

In the passage that is our concern, both these patterns appear together, 27A9–B1
 οὐ δὲ ἡμῖν ἀποκρίναι, ὦ Μέλητε. ὑμεῖς δὲ . . . μέμνησθέ μοι μὴ θορυβεῖν (quoted
 more fully above).

We can now see what Plato must have written in the sentence in question. Socrates has just asked Meletus whether anyone believes in human affairs but not in humans. Obviously the impatient hearers found the question exasperating and voiced their objections by raising one more θόρυβος. Socrates accordingly makes an appeal: “Gentlemen, let him answer and do not keep on interrupting” or, in Greek, ἀποκρινέσθω, ὦ ἄνδρες, καὶ μὴ ἄλλα καὶ ἄλλα θορυβεῖτε. The third-person imperative form θορυβεῖτω is a very old corruption, most likely a perseveration of the ending seen in the preceding ἀποκρινέσθω. For μὴ θορυβεῖτε see 21A, 30C; compare also 20E (aorist) and 30C (all cited above).

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THE *LEX PAPIRIA DE DEDICATIONIBUS*

The *Lex Papiria de dedicationibus*, a tribunician law of uncertain date that apparently required popular authorization for dedications of temples, sites or altars, has been the object of far greater scholarly agreement than it is customary for classicists to bestow upon a measure about which so little is known.¹ The chief controversy attending this law is whether it should be identified with the one regarding dedications mentioned by Livy as being passed in 304.² Otherwise scholars have tended to accept Cicero's succinct formulation of the law in his *De Domo* (127): “video enim esse legem veterem tribuniciam quae vetet iniussu plebis aedis, terram, aram consecrari.” One of the purposes of this paper is to shatter this academic concord, not through polemic, to be sure, but by inquiring into the role of the *Lex Papiria* in Cicero's case against Clodius' consecration: an examination of Cicero's introduction and elucidation of the law makes it evident that the application of the Papirian law to Cicero's circumstances was anything but straightforward. Which raises the question of the law's original purport and its role in the development of *dedicatio*.³

1. L. Lange, *Römische Alterthümer*, vol. 2 (Berlin, 1879), p. 634; P. Willems, *Le sénat de la république romaine*, vol. 2 (Louvain, 1895), pp. 305–9; T. Mommsen, *Römisches Staatsrecht*³, vol. 2 (Leipzig, 1887), pp. 618–24; R. G. Nisbet, *M. Tulli Ciceronis “De Domo Sua ad Pontifices” Oratio* (Oxford, 1939), pp. xxii, 176, 209–14; J. Bleicken, *Lex Publica. Gesetz und Recht in der römischen Republik* (Berlin, 1975), pp. 155–56. A recent discussion of *consecratio* and *dedicatio* merely alludes to the *Lex Papiria*: cf. W. Kierdorf, “«Funus» und «Consecratio»,” *Zu Terminologie und Ablauf der römischen Kaiserapotheose*, *Chiron* 16 (1986): 46–49. L. Pietilä-Castrén, *Magnificentia publica. The Victory Monuments of the Roman Generals in the Era of the Punic Wars* (Helsinki, 1987), though attentive to the sources for particular dedications, is not concerned with the *Lex Papiria*. A. Watson, *The State, Law and Religion: Pagan Rome* (Athens and London, 1992), pp. 55–56, examines matters related to the *Lex Papiria*, but for purposes other than illuminating the measure itself.

2. So identified by Lange, *Röm. Alt.*, p. 634, followed by Willems, *Sénat*, pp. 308–9. This view is rightly rejected by most scholars.

3. The Romans could distinguish a proper *templum*, which required inauguration, from an *aedes*, which, though consecrated, did not require inauguration; cf. J. Linderski, “The Augural Law,” *ANRW* II. 16.3 (1986), pp. 2249, n. 407; 2272–79. (more generally on *templa*). The language of consecration, especially terms like *consecratio* and *dedicatio*, was sometimes employed imprecisely: cf. Nisbet, “*De Domo*,” pp. 209–12; Kierdorf, “«Funus» und «Consecratio»,” p. 46.

I

Cicero's principal technical objection to the validity of Clodius' consecration of the *aedes Libertatis*, which encroached upon the orator's Palatine property, was that it violated the *Lex Papiria*. This point, *nec de pontificio sed de iure publico* (*Dom.* 128), was expanded by the orator at *De Domo* 127–36: Cicero began by citing the legislation and elaborating its relevance (127–28), then he suggested that the tribune's boiling meddlesomeness had caused him to overlook its requirements (129), after which he introduced two illustrative exempla (130–36) into whose explication he inserted a digression that attacked the tribune's lack of respect for the pontifical college—especially his employment of the college's least experienced member, Pinarius Natta, a kinsman whom the tribune held fast in the grasp of *gratia* (131–35).⁴

Now Cicero makes it clear from the start that the *Lex Papiria* is not precisely relevant to his situation: in perhaps the most tortuous passage of the entire speech (*Dom.* 128), Cicero contrasts the tribune's consecration of the orator's private residence with the Papirian law's impositions on *imperatores* wishing to consecrate shrines, altars, and *agros de hostibus captos*, nothing of which can fairly be deemed a clarification of the law's jurisdiction or of its appositeness to the case at hand. Cicero's tack becomes more evident at *De Domo* 130, where he stresses the *vis huius Papiriae legis*, a phrase that undoubtedly was meant to contrast with Cicero's reference to Clodian violence⁵ but that also refers to the general principle underlying the legislation—its spirit—as opposed to its actual letter.⁶ For Cicero immediately introduces the exemplum of C. Cassius Longinus, the censor who in 154 hoped to dedicate a statue to Concordia.⁷ Again, Cassius represented an excellent foil to Clodius (censor versus tribune; devotion to Concordia versus Libertas), but Cassius' primary function in this oration is to demonstrate the inclination of pontiffs past to observe the spirit of the *Lex Papiria* and to apply its terms liberally. Cassius consulted the pontiffs as to the propriety of his dedication, which evidently did not fall directly under the provisions of the *Lex Papiria*, the dedicated object being not a temple, site or altar, but a statue. Granted the text mentions the Curia, but from a procedural perspective there was no need to consult the pontiffs about that—only about the statue.⁸ The pontiffs, Cicero reports, accommodated the *ius dedicandi* not only to the germane ritual requirements but also *ad populi iussa*

4. Pinarius was Clodius' brother-in-law; cf. L. R. Taylor, "Caesar's Colleagues in the Pontifical College," *AJP* 63 (1942): 396–97 and *MRR* 3:157. This section of the *De Domo* and the nature of the *ius publicum dedicandi* are examined in detail by J. Linderski, "The *Libri Reconditi*," *HSCP* 89 (1985): 214–26.

5. *Dom.* 130 "At videte quanta sit vis huius Papiriae legis in re tali, non qualem tu adfers, scelerosis plenam et furoris." Cf. Nisbet, "*De Domo*," p. 178.

6. On the *ius/aequitas* (or *scriptum/voluntas*) distinction (in Greek the στάσις κατὰ ῥητὸν καὶ ὑπερ-αίρεσιν) and its use in Roman oratory, cf. J. Martin, *Antike Rhetorik. Technik und Methode* (Munich, 1974), pp. 44 and 46–48. The best known illustration in Cicero's day was the *causa Curiana*, alluded to by Cicero several times (e.g., *Brut.* 194–98; *De Or.* 1.180, 2.140); cf. A. D. Leeman, H. Pinkster, and H. L. W. Nelson, *M. Tullius Cicero "De Oratore" Libri III*, vol. 2 (Heidelberg, 1985), pp. 68–72.

7. Sources for his censorship collected in *MRR* 1:449.

8. What, exactly, did Cassius intend to dedicate? Cicero begins by placing heavy emphasis on the statue to Concordia raised by Q. Marcius Philippus (cens. 164), which Cassius hoped to remove to the Curia. However, the orator quickly shifts to the suggestion that Cassius planned to dedicate both the statue and the Curia itself: "Q. Marcius censor signum Concordiae fecerat idque in publico conlocarat. hoc signum C. Cassius censor cum in curiam transtulisset, collegium vestrum consuluit num quid esse causae videretur quin id signum curiamque Concordiae dedicaret" (*Dom.* 130; cf. *Dom.* 131: "Concordiae signum volebat in curia curiamque ei deae dedicare"). Two possibilities emerge: (1) Cicero is reporting Cassius'

(136). And the response of M. Aemilius, the *pontifex maximus*, may be viewed as recommending the extension of the Papirian law to the dedication of statues: “nisi eum populus Romanus nominatim praefecisset atque eius iussu faceret, non videri eam posse recte dedicari” (136). This exemplum, indeed, Cicero’s extensive treatment of the *Lex Papiria*, along with the orator’s lengthy, virulent attacks on Clodius’ politics and morality throughout the speech, all support the conclusion that the appositeness of the law to Cicero’s case was anything but obvious: although Clodius had actually dedicated an *aedes*, matters were more complicated than simply citing the relevant statute—hence the orator’s heavy recourse to the tools of persuasion. The Papirian law provided the pontiffs with an opportunity—not an obligation—to invalidate Clodius’ consecration.⁹

The language Cicero ascribes to Aemilius is reproduced in a letter to Atticus reporting the decision of the pontiffs in Cicero’s own case: “cum pontifices decreissent ita, ‘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, videri posse sine religione eam partem areae mihi restitui’” (*Att.* 4.2.3).¹⁰ Obviously Cicero had succeeded in persuading the pontiffs to apply the expectations of the *Lex Papiria* to his particular situation—and clearly the terms of the *Lex Papiria* required popular authorization that explicitly enabled an individual to perform a dedication.¹¹ But liberal applications of legislation invariably entail interpretative complications.

scheme faithfully (so Willems, *Sénat*, p. 308; H. H. Scullard, *Roman Politics, 220–150 B.C.*,² [Oxford, 1973], p. 232; J. Suolahti, *The Roman Censors* [Helsinki, 1963], p. 389), in which case the censor’s plan—to rededicate the Curia—can only be described as remarkable indeed. Still, the rededication of the Curia, however open to dispute at the time, was obviously covered by the *Lex Papiria* and so not problematic from the procedural point of view. Only the dedication of the statue was questionable from that perspective. Given the controversial quality of the building program proposed by the censors of 154 (cf. Suolahti, *Roman Censors*, p. 389), this must remain a real possibility, though the (inevitable) notoriety of Cassius’ undertaking (if imagined along these lines) and the enormity of the censor’s actual venture when compared with the dedication of Clodius’ shrine might be thought to have been counterproductive to Cicero’s rhetorical strategy here; (2) Cicero has introduced the idea of dedicating the statue’s new setting in order to enhance the parallel between his exemplum and the circumstances of Clodius’ shrine, which housed a statue of Libertas; the parallel, passed over rapidly, would be more apparent than real, especially since the attentions of Cicero’s audience are directed toward the relatively innocuous request to rededicate a statue to Concordia. The second possibility seems to me much more likely, and it would explain not only the initial stress on the statue at *Dom.* 130 but also the orator’s recurrence to the statue alone at *Dom.* 136, where, according to Cicero, the precise object of pontifical inquiry was the appropriateness of the dedication of the *signum*: “habetis in commentariis vestris C. Cassium censorem de signo Concordiae dedicando ad pontificum collegium rettulisse” (*Dom.* 136; cf. *Dom.* 137 “tum censorem, hominem sanctissimum, simulacrum Concordiae dedicare pontifices in templo inaugurato prohibuerunt”). One might also note that official concern with the dedication of a well-known statue in 154 makes a great deal of sense in the aftermath of the actions of the censors of 159, who had removed from the Forum all statues that had not been placed there by order of the people (cf. Suolahti, *Roman Censors*, p. 386). In either case, whatever Cassius’ real intentions regarding the Curia, his question to the pontiffs must have concerned the statue to Concordia.

9. It is not difficult to find Cicero misrepresenting legislation in his *post reditum* oratory: e.g., he misrepresents Clodius’ laws affecting *obnuntiatio* (cf. T. N. Mitchell, “The *Leges Clodiae* and *Obnuntiatio*,” *CQ* 36 [1986]: 172–76) and the censorship (cf. W. J. Tatum, “The *Lex Clodia de Censoria Notione*,” *CP* 85 [1990]: 34–43). In order to score his point Cicero is willing to distort even legislation that is not under direct attack; amongst the collateral damage are to be found the *Leges Aelia et Fufia*, cf. A. E. Astin, “*Leges Aelia et Fufia*,” *Latomus* 23 (1964): 423, and E. J. Weinrib, “*Obnuntiatio*: Two Problems,” *ZSS* 87 (1970): 403.

10. Cicero’s use of *mihi* indicates that this is an adapted citation; cf. D. R. Shackleton Bailey, *Cicero’s Letters to Atticus*, vol. 2 (Cambridge, 1965), p. 170.

11. Linderski, “*Libri Reconditi*,” p. 16, is right to notice the conditional nature of the pontiffs’ response, but subsequent events quickly left little doubt as to the intention of the pontifical judgment (see below).

Although modern scholars have occasionally wondered at Clodius' (and his scribe Cloelius'; cf. *Dom.* 129) failure to take account of the stipulations of the *Lex Papiria*, they have paid insufficient attention to Clodius' insistence that he was not in contravention of any legal requirement, both during the hearing (to be inferred from *Dom.* 106 *tuleram, inquit, ut mihi liceret*) and in the aftermath of the promulgation of the pontiffs' decree, when Clodius and Ap. Claudius, his notoriously observant brother, held a *contio* to announce that the pontifical college had favored the ex-tribune (*Att.* 4.3.2).¹² Although the senate, whose authority was binding even in matters into which religion rightly obtruded, soon settled things to Cicero's advantage, thereby revealing Clodius' *contio* as a desperate attempt to influence senatorial deliberations by appealing to popular force, one cannot ignore Clodius' actions altogether: he must have had at least a broken reed upon which to lean.¹³

In my view, Clodius had two likely counterclaims to Cicero's invocation of the *Lex Papiria*: (1) the *Lex Papiria* probably did not explicitly deal with tribunes, nor was it ever intended to do so, and (2) Clodius could at least claim that his dedication was in fact authorized by the *plebs*.

II

Once it is agreed that Cicero's appeal was to the spirit rather than to the letter of the *Lex Papiria*, one may safely regard the orator's formulation of the law as his interpretation instead of an actual citation of its terms. In order to attempt to recuperate the extent and limits of the law with a degree of exactitude that at least excels Cicero's account, a review of what can be known about the development of republican legislation governing the right to perform dedications is needed.

The legal requirements for eligibility to dedicate a Roman temple developed throughout the republic, and the stipulations associated with the construction and dedication of sacred buildings must be carefully distinguished from those pertaining merely to public building (itself fraught with enough difficulties).¹⁴ *Mos maiorum* always prevented a *privatus* from being qualified to dedicate.¹⁵ Furthermore, if we may believe the objections raised in 304 by the *pontifex maximus* Cornelius Scipio Barbatus against the low-born Cn. Flavius' dedicating the temple of Concord while holding the office of aedile, until that time *mos maiorum* had permitted only consuls and *imperatores* to dedicate.¹⁶ Now this was not entirely true,

12. Surprise at Clodius' lapse: J. O. Leneghan, *A Commentary on Cicero's Oration "De Haruspicum Responso"* (The Hague, 1969), pp. 96–97. Philologists and historians alike have tended to accept Cicero's construction of the law, and Clodius' failure to comply with it, at face value: e.g., Nisbet, "*De Domo*," p. xxii; M. Gelzer, *Cicero. Ein biographischer Versuch* (Wiesbaden, 1969), p. 154; D. R. Shackleton Bailey, *Cicero Back from Exile: Six Speeches upon his Return* (Chicago, 1991), p. 38, following L. Schaum, *De consecratione domus Ciceroniana* (Diss. Mainz, 1889), p. 8 (*non vidi*). On Clodius' scribe, Sex. Cloelius, see W. J. Tatum, "P. Clodius and Tarracina," *ZPE* 83 (1990): 299–304 (with further references).

13. It is important to keep in mind that the pontiffs were responsible for delivering an opinion within their field of competence, whereas the senate was charged with deciding the actual issue (taking into account, of course, the pontiffs' judgment). Senatorial authority: M. Beard, "Priesthood in the Roman Republic," in *Pagan Priests. Religion and Power in the Ancient World*, ed. M. Beard and J. North (London, 1990), pp. 30–34; see also Linderski, "Augural Law," pp. 2161–62. and "*Libri Reconditi*," pp. 216–17. Of course the pronouncements of the sacred colleges were not invariably adhered to by the senate in its deliberations, cf. M. G. Morgan, "The Introduction of the Aqua Marcia into Rome, 144–140 B.C.," *Philologus* 122 (1978): 48–50.

14. D. E. Strong, "The Administration of Public Building in Rome during the Late Republic and Early Empire," *BICS* 15 (1968): 97–109.

15. Mommsen, *Staatsrecht*³, 2:620.

16. Livy 9.46.6. Cf. *MRR* 1:168.

since the office of *Ilvir aedi dedicandae* is attested (in Livy at least) as early as 484, when Postumius Albus Regillensis was elected to dedicate the temple vowed by his father, the dictator.¹⁷ And when in 387 T. Quinctius Cincinnatus Capitolinus dedicated the temple of Mars that he had vowed in the Gallic War, he held the position of *Ilvir sacris faciendis*, which Mommsen took to be an error for *Ilvir aedi dedicandae* though perhaps without good reason.¹⁸ In so far as a pattern actually emerges prior to the contentious year 304, it is this: dedications properly belonged within the competence of consuls and *imperatores*, who presumably would be allowed to dedicate temples that they had vowed. In order to allow *imperatores* to dedicate after they had laid aside their *imperium*, if they did not at the appropriate time hold a magistracy, they were elected to the office of *Ilvir*. If the original professor, who had actually vowed the temple, could not make the dedication, a relative, who also had to hold an appropriate office, was allowed to perform the ceremonies. The example of Quinctius in 387, unless Mommsen is right that Livy is in error, merely shows how accommodating the senate could be in accepting, not unreasonably, his sacred office as sufficient for performing the dedication.¹⁹

But the controversy of 304 changed things. Henceforth, by law, it was necessary for anyone wishing to dedicate a temple or an altar to win the approval of the senate or of a majority of the tribunes of the *plebs*. There is no reason to think that this law was not observed thereafter, remarkable evidence of *concordia* given the amount of sacred construction in the third and second centuries as well as the evidence for energetic political rivalries during the same centuries.²⁰ An illustration of the Law of 304 in operation can be found in Livy's account of the dedication of the temple to Venus Erycina: Q. Fabius Maximus Verrucosus sought the senate's approval to dedicate the temple in 216; the senate responded by instructing Ti. Sempronius Gracchus, the consul designate, to propose to the people, immediately upon his assumption of office, that Fabius be elected *Ilvir*; this in fact occurred, and Fabius made his dedication in 215.²¹ Although it is not mentioned by Livy, it seems likely enough that it was normal for the senate to refer requests to dedicate to the college of pontiffs, whose regular recommendation would be to approve (hence the silence of the sources on this formality except when, as we shall see below, there was a controversy).²² The tendency of our sources to pass over the routine is familiar and easily demonstrated in the matter of dedications: in 179 the censor M. Aemilius

17. Livy 2.42.5.

18. Livy 6.5.8. Cf. Mommsen, *Staatsrecht*³, 2:621, n. 1.

19. Mommsen, *Staatsrecht*³, 2:619–24 (more schematic than the presentation offered here); H. Baron, "La Naissance d'un temple," *REL* 33 (1955): 166–82; Strong, "Administration of Public Building," pp. 97–109 (both hesitant to draw exact conclusions). On the claims of relatives to dedicate and maintain a monument, cf. M. G. Morgan, "Villa Publica and Magna Mater: Two Notes on Manubial Building at the Close of the Second Century B.C.," *Klio* 55 (1973): 222–23.

20. The extent of building activity is illustrated by the list drawn in S. B. Platner and T. Ashby, *A Topographical Dictionary of Ancient Rome* (Oxford, 1929), pp. 588–90. Building activity and attendant political consequences and contests: M. G. Morgan, "The Portico of Metellus: A Reconsideration," *Hermes* 99 (1971): 480–505; idem, "Villa Publica and Magna Mater," pp. 215–46; idem, "Introduction of the Aqua Marcia," pp. 25–58; Pietilä-Castrén, *Magnificentia publica*, pp. 22–28 (and *passim*).

21. Livy 23.30.13–14, 23.31.9. Cf. *MRR* 1:257 and 258, n. 10. Other dedications by *Ilviri* (mentioned with less detail than the example cited in the text): Livy 34.53.5 (Fortuna Primigenia in 194), 34.53.7 (Jupiter in 194), 35.41.8 (Jupiter in 192), 36.36.5–6 (Juventas in 191).

22. The senate ordinarily referred religious questions to the appropriate authorities, see O'Brien Moore, *RE*, suppl. 6 (1935): 714. The ultimate decision, of course, resided with the senators. Religious scrupulosity will explain the inclination to refer to the experts all requests for dedications (which were always far from mundane matters however frequently and uneventfully they seem to us to have occurred).

Lepidus asked the senate for money to fund the games he planned in connection with his dedications; Livy makes no mention whatsoever of Aemilius' original request to dedicate or of the senate's response, though they are necessary inferences from Aemilius' request for funding.²³

The limitations of the Law of 304 and evidence of some straining at societal expectations become evident in 174. The censor Q. Fulvius Flaccus let contracts for temples in Pisaurum and Fundi on his own initiative and without the cooperation of his colleague, A. Postumius Albinus, who considered such activities improper without the approval of the senate or people. Since Fulvius was allowed to complete his building program and to dedicate the temple of Fortuna Equestris in 173 (despite his larceny of tiles from the temple of Juno Lacinia), it would be unreasonable to conclude that Fulvius violated the law or even outraged sensibilities beyond repair.²⁴ The letting of contracts for temples outside the city probably did not fall within the jurisdiction of the Law of 304, though it is notable that Postumius nonetheless felt that its fundamental requirement, the approval of the senate or people, ought to be observed in these matters as well.

The next innovation surfaces in the censorship of C. Cassius Longinus in 154, which has already been discussed. Cassius, who wished to dedicate a statue to Concord, was informed by the pontiffs that it would be necessary for him first to receive express authority from the people. Out of which we may conclude that the *Lex Papiria*, the influence of which Cicero claims for this pontifical decision, was passed before 154: it did not explicitly apply to dedications of statues, else Cassius would have known how to proceed, but was available to the pontiffs as a model of proper procedure (just as Postumius was influenced in 174 by the spirit of the Law of 304).

It has been suggested that the *Lex Papiria* was passed sometime between 174 and 154, reasonable enough in the light of such literary evidence as we possess.²⁵ Certain though perhaps less than compelling considerations might narrow the range a bit. Livy's extremely keen interest in public building in Rome (and matters pertaining thereto) allows one to wonder whether his silence regarding the *Lex Papiria* owes itself to the fact that his extant account breaks off with Book 45 in the year 167, as a result of which our detailed knowledge of Roman constructions from that point onwards becomes severely deficient in spite of ample evidence for intensive and increasingly ambitious building projects.²⁶ The burgeoning determination to

23. Livy 40.52. Bardon, "Naissance d'un temple," pp. 172–73, believes that funding was more difficult to obtain from the senate than actual permission to dedicate and herein lay the senate's chief means of regulating the construction and dedicating of temples. The tendency to compress the reporting of routine procedures is discussed by Kierdorf, "«Funus» und «Consecratio,»" pp. 46–49, esp. n. 15 (this point is part of the general thrust of Kierdorf's article, pp. 43–70).

24. Livy 41.27.11 for the varying attitudes of the two censors. Other sources collected in *MRR* 1:404; cf. also Pietilä-Castrén, *Magnificentia publica*, pp. 114–15. Fulvius committed suicide in 172 owing to the misfortunes of his sons; it was rumored that Juno Lacinia had punished him with madness after his sacrilege (hence the disgraceful manner of his suicide?): Livy 42.28.10–12.

25. *MRR* 2:471. There is no real reason to associate our law with the *Lex Papiria de Sacramentis*, another tribunician law of uncertain date (certainly after 242 and probably before 122/21, though greater exactitude seems impossible); cf. D. Cloud, "The *Lex Papiria de Sacramentis*," *Athenaeum* 80 (1992): 159–86.

26. Livy's interest and the evidence for public building after 167 are examined thoroughly by F. Coarelli, "Architettura e arti figurative in Roma: 150–50 a.C.," in *Hellenismus in Mittelitalien. Kolloquium in Göttingen vom 5. bis 9. Juni 1974*, ed., P. Zanker (Göttingen, 1976), pp. 21–51; idem, "Public Building in Rome between the Second Punic War and Sulla," *PBSR* 45 (1977): 1–23.

erect elaborate structures, which must have entailed heightened competition in the political sphere, supplies an appropriate moment when the need for new legislation regulating dedications might be felt and thus provides the *Lex Papiria* with a natural and quite comprehensible context.²⁷ As there is no mention of the law in Livy and since no tribunes for the years 166 to 155 are known, this seems to be the likeliest period in which to place Papirius' tribunate (which would furthermore help to explain the noteworthiness of Cassius' query, if it reflected a more or less immediate reconsideration of the implications of the *Lex Papiria*).

We may now turn to the provisions of the *Lex Papiria*. Cicero's convoluted explication of the law informs us that at the very least it applied to *imperatores* and to dedications of temples, sites, and altars at Rome and in conquered territory.²⁸ Furthermore, it required express approval of the dedicator by the people (*Dom.* 136; cf. *Att.* 4.2.3). None of which demands the conclusion that the law regulated dedications by tribunes, an assumption too easy to make in view of the comprehensive nature of Cicero's formulation, which is to say his interpretation, of the law. The dedication of an *aedes* by a tribune in 58 was (so far as we know) without precedent.²⁹ It may well have been the case that the *Lex Papiria* regulated only the dedications of magistrates known to dedicate temples, that is, holders of *imperium* as well as censors, aediles, and *Ilviri*, though the election of the last named, itself made possible only by the introduction of a distinct bill, would ipso facto constitute popular authorization and forestall any charge of dedication *iniussu populi*.³⁰ The tribune Papirius had no reason to think it necessary to include the tribunate in the terms of his bill.

This possibility finds some support in Cicero's other example of the Papirian law's *vis*: in 123, the propriety of dedications made by the Vestal Licinia was queried in the senate; the matter was referred to the pontiffs, who again insisted on popular authorization, an opinion endorsed by a *senatus consultum*.³¹ Unlike the censor

27. One of Livy's final references to public building before the 167 terminus is his account of Cn. Tremellius (tr. pl. 168) vetoing the prorogation of the censors' term of office so that they might complete their building schemes; cf. Livy 45.15.9.

28. This much was recognized by E. Rawson, "Religion and Politics in the Late Second Century BC at Rome," *Phoenix* 28 (1974): 197 = *Roman Culture and Society* (Oxford, 1991), p. 153, n. 24: "It [the *Lex Papiria*] had been passed, says Cicero, on account of dedications by generals." If the *Lex Papiria* originally applied only to dedications *de manubiis*—an intelligent possibility raised by the anonymous reader—it would be clearer why tribunes were not covered by its terms (as I suggest here). Unfortunately, I suspect, such an argument cannot be sustained by what little evidence we possess.

29. According to Pliny *NH* 33.17, Flavius was both aedile and tribune in 304, but the bulk of the tradition favors the view that Flavius dedicated as aedile; cf. *MRR* 1:168. To be sure, tribunes could be involved in public works, cf. T. Mommsen, *Gesammelte Schriften*, vol. 3 (Berlin, 1904; repr. ed., 1965), pp. 31–32, but one notes that their activity even in this sphere was sometimes accompanied by a distinct appointment: e.g., M. Flavius Flaccus, while tribune in 270, was elected *Ilvir aquae perducendae* in the same year after the death of M'. Curius Dentatus; cf. *MRR* 1:199.

30. *Ilviri* were elected in accordance with distinct measures brought before the people, as we have seen in the instance of Fabius' election in 215. Epigraphic support for this practice is found in *CTL* 6.3732 = *ILS* 4019: A. Postuminius was elected *Ilvir* in accordance with a *Lex Plaetoria*, presumably a measure introduced to make possible his election. If Plaetorius, otherwise unknown, was a tribune (cf. *MRR* 2:472), this merely shows that election to this office could as easily come from the *plebs* as the *populus* (cf. Mommsen, *Staatsrecht*,³ 3:1050) and that the business of proposing the law was occasionally handed over to a tribune in this as in other matters. Inferences more ambitious than the one offered here have been drawn from this inscription; cf. E. Rawson, "Scipio, Laelius, Furius, and the Ancestral Religion," *JRS* 63 (1973): 161 = *Roman Culture and Society*, p. 80 (see her note 2 for further bibliography).

31. Cic. *Dom.* 136.

Cassius, the Vestal, apparently on her own initiative, had made devotions that ought to have fallen under the jurisdiction of the *Lex Papiria*: "... Licinia, virgo Vestalis, summo loco nata, sanctissimo sacerdote praedita, T. Flaminio Q. Metello consulibus aram et aediculam et pulvinar sub Saxo dedicasset . . ." (*Dom.* 136). Yet it was only after the matter had been raised in the senate and the pontiffs had adjudicated the issue that the senate passed a decree disallowing Licinia's devotions. Now it is possible that Licinia was ignorant of her legal responsibilities or rebellious, though Cicero mentions neither factor (he only commends the *severitas* and *diligentia* of the senate). Instead, however, it is safest to infer that Licinia's actions were not at first felt to be regulated by the *Lex Papiria*. Hence the senate's inquiry. Licinia's predicament—and Cicero's allusion to it along with the exemplum of Cassius—make sense if the provisions of the Papirian law failed to include Vestals explicitly, although dedications by Vestals, however rare, were hardly out of the question.³² If a fortiori the law was similarly heedless of the possibility of tribunician dedications, Clodius, as tribune, may have considered his legislation and the dedication deriving from it immune to the criticism that they were *iniussu populi*, a state of affairs that was radically transformed by Cicero's recall and the centuriate assembly's de facto abrogation of the *Lex Clodia de exilio Ciceronis*.

III

In spite of Cicero's asseverations to the contrary, Clodius insisted that he had fulfilled the requirements of the Papirian law by passing appropriate legislation (*Dom.* 106 'tuleram,' inquit, 'ut mihi liceret'). The law to which he referred must have been the *Lex Clodia de exilio Ciceronis*, one clause of which had allowed for the construction of the shrine to Liberty.³³ Clodius no doubt maintained that this plebiscite constituted the required popular authorization to satisfy the spirit (if we are right that the law was not designed to regulate the actions of tribunes) of the *Lex Papiria* and he may have made heavy weather of the fact that no one in the senate, in the pontifical college, or in the college of tribunes had opposed his consecration at the time he actually performed it. In his response Cicero levelled severe criticisms at the *Lex de exilio*, which he denounced as a *privilegium*, condemned as tantamount to proscription, and which he claimed violated the *Lex Caecilia et Didia* (*Dom.* 53) and the *Lex Licinia* (*Dom.* 51), the last mentioned of which prohibited the author of a law from creating a *curatio* for himself.³⁴ In view of Cicero's intense questioning as to exactly where in the *Lex de exilio* Clodius was given explicit permission to dedicate and in view of the language of the pontiffs' final decree (which the senate interpreted as supporting Cicero's position), it seems reasonable to conclude that

32. E.g., the dedication of the Temple of Bona Dea Subsaxana reported by Ovid *Fasti* 5.155–56. Platner–Ashby, *Topographical Dictionary*, p. 85, believe that Ovid confused the dedication of this temple with Licinia's abortive dedication, but unnecessarily; cf. *MRR* 1:516. The Sacellum Pudicitiae Plebeiae, dedicated by the Vestal Virginia, was part of her own home and so *res sacra* rather than *res religiosa*; cf. Platner–Ashby, *Topographical Dictionary*, p. 435.

33. P. Moreau, "La Lex Clodia sur la Bannissement de Cicéron," *Athenaeum* 75 (1987): 480.

34. *Privilegium*: e.g., *Dom.* 43, 57. Tantamount to proscription: *Dom.* 44, 48, 107, 116. The *Lex Caecilia et Didia* forbade the accumulation of unrelated provisions into a single bill. Cicero claimed that Clodius violated the *Lex Licinia* in assigning to himself the *operum publicorum exactio*, which was evidently the supervision of the destruction of Cicero's house but was meant by Cicero (and may have been represented by Clodius) to include the construction of the *aedes Libertatis*; cf. Moreau, "Lex Clodia," pp. 478–79.

the *Lex de exilio* probably did not explicitly allow Clodius to consecrate the temple it permitted him to build (though the nature of Roman record keeping makes it impossible to be more than tentative in such conclusions).³⁵

Clodius, as tribune, had proceeded to dedicate his shrine—under the guidance of a pontiff in accordance with proper ritual of course—because it had not been clearly legally necessary for him to gain explicit popular authorization, approval that was no doubt thought by most to be implicit in the tribune's law banishing Cicero (as well as in Clodius' actual office). When, however, the *Lex de exilio* was rejected by the senate and overthrown by the *comitia centuriata*, Clodius' claim to authorization was severely compromised.³⁶ Yet he could still hope to find refuge in the strict construction of the law and in an appeal to the efficacy of Roman ritual procedure.³⁷ All of which he did, though unsuccessfully in the face of Cicero's creative (though not unreasonable) application of the *Lex Papiria* in conjunction with the orator's heavy attacks on Clodius' personal morality and his superstitious attitude toward ritualism.³⁸ But the point must not be lost that Cicero's employment of the *Lex Papiria* in his case against Clodius' consecration of the *aedes Libertatis* was anything but a mechanical reference to the statute books. It was necessary for the orator to persuade the pontiffs to be willing to apply the terms of this law to the circumstances of Clodius' dedication in the face of the ex-tribune's strong claims of ritual propriety and legal exemption. As Nisbet (who accepted the accuracy of Cicero's representation of the Papirian law) put it, "Might not some die-hard *pontifex* convince his colleagues that a consecration must always be valid, in spite of the *lex Papiria*?"³⁹ Indeed, especially when the law's jurisdiction was not relevant beyond objection.

Why the pontiffs sided with Cicero is outside the scope of this paper. Perhaps they were disgruntled by Clodius' recourse to his brother-in-law instead of the senior members of the college. Perhaps they were, like many in the senate, hostile toward Clodius owing to the excesses of the final months of his tribunate (hostility that was ultimately responsible for Cicero's recall from exile).⁴⁰ Or perhaps they were actually persuaded by Cicero's arguments that Clodius' dedication was wrong in the eyes of men and gods alike, as a result of which they welcomed the orator's liberal interpretation of the Papirian law. The pontiffs' rationale aroused the curiosity of the senate, though, unfortunately for us, M. Lucullus put a halt to

35. Cicero's questioning of the terms of Clodius' authorization: *Dom.* 127–28. The senate's decree: *Att.* 4.2.3. On the problems associated with Roman record keeping, especially with respect to preserving the texts of legislation, see the excellent treatment by P. Culham, "Archives and Alternatives in Republican Rome," *CP* 84 (1989): 100–115. Clodius' record keeping: *Plut. Cic.* 34.1, *Cat. Min.* 40.1, *Cass. Dio* 39.21.1, *Schol. Bob.* 171 (St.); cf. Moreau, "Lex Codia," p. 490.

36. Cicero's recall: *Cic. Red. Sen.* 27, *Red. Quir.* 17, *Dom.* 75, 87, 90, *Sest.* 109, 128, *Pis.* 35–36; *Att.* 4.1, *Cass. Dio* 39.8.2, *Plut. Cic.* 33.4.

37. E.g., *Dom.* 127 "Dedicatio magnam," inquit [Clodius], 'habet religionem.'" Cf. *Dom.* 92, 103–9, 137. Clodius could expect his claims to strike a chord amongst those possessed of anxieties over the efficacy of ritual practices; cf. M. G. Morgan, "Politics, Religion and the Games in Rome, 200–150 B.C.," *Philologus* 234 (1990): 30–31.

38. Attacks on Clodius' morality: *passim*, but cf. esp. *Dom.* 139; his "superstition": *Dom.* 103–5; his manipulation of religion: *Dom.* 109, 119–20, 123.

39. "De Domo," p. xxvi.

40. See the concise narratives of R. Seager, *Pompey, A Political Biography* (Berkeley and Los Angeles, 1979), pp. 105–9, and T. N. Mitchell, *Cicero. The Senior Statesman* (New Haven, 1991), pp. 144–55.

any explanation of the pontifical decree, instead directing the senate's attention toward its own proper responsibilities.⁴¹

In any event, the pontiffs and the senate alike rejected Clodius' arguments in favor of Cicero's, a decision that had the effect of extending the jurisdiction of the *Lex Papiria* to tribunician dedications. In view of the many obstacles, not the least of which was the "die-hard *pontifex*" postulated by Nisbet (and necessarily by Cicero as well), it is small wonder Cicero took so much pride in his speech, which he eagerly published.⁴² The verdict of the pontiffs and of the senate, however, was not quite final in 57. Strange noises and other prodigies resurrected Clodius' religious objections to Cicero's reconstruction of his *domus*. Which brought forth yet another successful oration from Cicero.⁴³ Such controversy, however, was fated to be eclipsed by the activities of those with a stake in the unholy arrangements made at Luca, in the midst of which Cicero finally rebuilt his house while Clodius went on to buy other neighboring Palatine properties.⁴⁴

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41. Cic. Att. 4.2.4. Shackleton Bailey, *Cicero's Letters*, p. 171, adduces parallels for the senate's request for the reasons a decision has been based on.

42. Cic. Att. 4.2.1.

43. The circumstances of the *De Haruspicum Responso* are discussed by Lenaghan, "De Haruspicum Responso," pp. 19–21.

44. Clodius' Palatine purchases and holdings: M. Royo, "Le quartier républicain du Palatin, nouvelles hypothèses de localisation," *REL* 65 (1987): 105–7; A. Carandini, "Domus e insulae sulla pendice settentrionale del Palatino," *BCAR* 91 (1986): 265–68.

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LOVE AND LASERPICIUM IN CATULLUS 7

Quam magnus numerus Libyssae harenae
lasarpiciferis iacet Cyrenis
oraclum Iovis inter aestuosi
et Battii veteris sacrum sepulcrum.

[Catullus 7.3–6]

Catullus' simile is rich with innuendo, as he attempts to convey the extent of his passion for Lesbia. Cyrene is particularly prominent here, for not only is it named and geographically identified, but even its founder, Battus, is named. The reference to Battus, whose tomb was a conspicuous marker in the heart of the city, serves in turn as an allusion to his descendant, the poet Callimachus, as has been widely recognized.¹ The cumulative details of this simile, however, apart from recognizable

1. For the Hellenistic allusions, see W. Kroll, *Catull* (Stuttgart, 1923; 1968), p. 15; C. J. Fordyce, *Catullus* (Oxford, 1961), pp. 108–9; D. O. Ross, Jr., *Style and Tradition in Catullus* (Cambridge, Mass., 1969), pp. 57 and 162, n. 105; H. P. Syndikus, *Catull: Eine Interpretation. Erster Teil: Die kleinen Gedichte (1–60)* (Darmstadt, 1984), p. 101; G. O. Hutchinson, *Hellenistic Poetry* (Oxford, 1988), p. 314.