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Ex qua quod vellent facerent: Roman Magistrates' Authority over *Praeda* and *Manubiae**

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It is widely held that Roman magistrates enriched themselves by appropriating booty, and that this was both legal and ethical. This view was advanced by Israel Shatzman (1972), building on earlier work by Karl-Heinz Vogel (1948 and 1953). Their views—and especially Shatzman's—have wielded a heavy influence on subsequent scholarship in English. Shatzman's article is the only source cited in the entry on *manubiae* in the third edition of the *OCD*, which restates his thesis with the authoritative air of demonstrated fact: "[the magistrate] was free to dispose [of *manubiae*] as he wished without any legal restrictions."[1] Vogel's work is sometimes neglected by Anglophones when Shatzman is cited.[2] I am aware of only one general comment on the question in English since Shatzman that neither cites his work nor presumes his conclusion: A. E. Astin in the *Cambridge Ancient History* (1989: 179; cf. 181) implies that appropriation of booty was illegal.[3] He makes the point without any indication that it is controversial, so it is fair to say that Shatzman has so far had the last

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[1]Campbell 920. I will deal presently with the precise connotations of *manubiae*. All translations are my own.

[2]E.g., Feig Vishnia 129, 232 n. 36; Astin 1978: 63; Harris 75 (with reservations on minor points); Gruen 1984: 290–91 and n. 10. Gruen 1990: 134 n. 43 indicates that Shatzman has superseded Bona (1960), but does not mention Vogel. He does point out (1990: 134 n. 47) that Shatzman's treatment of the trial of M.' Acilius Glabrio is problematic. Harris 74 n. 5 cites Vogel 1953, and Briscoe 391 cites the full triumvirate of Shatzman 1972, Vogel 1953, and Bona 1960. Orlin 117–22, who mostly accepts Shatzman's conclusions but adds nothing to his argument, cites all three authors (like Shatzman 1972, however, he does not cite Vogel 1953, but only Vogel 1948).

[3]Earlier, in his biography of the Elder Cato (Astin 1978: 63 and n. 40), he had cited Shatzman in accepting the opposite conclusion.

word on the question; to my knowledge no one has yet raised a serious and explicit objection. I intend to do so by clarifying the evidence and showing that *manubiae*, the share of booty over which the magistrate had the broadest discretionary powers, were public property.

Now, Shatzman held the line against a lingering misunderstanding that may, in part, have prevented earlier generations of scholars from settling the question of the magistrate's authority over booty. Vogel and many of his predecessors were persuaded by a notice in Aulus Gellius (13.25) to believe that *manubiae* referred to the money obtained from the sale of *praeda*;[4] but Shatzman (1972: 179–80) confirmed what several others had already pointed out: that this is impossible given especially some references to the sale of *manubiae*, which, therefore, could not already have been liquidated.[5] The fact that Favorinus could be quoted by Gellius (*loc. cit.*) for such an impossible definition only shows that, by the first half of the second century C.E., it was no longer clear what had distinguished *manubiae* from *praeda* in the late Republic.[6] Shatzman (1972: 188) and Ferdinando Bona (1960: 149) agreed that *manubiae* represented a share of booty reserved by the general after the triumph (though they differed on the question of ownership). Although the sources might seem at first glance to support that interpretation, I shall take up, though with a slightly different conclusion, the suggestion of Otto Karlowa (7) that the distinction was based on the circumstances of acquisition, not on reservation after the triumph.

Furthermore, Bona (1960: 148–50) called for a revival of the contention that *manubiae*, and *praeda* in general, were public property under the control of the magistrate with *imperium*, and therefore that their only legitimate uses were in the service of the Roman state, whether as pay for soldiers, rewards for valor, payment for games or public projects at Rome or in the provinces, and the like.

[4]Mommsen 1887: 241; 1879: 443; Vogel 1948: 408 (= 1953: col. 1207); cf. Brecht cols. 820–22; Treves 644.

[5]Bona 1960: 149–50; Fabia 1583; Karlowa 5–6. Orlin 117–22 has since revived the old definition to assert that a solution to the problem of the definition is hopeless: "The distinction may not have been as important to the Romans as it seems to us, for Roman authors made no attempt to use these terms in a consistent fashion nor did they define these terms until after the distinction was moot" (121). Of course, we don't know whether or when they defined the terms prior to the definitions which happen to be extant. Those pieces of evidence on which he bases this view will be dealt with as they come up in the course of my argument.

[6]Sufficient explanation for this confusion was advanced by Fabia 1585, pointing out that as public property and the emperor's property became functionally equivalent, the old distinction was rendered moot.

In rough outlines, this was the prevailing view among scholars prior to Vogel.[7] It was believed that misappropriation of booty could be prosecuted as *peculatus*;[8] Bona (1960: 160–70) suggested that booty kept by the magistrate and not yet expended in the public interest was viewed as *residuae*, though action was not taken while the magistrate still lived. Shatzman occupied himself during much of his article (1972: 188–98) with showing that no charges concerning the disposal of booty were prosecuted as *peculatus*. He joined Vogel (1948: 413–22; 1953: cols. 1211–13) in categorically denying that the magistrate was in any way procedurally or legally accountable for his use of booty, explaining away several incidents and details recorded in our sources that would otherwise indicate the opposite. I will proceed first by examining the evidence that can be used to establish a better definition of *manubiae*, the crucial subset of the generic *praeda*;[9] then an examination of evidence about booty will show that it was public property; and finally an examination of some incidents dismissed too quickly by Shatzman and Vogel will confirm that the general or, if he died, his heirs, bore the responsibility to use *manubiae* in the public interest.

1. The Definition of *Manubiae*

The evidence for the meaning of the term *manubiae* is scattered and incomplete, but it is possible to improve upon the definition of Shatzman and Bona that *manubiae* represented simply any and all material reserved for the general's use after the triumph. There are indications it referred to a category of booty that existed before the triumph—that is, before it could have been "reserved"—though admittedly the term is only rarely attested with reference to such material. Still, what evidence there is of the historical development of the term makes it more likely that the term referred to goods as they were taken than to booty that was kept after the triumph by the general.

The bare etymology of the word *manubia* suggests that it might originally have been a generic term for things handed over, thus referring to the moment of acquisition. It appears to be a compound of the root of *habere*, "hold," and

[7]Mommsen 1887: 241–42; Karlowa 7–8. This view was taken up again by Bona 1960. Fabia 1584 argued that, while it was entirely legal, any use other than in the public interest was avoided as immoral.

[8]Mommsen 1899: 765 nn. 5, 7; 1879: 449, 452–55; Fraccaro 368–70.

[9]The term *spolia* need not concern us in this connection, since it was not used as a technical term, and any specific reference was to weapons and armor taken from enemy soldiers (cf. Liv. 45.33.1–2).

the root of *manus*, "hand."[10] This connection is supported by evidence of the early meaning of the term.[11] A *scholion* to Cicero (Ps.-Asc. schol. *ad* Cic. *Ver.* 1.157) reads: *spolia quaesita de vivo hoste nobili per deditionem manubias veteres dicebant; et erat imperatorum haec praeda, ex qua quod vellent facerent* ("the ancients called spoils sought from a living noble enemy through surrender *manubiae*; and this was the booty of the generals, from which they did what they chose"). The same or a similar idea is attested by the grammarian Placidus, who writes (*C.G.L.* 5.32.1): *manubiae dicuntur spolia hostium quae a rege aut duce eiusdem manibus deportantur, ut exuviae et induviae dicuntur*; in two other glosses (*C.G.L.* 5.114.44; *C.G.L.* 5.83.10) cognate to this one, the same words are used except that *C.G.L.* 5.83.10 has the phrase *eius de manibus* in place of *eiusdem manibus*. The only question is whether these goods were taken *from* or *by* the noble's hands in these examples. In the *scholion*, the goods were taken from a living noble opponent. In Placidus, the language is strange, to say the least, and the variants may have some bearing on the interpretation. Either reading, however, can be taken to mean that the goods were taken from a king or general (*a rege aut duce*) from his hands (*eius de manibus* or *eiusdem manibus*).[12] The reading *eius de manibus*, which I think is more likely the correct one, can only reasonably be interpreted in this way.[13] There is little reason to credit the idea that there were two parallel traditions, one that *manubiae* were defined by the fact that nobles gave them up, and the other by the fact that nobles took them; this would make a hash of the evidence. It is more likely that both of these *testimonia* referring to archaic practices stem ultimately from the same tradition and we should translate Placidus' words:

[10]Walde-Hofmann 1954: 34. Fabia 1584 and nn. 13–14 argues that it was derived from a rare verb *manuo*, citing the parallelism in *exuo*: *exuviae*. Two considerations tell against this argument. First, *exuo* and *manuo* are apples and oranges, the first being a compound verb (**ex-evo*; cf. Walde-Hofmann 1938: 434–36), and the second a sort of denominative from *manus*. More importantly, the necessary form *manuviae* is unattested until very late (Albinus *G.L.* 7.305.7). In any event, this etymology would pose no difficulty for the argument being advanced.

[11]For the following, cf. Bona 1960: 119–23.

[12]The phrase *manu mittere* betrays the original pattern behind the proposed interpretation of the latter phrase, and a bare ablative of separation is common enough in classical Latin, especially when the verb displays an appropriate adverbial prefix; cf. Hofmann-Szantyr 103.

[13]This usage of *eiusdem*, if this is what was written, is apparently a *hapax legomenon*. *Ipsius* is attested (*OLD* s.v. *ipse* [10a]) picking up a noun occurring elsewhere in the same clause, but not, so far as I can determine, *eiusdem*. This should encourage us to consider the other reading, which is easily restored from either passage (*eiusdem* being quite intelligible as an error for *eius de*).

"The spoils of enemies that are carried off from a king or leader from his hands are called *manubiae*, as are called *exuviae* and *induviae*." At the earliest point relevant to the question of the classical use of the term to refer to booty, it referred to goods surrendered by living noble enemies.[14]

Apparently it followed that generals would control those goods; when in later times more and more property captured from enemies came to be controlled by generals, the term came to include even that which had not been taken from the hands of living nobles. For this transition there is no direct evidence, but by the historical period indications are that the portion of booty called *manubiae* was exclusively controlled by the man who had held the *imperium* when it was taken. In the five Republican inscriptions in which the term *manubiae* occurs, the dedication from *manubiae* was made by a former consul.[15] The literary record confirms the association. Livy uses *manubiae*—usually in the formulaic expression *de manubiis*, which echoes the inscriptional evidence—of public works or games provided by the former magistrate.[16] In other references, such as to distributions to soldiers, *praeda* is the operative term.[17]

On the other hand, attested dedications by magistrates without *imperium*, such as military tribunes, were made *de praeda*.[18] The absence of any attested

[14]The term *manubia* also referred to thunderbolts wielded by divinities; cf. Sen. *Nat.* 2.41.1–2; Fest. p. 114L, 236L; Serv. ad *A.* 1.42; 8.429; 11.259. Whatever the connection may be, it is too remote to be of immediate relevance. The most obvious, and I suspect the right, connection is that these *manubiae* of the gods were weapons of special value, just as the weapons and armor of kings and generals would be more valuable than those of the common soldiery. Things handed over by such men (or gods) were certainly deserving of a special designation. Whether the association with gods or nobles came first is a chicken-or-egg controversy best passed over in silence.

[15]*CIL* 1^2.635; 6.1301, 1316; 10.6087; 11.1831; cf. Bona 1960: 133–35.

[16]Liv. 1.55.7; 10.46.14–15; 23.11.3; 33.27.4; 36.36.2; 43.4.6. At Liv. 33.47.3 *manubiis* is Madvig's emendation: "tum vero ii quos paverat per aliquot annos publicus peculatus, velut bonis ereptis, non furtorum manubiis extortis, infensi et irati Romanos in Hannibalem, et ipsos causam odii quaerentes, instigabant." If correct, the usage might be taken to imply that *manubiae* were private property; however, such a metaphorical application cannot tell us much with certainty about strict technicalities. Another possible emendation may be "*furto manibus extortis*" (an "*o*" with an indistinct blotch of ink or other imperfection attached to it might have been mistaken for an abbreviated "*-orum*"). Instead of "the plunder (*manubiis*) of thefts extorted" it would mean "(goods) extorted by their hands in stealth"—a bit of a poetic turn with *furto manibus* standing as hendiadys: "by their thieving hands."

[17]E.g., Liv. 7.27.8; 10.30.10, 46.5–6; 30.45.3; 31.20.7; 33.27.3; 34.46.23; 36.36.2. Cf. Shatzman 1972: 183, and nn. 25, 27.

[18]*CIL* 1^2.48, 49; cf. Bona 1960: 137–39; the other occurrence of *praeda* is twice in what purports to be a copy of a list of booty from the Sicilian campaign of C. Duilius (*cos.* 260

use of the word *manubiae* in connection with anyone who had not formerly held *imperium* suggests that if such goods ever ended up in the hands of others (whether as rewards, gifts, or otherwise) they were no longer called *manubiae*, but reverted to the generic *praeda*. It remains true, however, and important to bear in mind throughout, that the term *praeda* was often used when *manubiae* were apparently meant.[19] This can best be demonstrated by juxtaposing a pair of references, one using the word *praeda*, and the other *manubiae*, to refer to the same body of material. Livy tells us (1.55.7) that L. Tarquinius Superbus built the temple of Capitoline Jupiter out of the *manubiae* from Pometia, while the elder Pliny (*Nat.* 3.70) says that Valerius Antias (= *HRR* fr. 11) reported that the same temple was built from the *praeda* of Apiolae. Now, it is almost certain that Pometia and Apiolae were the same place.[20] Livy's *manubiae* and Antias' *praeda* thus refer to the same material.

The extant classical occurrences of the term *manubiae* refer almost exclusively to dedications made after the triumph. This limited sample fostered the assumption that the term became applicable at the triumph when *praeda* became *manubiae* if they were not given away to some person or to the state, but were retained by the former magistrate. The term is used rarely enough, however, that we cannot dismiss as erroneous, as do Shatzman (1972: 186 n. 36) and Bona (1960: 133), a statement of Velleius Paterculus that indicates *manubiae* existed prior to that moment. On Pompey's return from his eastern campaigns, Velleius wrote (2.40.3): "he returned to the city and for two days celebrated a triumph over so many kings, and brought a far greater sum from *manubiae* (*ex manubiis*) to the treasury than any that had been brought in before him by anyone but [L. Aemilius] Paullus." It is obviously not necessary to regard this as erroneous unless we are predisposed to imagine that *manubiae*

B.C.E.), which is not concerned with the dedication or other disposal of the material: *CIL* 1.195.13–17 (= 1^2.25.13–17); cf. Bona 1960: 139–41.

[19]Livy 43.4.6 uses the word *manubiae* and the word *praeda* in the same passage in such a way as to suggest the possibility that the magistrate in question had kept booty that belonged to both categories. Orlin (120) takes it to support the definition given in Aulus Gellius (13.25) of *manubiae* as monetary proceeds from sale of booty, since an aqueduct was built *ex manubiis* and paintings were dedicated *de praeda*. If we accept Orlin's idea that there were multiple active definitions of *manubiae* at the time, this is reasonable enough as an interpretation. But, given that Livy likes to vary his language (cf. Walsh 174 and n. 3), this passage presents no serious challenge to the more consistent interpretation I intend to offer.

[20]Apiolae and Pometia were apparently Greek and Latin counterparts, both meaning something like "Pear-" or "Fruit-orchards," and Apiolae is otherwise unknown; Pais 347 n. 2; cf. Cornell 129.

meant the part the general had reserved after the triumph. It suggests, rather, that *manubiae* were goods over which the general had some broader authority, which included the right to reserve some after the triumph, if he so chose. The other possible point of distinction, for which there is strong circumstantial evidence, was at the point of acquisition.

In our literary sources we find booty being divided at the point of acquisition into two separate categories, one for the soldiers and the other kept by the general for the state. On the one hand, when a city had been captured by force, certain goods were collected and reserved to the general before the soldiers commenced looting.[21] Then, on the other hand, the goods collected by the soldiers, as Polybius (10.16.2–9) relates, were pooled and eventually distributed to the whole army. In a passage that is otherwise problematic, Plutarch makes a stark division, indicating that, of all the goods the Romans had obtained in Marius' victory over the Teutones, what was not looted (ὅσα μὴ διεκλάπη) went to the general's control.[22] It was rare that a surrendered city

[21]E.g., Liv. 9.37.10; 27.16.8, 47.7–8; Plu. *Marc.* 19.3, 21.3–4; *Luc.* 29.3.

[22]Plu. *Mar.* 21.2. The problem is that Plutarch indicates that this division was accomplished by a vote of the soldiery (ἐψηφίσαντο). This would imply, if accurate, one of two things: 1) that ordinarily the general did not take control of goods not looted, which is at variance with the rest of the evidence; 2) that they voted not simply that the general should control the goods (as I will argue in the next section the general ordinarily did) but also that he should keep them as his own personal property (which I will argue he was not allowed to do). Although the latter conclusion would support my argument by indicating that only by some extraordinary motion could a general appropriate booty to himself, I think it unlikely that this detail is accurate. Among the errors in Latin translation attested for Plutarch is one in which he confused the boundaries between clauses: among some portents reported prior to Cannae Livy (22.1.11) wrote that the sky at Falerii had split open and where it had opened a bright light shone through, and that "lots had shrunk on their own" (*sortes sua sponte attenuatas*) and that one had fallen out (*unamque excidisse*) inscribed with the phrase "Mars is brandishing (*concutit*) his weapon." Plutarch conflated the separate clauses in his version (*Fab. Max.* 2): "the sky over Falerii seemed to burst and from it fell and scattered writings, and on one of these was written, as the phrase goes, 'Ares is shaking (σαλεύει) his equipment'." Plutarch or his translator omitted the words "and where it opened a bright light shone through," and failed to translate *sua sponte*, but every other word or phrase seems represented somehow (he seems to have taken *attenuatas* to mean "dispersed"). In his confusion, the translator lost track of boundaries between clauses: *excidisse* occurs after *unamque*, but the translator took it with *sortes attenuatas*. Postulating an error similar in scope and effect would solve the problem posed by the current passage. At least one Latin word for voting (*censere*) is also a verb of thinking. Given that Plutarch subsequently (*Mar.* 21.2) reports an opinion that the reward conferred on Marius was hardly commensurate with the risks entailed, it is likely enough that the word *censere* occurred in the Latin original. Were the phraseology the least bit confusing, a simple transposition like that of *excidisse* in

was looted, but, when it was, the same division took place.[23] Booty collected from surrendered cities that were not looted was apparently reserved exclusively to the control of the general and his staff; as a group of soldiers reportedly (Tac. *Hist.* 3.19) reminded themselves, "the booty of defeated cities pertains to the soldiers, that of those surrendered, to the leaders."

This renders comprehensible an otherwise difficult passage that provides the earliest attested reference to the special category of *manubiae*. In a speech defending himself against some unspecified charge, Cato repeated an earlier declaration of his own incorruptibility (*orat.* 203): *numquam ego praedam neque quod de hostibus captum esset neque manubias inter pauculos amicos meos divisi, ut illis eriperem qui cepissent* ("never have I divided booty—neither what had been taken from the enemies nor *manubiae*—among some few friends of mine, taking it away from those who had taken it"). Both *quod de hostibus captum esset* and *manubiae* were *praeda*, and both were taken, in some sense, by the army, since giving either to friends would be to strip it from those who had taken it (*ut illis eriperem qui cepissent*). *Quod de hostibus captum esset* must have been those things that had been looted by the army; *manubiae* were the goods that the army had captured indirectly by intimidating cities into surrender, and those goods that were reserved from looting when it took place.[24]

Circumstantial evidence supports the hypothesis that the *manubiae* were the objects not looted by soldiers, since items not looted by soldiers are the same items we find identified as *manubiae*. Livy (38.9.13) mentions that all the paintings and bronze and marble statues in Ambracia, which was not looted, were carried off;[25] Frontinus (*Str.* 4.3.15) mentions paintings and statues (*tabulis statuisque*) among the *manubiae* of Mummius. Gold cups and silver vessels were brought to Scipio in Livy's narrative (26.47.7–8) of the aftermath of the sack of New Carthage; likewise, Vitruvius mentions (5.5.8) bronze

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the cited example would make it possible to associate *censere* with the division of spoils rather than with the reported opinion, and then it would naturally seem to mean "vote" instead of "think." Cf. Rose 16–18; Jones 81–87; Russell 54 and n. 27.

[23] No looting: Liv. 38.9.6–14; punitive looting: Liv. 45.34.

[24] Orlin 118–19 has suggested that Cato's words should be interpreted in light of the definition given by Aulus Gellius (13.25) of *manubiae* as "monetary proceeds from booty." This is a reasonable interpretation, but we would then be forced to accept the implication (Orlin 121) that there were at least two mutually exclusive definitions of *manubiae* in force; as we are about to see, *manubiae* also included actual objects of booty. Orlin's conclusion is unnecessary, since sense can be made of these words without rendering them incompatible with the rest of the evidence.

[25] Cf. Liv. 27.16.8; Plu. *Marc.* 21.1–4.

vessels brought from the theater at Corinth that Mummius dedicated *de manubiis* at the temple of Luna. Furthermore, land, which obviously could not be removed by soldiers, is implicitly attested as belonging to the *manubiae*.[26] The circumstantial evidence (there is no other evidence) leads to the conclusion that large and especially precious items were reserved against looting, and that these items were called, if one wanted to be precise, *manubiae*.[27]

It seems to me only reasonable to conclude that the term *manubiae* was by the late Republic applied to everything that was not taken by the army in the prescribed looting process, but over which the Roman people still had a claim. What was taken in the looting had to be given to the soldiers; the historical lesson represented by several cases when men were tried and convicted for failing to distribute booty, or distribute it fairly, to the soldiers, had been learned by the late Republic.[28] This share pertaining to the soldiers was called by the generic term *praeda*; but, when it had to be distinguished specifically from *manubiae*, a periphrasis like Cato's *quod de hostibus captum esset* could be used. The general had more discretion with the *manubiae*, since he was at least not required to give it to the soldiers (although he could) or the treasury (although sometimes the senate resented generals for stinginess). The question to be raised now is whether or not the control the general had over the *manubiae* was akin to ownership, as Shatzman argued it was.

2. Ownership and Authority

The distinction to be drawn and maintained in this section is between ownership on the one hand and custody on the other. There is no disputing that the general was entitled to custody of the *manubiae* from the time they were taken to the

[26]Cicero (*Agr.* 2.53), imagining a letter Rullus might have written to Pompey in the enforcement of his law: "'I want you to be sure to be there for me at Sinopa and bring help, while I sell the lands you took by dint of your efforts and struggles.' Will he not consult Pompey? Will he sell the *manubiae* of the general in his province?" Shatzman (1972: 182 n. 23) claimed that Cicero was mistaken or exaggerating.

[27]Vogel (1953: col. 1203), under the old misapprehension (cf. 1953: col. 1207) that *manubiae* were the monetary proceeds from the sale of booty, identified this special category, but called it "the greater booty" (*Großbeute*). Karlowa 7, who hypothesized as I have that the distinction between booty and *manubiae* was made at the point of acquisition, reasoned that an army often obtained great amounts of booty without bloodshed, and it was this booty that the general had to lodge in the treasury. Whatever was captured in war was *manubiae*, the portion that, if not distributed as reward for service, he could keep for public projects. This *a priori* assumption is certainly reasonable, but the evidence suggests something else, as I hope to have shown.

[28]Liv. 2.41.1–2, 3.31.4–6; Fron. *Str.* 4.1.45.

time they were expended. This by itself hardly indicates that he owned them outright, or that he was within his rights to take any amount he wanted for himself. There were certainly powerful fringe benefits (which will be examined in due course) to holding *manubiae*, but indications are that they were viewed as public property in the custody of the man under whose auspices they had been won.

In the first place, the testimony of jurists and scholiasts, such as it is, tends to indicate that *praeda* was public property. Modestinus (*dig.* 48.13.15) wrote that *is qui praedam ab hostibus captam subripuit lege peculatus tenetur* ("he who has stolen booty taken from enemies is subject to the law of *peculatus*"). This statement brought Mommsen (1879: 449; cf. Bona 1959: 349–51) to the conclusion that booty was public property.[29] Corroborating evidence comes from Pomponius (*dig.* 49.15.20.1), who wrote: *publicatur ille ager qui ab hostibus captus sit* ("land taken from enemies is made public"). Here Vogel (1953: col. 1205) simply suggested, without corroboration, that land was a special case. But we still have the evidence of Cicero (*Agr.* 2.53), cited above (n. 25), that land was part of the *manubiae*. These indications corroborate the general statement in Livy (30.14.8–9) that all property of the defeated enemy became the property of the Roman people.[30] Given that there is no implicit or

[29]Vogel (1953: col. 1204) suggested that only once the general had decided to give booty to the treasury was it *peculatus* for anyone (including himself, if we think of the case of Servilius Caepio, to be discussed in the next section) to steal it before it got there; as support for this assertion he cites (against Mommsen's contrary argument) the statement of Celsus (*dig.* 41.1.51.1) that *quae res hostiles apud nos sunt, non publicae, sed occupantium fiunt* ("enemy property that is among us does not become public, but the property of those who seize it"). However, Bona (1959: 334–37) has pointed out that *res hostiles* were not *praeda* but property owned by someone who had been made an enemy, and was thus deprived of Roman property rights, by a declaration of war—a situation that would have arisen often enough during the Social and Civil Wars, for example. The statement means that such property, when located in Roman territory, was fair game for any citizen to claim. As such, it provides no support for the assumption that booty was private property.

[30]It seems to me the statement of Gaius (*dig.* 41.1.5.7) should be interpreted in this light: *quae ex hostibus capiuntur iure gentium statim capientium fiunt* ("things taken from enemies, by international law, immediately become the property of those who take them"). *Capientium*, then, refers to the conquering people collectively, not to individual citizens or soldiers. Certainly the Romans' actual practice of looting and sharing the booty among all the soldiers fits the theory that the property was owned collectively, but not individually; as we know from Polybius (10.16.2–9), at least half of the army never laid hands on the booty, and those who physically gathered it were bound by oath not to keep any for themselves, but rather to share all of it equally with everyone else. They received it, it seems to me, as pay from the state for their services, not because it was their private property at the moment it was taken. That

explicit statement that the generals owned *manubiae* or any other category of booty, we ought to accept these indications that they were public property.[31]

On the other hand, there are numerous literary passages that have been used by Shatzman (1972: 184–85) and Vogel (1953: cols. 1209–10) to advance the notion that generals were allowed and expected to enrich themselves from booty won under their auspices. The magistrate is praised, or praiseworthy, in each cited passage, for avoiding any actual or apparent enrichment from booty.[32] At best, this demonstrates that it was thought possible for material from booty to be turned to the personal profit of the general, but does not, as the aforementioned scholars claim, prove that such personal profit was legitimate or that it would have been tolerated if it was discovered. The most instructive passage along these lines, which also happens to be the only one penned by an author who had first-hand experience with the subject of his narrative, sheds enough light on the question to show that, in fact, direct enrichment was probably impermissible, but there were indirect ways of deriving benefits that the most scrupulous avoided altogether.

Polybius recounts (18.34.6–8) a diplomatic exchange between T. Quinctius Flamininus and Philip V of Macedon after which many Greeks were convinced there must have been the exchange of a bribe, since Flamininus seemed to have granted an armistice rather quickly, and since, according to Polybius, the Greeks of the time were quite used to bribery and were unaware

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whatever was not distributed remained public property is further supported by Cicero's phrase (*Ver.* 2.1.57) *praedam populi Romani* in a passage to be considered in greater detail later.

[31]One *scholion* defining *manubiae* (Ps.-Asc. *ad* Cic. *Ver.* 2.1.154) is compatible with the hypothesis of ownership, but does not require it: *manubiae sunt autem praeda imperatoris pro portione de hostibus capta* ("*manubiae* are the booty of the general as a portion taken from the enemy"). This is comprehensible as a simple statement that the *manubiae* were the objects reserved to the general's custody; cf. Karlowa 7. The other relevant *scholion* (Ps.-Asc. *ad* Cic. *Ver.* 2.1.157) actually implies that ownership was not the issue: *erat imperatorum haec praeda ex qua quod vellent facerent* ("this was the booty of the generals, from which they could do what they wanted"). It would be redundant to suggest that the generals could do what they wanted with property that belonged to them. Vogel (1953: col. 1206) also cited a decree by Scipio (Liv. 26.47.2; Plb. 10.17.9) that laborers captured from New Carthage would be public slaves with the promise of freedom for good service; this decree, Vogel claimed, implied that the laborers were Scipio's personal property. In fact, the decree indicated that these captives would not be treated as they typically might have been. In other circumstances they would have been sold (e.g., Liv. 10.31.3; 23.37.13) and the proceeds, when a recipient was expressed, lodged in the treasury (e.g., Liv. 5.22.1; 7.27.8).

[32]V. Max. 4.3.13; Cic. *Ver.* 2.3.9; *Off.* 2.76-7; Liv. *Per.* 52; D.H. 19.16.3–4; Fron. *Str.* 4.3.15; Plin. *Nat.* 34.36.

that the Romans were different. Polybius goes on to give evidence for the assertion that, while the Romans' virtue on such a question was no longer universal, the best among them were still incorruptible. L. Aemilius Paullus, the natural father of Scipio Aemilianus, not only kept his hands off the booty of Perseus, Polybius says, but did not even pay personal attention to its disposal.[33] Polybius, who was himself a witness to Aemilianus' conduct during the Third Punic War, gives us details that were likely mined for later accounts praising him for his self-control and moderation.[34] Polybius' wording (18.35.9–11) suggests that there were means by which a general might appropriate booty, but, upon close analysis, hardly even allows the conclusion that any of the booty was regarded as belonging to him or subject to appropriation:

> καὶ μὴν Πόπλιος Σκιπίων ὁ τούτου μὲν [sc. Αἰμιλίου] κατὰ φύσιν υἱός, Ποπλίου δὲ τοῦ μεγάλου κληθέντος κατὰ θέσιν υἱωνός, κύριος γενόμενος τῆς Καρχηδόνος, ἥτις ἐδόκει πολυχρημονεστάτη τῶν κατὰ τὴν οἰκουμένην εἶναι πόλεων, ἁπλῶς τῶν ἐξ ἐκείνης οὐδὲν εἰς τὸν ἴδιον βίον μετήγαγεν, οὔτ' ὠνησάμενος οὔτ' ἄλλῳ τρόπῳ κτησάμενος οὐδέν, καίπερ οὐχ' ὅλως εὐπορούμενος κατὰ τὸν βίον, ἀλλὰ μέτριος ὢν κατὰ τὴν ὕπαρξιν, ὡς Ῥωμαῖος. οὐχ οἷον δὲ τῶν ἐξ αὐτῆς τῆς Καρχηδόνος ἀπέσχετο μόνον, ἀλλὰ καὶ καθόλου τῶν ἐκ τῆς Λιβύης οὐδὲν ἐπιμιχθῆναι πρὸς τὸν ἴδιον εἴασε βίον.
>
> And indeed Publius Scipio the son by birth of this man, Aemilius, and the grandson by adoption of the Publius called "The Great," when he became master of Carthage, which seemed the richest of all the cities in the world, transferred precisely none of the goods from there to his own property, neither obtaining them by purchase nor by any other means, even though on the whole he was not well off, but was of moderate means, for a Roman. And not only did he keep his hands off the property of Carthage itself, but he didn't even allow any of the goods of Libya to be mixed in with his own property.

The overall import is the same as in several of the aforementioned passages—praise for refraining from private enrichment. What he controlled was the impulse to transfer (μετήγαγεν) something from the booty to his own property (εἰς τὸν ἴδιον βίον). This by itself suggests not that booty was already

[33]Plb. 18.35.4–7. A later-attested tradition has it that Aemilius gave the library of Perseus to his sons (Plu. *Aem.* 28.6), and five pounds of silver to his son-in-law, Q. Aelius Tubero (V. Max. 4.4.9). This need not imply, of course, that Aemilius took personal charge of the arrangements.

[34]Cic. *Off.* 2.76; V. Max. 4.3.13.

technically part of his property, but that it was quite distinct. But Polybius added ancillary detail that supplies for us a more demonstrative hint: Aemilius refrained from such transfer of property *by purchase or by any other means* (οὔτ' ὠνησάμενος οὔτ' ἄλλῳ τρόπῳ κτησάμενος οὐδέν). Any interpretation of the word μετήγαγεν taken to indicate that booty, while it was kept distinct from the rest of his property, nevertheless belonged to him, is refuted by the notion that he might then *buy* that property. And if Aemilianus could have *bought* these goods, but refrained even from that, the whole premise that he could legitimately have simply *taken* it for himself is at least called into question. I think it is a safe bet that Aemilianus could legitimately have bought a few mementos from the haul to keep as souvenirs, since the state would have been compensated by the price paid.[35] He might even have profited, probably with less legitimacy, by low auction prices for precious goods for which he would have paid more back home; by refraining even from this practice, Aemilianus showed that he was above reproach. By "any other means," Polybius seems to indicate less reputable, and perhaps illegal, methods of acquisition—such as direct appropriation.

To this inference from Polybius may be added a specific hint that appropriation of booty by the magistrate was disallowed. It has been attractive to assume that the general himself was as entitled to rewards for valor and distinguished service as his men were.[36] There is one anecdote—the only evidence on the question, as far as I know—that tends to refute that assumption. Cn. Calpurnius Piso Frugi (*cos.* 133) is remembered (V. Max. 4.3.10) for having given his son, who had distinguished himself under his father's command, a *titulus* for a gold crown of three pounds' weight, promising to leave him as a legacy an equal weight of gold from his own private property. He explained that it was improper for a magistrate to make a disbursement of public funds that would end up in his own property, as, of course, any property given to a son in his *potestas* would. Even if, in this case, the public source that would have been used to constitute the reward was not *manubiae*, it is clear that *manubiae*, like the rest of the booty, were public property. If Piso's

[35]This would suffice to explain, for example, the globe from Syracuse that found its way onto Marcellus' property (Cic. *Rep.* 1.21) and the *rostra* adorning Pompey's house (Cic. *Phil.* 2.68). Certainly a man who was already rich could, in this way, buy large amounts of booty that would then be his and that might be considered to have enhanced his property, even if on the books his "net worth" had not been increased (but see further in text).

[36]Vogel (1953: col. 1206); Karlowa 7 assumed that the general was at least entitled to the same share of the booty distributed to cavalry and officers.

statement is reported accurately, it was just as inappropriate to grant *manubiae* to his son as to grant any other public property. If it was improper to pass such materials to himself indirectly, it cannot have been proper to do so directly. Piso's claim that it was inappropriate to transfer public funds to himself would have been ridiculous if it was, in fact, legal to give himself large awards. More likely, his statement points to a loophole that had not yet been closed. Perhaps some men exploited the loophole, but no evidence has yet come to my attention that any father ever gave *manubiae* or any other public property as a reward to a son in his *potestas*.[37] At any rate, if there is anything to this anecdote, the logical inference is that generals could not reward themselves. Given that, they certainly could not appropriate booty for no reason whatsoever.

To return to the case of Aemilianus, his behavior was apparently designed to eliminate any suspicion that he had any intention to take booty for himself—by any means whatsoever. In the final sentence of the passage quoted, Polybius added that Aemilianus had not even let any of the booty from Libya be mixed in with his own personal property. The choice of words suggests that what is meant here is not a transfer of ownership, but mingling of two kinds of property (ἐπιμιχθῆναι). Beyond the fact that Aemilianus had not purchased or otherwise acquired any of the booty from Carthage itself, he had kept all booty obtained from Libya separate from his personal property. The point is twofold: 1) he had been scrupulous with even more voluminous goods than had previously been mentioned; and 2) not only had he not appropriated them, but refrained even from mixing them in among his own property. The second point is the important one; either "mixing it in" with his property was the equivalent of appropriation (which would support Shatzman and Vogel), or "mixing" indicates that two discrete categories are still in force. There are two considerations that tell in favor of the latter interpretation.

In the first place, the implication that *manubiae* were kept with private property without necessarily becoming private property is borne out in other indications. Bona (1960: 135–37, 147) collected the evidence to show that some *manubiae* were held in reserve for as long as five or ten years before being expended on public monuments. I am aware of no specific evidence to confirm it (nor would I really expect to find any), but that the magistrate kept such

[37]Shatzman's assertion (1972: 195) that L. Aemilius Paullus, the victor of the Third Macedonian War, gave such rewards to his sons (Plu. *Aem.* 28.6) neglects the plain fact that Paullus' two older sons, who were with him on this campaign, were no longer in his *potestas* because they had been adopted into other families (Liv. 44.35.14, 44.1–3; Plu. *Aem.* 5).

property with his own seems a reasonable inference from the simple fact that it was kept.

Even though this property was kept with private property, there is at least one explicit indication that it did not therefore become legitimately part of the private property. Livy (36.36.1) tells us that in 191 B.C.E., the consul P. Cornelius Scipio Nasica asked the senate to disburse money from the *aerarium* for games he had vowed as praetor three years before. Livy goes on (36.36.2):

> novum atque iniquum postulare est visus; censuerunt ergo, quos ludos inconsulto senatu ex sua unius sententia vovisset, eos vel de manubiis, si quam pecuniam ad id reservasset, vel sua ipse impensa faceret.
>
> He seemed to have made an unprecedented and unfair demand; they ruled therefore that, since he had vowed those games without consulting the senate, and on his own judgment alone, he should either put them on out of *manubiae*, if he had kept any money for that purpose, or at his own personal expense.

The phrase that distinguishes Nasica's own expense from the *manubiae* is too emphatic (*pace* Shatzman 1972: 183–84) to be explained away. The contrast between *de manubiis* and *sua impensa* is strikingly emphasized by the insertion of *ipse* within the latter phrase. The impression given is clearly that there was a difference of night and day between paying out of *manubiae* on the one hand and bearing the expense from one's own personal property on the other. Furthermore, the response was clearly designed to be hostile to Nasica's impertinent request (*novum atque iniquum postulare*). If he had been so foolish as to make the vow and then not set aside sufficient funds from the *manubiae* to cover it, he would have to bear the expense *himself*. If he had kept money from the *manubiae*, on the other hand, he would *not* have to bear the expense himself. If the *manubiae* were his personal property, there really would be no reason to draw such a fine distinction, and the senate's response would be drained of its essential irony.[38]

[38]The fine distinction here is not undercut by Cassius Dio (53.22.1), who translated or paraphrased Suetonius (*Aug.* 30.4) *ex manubiali pecunia* (or something similar from another source) with the Greek τοῖς οἰκείοις τέλεσι, which Shatzman (1972: 186) took to indicate that *manubiae* were actually private property. In the first place, we have already mentioned that by Dio's time there was confusion about the meaning of *manubiae*. In the second place, there was certainly no Greek term that would easily refer to goods that were held by former magistrates but that were not actually theirs. Dio is not known for his devotion to such details, so without corroborating evidence, I think we cannot make too much of his choice of words.

Obviously the *manubiae* were in Nasica's control, but they were not his private property. Likewise, Aemilianus could have taken *manubiae* to his property and kept it so as to blur the line between his property and the *manubiae*, but he scrupulously avoided doing so and thereby provided Polybius a piece of evidence for his contention that the best Romans of his day were beyond corruptibility. They refrained even from the apparently legitimate perquisites of their offices (purchase of booty, mingling it with their private property), thus rendering implausible the suggestion that they would accept illegal bribes. Those who took advantage of such perquisites were perhaps not quite above reproach, and so were not remembered for their scrupulousness in this regard. Later authors were demonstrably less precise than Polybius when they retailed praise of these and other men for taking no booty home to their own profit, and inferences drawn from their testimony are accordingly of lesser value than the precise inferences drawn from Polybius and corroborated by other testimony.

Already a picture is beginning to emerge of the demonstrable perquisites to *manubiae* even though they were apparently public property from beginning to end. In the first place the general could, with apparent legitimacy, purchase items from the *manubiae*, which then served as lasting mementos of the victories he had won, and perhaps as hardly insignificant profits added to his personal wealth. Furthermore, merely keeping these goods with one's own property was probably a great social boon in some circles. Finally, by drawing on these goods, the former general could finance public projects that he would otherwise have to pay for out of his own pocket. The credit claimed by Augustus in the *Res Gestae* and by every other magistrate who financed public projects from *manubiae* testifies to the fact that Roman magistrates could, to this extent, have their cake and eat it, too: they were credited for the public benefit from projects funded from *manubiae* even though they did not own them.[39]

Furthermore, references to greed as a motivating factor for war are comprehensible in view of the benefits from legitimate control of massive *manubiae*.[40] In the Roman political context, the ability to give games, build

[39]Shatzman (1972: 187) and Wilcken (772–73) took Augustus' use (e.g., *RG* 21.2) of the phrase *mihi constiterunt* to describe the cost from *manubiae* of certain projects to mean that he owned the *manubiae*. This pushes the phrase too far; a magistrate put his name on a monument he had built, which made it in some sense "his," but he clearly did not own it. What counted was that he received credit for it.

[40]E.g., Plu. *Luc.* 24.3; 33.4; 39.2; *Caes.* 12.2; *Mar.* 31.4.

lavishly, and otherwise cater to public opinion through public expenditure was incentive enough. Literary praise for men who avoided even the appearance of impropriety, as Aemilianus did, by not even letting *manubiae* mingle with his private property, and for those who appropriated not even one *as*' worth of booty, is comprehensible enough in a period in which corruption was the rule, rather than the exception, and in no way indicates that less scrupulous behavior was ever really acceptable. It is time, then, to consider the evidence that can be found bearing on the question of how generals' behavior with *manubiae* was policed and regulated.

3. Documentation and Accountability

It was, perhaps, inevitable that the premises that appropriation of booty happened all the time, that it was acceptable, and that only the most scrupulous magistrates ostentatiously avoided enriching themselves would leave one suspicious of any literary reminiscence of a trial in which a general was accused of appropriating booty or contingent offenses. If I have succeeded in showing that the evidence supporting that set of premises is equivocal, and that there are fairly persuasive indications to the contrary, a fresh view of some important cases is necessary. Taken at face value, they tend to prove that appropriation of booty by the general was impermissible. Not only did the Romans expect generals to use *manubiae* in the public interest, but there were telltale signs that, if anyone was paying attention, would make it apparent that the general had no intention of gratifying the expectation, and under those circumstances prosecution became possible.

M.' Acilius Glabrio had expelled the forces of Antiochus the Great from Greece during his consulship in 191 B.C.E. In the decisive battle at Thermopylae he had, with the help of the military tribune, M. Porcius Cato, routed the king's forces and plundered the camp of its royal treasures. Two years later, in 189, in the race for the censorship against, among others, that same Cato, he ran into a politically fatal controversy. Livy writes (37.57.11–14):

> in hunc [sc. Glabrionem] maxime, quod multa congiaria distribuerat, quibus magnam partem hominum obligarat, favor populi se inclinabat. [12] id cum aegre paterentur tot nobiles novum sibi hominem tantum praeferri, P. Sempronius Gracchus et C. Sempronius Rutilus, tribuni plebis, ei diem dixerunt, quod pecuniae regiae praedaeque aliquantum captae in Antiochi castris neque in triumpho tulisset neque in aerarium rettulisset. [13] varia testimonia legatorum tribunorumque militum erant. M. Cato ante alios testis conspiciebatur, cuius auctoritatem perpetuo tenore vitae partam toga candida elevabat. [14] is testis, quae

> vasa aurea atque argentea castris captis inter aliam praedam regiam vidisset, ea se in triumpho negabat vidisse.
>
> The people's favor inclined mostly toward Glabrio, because he had distributed many *congiaria*, with which he had obliged a large group of people. When so many *nobiles* took it ill that a *homo novus* was being so much preferred to them, Publius Sempronius Gracchus and Gaius Sempronius Rutilus, tribunes of the *plebs*, indicted him because he had neither carried in the triumph nor brought to the treasury some amount of royal money and booty taken in the camp of Antiochus. The testimony of legates and military tribunes was diverse. Marcus Cato stood out before the other witnesses, and the *toga candida* weakened the influence born of the unbroken course of his life. That witness said that he had seen some golden and silver vessels when the camp was taken among the rest of the royal booty, and that he had not seen them in the triumph.

Despite attempts to dismiss elements of this narrative, there is nothing problematic about the text as it stands. Some booty from Antiochus' camp failed to appear in the triumph and failed to materialize in the treasury. That was sufficient to bring Glabrio to trial. Cato's testimony confirmed one aspect of the charge: that certain goods had been seen in the camp, but not in the triumph.[41]

At any rate, the case against Glabrio, as it stands, is enough to prove that booty was *de facto* public property. The charge was precisely tailored to trap a man who had attempted to embezzle booty, even if the booty could not actually be traced. By not carrying the booty in the triumph and not recording it in the treasury, the magistrate attempted to make it a secret from the public that he had taken the goods in the first place and that they were still in his custody. Once he had done that, the only way to avoid the appearance of appropriation was to put the hidden goods into the treasury, where they would no longer be at his personal disposal.

[41]Vogel (1948: 417; 1953: cols. 1211–12) suggested that Cato's testimony had somehow obscured and reconfigured the original charge. If so, the premise behind the reconfiguration was that this "disappearance" of *praeda* would demonstrate illegal activity. This hardly lends credence to the argument that appropriation of booty was legal, since historians believed it was not. Shatzman (1972: 191–92), likewise convinced that there was no legitimate charge, hypothesized that the prosecutors wanted to embarrass Glabrio by forcing him to render accounts that he was not obliged to keep to prove that he had done something that was not illegal. How this would have embarrassed Glabrio is not clear. If it did embarrass him enough to force him out of a political campaign, it can hardly be said that whatever he had done was acceptable; if it was not technically illegal, it was effectively so.

The process that Glabrio should have followed can be paralleled by a reference from the later period of the Republic. In the famous case that launched him to prominence, Cicero chastised Verres for despoiling his province illegitimately and then, on top of it, for appropriating the proceeds. He listed (*Ver.* 2.1.55) men of old from Marcellus to Mummius who sacked rich cities and appropriated nothing. He went on (*op. cit.* 2.1.56) to obviate the suggestion that such virtuous behavior had gone out of style by bringing up the example of P. Servilius (*cos.* 79). Cicero contrasted (*op. cit.* 2.1.57) Verres' illegitimate spoils with Servilius' scrupulous conduct:

> tu quae ex fanis religiosissimis per scelus et latrocinium abstulisti, ea nos videre nisi in tuis amicorumque tuorum tectis non possumus. P. Servilius, quae signa atque ornamenta ex urbe hostium vi et virtute capta, belli lege atque imperatorio iure sustulit, ea populo Romano apportavit, per triumphum vexit, in tabulas publicas ad aerarium perscribenda curavit.
>
> We cannot see the things you carried off from the most religious shrines through crime and robbery except in your houses and those of your friends. Publius Servilius, when he had taken statues and adornments from an enemy city by force and with courage, took them off by the law of war and by the rule of *imperium*, and brought them to the Roman people, carried them through the triumph, saw to their thorough description on public tablets in the *aerarium*.

There is a remarkable correspondence between the last two clauses of this passage and the two clauses of the charge against Glabrio as reported by Livy. In both cases the scrupulous magistrate carried the booty in the triumph (*in triumpho tulisset*; *per triumphum vexit*), and in both cases he openly acknowledged a public claim on the goods (*in aerarium rettulisset*; *in tabulas publicas ad aerarium perscribenda curavit*).

This parallel suggests that good generals documented their *manubiae* in the treasury. In the passage following the quotation cited above, Cicero had the account of Servilius read out to show how carefully the document deposited in the treasury recorded the nature of the objects that had been in the triumph but which he was apparently not depositing in the treasury (there would seem no reason to document them if they were being lodged there). This document would serve as a concrete record of what the public had already seen, and would make it possible for those with access to the *aerarium* to confirm their recollections. That this documentation was simultaneously an affirmation of

public ownership is confirmed by Cicero a moment later (*loc. cit.*): *multo diligentius habere dico Servilium praedam populi Romani quam te tua furta notata atque perscripta* ("I declare that Servilius had the booty of the Roman people marked out and described much more carefully than you had your personal thefts").

I can think of no rationale for expecting a general to display what was nominally his own property in a public procession that had the effect, at least in part, of enhancing his personal glory; I see no rationale on the part of the general for leaving such property out of the procession if he was free to use it as he pleased thereafter. On the other hand, if the booty was public property, Glabrio had every reason to keep it out of the triumph if he intended to use it in ways the public would not sanction, such as in electioneering. He denied the public their opportunity to know what property of theirs he was holding, and for that he was attacked in a public trial and forced out of an important political race.

The insinuation that this was a political prosecution should not dissuade us (*pace* Shatzman 1972: 192) from using the narrative as evidence for what was required and expected of magistrates. The trial was clearly political. The charge was brought in the midst of an election, and the only immediate effect, since the case was dropped when Glabrio withdrew from the race (Livy 37.57.15–58.1), was political. That suggests the motives of the prosecutors. It does not suggest that the conduct for which he was prosecuted was not subject to prosecution.[42]

In fact, it is fair to say that it was a political prosecution for an essentially political crime. Livy's narrative suggests that Glabrio was suspected of using embezzled booty to enhance his chances to be elected to the censorship.[43] Obviously it would be hard to confirm such a suspicion, since Glabrio had deliberately avoided leaving any physical or documentary evidence that he had taken the objects in question. The charge that was brought was the only way to get at him, by showing through testimony what would otherwise have remained hidden from public view—that Glabrio had taken goods at the camp

[42]Cf. Gruen 1990: 134; Astin (1989: 181) indicated Glabrio was "attacked on the score of improper handling of public resources." He gave no further detail or evidence, and, as previously mentioned, neither cited Shatzman nor acknowledged any controversy.

[43]It is perhaps worth noting the rough parallels to the Watergate controversy in U.S. politics: the political impact of the break-in was more serious than the criminal aspect, and the attempt to cover up the crime was what eventually brought down the President. Once he had abdicated the political office that the break-in was calculated to help him attain, Nixon was pardoned and subject to no more legal repercussions.

of Antiochus that he had not subsequently carried in the triumph or put on the public account.[44] As in many modern cases of this complexity, they attacked him for a kind of cover-up since they could not prove the crime. Once Glabrio had resigned in political disgrace, the benefit his opponents suspected he had hoped to gain from the embezzled goods was destroyed. They won the battle and the war when he conceded his guilt and withdrew from the race.[45]

So we can see that, although Shatzman (1972: 192) was quite right to point out that there is no mention in the case against Glabrio of a charge of *peculatus*, there were other issues that warranted a trial. The case as it stands demonstrates that it was possible to prosecute men who failed to carry booty in the triumph and/or document it in the treasury—an expectation that was probably common knowledge but was fortuitously recapitulated much later by Cicero, lecturing Verres like a juvenile delinquent for his apparent ignorance of the most basic distinctions between right and wrong conduct. The magistrate was expected to respect the public claim on *manubiae*. If, as must often have been the case, it was impossible to prove that he had stolen the goods, it might still be possible to prove that he had hidden them from public scrutiny, and that was sufficient cause for action.

Another fruitful example—this of a man actually prosecuted for taking booty—comes from the famous case of the gold carried off from the city of Tolosa by the proconsul Q. Servilius Caepio (*cos.* 106). Here, however, perhaps remembering the case of Glabrio, Caepio is alleged to have staged the disappearance of the gold on its way to Massilia so as to absolve himself of the expectation that he document it;[46] after all, if it had been stolen by brigands,

[44]Vogel's (1948: 417) reasoning that Glabrio would have been within his rights to melt down the gold and silver to mint coins, and thus that there was no ground for this prosecution, relies for its relevance on the presumption that Glabrio could have made and sustained the claim that he had done so. I would stipulate that if he had used the goods in question for the administration of the province, there would have been no grounds for the prosecution. We have no reason to think he used them in this way, much less that any of the legates or military tribunes, or even his quaestor, would testify to it.

[45]For the two sides of the long-standing debate over the motives behind this prosecution, see Develin 172–73 (with further bibliography 173 n. 110) and Scullard 137–38. In general, modern scholars who have de-emphasized the legal standing of the charge have done so from the conviction that Roman magistrates were not required to be as scrupulous as the charge indicates they were—thus, obviously, begging the question; see, most recently, Feig Vishnia 129.

[46]There are two threads to the tradition of this story. One of them emphasizes the sacrilegious aspect of the seizure of the gold from the temple of Apollo. According to this tradition, calamities suffered later by Caepio and his army were due to divine retribution: Gel.

he could hardly be responsible for it any longer, and there was nothing to document. It was unfortunate for Caepio that the train of events was suspicious enough to inspire an investigation.[47] There is no question but that Caepio was implicated; as Orosius (5.15.25) put it, Caepio *cuncta per scelus furatus fuisse narratur* ("is said to have stolen all of it"). The author of the *De viris illustribus* (73.5) mentioned the use of confiscated money *dolo an scelere Caepionis partum* ("born of the guile or perhaps crime of Caepio") to fund colonies. It is not definitively established, on the other hand, that Caepio himself was among those who were, according to Cassius Dio (27 fr. 90), punished (εὐθύνθησαν) for appropriating the booty (ἐσφετερίσαντο).

The explicit testimony in this case supports the notion that the booty was public property. Caepio was charged with theft (*furatus fuisse*) and those convicted were convicted of appropriation (ἐσφετερίσαντο). These terms are incompatible with the idea that the booty originally belonged to Caepio, or that he was within his rights to appropriate it. Our sources clearly thought they were talking about embezzlement, and we have no sound reason to doubt them. Perhaps the case was overshadowed by the more serious, and politically fatal, disaster at Arausio. For the great Roman defeat of 105 at the hands of the Cimbri Caepio was stripped of his goods and *imperium*.[48] Be that as it may, the evidence that we have indicates unequivocally that the booty of Tolosa was not his to take, which corroborates again the other testimony that booty was public property and that stealing it was prosecuted as *peculatus*.

The last case to be considered here begins with the sack by Cn. Pompeius Strabo, Pompey's father, of the city of Asculum during the Social War. The senate had been upset when Strabo chose not to use the booty of Asculum to help the treasury, which was in dire straits at the time (Oros. 5.18.26): *...cum de hac praeda opitulationem aliquam in usum stipendii publici senatus fore*

3.9.7; Just. *Epit.* 32.3.9–11; Strabo (4.1.13), or his source Timagenes, inferred that Caepio was exiled as a temple-robber (ἱερόσυλον), when other indications are that his exile stemmed from a charge of *maiestas*, not directly connected to the disappearance of the gold; cf. Broughton 565–66 nn. 7, 8 and sources cited there. The other tradition treats the transgression as a legal one—the theft of public property: Oros. 5.15.25; Cic. *N.D.* 3.74; D.C. 27 fr. 90. Only the latter tradition need concern us here.

[47]Oros. 5.15.25; Cic. *N.D.* 3.74.

[48]Liv. *Per.* 67. Vogel argued (1953: col. 1213) that the attack regarding the booty of Tolosa was subsidiary to the attack on him as a result of the defeat at Arausio, intended "to destroy him once and for all." He further asserted (*loc. cit.*) that Caepio was attacked not for stealing the booty, as all of the evidence indicates he was, but for mishandling and thus losing it.

speraret, nihil tamen Pompeius ex ea egenti aerario contulit ("...although the senate hoped that with this booty there would be some aid for the benefit of the public tax fund, nevertheless Pompeius brought nothing from it to the impoverished *aerarium*"). There is no indication, as Vogel was content to point out (1953: cols. 1207–8), that Strabo did anything illegal by giving none of the booty in question to the treasury. The problem was that some of the *manubiae* from Asculum were not used in the public interest, and Pompey was required to account for them after his father's death.

Plutarch (*Pomp.* 4.1–3) described the proceeding brought against Pompey after Strabo's death, and indicated as explicitly as he could that the charge was *peculatus* (κλοπῆς...δημοσίων χρημάτων).[49] When Pompey showed that most of the goods in question (which might well have included residual funds as well as other *manubiae*) had been taken by a freedman, he himself was charged with possessing some specific items of *manubiae* (Plu. *Pomp.* 4.1):

> καὶ τὰ μὲν πλεῖστα φωράσας ἕνα τῶν ἀπελευθέρων ὁ Πομπήιος νενοσφισμένον Ἀλέξανδρον, ἀπέδειξε τοῖς ἄρχουσιν, αὐτὸς δὲ λίνα θηρατικὰ καὶ βιβλία τῶν ἐν Ἄσκλῳ ληφθέντων ἔχειν κατηγορεῖτο.
>
> And Pompey showed the judges that he had investigated and discovered that one of his freedmen, Alexander, had stolen most of them, but he himself was accused of having hunting nets and books from the goods taken at Asculum.

This charge could not have been made or sustained if, as Shatzman (1972: 195) averred, the nets and books from the *manubiae* were Pompey's own property—a gift or reward given by his father. The only difference in Plutarch's version of events between the nets and books and the rest of the property was that Pompey could not evade the charge that he had secreted the nets and books away, whereas the rest he had shown to have been taken by that freedman. The nets and books were no more his than the other public property that had been taken. Had Pompey not convinced the jury that they had been taken forcibly from his possession, he would presumably have been held accountable for the loss. These items were obviously viewed as public property.

[49]Vogel (1953: col. 1213) concluded that the case was of no relevance to the question of ownership of booty, since there was no conviction; *contra* Mommsen 1879: 449 n. 73.

As Bona (1960: 166) pointed out, as long as a former general holding *manubiae* could still say he intended to use them in the public interest, there was obviously hardly any way to show that he had *appropriated* it. The case of Pompey's prosecution illustrates that the death of the original holder awakened concerns for the public property that was in danger of being lost forever. Pompey's case (and perhaps some others like it) might have inspired a later solution to the problem that we find hinted at in an obscure and, so far as I know, isolated reference. A statue of Hercules is described by Pliny the Elder (*Nat.* 34.93) as having sported three *tituli*: 1. *L. Luculli imperatoris de manubiis* ("From the *manubiae* of Lucius Lucullus, *imperator*"); 2. *pupillum Luculli filium ex S.C. dedicasse* ("the orphaned son of Lucullus dedicated according to a *senatus consultum*"); 3. *T. Septimium Sabinum aed. cur. ex privato in publicum restituisse* ("Titus Septimius Sabinus, curule aedile, restored from private to public property"). The first *titulus* indicates that the statue came from the *manubiae* of Lucullus.[50] The second *titulus* tells us that it was dedicated in public by Lucullus' orphaned son according to the provisions of an otherwise unknown *senatus consultum*.[51] The *senatus consultum* apparently mandated that *manubiae* be dedicated by heirs after the death of the holder, a neat compromise to minimize the need for *ad hominem* prosecutions like the one against Pompey. Presumably if anyone refused to comply with the *senatus consultum*, the threat of further action remained open. This can only have been the case if the state had a lasting claim on the objects, which were, therefore, public property.

There were, then, at least three cases to which we can point as clear indications that appropriation of booty and contingent offenses were crimes against the state.[52] Glabrio suffered severe political consequences as a result of his prosecution. Caepio might have suffered as severely, but, as it turned

[50]The wording does not support the claim of Shatzman 1972: 188 (cf. Orlin 120–21) that the statue was by the words *Luculli...de manubiis* labeled as Lucullus' private property.

[51]This certainly does not imply that such statues were regularly being *appropriated* by magistrates, as Shatzman (1972: 188) argues, but only that they were kept with the magistrate's property and were sometimes still there when the magistrate died.

[52]One other case would, in any event, warrant an asterisk: Faustus Sulla supposedly held some *manubiae*, along with other public money, that had been in his father's hands. Cicero tells us (*Clu.* 94) that the younger Sulla was let off the hook not by his innocence, but because he would not get a fair trial. That *manubiae* or *aurum coronarium* was concerned is demonstrated by Cic. *Agr.* 1.12; cf. Bona 1960: 161–63; Shatzman (1972: 196) suggested that the "*manubiae*" in question were goods confiscated from the proscribed and deceased Marians and liquidated by Sulla the dictator. This is possible, but Cicero indicated that not only Faustus Sulla but many other men would have been liable to this inquiry by the *Xviri*.

out, his misconduct with booty ended up overshadowed by the disgrace visited on him as a result of the calamitous defeat at Arausio. Pompey was acquitted because the goods in question had been stolen from his control. Generals kept *manubiae*, and they had sole authority to determine the public use to which they were put, but this was not at all a matter of ownership.

4. Conclusion

When an enemy of Rome capitulated to a Roman general, goods could be confiscated and reserved by the general as *manubiae*; the army to which the general granted the right to plunder looted what it could and shared the proceeds by rank. The *manubiae*, which included the bodies of booty themselves as well as any proceeds from their sale, could be used by the general in any way he saw fit that was arguably in the public interest. During the war they could be lavished on provincial populations or soldiers as rewards for valor (although perhaps not to a son still in the general's *potestas*). After the triumph, the general was free to reserve some to use later for games or public buildings or other expenses in the public interest.[53] These could apparently be kept on the former general's private estates.

It follows, then, that magistrates could derive massive benefits from control of *manubiae* without ever owning them. These men sheltered their own property by using *manubiae* to defray expenses incurred on behalf of the public. They benefited by displaying *manubiae* from their victories on their property, and later by building public edifices and putting on games from the same *manubiae*. In view of these benefits, it would hardly be surprising, even if it was impossible to appropriate booty, that ambitious men like Marius and Caesar would be eager for opportunities to win *manubiae*, and that their enemies and posterity, quite probably with some justification, could call them greedy.

In fact, the question of "appropriation" of booty was rendered largely, though not entirely, moot by the unique set of expectations surrounding *manubiae*. While the former magistrate lived, he was safe if he could claim that he had every intention of using the *manubiae* in the public interest. Perhaps if he built some piece of unpaid-for *manubiae* permanently into a private edifice

[53]Shatzman (1972: 187) points to Augustus' use of *manubiae* (*RG* 15.1, 3) for donatives to the *plebs* and to colonial veterans as evidence that uses not in the public interest were all right; however, I imagine it was and maintain that it is still arguable that disbursements of this sort should legitimately be regarded as in the public interest.

he could have been charged if anyone noticed. If he expended profits from *manubiae* on private items, he should also have been liable, but this would have been a matter of accounting, since money was fungible; in other words, only if his private expenditures exceeded the sum total of his private cash-on-hand would it be demonstrable that any money derived from *manubiae* had been spent privately.

On the other hand, a general who engaged in activity that can only have been calculated to defraud the state was, as the evidence shows, subject to prosecution for that activity. Glabrio had allegedly sneaked booty home, evading a public acknowledgment of its nature as public property, which, if true, was enough to show that he had abused his power over it. Caepio allegedly tried to stage the disappearance of such booty so that there would be no way to prove that he had taken it. In both cases legal prosecution was the result. Absent any evidence or clear indications that *manubiae* had been permanently converted to private property, there was no reason for an attack on the former magistrate while he lived.

When the original holder died, on the other hand, it was time for public concerns to be raised with the heirs. Pompey was forced to satisfy the public that he had not taken public property from his father and treated it as private property. Had *manubiae* still been in his possession, he would have had to use them in the public interest, just as Lucullus' son was compelled by a *senatus consultum* to do.

This complex situation can be most easily illustrated, I think, by drawing a parallel to the modern academic experience. *Manubiae* were public property in the same way that modern academics in many institutions of higher learning hold property belonging nominally to the institution. Many professors use institutional funds to purchase supplies, computers, books, and so on. Typically, all of this material belongs to the institution, but its use is entirely at the discretion of the professor. Such assets are intended to be used in ways that benefit the institution, and thus only for the institutional responsibilities of the professor. If the professor leaves the institution, the expectation is that they will be returned. If the professor dies, the assets do not legitimately go to his or her heirs.

The fringe benefits of these two cultural practices are quite analogous. Just as the professor might keep some of the institution's property in his home, if his work patterns make that more desirable, the Roman magistrate apparently kept *manubiae* on his property. The Roman magistrate who kept *manubiae* sheltered

his private resources just as a professor's private wealth is sheltered by an institutional grant for books, supplies, computer equipment, travel, and so on. Professors might by some be called greedy for expecting such perquisites from their employment, as, for example, if they were seeking a great increase in such funds from the institution; this imputation of greed would not imply that these institutional goods were routinely being stolen. The profit of having them is enough without owning them.

The two cases are also similar in that both the professor and the former magistrate would be safe from prosecution if they appeared to be acting in good faith. While the professor lives, he will not be accused of theft merely for keeping the property that he is entitled to keep, and that he openly acknowledges as institutional property, just as in the case of a former magistrate holding *manubiae*. Upon his death or departure from the institution, the goods would be expected back, just as the heirs of the holder of *manubiae* were called upon to use the *manubiae* in the public interest, apparently on pain of prosecution.

On the other hand, behavior demonstrating a manifest intent to defraud the state or institution would be punishable in either case. Just as a general who evaded or tried to evade public scrutiny of the public property in his possession would be prosecuted as Glabrio and Caepio were, one would expect a professor who failed to record a purchase made from institutional funds to be treated as though he had, in fact, defrauded the institution. A professor who manifestly transferred institutional property into a private fortune would likewise be liable to the charge of theft.

This analogy allows us to frame the question of abuse in a more comfortable light. The kind of abuses available to the Roman magistrate holding *manubiae* are largely similar to the kind available to the professor holding institutional property. Furthermore, and perhaps more importantly, the incentives to those abuses are similar in some respects. Both kinds of property are held in trust for purposes in a collective, not an individual, interest, but the holder derives some direct benefits from holding them: both the magistrate and the professor do their "job" better or at least more easily with them than without them. The additional opportunity of "stealing" the goods in question, which is not as easy to do as it might at first have seemed, is limited. But in neither case is it either accurate or fair to characterize the goods in question as individual property.

In either case, if institutional or public oversight were lacking at the crucial moment, the property could forever pass into individual hands. We have

seen two cases in which such oversight was put into practice in the case of *manubiae*. Pompey might have kept the nets and books from Asculum if they had not been taken from him by Cinna's men and if no one had investigated their disposal; but someone did investigate. Lucullus' son might not have put that statue of Hercules into a public monument if not for the *senatus consultum*, but the *senatus consultum* was passed. These cases by themselves tend to give the lie to the idea that *de facto* appropriation of booty happened regularly and was tolerated;[54] surely Pompey and others would have retaliated against political enemies who were guilty of such offenses once they had brought such a charge against them. Similarly, if members of an institution were routinely allowed by their peers to take institutional property, that tacit agreement would break down as soon as one member's heirs were brought to a show trial on the charge of theft.

Manubiae were a unique category of property, and it is imperative that we take careful account of its uniqueness as we study the political and legal mechanisms of the Roman state. Statements about magisterial greed and magisterial austerity with respect to *manubiae* fall into a gray area, since *manubiae* were public property in private hands, thus exhibiting some incidental similarities to private property. The most any of these statements, taken in context, can demonstrate is that it was possible for some of those goods to be turned to private profit, but not that this was legal or ethical. Just as it would be a serious oversimplification to say that institutional or corporate assets used by employees are actually the property of those employees, we must not be seduced into thinking that *manubiae* were the reward for service that the magistrate could take to himself at his discretion, however plausible or reasonable it might seem to assume this was the case. In light of the analogy, and even in light of simple common sense, it is hardly surprising that the situation of a general giving rewards to himself would be viewed as a conflict of interests between the state and the individual. Cicero's assertion (*Off.* 2.77) that it was not only improper, but criminal and wicked to manage the state to one's private profit appears to have been more than a rhetorical conceit.

[54]Cf. the statement attributed by Livy (37.57.15) to Glabrio that he was attacked although the nobility usually looked the other way in such situations. Of course, this statement is at variance with Livy's narrative (37.57.12)—and he must have been aware of this when he wrote it—that indicated that it was precisely the noble opponents of Glabrio who started the process against him. In context, Glabrio's outcry smacks of "sour grapes."

The Romans were conscious of the great benefits derived from custody of *manubiae*, and there were attempts by some to curtail or even revoke it entirely. Cato (*orat.* 224) railed against "public thieves" (*fures publici*) who lived out their lives in luxury. The speech—entitled *De praeda militibus dividenda*—was apparently intended to force generals to distribute some (or perhaps all) of the *manubiae* to the soldiers.[55] He was applying the same standard he had expressed elsewhere (*orat.* 203, quoted above) when he implied that if he had not given all the *manubiae* to his soldiers, he would, in effect, have stolen the *manubiae* from them. The public conscience was apparently less strict than his own, and this attempt to change it seems to have failed, since we hear nothing more about it and generals continued to keep *manubiae*.

Much later, the agrarian bill of 63 B.C.E. proposed by P. Servilius Rullus called for booty, *manubiae*, and crown-gold to be collected and brought to the commission of ten men to be used in their purchase of land. Cicero (*Agr.* 2.59–61) objected to this provision on the grounds that it was wrong to strip from generals their legitimate authority over booty. There is no indication (*pace* Shatzman 1972: 199–201) that this was an attempt *de novo* to turn booty for the first time into public property, but every reason to think that, next to taxes, booty was already a ready source of public revenue and thus, from Rullus' point of view, fair game for his commission. Rullus may well have believed (at least he wanted others to believe) that his commission would make better public use of the property than the generals themselves. The law was defeated, and generals retained their discretionary control over *manubiae*.

The only other mention of a legal restriction on booty tells us only that a restriction existed. Cicero mentioned (*Pis.* 90) one provision of Caesar's *lex repetundarum* of 59 B.C.E. that regulated the *summa praedae* ("amount of booty"). We know nothing about the regulation, but there was apparently some codified state limit on the acquisition or control of booty by the general (which Cicero insinuated Piso had transgressed).

It appears, then, that Romans were aware that the power of magistrates to control *manubiae*, even though they never legitimately possessed it, was a

[55]Even less clear is the import of Cato's complaint in his speech *Uti praeda in publicum referatur* that (*orat.* 98) he was surprised men weren't ashamed to keep divine representations as furniture. This is as compatible with the idea that *manubiae* were being kept for long periods of time on private property, or that they were being given as rewards to subordinates who could then keep them legitimately as private property, as with the idea that such goods were being appropriated by generals—as Shatzman would suggest.

perquisite of no small importance and admitting no small incentive to greed and abuse. Some thought it was too much power for them to hold, and some of them chose not to flaunt this power, whether fearing negative consequences from flaunting it or hoping to increase their public standing by refraining from such flaunting. It was probably to be feared that, if generals took too much or too obvious advantage from this perquisite, it would be possible to generate public fervor sufficient to strip it from them once and for all.

In view of all this I think we need to pull back from the generalization advanced by, for example, Shatzman (1975: 245–46, 248, etc.) about the most powerful Romans, that they "probably took some booty" for themselves. What we need to say is that they "probably reserved some *manubiae* and used that for future expenses on behalf of the public." Their control over *manubiae* is neither irrelevant to the question of their wealth nor directly relevant to it; it is important information when understood in its proper context. When we find references to pieces of booty kept as mementos, we need to remember that the general might have bought them for himself, thus compensating the state for their loss; we must bear in mind that, while they were often in debt, these men were never poor when they embarked upon public careers.

Furthermore, we should remember that there was no obstacle to making large private profits as a subordinate, since the general could at his discretion make huge rewards to his officers. Pompey and Caesar are, of course, well known for this. As Catullus wrote (29.1–4, 23–4):

> Quis hoc potest videre, quis potest pati
> nisi impudicus et vorax et aleo,
> Mamurram habere quod comata Gallia
> habebat ante et ultima Britannia?...
> eone nomine...
> socer generque, perdidistis omnia?
>
> Who can stand to see this,
> unless a shameless greedy gambler,
> Mamurra having what long-haired Gaul
> and far Britain had before?...
> Is it for that reason...
> father-in-law and son-in-law, that you have destroyed everything?

It would hardly be an outrage for Mamurra to have been enriched if the general had enriched himself in a more egregious way. If my argument be accepted, however, Caesar probably was not enriched in any egregious way, because he

was bound to use the *manubiae* for the public;[56] Mamurra, whom Caesar kept at his side (Catullus alleges) with a constant stream of wealth only ostensibly earned, but in fact merely given away (cf. *sinistra liberalitas*, 29.15), was under no such constraint, as Catullus gleefully emphasizes throughout his attack.[57] This kind of enrichment of friends and potential clients, in which the Elder Cato refused to indulge, was perhaps the favorite loophole of all, because it was important to have many loyal clients, and rich ones were of special usefulness.[58] These men were indebted to the general, and it cost him nothing. Catullus and his ilk could carp, but no legal accusations could be brought. Now that we have recognized that it was illegitimate for the general to profit directly, we can, I hope, develop a clearer picture of these and similar ways in which it was legitimate to exploit booty, and come to a better understanding of the nuances of the society and government of the Roman Republic.

[56]Booty captured with *imperium* is never clearly the only source of profit that can be imagined to explain the wealth we find hinted at in our sources. When Caesar went to Spain, and improved his finances as a result, he captured booty but he was also alleged (Suet. *Jul.* 54.1) to have "begged for and received money to help him pay his debts." If my argument holds, Caesar benefited in different ways from each kind of property: the *manubiae* helped him move his political career along without becoming his, while the gifts were his and could be used to pay off his debts.

[57]E.g., Cat. 29.17–19: *paterna prima lancinata sunt bona; / secunda praeda Pontica; inde tertia / Hibera, quam scit amnis aurifer Tagus* ("first his father's goods were wasted; second the Pontic booty; then third the Spanish, which the gold-bearing river Tagus knows"). Cf. Cic. *Att.* 7.7.6; Plin. *Nat.* 36.6.48.

[58]Note the aplomb with which Caesar apparently took the news of Mamurra's death (Cic. *Att.* 13.52.1): *tum audivit de Mamurra; vultum non mutavit* ("then he heard about Mamurra; his expression was unchanged"). Mamurra's usefulness might have been more valuable to Caesar than his affection.

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