

THE *LEX CLODIA DE CENSORIA NOTIONE*

On the very day he entered his tribunate, P. Clodius Pulcher promulgated four bills, all of which subsequently passed into law: *quattuor leges perniciosae*, as Asconius dubs them.<sup>1</sup> Perhaps the least discussed of the four is the *Lex de censoria notione*, usually mentioned only in passing and then in general terms.<sup>2</sup> Yet this same law received more than its fair share of attention in the 50s. Cicero denounced it as a law whose spirit, if not its letter, aimed at the abolition of the censorial stigma (*Sest.* 55 "ut censoria notio et gravissimum iudicium sanctissimi magistratus de re publica tolleretur"; cf. *Pis.* 10). This, Cicero asseverated, was tantamount to abolishing the censorship itself (*Pis.* 9 "vetus illa magistra pudoris et modestiae, censura, sublata est"; cf. *Dom.* 130, *Har. resp.* 58, *Prov. cons.* 46). The hyperbole underscores for us the importance that Cicero (and presumably his contemporaries) placed upon the censors' authority to inflict *ignominia* in an age when the Roman obsession with *dignitas* was at its height.<sup>3</sup> Cicero's opposition was not unique; in the months after Clodius' death no less a figure than Metellus Scipio, then Pompey's colleague in the consulship, carried a law abrogating the *Lex Clodia* (Cass. Dio 40. 57). Cicero's objections to the Clodian law, for all their exaggeration, cannot be ascribed merely to his personal hostility toward its promulgator; Scipio's action proves that. But the precise basis for Cicero's complaints has not yet been determined, partly because his opposition to the law has not been taken entirely seriously, and also because the actual significance of Clodius' law has not been fully appreciated. Hence the purpose of this paper, a reconsideration of the *Lex Clodia*.

## I

We are fortunate in possessing Asconius' explanation of the Clodian law: "ne quem censores in senatu legendo praeterirent, neve qua ignominia afficerent, nisi qui apud eos accusatus et utriusque censoris sententia damnatus esset" (Asc. 8 C.; cf. Cass. Dio 38. 13, 40. 57, *schol. Bob.* 132 St.). Thus explained, the law does not at first glance seem especially innovative. The principle of collegiality already required that the censors concur in the assignment of a *nota*; and there exist numerous examples of senators and equites defending themselves before the censors—so many, in fact, that Mommsen concluded that a Roman accused before the censors, or otherwise threatened with a *nota*, already had the opportunity to present his case guaranteed him by tradition.<sup>4</sup> Consequently, in

1. Asc. 8 C. Sources for Clodius' tribunician legislation are collected in *MRR*, 2:195–96.

2. See, e.g., J. Suolahti, *The Roman Censors: A Study in Social Structure* (Helsinki, 1963), p. 50; F. de Martino, *Storia della costituzione romana*<sup>2</sup>, vol. 3 (Naples, 1972), pp. 175–76; E. S. Gruen, *The Last Generation of the Roman Republic* (Berkeley and Los Angeles, 1974), p. 257; C. Nicolet, *The World of the Citizen in Republican Rome*, trans. P. S. Falla (London, 1980), p. 56; A. E. Astin, "Censorships in the Late Republic," *Historia* 34 (1985): 187; B. A. Marshall, *A Historical Commentary on Asconius* (Columbia, Mo., 1985), p. 98. The most thorough discussions are still those of P. Willems, *Le sénat de la République romaine*, vol. I (Louvain, 1895), pp. 234–39, and T. Mommsen, *Römisches Staatsrecht*<sup>3</sup>, vol. 2 (Leipzig, 1887), pp. 386–87.

3. Cf. Astin, "Censorships," pp. 187–89; A. Alföldi, "The Main Aspects of Political Propaganda on the Coinage of the Roman Republic," in *Essays in Roman Coinage Presented to Harold Mattingly*, ed. R. A. G. Carson and C. H. V. Sutherland (Oxford, 1956), pp. 63–95.

4. *Staatsrecht*<sup>1</sup>, 2:375–76, 386–87.

Mommsen's opinion, the *Lex Clodia* codified what was in any case customary. Similarly, so he thought, Clodius' law deprived the censors of all initiative in condemning the morals of any Roman, reducing them to judges dependent upon some third party to level an accusation, a procedure that was also the rule, though not the law, in the prior conduct of the census.<sup>5</sup>

This view brings with it certain difficulties. If Clodius' law agreed so closely with traditional practice, how could Cicero attack it so forcefully? Despite his personal animosity toward all things Clodian he could not have expected to persuade the senate and people of Rome that what was once *mos maiorum* had suddenly become an outrage. There is also the question why the law, if it corresponded so neatly with traditional procedure, was ultimately repealed. One might argue that the imposition of legal requirements on what had previously been matters of censorial discretion was a restriction unworthy of Rome's most august magistracy, and that the role of the plebs in dictating the restriction could only heighten the indignity.<sup>6</sup> Cicero, however, accused the *Lex Clodia* not of disgracing the censorship, but of emasculating it.<sup>7</sup>

If Clodius' law had actually deprived the censors of their initiative in performing the *lectio senatus* or the *regimen morum*, as Mommsen argued, it would have severely weakened the office—to the point that Cicero's outcries would have been reasonable. But this seems unlikely. First, although the sources show that the censors heard accusations brought against individuals by others, there is no indication that the censors hesitated to act on their own. The confrontation of Scipio Aemilianus and C. Licinius Sacerdos, adduced by Mommsen, proves nothing.<sup>8</sup> Although the affair is reported by several sources, we may cite Cicero's account, which was delivered as part of his defense of Aulus Cluentius (*Clu.* 134): "[Aemilianus] cum esset censor et in equitum censu C. Licinius Sacerdos prodisset, clara voce, ut omnis contio audire posset, dixit se scire illum verbis conceptis periurasse; si quis contra vellet dicere usurum eum esse suo testimonio. deinde cum nemo contra diceret, iussit equum traducere" (Cicero omits the additional comment found both in Val. Max. 4. 1. 10 and, translated, in [Plut.] *Apophth. Scip. Min.* 12: "lucrificac censoriam notam, ne ego in tua persona et accusatoris et testis et iudicis partes egisse videar"; Quint. *Inst.* 5. 11. 13 paraphrases Cicero). The incident was, to say the least, remarkable, and Cicero employed the exemplum to demonstrate how far that greatest of men had gone to insure impartiality in his censorship; by implication, the process was ordinarily much less scrupulous and therefore of less than perfect credibility (at least, so Cicero hoped to prove, in the case of his client, the disgraced Cluentius). As Valerius Maximus states (4. 1. 10), Aemilianus' conduct was a shining example of his *moderatio*—it was not typical behavior.<sup>9</sup> On the contrary, the accounts of

5. Ibid., 2:386–87. Whatever censorial procedures were before Clodius' law, it must be stressed that they followed custom, not law; see Willems, *Sénat*, p. 235, and A. H. J. Greenidge, *Roman Public Life* (London, 1901), p. 220.

6. Such an attitude prevented Cn. Baebius Tamphilus (tr. pl. 203) from indicting the censors of that year for their public quarrel; see Livy 29. 37. 17; cf. Val. Max. 7. 2. 6.

7. Even Cass. Dio says (40. 57) that Clodius' law deprived the censors of ἐξουσία.

8. *Straatsrecht*<sup>3</sup>, 2:380, n. 2, and 385; Mommsen's other examples show only that a third party *could* act as *accusator*.

9. Aemilianus, of course, did not display *moderatio* by choice; his colleague in the censorship, L. Mummius (cos. 146), protected many senators and equites against Aemilianus' sternness. Mummius'

ambitious censorships, like that of Cato, all indicate that the initiative lay solely with the censors; and this suggests that there was no customary necessity of relying on outside parties to lay charges before the censors.

Nor does Asconius' statement ("qui apud eos accusatus et utriusque censoris sententia damnatus esset"; cf. Cass. Dio 38. 13 τις παρ' ἀμφοτέροις σφίσι κριθείς ἀλοίη) show that Clodius' law prohibited censors from leveling accusations themselves. The phrase *apud eos* need not be construed so closely with *accusatus* that it implies a third party was required to lay the accusation; rather, the phrase, appearing as it does at the clause's beginning, emphasizes that the entire procedure demanded the active participation of both censors (a point stressed by Dio's language as well). Under the old procedure, both in the census proper and (presumably) in the *lectio*, the *nota* affixed by one censor took effect unless the other censor actively opposed it (this is why expulsions were frequently attributed to one and not the other of a pair of censors). Clodius' law, on the other hand, necessitated explicit condemnation by both censors.<sup>10</sup> Herein lies the essence of the *Lex Clodia*: not the weakening of the censorial initiative, but the formalization of the *lectio senatus*, a matter to which we may now turn.

## II

The *lectio senatus* was not among the original duties of the censors. It was the censors' unique responsibility to conduct the official census—that is, to compile the lists which indicated each individual's property class—and to perform the *lustrum*. One facet of the former task was the *cura morum*, since in Rome not only wealth but also character determined one's place in society.<sup>11</sup> During the census each citizen was subject to the censors' scrutiny, though in practice only the upper classes were affected. If the censors judged an individual morally wanting, they might satisfy themselves with a reprimand, or they might record their objection by placing a mark (*nota*) on the census list alongside the individual's name; they might even attach a brief explanation of their mark (*subscriptio censoria*). The censors could also impose various sanctions upon objectionable citizens.<sup>12</sup> An individual charged with some offense was customarily given an opportunity to present his side, pleading either himself or through a lawyer; and it should be noted that such defenses were often successful.<sup>13</sup> Although the censors were responsible for the moral supervision of the Romans, this *regimen morum* was limited to their conduct of the census and was most conspicuously displayed in the *recognitio equitum*. Only with the passage of the *Lex Ovinia* sometime before 312 was the revision of the senate roll assigned to

opposition renders Aemilianus' unwillingness to proceed against Licinius perfectly comprehensible. On Aemilianus' censorship generally, see A. E. Astin, *Scipio Aemilianus* (Oxford, 1967), pp. 115–24.

10. That Clodius' law called for formal proceedings (*iudicia*) has often been noticed; see, e.g., Mommsen, *Staatsrecht*<sup>3</sup>, 2:386–87; Suolahti, *Censors*, p. 50; Gruen, *Last Generation*, p. 257; Astin, "Censorships," p. 187; Cic. *Att.* 4. 16. 8, discussed in section III below.

11. On the *cura morum*, see A. E. Astin, "Regimen Morum," *JRS* 78 (1988): 14–34 (with further references).

12. See *ibid.*, pp. 41–43, on censorial sanctions, several of which remain controversial.

13. E.g., the defense of C. Gracchus before the censors, recently discussed by E. Badian, "The Silence of Norbanus," *AJP* 104 (1983): 160–64; for more examples, see Suolahti, *Censors*, p. 50. The *cura morum*, it should be noted, continued throughout the census; see Livy 29. 37. 11–17, on the maneuvers of M. Livius Salinator (cos. 219, 207) and C. Claudius Nero (cos. 207).

the censors,<sup>14</sup> a change that added yet another sanction to the censors' moral authority. Nonetheless, the *lectio*, though carried out by the censors, was not thereafter an integral part of the census proper; it remained independent of the census and was usually completed before the census itself was begun.<sup>15</sup> Thus both procedures, the revision of the *album senatorum* and the revision of the census lists, persisted side by side.

This separation is illustrated by the incident involving L. Metellus, who was quaestor in 214: in that year he was deprived of his public horse, removed from his tribe, and made an *aerarius* because of his conduct in the aftermath of Cannae (Livy 24. 18. 1–6, though Livy gives the praenomen as Marcus; cf. *MRR*, 1:261). Since Metellus was ejected from the senate in the next census, that of 209, he was not expelled in 214. And he must have been a member: either he was actually enrolled in the *lectio* of 214 or (more likely) he had been adlected in 216 by the dictator Fabius Buteo, who was striving to replenish the senate (Livy 23. 23. 3–7). The point is that, once the *lectio* had been completed, the censors could not review the matter of Metellus' place in the senate; they were limited to the sanctions of the census proper (of which they chose the most severe).<sup>16</sup>

There are, to be sure, certain similarities between the *lectio* and the census proper: both procedures employed lists handed down from the previous censors; both used the *nota* and *scriptio*; the terminology of the two was similar (cf. the phrases *senatu movere* and *tribu movere*); and in both activities the censors painstakingly exercised their guardianship of Roman morality. Nonetheless, Mommsen pushed the analogy too far when he asserted that the actual procedure for eliminating someone from the senate roll was the same as that followed for the *recognitio equitum*.<sup>17</sup> I have already remarked that anyone accused before or by the censors during the conduct of the census was allowed by tradition to defend himself. There is no evidence, however, that senators were given any opportunity to defend themselves from expulsion during the *lectio senatorum*.<sup>18</sup>

The censors of 70, in their severe revision of the senate roll, passed over the jurors who had been bribed in the notorious trial of Oppianicus, four years earlier.<sup>19</sup> None of these senators, according to Cicero, was allowed to defend himself. In the *Pro Cluentio*, which admittedly is biased and very much concerned to minimize the importance of these expulsions (though without giving offense to the censors themselves), Cicero claims, with regard to the ejected senators (*Clu.* 131): “si hanc apud eosdem ipsos censores mihi aut alii causam agere licuisset, hominibus tali prudentia praeditis certe probavisset: res enim indicat nihil ipsos habuisse cogniti, nihil comperti.” Since Cicero defended Cluentius in 66 and the fate of the *iudicium Iunianum* was well known, it would have been absurd for Cicero to assert that neither he nor anyone else (*aut alii*) had had the opportunity to present a defense, if the stigmatized senators had in

14. Sources for the *Lex Ovinia* collected in *MRR*, 1:158–59. The controversies attending this law do not affect this paper, since the relevant point, the assignment of the *lectio* to the censors, is well established.

15. See Mommsen, *Staatsrecht*<sup>3</sup>, 2:419–20.

16. Cf. also the incident involving L. Scipio Asiaticus (cos. 190) and the censors L. Valerius Flaccus and M. Cato in 184, discussed (charitably) in A. E. Astin, *Cato the Censor* (Oxford, 1978), pp. 81–82.

17. *Staatsrecht*<sup>3</sup>, 2:422.

18. Cf. Willems, *Sénat*, p. 235.

19. See Cic. *Clu.* 117–34; Sall. *H.* 4. 52 M.; Livy *Per.* 98; Asc. 84 C.; Plut. *Cic.* 17. 1; Cass. Dio 37. 30. 4.

fact been allowed to address the censors. No one had been permitted to do so because it was not customary for censors to grant hearings before expelling someone from the senate.<sup>20</sup>

Such procedure was quite sensible. As Mommsen himself noted, speed was vital to the *lectio*, both to allow the newly chosen senate to get on with its business and so that the censors might turn to the time-consuming process of the census itself (as well as their other duties).<sup>21</sup> Other evidence supports this generalization deduced from Cicero. Whenever the sources report a defense pleaded before the censors, it is invariably an incident from the census proper. This is sometimes stated explicitly and sometimes implied by the punishment imposed.<sup>22</sup> Numerous anecdotes from the censorship of L. Mummius and Scipio Aemilianus (142) have been preserved; all save one involve equites defending themselves at the *recognitio*.<sup>23</sup> The exception concerns a centurion; and though it indicates that even humbler citizens, when threatened with a *nota*, were permitted a defense, it clearly has no bearing on the *lectio senatus*. Gellius records several harsh censorial judgments (*NA* 4. 20), and in each case a defense was offered; yet each time the offender, in spite of his plea, was made an *aerarius*, evidence that the incident occurred during the census, not the *lectio*. Indeed, we hear strikingly little about the conduct of the *lectio* itself except for the disagreements that arose between various censors and, of course, except for the actual results of the *lectio*.

This is not to say that ejected senators never took action. There are several instances of retaliation. C. Atinius Labeo was expelled from the senate by the censors of 131, Metellus Macedonicus (cos. 143) and Q. Pompeius (cos. 141). Elected to the tribunate for 130, Atinius responded by ordering Metellus thrown from the Tarpeian rock.<sup>24</sup> When the other tribunes came to Metellus' aid, Atinius went on to consecrate the censor's property (Cic. *Dom.* 123). Atinius' behavior was imitated by a tribune of 70 who, after he had been excluded from the senate, attempted to give one of the censors the same treatment (ibid. 124). More interesting is the case of M. Duronius, who, when tribune in 97, was ejected by L. Valerius Flaccus (cos. 100) and M. Antonius (cos. 99) because he had abrogated a sumptuary law. Duronius, Valerius Maximus reports (2. 9. 5), mounted the rostrum—*impudenter*, in Valerius' opinion—to inveigh at length against his expulsion. Later Duronius prosecuted Antonius *de ambitu* for improprieties allegedly committed during his censorship (Cic. *De or.* 2. 274). But all this, whatever the satisfaction it may have provided to the expelled tribunes, had no bearing on the *lectio* itself; the tribunes had already been stigmatized before they acted. Even Duronius, who actually spoke against his expulsion (solely by virtue of his office), merely raged against a *fait accompli*.

20. Mommsen, *Staatsrecht*<sup>3</sup>, 2:386, n. 5, regards the procedure described by Cicero as an aberration; but Cicero nowhere makes this claim, though it would have served his purpose. On the contrary, Cicero is at pains to stress the traditional role of the *lectio* in Roman life.

21. Ibid., 2:422.

22. See following; note, however, that nothing can be deduced from Pliny *HN* 17. 32.

23. See Astin, *Scipio Aemilianus*, pp. 120–21.

24. Livy *Per.* 59; Pliny *HN* 7. 143. Atinius was tr. pl. in 130, not 131 (see *MRR*, 3:27, correcting *ibid.*, 1:500–501). For a full discussion see G. V. Sumner, *The Orators in Cicero's "Brutus": Prosopography and Chronology* (Toronto, 1973), p. 58.

The one incident that bears directly on the *lectio* is the expulsion of L. Quinctius Flaminius (cos. 192) by the censors of 184.<sup>25</sup> This was the occasion of a lengthy tirade by the censor Cato, in which he condemned Lucius' conduct during the campaign against the Boii in 192. Cato's speech, as Livy tells us (39. 42. 6), was neither necessary nor traditional: "patrum memoria institutum fertur ut censores motis senatu adscriberent notas. Catonis et aliae quidem acerbae orationes exstant in eos quos aut senatorio loco movit aut quibus equos ademit." He was on this occasion prompted by the demonstrations of the brothers Flaminius, who, upon hearing of Lucius' *nota*, appeared before the people in mourning and kept demanding that Cato state his reasons for disgracing so illustrious a family. Clearly, Lucius' expulsion had taken them by surprise; clearly, too, the *nota* must not have specified the censors' reasons for their action. After Cato had amply justified the censors' decision, he went on to challenge the ejected consular: if Lucius wished to defend himself, let him do so by *sponsio*.<sup>26</sup> Once again, all this took place after the *lectio* had been completed, and it speaks strongly against any formal process of accusation and defense during the censors' revision of the *album senatorum*.<sup>27</sup>

Thus the real significance of the *Lex Clodia* emerges. The censors continued to have the right to impeach senators and to exclude them from the senate. Clodius, however, assimilated the procedure of the *lectio* to that of the census proper: henceforth, senators would hear the charges against them and would be granted an opportunity to defend themselves before the censors could remove them from the senate. Though such defenses had been traditional within the framework of the census proper, they were totally new to the *lectio*. This was the innovation of the Clodian law.<sup>28</sup>

### III

It is time to consider Clodius' purpose in carrying his law. Recent scholarship has demolished the Ciceronian characterization of Clodius as a depraved revolutionary;<sup>29</sup> we may therefore dismiss the common assertion that the *Lex Clodia*

25. Sources and discussion in Astin, *Cato*, pp. 79–80.

26. Livy 39. 43. 5; cf. Plut. *Cat. Mai.* 17. 7. Plut. *Flam.* 19. 2, stating that Cato's oration left Lucius dumbstruck, is not to be taken seriously; Cato gave Lucius no opportunity to respond, nor was he required to do so.

27. There is no reason to suppose that Cato's speech was delivered in the senate (so, e.g., M. T. Sblendorio-Cugusi, ed., *M. Porci Catonis Oratorum Reliquiae* [Turin, 1982], pp. 224–29). Nor do Plutarch's accounts of the incident support the view of P. Fraccaro, *Opuscula*, vol. I (Pavia, 1956), pp. 429–32 (followed by H. H. Scullard, *Roman Politics* [Oxford, 1973], p. 158), that Cato delivered his speech at the *recitatio*. According to Plutarch, (1) the Flamini learned of Lucius' disgrace (i.e., the *recitatio*), (2) they donned mourning (ἀμώτεροι ταπεινοὶ καὶ δεδακρυμένοι) and demonstrated against Cato, and (3) Cato responded with his speech against Lucius (presumably at a *contio* called by himself and his colleague, who was present at the speech); clearly, some time elapsed between these stages; cf. J. Crook, "Sponsione Provocare: Its Place in Roman Litigation," *JRS* 66 (1976): 133.

28. Willems, *Sénat*, p. 236, draws a similar conclusion, though he does not distinguish between the *lectio* and the census proper as I do. Of course, Clodius' law required hearings at both the *lectio* and the census proper (Cass. Dio 38. 13. 2); as we have seen, however, in the case of the latter it merely codified what was already custom—though perhaps we ought not to slight the effect of transforming custom into a procedure defined by law.

29. See E. S. Gruen, "P. Clodius: Instrument or Independent Agent?" *Phoenix* 20 (1966): 120–30; A. W. Lintott, "P. Clodius Pulcher—*Felix Catilina*?" *G&R* 14 (1967): 157–69; W. M. F. Rundell, "Cicero and Clodius: The Question of Credibility," *Historia* 28 (1979): 301–28.

was intended to shield its promulgator from subsequent, anticipated efforts to expel him.<sup>30</sup> Nor is it likely that the fate of Clodius' father, who was passed over by the censors of 86, influenced Clodius himself.<sup>31</sup> Ap. Claudius (cos. 79) was an exile at the time, after all, and under the circumstances not even his kinship with one of the censors could legitimately spare him (Cic. *Dom.* 84). Far more probable—and certainly more to the point in 58—is the view that Clodius proposed his law in order to win political support in the senate.<sup>32</sup> During his quaestorship Clodius had undergone the embarrassment of the Bona Dea scandal, which revealed how little senatorial support he might expect in the future, for all his illustrious lineage.<sup>33</sup> The *dolor* his ordeal provoked led Clodius to take the drastic step of becoming a plebeian, a goal he attained only at the cost of arousing the senate's suspicion, alienating his kinsman Metellus Celer (cos. 60), and obliging himself to Pompey and Caesar.<sup>34</sup> Yet by the time Clodius entered upon his tribunate, the notorious *socer generique* had become quite unpopular among commoners and senators alike and were no longer unquestionably useful allies.<sup>35</sup> Clodius could not afford to rely exclusively on their support: it was vital that he find his own political base, and a necessary component of that base was some portion of the senate. Hence the *Lex Clodia*, which "was no doubt concerned first and foremost with senators; Clodius wanted to reassure those who might feel threatened with expulsion."<sup>36</sup>

The recent history of the censorship provided abundant cause for such anxieties. The censors of 70 had purged the senate of sixty-four members—an astoundingly large figure, which included Lentulus Sura, consul of the previous year.<sup>37</sup> This unsparing census cast its shadow over the next twenty years, with the result that the *lectio*, which had always been important, became "the most commonly mentioned feature in the record of the late Republican censorship—to the point of constituting a recurring theme."<sup>38</sup> One factor in the stringency of

30. Cf., e.g., G. Lacour-Gayet, *De P. Clodio Pulchro Tribuno Plebis* (Paris, 1888), pp. 39–40; M. Cary in *Cambridge Ancient History*, vol. 9 (Cambridge, 1951), p. 522: such discussions assume that Clodius had already determined upon an objectionable career.

31. A suggestion of Marshall, *Historical Commentary*, p. 98.

32. Cass. Dio 38. 12. 4. This has long been recognized, if without elaboration; see, e.g., Lacour-Gayet, *De P. Clodio Pulchro*, p. 40; cf. (with reservations) W. Drumann and P. Groebe, *Geschichte Roms*, vol. 2 (Leipzig, 1902), pp. 207–8.

33. The trial was an affront to Clodius' *dignitas*: cf. W. K. Lacey, "Clodius and Cicero: A Question of *Dignitas*," *Antichthon* 8 (1974): 91. A full treatment of the Bona Dea scandal is provided by P. Moreau, *Clodiana Religio: Un procès politique en 61 av. J.-C.* (Paris, 1982).

34. On *dolor* among Roman aristocrats, see E. Badian, "Tiberius Gracchus and the Beginning of the Roman Revolution," *ANRW* 1.1 (Berlin and New York, 1972), p. 692; M. G. Morgan and J. A. Walsh, "Ti. Gracchus (Tr. Pl. 133 B.C.), the Numantine Affair, and the Deposition of M. Octavius," *CP* 73 (1978): 201–4; Clodius' inherited *claritas* imposed upon him great expectations, thereby exaggerating the effect of any perceived setback. On Clodius' kinship to Celer, see D. R. Shackleton Bailey, "Brothers or Cousins?" *AJAH* 2 (1977): 148–50 (half-brothers); T. W. Hillard, M. Taverne, and C. Zawawi, "Q. Caecilius Metellus (Claudianus)?" forthcoming in *AJAH* (cousins; I am grateful to Dr. Hillard for providing me with an early draft of this paper). On Clodius' *transitio ad plebem*, see Cic. *Att.* 1. 18. 4–5, 1. 19. 5, 2. 1. 4–5, *Cael.* 60, *Dom.* 34–42, *Sest.* 15–16, *Prov. cons.* 45–46; App. *BCiv.* 2. 14; Plut. *Caes.* 14. 9; Cass. Dio 37. 51. 1–2, 38. 12. 1–2, 39. 11. 2, 39. 21. 4, and numerous *obiter dicta*.

35. R. Seager, *Pompey: A Political Biography* (Berkeley and Los Angeles, 1979), pp. 93–96, with references.

36. Nicolet, *World of the Citizen*, p. 56.

37. Sources in *MRR*, 2:126–27.

38. Astin, "Censorships," p. 187.

the *lectio* seems to have been the notion that the senate had a maximum capacity, which the censors were determined to respect.<sup>39</sup> Because the Sullan constitution provided for the automatic adlection of quaestors and tribunes, there was likely to be an overabundance of members by the time each new census rolled around, a situation that invited the censors' *nota*. Moreover, the intensification of political rivalries characteristic of the first century, combined with the Romans' obsessive concern for personal *dignitas*, provided enormous temptation for the abuse of *censoria potestas*, especially when such politicism could pose as the performance of one's duty and as diligence in maintaining the senate's prestige. That such perceptions obtained in the aftermath of 70 is demonstrated by the events of 64: the tribunes, fearing their own exclusion, contrived to obstruct the *lectio*, with the result that the censors finally resigned.<sup>40</sup> The censors of 61, schooled by the failure of their predecessors, allowed the membership of the senate to swell καὶ ὑπὲρ τὸν ἀριθμὸν (Cass. Dio 37. 46. 4). Following the course of least resistance was no solution, however, and the lenient census of 61 must have generated apprehensions about the conduct of the next census: one could not rely on a struggle to frustrate the *lectio*, and that *lectio* was likely to be stringent.

Such forebodings inform the drafting of Clodius' measure. The *Lex Clodia* provided each senator a legal—and so, undeniable—ground for challenging the censors should he feel (as indeed he must) that his removal would be unjust.<sup>41</sup> Inasmuch as such defenses were often efficacious in the census proper, and inasmuch as the tradition of allowing defense pleas had not in the past hampered the execution of the census proper, the Clodian law must initially have held wide appeal. It would have been particularly attractive to the *pedarii*, the senators most likely to be ejected in the event of a harsh *lectio*. Though unimportant individually, *pedarii* were important in bulk; they were a valuable constituency that Crassus, for one, had been shrewd enough to cultivate.<sup>42</sup> As for the senatorial elite, to them Clodius could represent his law as a sensible extension of the census procedure, allowing the senate to avoid the turbulence and failure of 64 without succumbing to the equally unacceptable leniency of 61. In short, he could pose as a prudent legislator carrying a timely, practical scheme. Dio reports (38. 12. 4) that Clodius' legislative program aimed at winning over not only the plebs but the equites and the senate as well. Free grain and *collegia* won the hearts of the common people. By safeguarding both the individual and the collective dignity of the senators, Clodius hoped to garner senatorial support and to prove himself more than a mere *tribunus popularis*.<sup>43</sup>

39. See *ibid.*, p. 181; and cf. R. Develin, "Sulla and the Senate," *The Ancient History Bulletin* 1 (1987): 130–33.

40. Cass. Dio 37. 8. 4. Precisely how the tribunes prevented the *lectio* is not known: perhaps they continually obstructed the recitation of the new list by *obnuntiatio*.

41. The anonymous referee observes that after Sulla had made admission to the senate virtually automatic upon reaching the quaestorship, senators may have felt that they had a right to their seat. In other words, since the censors no longer granted the rank of senator, they should not have the arbitrary power to take it away.

42. Cf. A. M. Ward, *Marcus Crassus and the Late Roman Republic* (Columbia, Mo., 1977), pp. 76–82.

43. Thus I must disagree with H. Benner, *Die Politik des P. Clodius Pulcher*, *Historia Einzelschriften* 50 (Stuttgart, 1987), pp. 51–52, who views the *Lex Clodia de censoria notione* as an attempt to safeguard the senate's *populares*.



## IV

For all its attractiveness, however, the *Lex Clodia* was not unassailable, as Cicero's vigorous efforts demonstrate. The senators' prestige was preserved at the expense of the censors' power. The new legal requirements—requirements not sanctioned by *mos maiorum*—did in fact diminish *censoria potestas*. Previously the censors had acted with absolute independence, unconstrained by custom or (evidently) by public opinion.<sup>44</sup> Now the new law demanded that they provide a fully articulated justification for expelling a senator, so that the jeopardized senator might respond. The censors had to endure and resist each defendant's exertions to sway their opinion; and they had to cope with the opinion of the public, who attended the newly instituted *iudicia*. If such practices had been the rule in the past, one could not assert that the censors' power was now reduced. But because these procedures were entirely foreign to the *lectio*, Cicero had an opportunity to persuade his various audiences that Clodius' law was as objectionable as its author. We should note, too, that Cicero's objections to the *Lex Clodia*—though expressed in the most acrid terms, on account of his hatred for Clodius—were not motivated solely by personal animosity. In the *De legibus* Cicero argued strongly that the censors' *regimen morum* ought to focus on the *lectio senatus*; indeed, in his treatise he actually called for an extension of censorial responsibility in supervising the *mores* of magistrates and the senate.<sup>45</sup> Cicero's hostility to Clodius found justification, in this instance, in his political and philosophical principles.

Cicero's asseverations were perhaps not entirely in vain, for the law was abrogated by Metellus Scipio in 52. Dio, our sole source, explains the law's repeal as an effort (misguided in his opinion) to restore to the censors the ἐξουσίαν . . . ἣν καὶ πρὶν εἶχον (40. 57. 1–3). His description of the Clodian law is, however, couched in hyperbolic terms that obviously look back (ultimately) to Ciceronian rhetoric. It is unclear, therefore, whether Dio provides the motive Scipio actually asserted; nor could we be sure, if we possessed such information, that the asserted motive was the prime motive for Scipio's action. Still, it remains possible that Cicero's rhetoric provided at least a convenient pretext for the law's repeal, if it was not itself an actual incentive.

Another and eminently practical reason for the law's abrogation can be detected: in a letter written to Atticus in 54 Cicero gives up the prospect of a *lustrum* as hopeless; in the same breath he mentions the *iudicia* that were created by a *Lex Clodia* (*Att.* 4. 16. 8, adopting the certain correction of the corrupt phrase *lege Coctia*). The sentence very likely implies that the *iudicia* required by the Clodian law were so lengthy and had so protracted the *lectio* that they were actually contributing to the difficulties of completing the census.<sup>46</sup> In retrospect it is easy to discern causes for the excessive prolongation: the senate was swollen, and so exclusions were necessary (any successful defenses would slow the process

44. L. Lange, *Römische Alterthümer*, vol. 2 (Berlin, 1879), pp. 187–88, had no basis for suggesting that a law was carried in 218 to limit the censors' freedom to eject unworthies from the senate. Clodius' law was the first such limitation.

45. See A. E. Astin, "Cicero and the Censorship," *CP* 80 (1985): 236–38; cf. *Leg.* 3. 7.

46. Astin, "Censorships," p. 188. The greatest threat to this census was tribunician *obnuntiatio*; cf. *Cic. Att.* 4. 9. 1.

further); political rivalries no doubt induced outsiders to bring accusations before the censors, thereby lengthening the censors' docket; though brief excuses may have been the rule during the census proper, every senator possessed the requisite rhetorical skills for a lengthy, if not particularly eloquent, defense. The furious competition to retain a seat in the senate and the notion that the senate's enrollment must be limited combined to yield a situation very different from the *cura morum* of the census proper. Consequently, the solution that the *Lex Clodia* offered to the problem of the *lectio* was shown by events to be wholly unsatisfactory.

Finally, purely personal motives may have played a role in Scipio's action. After the failure of the census in 54 it may have become evident by 52 that a thorough revision of the senate roll was necessary and that the censors should be freed from the originally unforeseen impediments of the *Lex Clodia*.<sup>47</sup> Such a sentiment would certainly consist with the election of severe censors in 50—especially the choice of Ap. Claudius. Under these circumstances Scipio's repeal of the law would be a sound political move. We should recall, too, Caesar's judgment (*BCiv.* 1. 4) that in 49 Scipio was motivated by *iudiciorum metus*: if this was true for the previous three years as well, yet another (if very speculative) incentive emerges. In an environment so electric with prospects of expulsion, Scipio may have thought that he was likely to be vulnerable in the next *lectio*; perhaps, then, in order to ground himself against the censors' strike he reformed the magistracy by restoring its old prerogatives, thereby showing himself to be an effective champion of *censoria potestas*. Thereafter it would be most difficult for conscientious censors to remove from the senate the author of so prudent a measure—and one so advantageous to the censors themselves. Thus it would be Metellus Scipio, not Publius Clodius, who tampered with the office of censor in order to protect himself—though Scipio probably would have believed that in this instance his own interests and those of the *respublica* converged.

To summarize, the revision of the senate roll, once it became a duty of the censors, was conducted behind closed doors; only when the procedure was finished were its incontestable results presented to the public. Clodius, in carrying out his initial legislative program, passed an innovative law that transformed the censors' conduct of the *lectio senatus*. Clodius' reform was meant to win senatorial support by solving the various problems that had recently beset and subverted the *lectio*. Cicero, for motives both personal and philosophical, opposed the law bitterly, but it was not until 52—after the death of its promulgator—that the *Lex Clodia* was repealed. By abolishing the measure and the safeguards that it required, Metellus Scipio restored to the censors their former authority to conduct a private, discretionary, and uninhibited *lectio*, an authority that was vigorously exercised two years later during the censorship of Clodius' eldest brother, Appius Claudius.<sup>48</sup>

W. JEFFREY TATUM  
The Florida State University

47. This does not mean that senators were less keen to preserve their places; but after 54 the need for someone to be removed—someone else, from the view of each senator—was very likely evident to all.

48. I am grateful to A. E. Astin, J. Linderski, and M. Gwyn Morgan for criticizing and improving an earlier draft of this paper.