sup>474</sup> The list of personal impieties is familiar: the destruction of his family gods through his adoption, violation of the rites to the Good Goddess, and a new one, the burning of a temple 'to those very gods by whose aid other fires are quenched.'<sup>475</sup> Cicero juxtaposed this litany of impieties with a discussion of Clodius' activities *de patria*, denouncing his political tactics and his political program, including his trampling of the auspices and his repeal of the *leges Aelia* and *Fufia*.<sup>476</sup> Any actions arguably aimed at stirring up discord became

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<sup>472</sup> Cic. *Har. resp.* 56. It is not exactly certain to what Cicero was referring. Watts (1923), 392 thinks it referred to the recall of Cicero from exile, while Lenaghan, who sees all of section 56 as referring specifically to the candidacy and failure of P. Vatinius for the aedileship, (1969), 186-187, thinks that the 'evil' was corrected by the assembly's rejection of Vatinius' candidacy.

<sup>473</sup> Cic. *Har. resp.* 57. Lenaghan (1969), 185, believes that the *haruspices* originally conceived of the *deteriores* and the *repulsi* as the same people.

<sup>474</sup> Cic. *Har. resp.* 57-58.

<sup>475</sup> 'idemque earum templum inflammavit dearum, quarum ope etiam aliis incendiis subvenitur.' Cic. *Har. resp.* 57. This probably refers to a riot by Clodius followers that resulted in the burning of a Nymphaeum in the Campus Martius: Lenaghan (1969), 188. As Lenaghan points out, Cicero mentions that Clodius has burned temples in a number of other speeches, including *Red. pop.* 14, *Mil.* 73, 14, *Sest.* 84., *Parad.* 4.31. In addition, *Cael.* 78 makes the same charge against Sex. Cloelius, Clodius' henchman. Of these speeches, only the *Pro Milone* gives any specifics about which temple was burned: '[Clodius] qui aedem Nypharum incendit ut memoriam publicam recensionis tabulis publicis impressam extingueret.' All of these sources except the *Red. pop.* date after *Har. resp.*, so it is possible that the burning of this temple took place between 57 and 56. If Clodius' gangs had actually burned a temple it is hard to explain why Cicero did not point this out to the pontiffs in 57. The passage in the *Red. pop.* may have been a rhetorical exaggeration or referred to the burning of some non-public religious site. As we have seen, much of Roman real estate could be arguably defined as sacred, since there were many public and private shrines and since every home had altars to the gods.

<sup>476</sup> Of course, Clodius would have put quite a different take on these events. See the discussion earlier, pp. 41-42. Also note the ease with which Cicero connected personal moral behavior to public religious behavior to political behavior. The various elements of a public leader's life were considered

fair game for Cicero, and since republican political activity made confrontation, debate, and argument inevitable, Clodius had provided Cicero plenty of material to work with. Cicero's argument could work rhetorically because religion was so embedded in civic life that it was not a stretch for his listeners to perceive activities that destabilized Roman politics as more than simply dangerous or even traitorous, but, in fact, as impious. The gods, after all, had as much invested in the Roman community as the citizens.<sup>477</sup> The line between impious behavior and politically unacceptable behavior was thin, and, of course, what constituted politically unacceptable (and therefore impious) behavior was to a significant extent in the eye of the beholder. In the realm of politics and rhetoric, piety and impiety had a very broad scope, indeed.

### ***Pietas and Concordia***

Cicero concluded his address by explaining how the Romans could avert the gods' wrath. In order to prevent things from getting worse, the Romans must maintain concord.<sup>478</sup> This was a theme that was dear to his heart, particularly after his return from exile. It was through the *concordia ordinum*, the harmony among senators and knights, that Cicero believed the political chaos afflicting his era could be prevented. In his conclusion to his speech on the response of the haruspices, he elevated *concordia* from his own personal wish to a divine command, taking the response as proof that his ideas

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interconnected, and serious problems in one area were considered indicators that there may be misbehavior in others; see Tatum (1993b) on the connection between religion and moral behavior.

<sup>477</sup> Scheid (1998), 124-128, in fact, argues that the Romans conceived of the gods, at least in part, in roles comparable to those of fellow citizens.

<sup>478</sup> 'Qua re hunc statum, qui nunc est, qualiscumque est, nulla alia re nisi concordia retinere possumus.' Cic. *Har. resp.* 61.

were divinely sanctioned. For Cicero, the source of the gods' anger was primarily Clodius,<sup>479</sup> and it was because the Romans had failed to punish Clodius that the gods had sent them *prodigia*. But Cicero also pointed out that the Roman nobility had it in its power to assuage the gods and to take the proper steps to avert the portents which the gods had continued to send them. Punishing Clodius was the first step, and the traditional expiatory rites were certainly necessary, but the Roman elite had to start working together if they wished to avert the catastrophe signaled by the gods' warnings.<sup>480</sup> Thus expiation required more than ritual. It required the senators and magistrates to alter their behavior.

Cicero's argument illustrates the pitfalls of trying to understand Roman religion only through narrow legalism.<sup>481</sup> His claims about how to expiate the prodigy of the Ager Latiniensis really do not correlate with what we know about how Roman ritual worked. When prodigies appeared, it was the responsibility of the Romans to figure out what rituals were necessary to satisfy them and then carry those out.<sup>482</sup> Once the proper rituals had been conducted, the gods were satisfied and the Romans' responsibilities ended. Yet in the *De Haruspicum Responso*, Cicero takes expiation of a *prodigium*

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<sup>479</sup> 'nam ut meliore simus loco ne optandum quidem est illo (Clodio) impunito. . . . Quo ne trudemur, di immortales nos admonent, quoniam iam pridem humana consilia ceciderunt.' Cic. *Har. resp.* 61.

<sup>480</sup> 'Sed faciles sunt preces apud eos, qui ultro nobis viam salutis ostendunt: nostrae nobis sunt inter nos irae discoridaeque placandae'. Cic. *Har. Resp.* 63.

<sup>481</sup> A point Goar (1972), *passim* makes often, but Goar sees this attitude as an improvement over Roman formalism. It is best to avoid judging religion in this way. Instead, Cicero's argument shows that the Romans could conceive of piety outside a purely ritual context, which expanded the scope for public discussions of piety and impiety.

<sup>482</sup> The process is summarized by Scheid (1998), 99.

outside the realm of ritual and into the realm of political tactics, which is quite a leap. We must also keep in mind that he intended his speech to persuade, so he could not undermine his arguments by claiming things that were completely outlandish. This indicates that, even if the state cult operated on a ritual level, the Romans conceived of the operations of the gods as more than just ritual, and, in fact, were capable of conceiving of piety toward the gods as more than simply offering the appropriate rituals.<sup>483</sup> Cicero's analysis of the *prodigium* shows that many kinds of public behavior could be conceived of as pious or impious.

### Conclusions

The conflict between Cicero and Clodius on the response of the haruspices demonstrates perhaps better than anything else that the Romans observed each other's religious behavior and were willing to call their fellow citizens on the carpet if they observed any impieties. Cicero used the response to submit a whole catalog of Clodius' supposed impieties for the consideration and judgment of his fellow senators, and while we do not have Clodius' speech before the *contio*, we can be certain that he reminded his fellow citizens that Cicero had the Temple of Libertas torn down. This was not, however, a sign of decay. Even if the parties in a dispute were trying to settle personal grudges or advance political agendas by making piety a public issue, this did not mean that their only goals were personal and political and that they had no real concern for the health of the civic cult. A Roman politician could satisfy his own personal desires and still work to improve the religious health of the community. It is hard to analyze motivation from this

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<sup>483</sup> Tatum (1993b) makes a similar point in regard to Roman morality. Tatum argues that Roman religion did have a moral component.

distance, though, so it is very difficult to ascertain whether, Cicero, e.g., or Clodius was genuinely concerned with the civic cult or whether they were simply using whatever weapons they thought effective to settle personal or political scores. But if we put questions of motivation aside, the very fact that they employed piety as a such a weapon demonstrates that they perceived that their fellow citizens and their fellow aristocrats, whose opinions they were trying to sway, wanted the civic cult to be properly maintained.

We also see again that the fragmentation of religious authority and the structure of the civic cult encouraged disputes over piety to form and made them very difficult to resolve once they had come into existence. As far as Roman religious and legal institutions were concerned, the Bona Dea affair and the fate of Cicero's house had been decided. Yet Clodius and Cicero kept the issues alive. There were four basic reasons that they could do so. First, piety was central to a politician's public image, and if a Roman could affix a reputation for impiety upon his enemy, he might seriously damage his opponent's public career. Second, no religious (or political) conflict need be regarded as truly lost, given that the various institutions that had authority over civic life in Rome could always reverse a decision. Cicero's own fate demonstrates this, since he suffered exile and the consecration of the site of his home, but within two years had made a triumphant return and gotten his property restored. As a consequence, there was every reason for Cicero and Clodius to treat every defeat as a temporary setback and keep launching attacks on each other's piety. Third, they could continue because there was no one to make them stop, and there were plenty of opportunities to continue. Roman civic life distributed authority among so many different groups and individuals and provided so

many opportunities for public discussions that disputes among civic leaders, including those over religious issues, could continue for a long time if the two sides were willing to keep fighting. Fourth, conflicts over piety were complex because piety was not normally a crime, which made it a complicated process to determine what kind of community involvement, if any, was needed to deal with the perpetrator of an impious act. Normally, if an impiety ruptured the *pax deorum*, the community repaired the breach through ritual and moved on, but sometimes the community decided that it should intervene when an impiety endangered public safety.

Finally, this tendency to fight over religious issues and to drag an enemy's piety into public view was not proof of decadence; instead it was healthy for the Roman civic cult. Roman civic life revolved around the idea that leaders could submit their ideas, their opinions, and their political lives to the judgment of their fellow citizens. Public discussion indicated public interest. This particular case is unusual only in that it was rare to debate this particular aspect of Roman religion, since in most cases, so far as we can tell from the sources, the advice of the *quindecimviri sacris faciundis* or the haruspices on how to expiate a prodigy was normally implemented without much comment. In this instance, the text of the response, which went beyond merely explaining which gods had been wronged and which sacrifices needed to be carried out in expiation, provided impetus for community discussion. In addition, the text encouraged debate by listing transgressions but not naming the transgressors, and the clauses of the response, whether by accident or design, seemed perfectly tailored for Clodius and Cicero to fill in the gaps by naming each other as the malefactor. The very nature of the

response encouraged public discussion, but this was healthy for Roman religion and Roman civic life, since the purpose of the debate was to analyze what was going wrong in both the religious and the political aspects of public life and to fix the problems. And if the subject of the conflict was rare, the pattern that it took looks familiar. A conflict over a religious issue broke out, and two opposing sides, each with an arguable case, took their opinions to one of the sources of religious authority in the community.

## CHAPTER 6

### CONCLUSIONS

The last three decades have witnessed a transformation in our understanding of Roman religion. Earlier generations of scholars saw Roman religion during the middle and late Republican periods as being corrupted by contact with the Hellenistic east and exploited by corrupt politicians. John North, Mary Beard, S. R. F. Price, John Scheid, and many others have exposed the scholarly blind-spots and preconceptions which influenced Cumont, Mommsen, Warde Fowler, Taylor, and others. We now see that Roman religion was influenced by surrounding cultures, including the Greeks and Etruscans, from Rome's earliest days, or at least as far back as our sources go. Now we look at Roman civic life as an amalgam of politics, religion, economics, and society. No one aspect of civic life can really be understood without understanding that it is embedded in all the others. The avenues of scholarly research have shifted in consequence. The minds of an earlier generation focused on origins, trying to glean from our sources what comprised Roman religion in its pristine state. And, while we are forever indebted to them for the light they shed on how Roman religion interacted with the religions of the Greek east and how closely related Roman religion was to the religions of other indo-European peoples, we recognize today how permeable Roman



culture was to the cultures of its neighbors. We are also beginning to see how Roman religion fit together with the other components of Roman civic life.

Our change in perspective, however, has given us a whole series of new questions. For instance, scholars in the early twentieth century had no problem understanding what the Bona Dea affair or the conflict over Cicero's house were 'really' all about: they were simply political squabbles using religion as a tool. Clodius and Cicero simply exploited the civic cult to settle political scores. The rivalry between Cicero and Clodius illustrated the bankruptcy of the civic cult during the late Republic, and were rarely if ever discussed for their religious significance. Today, however, we have to look at public conflicts over religion in a completely different light. When we see a Roman raising questions about whether one of his fellow citizens has fulfilled his obligations to the gods, we can no longer dismiss this as politics by other means. Things were more complex than that. Since politics and religion were linked, we expect to see Romans publicly discussing how their leaders managed the civic cult. In our new scholarly environment we have to examine Roman civic institutions and see how magistrates, the senate, the assemblies, and the priestly colleges interacted both to generate disputes over piety and to try to resolve them. The examination I have conducted has led me to the following conclusions.

The structure of Roman institutions encouraged public conflicts over piety to break out. Roman aristocrats were competitive, Roman religion was complex, and Roman religious authority was fragmented. Because aristocrats competed with each other for prestige, they kept an eye on each other. They noticed ritual errors, lapses in religious behavior, even unusual attitudes toward religion. Because Roman civic life was grounded in discussion and debate, these aristocrats had plenty of opportunities to present their fellow citizens with evidence that one of their rivals was impious. After Cicero and Clodius became rivals in the wake of the Bona Dea affair, for example, the contest

between them was waged at least in part on the battlefield of piety. Each strove to convince his fellow citizens that his opponent was impious. Furthermore, since so many different groups had a say over religious matters, contests over piety were fought in a number of different venues, prolonging the process of deciding which party in a dispute was correct. Of course, not all conflicts over piety erupted in the framework of competitive rivalry. Sometimes a new or unforeseen situation cropped up, one which could not be handled through the normal operation of the civic cult. Since so many different groups and individuals had authority over religious matters in republican Rome, it took some sorting out before the matter could be resolved. Often the discussion resulted in a new definition of pious or impious behavior. Thus, before 200 B.C., it was not considered proper to make vows of unspecified amounts (or at least no one had ever tried it); and when Sulpicius made such a vow and Crassus challenged him, the dispute between them resulted in a new way of fulfilling obligations to the gods. Likewise, in the process of deciding what to do about Clodius' conduct in December 62, the college of pontiffs decided once and for all that the presence of men at the rites to the Good Goddess was impious.

Contests over piety did not always end once the institutions governing the Roman community had weighed in. Clodius might feel vindicated because his jury acquitted him, but he had to defend his piety until his death because Cicero dragged the Bona Dea affair into every battle, turning his entire public life into a religious contest. Cicero too might cast a satisfied gaze around his rebuilt home, but he had to defend it even after the senators had cast their votes in his favor. Because authority did not rest in one person or even group of people who could impose their will and end the struggle, if the contestants wanted to continue the fight, and if both sides had enough public standing to gain an audience in the senate or *in contione*, the fight could continue. And since every decision of the senate or law of the people could be reversed by a subsequent *consultum* or law, no defeat ever need be considered permanent.

Because of this, it was sometimes difficult for the Romans to draw a clear boundary between pious and impious behavior. In 61, for instance, the college of pontiffs created such a line, but the community, in the form of a jury, absolved the very

man whose behavior had led the college to create a definition in the first place. In rhetoric, piety and impiety could take on very broad definitions. Cicero argued in the *De haruspicum responso* that pious behavior comprised *concordia*, and those who stirred up trouble, as he defined it, were not just nuisances but dangerous and impious. Of course, the Romans theoretically allotted to the gods the responsibility of punishing the impious. This was an important element in keeping the ritual system functioning, since it usually kept the Romans' already overburdened civic structure from having to police the religious behavior of its citizens, but it also meant that there were often no clear guidelines about how to deal with impieties that jeopardized the safety of the community. Since the Romans perceived a connection between the religious and earthly health of the community, it was inevitable that in some cases the community would have to get involved in issues of piety. Even if it were the gods who dealt with the actual impiety, the citizens could intervene to punish those who recklessly endangered their safety by committing impious acts. This meant that the community would have to take it upon themselves to work out a definition. It did so through the same means it used to solve other civic problems: discussion and debate among citizens and leaders in hopes of achieving some consensus. In some cases, it was easy for community and senate to achieve this consensus, make a decision, and get that decision to be accepted. The unfortunate Q. Fulvius Flaccus discovered this. He seems to have become a miserable civic outcast after he stripped the roof off of the Bruttian temple, causing an outraged senate to declare his act impious. The gods, so the Romans believed, punished him by taking away his children and driving him to suicide, but, as we can tell from Livy's

account, his fellow citizens did not seem to be particularly supportive of his troubles, seeing his misfortune as just punishment, and he lived the rest of his life with a reputation for impiety. However, when discussion and debate produced no consensus, then battles over what constituted piety could last for some time. Neither Clodius nor Cicero could deliver a knock-out blow against the other. Clodius escaped conviction, and Cicero regained his house, and each was able to maintain enough public standing and support among his fellow citizens and fellow aristocrats to continue his public career in the face of the other's repeated accusation of impiety. Thus they kept up their battle over piety until Clodius yielded the field by dying.

Finally, contests such as the one between Cicero and Clodius demonstrated the health of the civic cult, not its weakness. The outrage over Clodius' behavior at Caesar's house, the public interest in the meaning of the haruspices' response, and, perhaps more than anything, the Romans' willingness to listen to Cicero and Clodius level charge and counter-charge for a decade reveal that the Roman community did not feel alienated from the civic cult. Furthermore, contests over piety demonstrate the vitality of Roman religion during the republican era. Rome's leaders reckoned that piety was something worth discussing, that proper management of the civic cult was important, and that their fellow citizens, who had chosen the people who would lead the community, thought it important for their leaders to be pious. The structure of civic religion allowed public contests over piety to occur, yet these contests ensured that the community would continue to observe the practice of their religion and to have a say in how it operated.

‘Politicization’ helped the civic cult meet new challenges and continue to fulfill its role in community life.

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