

CICERO'S OPPOSITION TO THE *LEX CLODIA DE COLLEGIIS*

In March 59 Caesar and Pompey presided over the adoption of P. Clodius Pulcher into a plebeian family, thereby rendering the former patrician eligible for the tribunate.¹ The immediate purpose of the dynasts' action was to silence the contumacious criticism of Cicero, whose *Pro Antonio* had gravely offended Caesar.² And the gesture was effective: for a time at least, Cicero withdrew to his country estates.³ For Cicero – like everyone else in Rome – anticipated that, once tribune, Clodius would move to exact revenge for the dishonour done him during and after the Bona Dea trial.⁴ For the remainder of the year Cicero made preparations to fend off his enemy, and principal among his resources was the personal guarantee of his friend Pompey the Great. Pompey, who regarded Clodius as his creature, took it to be a point of honour that he should shield Cicero from harm's way.⁵ But the Vettius affair changed everything. Regardless of who masterminded the scandal and despite all protestations to the contrary, the Vettius affair left Pompey estranged from Cicero, a reality that Cicero could not fail to recognize.⁶ After the Vettius affair Cicero could not prudently rely solely on the dynasts' promises – if ever he did. Yet the means by which Cicero endeavoured to secure his own safety – independent of his relationship with Pompey or Caesar – have not been adequately appreciated by modern scholars. They incline, quite naturally in view of the events of 58 which followed Cicero's exile, to see the contest over Cicero's fate primarily as a struggle between the dynasts, especially Pompey, and Clodius.⁷ Such an attitude, however, tends to cause one to overlook an often cited but infrequently discussed stratagem of Cicero: according to Cassius Dio, Cicero induced L. Ninnius Quadratus, a tribune of 58, to stand up against the legislation which Clodius promulgated upon his entering the tribunate.⁸ This arrangement indicates that Cicero was trying with considerable energy to look after his own interests. It is the purpose of this paper to attempt to explain the means by which Cicero hoped to thwart Clodius as well as the machinations by which the erstwhile patrician outwitted his opponent.⁹

¹ Sources for Clodius' adoption: Cic. *Dom.* 34–42; *Sest.* 15–16; *Prov. Cons.* 45–6; Appian, *BC* 2.14; Plut. *Caes.* 14.9; Dio 38.12.1–2; 39.11.2; 39.21.4 and numerous *obiter dicta*.

² Cic. *Dom.* 41; *Sest.* 16; *Prov. Cons.* 42; Suet. *Jul.* 20.4; Appian, *BC* 2.14; Dio 38.10.1.

³ Cic. *Att.* 2.4–17 were written from various estates.

⁴ Bona Dea scandal: Ph. Moreau, *Clodiana Religio. Un procès politique en 61 av. J.-C.* (Paris, 1982). The expectation of revenge: D. F. Epstein, *Personal Enmity in Roman Politics* 218–43 *B.C.* (London, 1987), pp. 23f. ⁵ Cic. *Att.* 2.22.2 (cf. 2.20.2).

⁶ Here it is not necessary to enter into the controversy surrounding the Vettius affair. Important, recent bibliography includes: P. Greenhalgh, *Pompey: the Roman Alexander* (London, 1980), pp. 224–6; A. M. Ward, *Marcus Crassus and the Late Roman Republic* (Columbia, 1977), pp. 236–42; L. R. Taylor, *Historia* 1 (1950), 45–51; R. Seager, *Latomus* 24 (1965), 525–9; W. C. McDermott, *TAPA* 80 (1949), 531–67.

⁷ e.g. R. Seager, *Pompey: a Political Biography* (Berkeley, 1979), pp. 92–102; D. Stockton, *Cicero: a Political Biography* (Oxford, 1971), pp. 176–87; M. Gelzer, *Cicero, ein biographischer Versuch* (Wiesbaden, 1969), pp. 125–34. ⁸ Dio 38.14.

⁹ Previous discussions of Ninnius' opposition to Clodius' legislation are very brief: e.g. Gelzer, *Cicero* 134; F. Münzer, *RE* 17 (Stuttgart, 1937), 632–3; E. Meyer, *Caesars Monarchie*³ (Stuttgart, 1922), pp. 96–7; W. Drumann and P. Groebe, *Geschichte Roms*, vol. 2 (Leipzig, 1902), p. 208. Most accounts of 59–58 are too succinct to mention the episode.

But first let us consider Clodius. The embarrassment of the Bona Dea scandal was not only a blow to Clodius' prestige, but also revealed how little senatorial support he might expect in the future, for all his illustrious lineage.¹⁰ The *dolor* his ordeal provoked led Clodius to seek transfer to the plebs in order to be elected tribune, a proved means of making up lost political ground.¹¹ His various efforts to attain his goal succeeded only in arousing the suspicion of the senate and in alienating his kinsman Metellus Celer (cos. 60).¹² In his frustration Clodius was forced to turn to Pompey,¹³ who had troubles of his own¹⁴ and had by then directed his attentions toward Caesar.¹⁵ The triumvirs, it seems, kept Clodius cooling his heels until the fateful day when Cicero, defending the corrupt C. Antonius (cos. 63), made 'certain complaints about the state of public affairs'.¹⁶ No doubt pleasantly surprised to find himself, at long last, a plebeian, Clodius was not slow to exploit the possibilities of his new status. But it is worth underlining that, though the dynasts had created Clodius a plebeian in order to frighten Cicero and though revenge was unquestionably on Clodius' agenda, he had more pressing concerns in late 59 and even in early 58. Foremost was the need to establish his own political base. Courting the triumvirs, one can be sure, had offended his Claudian arrogance and had done little to mitigate Clodius' dolorous condition. Moreover, the increasing unpopularity of the triumvirate among commoners and senators alike made them less appealing – and less useful – as allies.¹⁷ Hence Clodius' ambivalent and unpredictable attitude toward the dynasts and his fitful advances toward the *boni*.¹⁸

Which brings us to the legislative programme promulgated by Clodius straightaway upon entering his tribunate.¹⁹ A brief description of the scheme will suffice. Clodius' programme comprised four laws: (1) a *Lex frumentaria* providing for the distribution of modest amounts of free grain, (2) the *Lex de collegiis* which rehabilitated the *collegia* suppressed by the *senatus consultum* of 64 and which allowed for the enrolment of new *collegia*, (3) the *Lex de obnuntiatione*, a measure to which I shall recur below and (4) the *Lex de censoria notione*, a procedural reform that attempted to remedy the ills afflicting the *lectio senatus* in recent censorships.²⁰ The *Lex de*

¹⁰ W. K. Lacey, 'Clodius and Cicero: a Question of *Dignitas*', *Antichthon* 8 (1974), 85–92. E. S. Gruen, *The Last Generation of the Roman Republic* (Berkeley, 1974), p. 275, less plausibly takes the contrary view.

¹¹ *Dolor*: E. Badian, *ANRW* 1.1 (Berlin, 1972), p. 692. Cicero makes a special effort to deny *dolor* to Clodius in the aftermath of the Bona Dea scandal (*Har. Resp.* 43–4). The opinion of ancient sources was that Clodius sought the tribunate to revenge himself on Cicero (Vell. 2.45.1; Suet. *Tib.* 2; Plut. *Caes.* 14.9; *Cat. Min.* 33.3–4), a view followed by some modern authorities (e.g. E. S. Gruen, *Phoenix* 20 [1966], 124–5). But this is not the complete explanation (see below).

¹² Clodius' efforts to be transferred: Cic. *Att.* 1.18.4; 1.19.5 (Herennius' bill); 1.18.5 (Metellus Celer's *rogatio*); Dio 37.51.5. *Dolor* combined with extreme methods (and *transitio ad plebem* must be regarded as drastic) inevitably inspired suspicion: cf. M. G. Morgan and J. A. Walsh, *CP* 73 (1978), 200–10. Celer's alienation: Cic. *Att.* 2.1.4–5; *Cael.* 60; Dio 37.51.2.

¹³ Plut. *Pomp.* 46.4–47.1; *Cato Min.* 31.2. A man in Clodius' position would be presumed to be tractable: cf. Morgan and Walsh, *CP* 73 (1978), 204.

¹⁴ Seager, *Pompey*, pp. 72–84, provides a concise yet thorough account.

¹⁵ Pompey and Clodius established their link before Caesar's return: Plut. *Pomp.* 47.1.

¹⁶ Cic. *Dom.* 41. On the *Pro Antonio* see J. Crawford, *M. Tullius Cicero: the Lost and Unpublished Orations* (Göttingen, 1984), pp. 124–31.

¹⁷ On the triumvirate's unpopularity see Seager, *Pompey*, pp. 93–9, with references. For Clodius' attitude see Cic. *Att.* 2.22.1.

¹⁸ Clodius' relationship with the dynasts was strained by April (Cic. *Att.* 2.7.3.). Clodius and the *boni*: W. M. F. Rundell, *Historia* 29 (1979), 309; E. S. Gruen, *Phoenix* 20 (1966), 124. Cicero hoped that Clodius would falter as he attempted to play both ends against the middle: Cic. *Att.* 2.9.1.

¹⁹ Sources collected in T. R. S. Broughton, *MRR* 2.196.

²⁰ W. J. Tatum, 'The *Lex Clodia de Censoria Notione*', *CP* 85 (1990) [forthcoming].

ensoria notione was designed to allow Clodius to pose as a prudent legislator (rather than yet another *tribunus popularis*).²¹ But what of the *Lex de obnuntiatione*? While the specific provisions of this law remain elusive,²² most scholars agree that Clodius' measure did not abolish but rather modified the *Leges Aelia et Fufia* in response to the exceptional – and exceptionable – tactics of Bibulus in 59.²³ Bibulus' continuous *obnuntiatio* by edict and Caesar's (and Vatinius') rejection of its validity resulted in a constitutional conundrum which was central to the political debates of 59 and 58 – and persisted beyond that. Bibulus' intention, of course, was to provide a legal basis for invalidating Caesar's *acta* as well as Vatinius' legislation, nor were Caesar's enemies slow to rally around Bibulus' edicts. But for all its potential usefulness in overthrowing – or at least menacing – Caesar, Bibulus' obstructionism set a precedent whose dangers must have been apparent to all – even to Bibulus' staunchest supporters. *Obnuntiatio*, though usually perceived as a weapon of the establishment to be wielded against reformist politicians (especially in view of the events of 59 and Cicero's subsequent rhetoric on the subject), was a two-edged sword: the will of the senate also could be frustrated by searching the heavens.²⁴ And the thought that a disgruntled magistrate or tribune could – without so much as leaving his house – paralyse the government for a year cannot have been a prospect pleasing to anyone. Hence the need for a reform, or at least a clarification, of the procedure for *obnuntiatio*.

In a recent essay T. N. Mitchell has argued plausibly that the substance of Clodius' law was 'an explicit requirement that the announcement of unfavourable omens be made in person to the presiding magistrate at an appointed time and place'.²⁵ A moderate (and sensible) reform like the one Mitchell suggests would explain why the senate made no effort to squash the bill (as one would expect if indeed the bastion of good government were being breached) and why – unlike the other three laws of Clodius' initial programme – the *Lex de obnuntiatione* was, so far as we know, never abrogated or modified.²⁶ Clodius' law was untouched because it offered a sound solution to a serious problem. And one must observe that the new law, inasmuch as it was not retrospective, in no way affected the controversy over the validity of Bibulus' *obnuntiatio*. In short, like the *Lex de censoria notione* Clodius' reform of *obnuntiatio* could be represented as responsible legislation. To be sure, Clodius had no desire to encounter the same obstruction which had plagued Caesar and Vatinius – and this was unquestionably one of his motives in proposing the *Lex de*

²¹ *ibid.*

²² T. N. Mitchell, 'The *Leges Clodiae* and *Obnuntiatio*', *CQ* 36 (1986), 172–6; Gruen, *LGRR* 255–7; G. V. Sumner, 'Lex Aelia, Lex Fufia', *AJP* 84 (1963), 337–58; J. P. V. D. Balsdon, 'Three Ciceronian Problems: I. Clodius' "Repeal" of the *Lex Aelia Fufia*', *JRS* 47 (1957), 15–16; S. Weinstock, 'Clodius and the Lex Aelia Fufia', *JRS* 27 (1937), 212–22; A. H. J. Greenidge, 'The Repeal of the *Lex Aelia Fufia*', *CR* 7 (1893), 158–61.

²³ Weinstock, art. cit. (n. 22), argued that the *Lex Clodia* did in fact abrogate the *Leges Aelia et Fufia*.

²⁴ cf. the prohibition on *obnuntiatio* resorted to by the senate when recalling Cicero (Cic. *Sest.* 129) and the potential obstruction cited by Cicero at *Sest.* 78 (for a defence of the text see Weinstock, art. cit. [n. 22], 219). *Obnuntiatio* could be used to postpone elections (e.g. Cic. *Att.* 4.9.1; *Phil.* 2.80; 2.99) and to threaten the completion of the census (Cic. *Att.* 4.9.1).

²⁵ Mitchell, art. cit. (n. 22), 175. Mitchell's thesis was nearly anticipated by C. Meier, *Res Publica Amissa* (Wiesbaden, 1966), p. 192 n. 437. Cf., however, J. Linderski, *ANRW* 2.16.3 (Berlin, 1986), 2155, 2165–7, 2198–2205.

²⁶ The *Lex de censoria notione* was abrogated in 52 (Dio 40.57); as dictator Caesar reduced the number of recipients of public grain (Suet. *Iul.* 41.3) and modified severely the *Lex de collegiis* (Suet. *Iul.* 42.3).

obnuntiatione – but it is a mistake to view Clodius' law as merely self-serving or exclusively *popularis* in its appeal. As E. S. Gruen has put it: 'Safeguards remained and abuse was checked. By voting the bill the Roman people had yielded not to demagoguery but to sound administrative reform.'²⁷

Dio reports that Clodius' programme aimed at winning over not only the plebs but the equites and senate as well.²⁸ Nonetheless, the principal target of Clodius' legislation was the plebs, whose favour would surely be won by free food and the restoration of the *collegia*.²⁹ In order to focus attention on the *Lex de collegiis* – in other words, in order to sensationalize the benefit he intended to confer upon the people – Clodius engineered the celebration, on the Kalends of January 58, of the *Ludi Compitalicii*, an act which dramatically anticipated the effect of his bill.³⁰ A demonstration of this nature was not original: in December 61 an unknown tribune had tried the same thing, but had been frustrated by the consul-designated Metellus Celer, whose personal prestige overawed him.³¹ The failure to celebrate the *ludi* in 61 could only enhance Clodius' reputation if he were successful; consequently he lent his full support to the *magister* who actually conducted the celebration, his own right-hand man Sex. Cloelius.³²

It is at this juncture that Ninnius makes his entrance.³³ Ninnius, we learn from Asconius,³⁴ tried to prevent the *ludi*; however, the tribune was evidently not competent to disperse the celebrants, nor had he the *auctoritas* of a consul-elect. Ninnius' exertions, if they were not encouraged by Cicero from the start, brought him to the consular's attention. For very soon Ninnius was working in Cicero's behalf against Clodius. As Dio reports it, the tribune opposed Clodius' entire legislative programme (Dio 38.14.1): *καὶ ἐπειδὴ ἐκεῖνος [Cicero], συνεῖς τὸ γιγνόμενον Λούκιον Νίννιον Κοναδράτον δημαρχοῦντα ἐναντιωθῆναι πᾶσί σφισιν [i.e. Clodius' legislation] ἀντιπαρεσκέυασεν*. Out of fear that his initiative would be derailed, Clodius made a deal with Cicero: in exchange for Cicero's restraining Ninnius, Clodius would bring no indictment against Cicero.³⁵ Cicero agreed, the Clodian legislation was passed, and very soon Clodius enjoyed not only unprecedented *popularitas* but also a mechanism that could rally vocal and violent demonstrations whenever required.³⁶ Emboldened by his newly acquired clout, Clodius then double-crossed Cicero in February 58 by promulgating his *Lex de capite civis Romani*.³⁷

Now it is not likely that Ninnius would try to veto Clodius' entire package as Dio asserts. In the first place, there can be no question of a tribune's daring to block the *Lex frumentaria*. And the *Lex de obnuntiatione* and the *Lex de censoria notione*, for all Cicero's later criticism, probably did not draw serious disapproval – in fact quite the

²⁷ Gruen, *LGRR*, 257.

²⁸ Dio 38.12.8. Cf. Plut. *Cic.* 30.

²⁹ On the importance of the *collegia*: J. M. Flambard, 'Clodius, les collègues, le plèbe et les esclaves. Recherches sur la politique populaire au milieu du I^{er} siècle', *MEFR, Antiquité* 89 (1977), 115–56; R. MacMullen, *Roman Social Relations 50 B.C. to A.D. 284* (New Haven, 1974), pp. 73–87.

³⁰ *Cic. Sest.* 34, 55; *Post Red. Sen.* 33; *Dom.* 54; *Pis.* 8; *Asc.* 7C. Since Clodius' legislation came before the people on 4 January (*Cic. Pis.* 9) the celebration of the *ludi* would be a very fresh memory.

³¹ *Cic. Pis.* 8; *Asc.* 7C.

³² *Cic. Pis.* 8.

³³ On Ninnius see T. P. Wiseman, *Roman Studies* (Liverpool, 1987), pp. 12, 20, 373, with earlier bibliography.

³⁴ *Asc.* 7C.

³⁵ Dio 38.14.1–2. Gelzer, *Cicero*, p. 134, who believes that Cicero continued to rely on Pompey and Caesar, states that Cicero restrained Ninnius for fear of inciting Clodius unnecessarily. But Cicero was no longer relying on the dynasts and was confident of his own resources when he wrote to his brother at the end of 59 (*Cic. QF* 1.2.16).

³⁶ W. Nippel, *JRS* 74 (1984), 128–9; A. W. Lintott, *Violence in Republican Rome* (Oxford, 1968), p. 193.

³⁷ Sources: *MRR* 2.196.

contrary.³⁸ One might object that Dio, in his discussion of Clodius' programme, singles out the *Lex de obnuntiatione* as the greatest threat to Cicero since it would remove a potent obstacle to the *Lex de capite civis*, which Clodius was to promulgate in February 58. Surely Cicero, like Dio, would have recognized this. Yet one must take care to distinguish Clodius' situation at the start of his tribunate from that after the passage and implementation of his initial programme: his tremendous *popularitas* and his control over the masses were the fruits of his popular legislation – of his personal enrolment of *collegia* as well as his personal involvement in the distribution of grain³⁹ – and it is only due to his influence over the people that Clodius could intimidate any opposition to his *Lex de capite civis* in February. And even then he found it necessary to secure the cooperation of the consuls as well as (as we shall discuss below) the neutrality of figures like Cato. Before the passage of Clodius' programme, before he had won the vigorous loyalty of the plebs,⁴⁰ there was no reason to believe that he would soon become too powerful (and too violent) to be vulnerable to the veto of a fellow tribune – and one must remember that most of Clodius' colleagues in the tribunate were hostile to him.⁴¹ Instead of appearing an insurmountable menace to Cicero, the *Lex de obnuntiatione* was, as we have seen, a sound measure.

Furthermore, in Cicero's only allusion to his active opposition to Clodius' legislation he does not mention the *Lex de obnuntiatione*, rather he cites the *Lex de collegiis* alone. In a letter to Atticus, composed in September 58, the exiled Cicero lamented his several errors of judgement which resulted in his desertion of Rome, errors for which he blamed himself but nevertheless reproached Atticus unstintingly. Amongst his regrets there is this (*Att.* 3.15.4): '...si quantum me amas et amasti tantum amare deberes ac debuisses, numquam esses passus me, quo tu abundabas, ege re consilio, nec esses passus mihi persuaderi utile, nobis esse legem de collegiis perferri.' That this tantalizing remark refers to the events described by Dio seems inescapable.⁴² Otherwise Cicero never mentions the episode, but we cannot build on that, since Cicero would hardly have wanted to admit that he had been outsmarted. The glee with which Dio reports Cicero's deception is ample indication of how embarrassing the incident was for its victim.⁴³ Now it cannot follow from Cicero's letter that he had opposed all or most of Clodius' legislation and subsequently dropped his opposition only to the *Lex de collegiis*. After all, none of Clodius' legislation was vetoed, nor was it carried amidst controversy or violence (or we should have heard a good deal about it). Cicero's opposition was significant only because he could influence a loyal tribune to intercede at his request (Clodius was not especially concerned with winning Cicero's personal approval), and for Cicero to complain that

³⁸ A point recognized in Drumann and Groebe, *Geschichte Roms*, p. 203, though it is then concluded that Cicero could not have opposed any of Clodius' legislation.

³⁹ *Collegia*: Cic. *Sest.* 34; *Dom.* 54 and 129. Grain distribution: Cic. *Dom.* 25; G. Rickman, *The Corn Supply of Ancient Rome* (Oxford, 1980), pp. 52–3. Cicero's criticism that Clodius placed Cloelius in sole charge of such matters may be dismissed; reliance upon subordinates was a common smear among the Romans: cf. Cic. *Verr.* 2.187 (Verres' and his scribe) and Cic. *QF* 1.1.17 (Q. Cicero and his freedman). Moreover, there was a tradition of Claudian dependence upon scribes which Cicero could exploit; cf. P.-C. Ranouil, *Recherches sur le patriciat (509–366 av. J.-C.)* (Paris, 1975) pp. 168–9.

⁴⁰ It must be underlined that benefactions bestowed upon the plebs were no guarantee of *popularitas*: cf. Z. Yavetz, *Plebs and Princeps* (Oxford, 1969), pp. 49–54.

⁴¹ Cic. *Sest.* 78.

⁴² A connection made already by Meyer, *Caesars Monarchie*, p. 97 n. 1 and Drumann and Groebe, *Geschichte Roms*, p. 208 n. 6.

⁴³ Dio's attitude toward Cicero: F. Millar, *A Study of Cassius Dio* (Oxford, 1964), pp. 46–55.

he was persuaded to *allow* the passage of the *Lex de collegiis* when he was unable to stop the other of Clodius' bills would be ridiculous to say the least. It is far more likely that Cicero and Ninnius limited their opposition to the *Lex de collegiis*, which in any case was the most appropriate avenue of attack. Whereas Ninnius had been unable to stop the *Ludi Compitalicii*, he was quite competent to veto Clodius' measure. He could invoke the *senatus consultum* of 64 as precedent and, since he was already on record as an adversary of the *collegia*, he could justify his action in terms of consistency and *dignitas* as well. Cicero's motive in urging Ninnius to veto Clodius' bill is not hard to discern: after the publicity attracted by the celebration of the *ludi*, failure to pass the *Lex de collegiis* would be a serious blow to Clodius' image – to his prestige – and it could be expected severely to affect his consolidation of an active power base amongst the plebs. None of this was lost on Clodius, which explains his eagerness to conciliate Cicero.

It remains to consider why Cicero accepted Clodius' bargain. As his correspondence in 59 makes clear, Cicero was perceptive enough to doubt the sincerity of Clodius' pledge to Pompey and Caesar, and he soon became sceptical of the dynasts themselves.⁴⁴ Yet Clodius was not offering Cicero and Ninnius anything that he had not already promised the triumvirs. And it is plain that Cicero was in a position to do serious damage to Clodius' political schemes. Whatever winning ways Clodius may have possessed, it is difficult to believe that on his own he was charming enough to persuade Cicero to trust him.⁴⁵ Clodius' overtures must have been carried by an intermediary, someone accessible to Clodius yet influential with Cicero⁴⁶ – which is to say that members of Clodius' circle are unlikely candidates. Nor are the dynasts plausible choices: as we have seen, by the time Clodius entered his tribunate Cicero no longer placed much faith in either Pompey or Caesar. Although he fits the description so perfectly, Atticus must also be excluded from consideration since he was criticized by Cicero for his passivity in these matters. I suggest that Clodius' deal was presented to Cicero by somebody in the circle of Cato and Hortensius.

Cato, Hortensius, and others of that close-knit (if unorganized) elite whom Cicero so often described as the *optimates*⁴⁷ were among Cicero's advisers during his struggle with Clodius. At various times during the latter months of 59 they had also been receptive to Clodius' advances as he shifted between them and the dynasts.⁴⁸ They were naturally anxious to win over the energetic tribune-elect, especially since his behaviour suggested that he could be won over. Clodius' defection, they might expect, would pose a significant threat to the plans of Pompey and Caesar. The promulgation of Clodius' legislation, while unlikely to inspire undiluted delight, could be taken, in view of its efforts to resolve recent problems in *obnuntiatio* and the *lectio senatus*, as an indication that Clodius was not in fact a thorough-going *popularis*. Again it must be noted that no one could have foreseen the immense political profit which Clodius would eventually acquire from his manipulation of the *collegia*. In other words, Clodius was in a position to persuade the *optimates* that he genuinely desired a

⁴⁴ e.g. Cic. *Att.* 2.19.4; 2.22.2; *QF* 1.2.16.

⁴⁵ Plut. *Cic.* 30.3 is accepted by D. F. Epstein, *CP* 81 (1986), 235 and P. Grimal, *Cicéron* (Paris, 1984), p. 75. But the passage is clearly based on Plutarch's belief that Terentia was responsible for Cicero's testimony at the *Bona Dea* trial (Plut. *Cic.* 29.2–3), a view which may safely be rejected; cf. W. J. Tatum, 'Cicero and the *Bona Dea* Scandal', *CP* [forthcoming].

⁴⁶ Compare the hostility which existed between Bibulus and Caesar in 48 (Caesar *BC* 3.16) when L. Scribonius Libo had to act as intermediary. Of course the actual circumstances were quite different.

⁴⁷ Gruen, *LGRR* 57, discusses the necessary qualifications which must attend the modern use of this term.

⁴⁸ See above. n. 19.

compromise with his enemy, a compromise which was mutually advantageous and one which he could portray as placing him in the *optimates'* debt. In short, the *optimates* may well have felt it in their interests to believe Clodius. Given Cicero's perpetual ambition to be numbered among the *optimates* (and his bitter disappointment whenever his exclusion was allowed to emerge)⁴⁹ it is perfectly plausible that they could have persuaded him to come to terms with Clodius. Objectionable though Clodius may have been in Cicero's eyes he could be expected to keep a bargain so much to his advantage – especially when his pledge was conveyed by the likes of a Cato or a Hortensius. And one must recall that these negotiations were made in haste.

It might be objected that, if the *optimates* acted as intermediaries between Clodius and Cicero, then they, too, were double-crossed. Yet, apart from some demonstrations on Cicero's behalf (which were quickly squashed by the consuls), there was no evident backlash against Clodius on their part.⁵⁰ And, as is well known, the *optimates* ultimately advised Cicero to capitulate, advice Cicero later considered to have been not only unwise but malicious as well.⁵¹ Two factors help to counter this objection. First, Clodius' *Lex de capite civis Romani*, while reaffirming the traditional right of *provocatio*, was innovative in that its retrospective application was not limited to magistrates: any senator could be indicted under its provisions, so the *optimates* were in potential jeopardy themselves.⁵² By February 58 Clodius had grown quite formidable, having garnered the support both of the people and (through his *Lex de provinciis consularibus*) the consuls;⁵³ consequently it could not be assumed that Clodius would limit his aggression to Cicero. Clodius was able to calm the anxieties of the *optimates*, however – and this is the second point – by proposing to send Cato on his well-known mission to Cyprus. The *Lex de imperio Catonis* conferred upon Cato a signal distinction and he was, regardless of Cicero's later portrayal, keen to accept the honour.⁵⁴ The point for our discussion is that Clodius, by demonstrating public support of Cato through the *Lex de imperio Catonis*, was able to split Cato and his group from Cicero's resistance.⁵⁵ Cato, after all, was as logical a target as anyone for prosecution under the *Lex de capite civis Romani*; yet Clodius, by proposing the mission to Cyprus, made it perfectly plain that he had no intention of attacking anyone except Cicero. Thus Clodius, first by menacing, then by reassuring, the *optimates*, was able to counter whatever sense of betrayal they may have felt. And, to be sure, it was not one of themselves who was going into exile.

That Cicero was ultimately unsuccessful in averting Clodius' vengeance does not detract from the significance of his exertions. Cicero, to his credit as a politician, did not look passively to the dynasts for protection; instead, he sought to weaken his opponent's position by blocking one well-publicized item on Clodius' agenda. All of which speaks for a more energetic Cicero in late 59 and early 58 than the one we

⁴⁹ Cicero's exclusion: e.g. Cic. *Att.* 1.16.10; *Fam.* 1.7.8; 3.7; *Sulla* 21–5; *Planc.* 58.

⁵⁰ Demonstrations for Cicero: Gelzer, *Cicero*, pp. 136–9, with references.

⁵¹ Cic. *Att.* 3.9.2; 3.15.2; *Fam.* 1.9.13; 14.1.2; *QF* 1.3.8; Plut. *Cic.* 31.4; Dio 38.17.4. Cato: Plut. *Cato Min.* 35.1; Dio 38.17.1. Hortensius: Dio 38.17.4.

⁵² Dio 38.14.5. Cf. Vell. 2.45.1.

⁵³ Popular hostility to Cicero: Dio 38.16.5. Sources for the *Lex de provinciis consularibus*: *MRR* 2.196.

⁵⁴ Sources for the *Lex de imperio Catonis*: *MRR* 2.196. Interpretation: E. Badian, *JRS* 55 (1965), 110–21; J. P. V. D. Balsdon, *JRS* 52 (1962), 135; S. I. Oost, *CP* 50 (1955), 98–112.

⁵⁵ W. M. F. Rundell, *Historia* 28 (1979), 301–28. Which is not to say that this was the only motive behind Clodius' bill: cf. Seager, *Pompey*, p. 105. Whether Caesar actually congratulated Clodius on this shrewd device is doubtful; cf. Cic. *Dom.* 22.

customarily imagine. Cicero's downfall, or at least his failure to stop Clodius' legislation, stemmed from the trust he placed in the men whose esteem he honoured and whose company he craved, a weakness which at root was a sense of social inadequacy perceptible to (or presumed by) his noble enemy. By persuading the *optimates* that both he and Cicero could be appeased, Clodius was able to dupe Cicero by indirect means. The *optimates* themselves, as so often in the story of the late Republic, showed themselves to be short-sighted and, once caught out, unreliable. That it is more ignominious to mistrust one's friends than to be deceived by them is one of La Rochefoucauld's better known apophthegms. Not one, however, which the exiled Cicero would have been likely to relish.⁵⁶

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⁵⁶ I am grateful to M. Gwyn Morgan, who read an early draft of this paper – which is not to say that he shares my views.