

Money, Games, and Power: Rome's Lower Magistrates and the Development of a City

by

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Optimis Parentibus Amantissimaeque Coniugi

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List of Abbreviations

Latin and Greek works have been abbreviated in the citations according to the method outlined in the forward of the *Oxford Latin Dictionary* and the *Liddell & Scott Greek-English Lexicon*.

For more recent sources I have made only occasional use of abbreviations.

Econ. Survey = Frank, Tenney. *An Economic Survey of Ancient Rome*. Paterson: Pageant Books, 1959.

MRR = Broughton, T. Robert S. *The Magistrates of the Roman Republic*. New York, NY: American Philological Association, 1951.

Röm. Ges. = Mommsen, Theodor. *The History of Rome*. Translated by W. P. Dickson. New York: Philosophical Library, 1959.

Röm. Staatsr. = Mommsen, Theodor. *Römisches Staatsrecht*. Leipzig: Hirzel, 1888.

Abstract

This project traces the development of civic institutions and legal culture, as the character of the Roman state transformed from informal, changeable government by means of appeal to custom and prestige, to a more recognizable state with formalized rules and laws. This stands in contrast to previous scholarship, much of which treats the Republic as legalistic from the beginning. In order to explore this development, I focus on the aediles and quaestors, the two magistrates most responsible for running the city. I aim to understand how their jobs changed as they responded to the city's evolving needs. Drawing on the works of Bourdieu, Geertz, and Agamben, I also develop a model for their role in the state from 310-91 BCE in what was a functioning government.

Chapter one serves as an introduction and explores the roles that both of the aediles and quaestors played within the Roman state in the early third century BCE. Chapter two focuses on the nature of *potestas*, the formal power with which magistrates were invested and traces the development of the quaestorship from the first Punic war down into the early second century. *Potestas*, I argue, was the power to look after the *res publica*, the common interests of the Roman people. Magistrates were elected each year by the people, who were expected to select the best men (in terms of personal traits). The magistrates would then be assigned their roles by the senate, which directed domestic and foreign policy. From here I use a mysterious expansion of the quaestorship, around 267 BCE, as a case study for exploring what limits the Romans envisioned for *potestas*, and what they imagined the role of a magistrate furnished with *potestas* could be.

Chapter three traces the development of the aedileship and the *cursus honorum* during the same period. As a result of the rapid expansion of the praetorship from 242-227 BCE, as well as the irregularities of office holding during the second Punic War, when a military crisis necessitated giving command in the war over to a very small group of individuals, and also the tremendous influx of wealth that occurred in the first part of the second century BCE, the aedileship was transformed from the locus of civic administration in the city of Rome to a stepping stone on an aristocrat's path to the consulship.

The fourth chapter shifts our focus back to practice and explores what the quaestors actually did and how they did it during the heyday of the Republic in the second century BCE. Chapter five adopts a similar approach for exploring the wide array of tasks for which the aediles were responsible in looking after the community and the urban fabric of Rome. Whereas the previous chapters focused on historical developments and cultural perceptions of office holding, these two narrow our focus to the more practical details of what a magistrate did and how he did it.

The next stage of this project will explore the development of legalism in Roman political thought, as legislators progressively sought to use law to change the state and restore it to what they imagined it had been in the fourth and third centuries BCE. This political project entailed redefining the aedileship and the quaestorship in altogether new ways.

Chapter 1

Why the Lower Magistrates?

1.1 Introduction

At some point during the year 100 BCE, or, as contemporaries would have said, when Marius and Flaccus were consuls,¹ the tribune L. Appuleius Saturninus brought a bill for a grain law before the Roman senate. The object of the bill was to subsidize the price of food for the urban poor, thus drumming up support for the man who had proposed it. Many senators disliked Saturninus, who had been dismissed from his province for incompetence when he was quaestor and had nearly been expelled from the senate by the censor (*App. BC* 1.28). Nevertheless, the senate as a body did not dismiss his motion out of hand, but instead asked the urban quaestor² in charge of the treasury, Q. Servilius Caepio, for his opinion on the matter. Caepio stated that the *aerarium* did not have enough money to pay for this subsidy, and the senate decreed that if Saturninus brought this law to the assembly of the Roman people, ...*adversus rem publicam videri ea facere* "...he would seem to be doing it against the public good" (*Rhet. Her.* 1.21).

Saturninus was undeterred and brought the bill before the assembly of the people in spite of the senate's decree.³ One of his colleagues in the tribunate vetoed the motion. Saturninus

¹ Broughton *MRR* vol. 1 (1951) 574 s.a. 100.

² The word quaestor translates roughly as "investigator," but such a translation is misleading and has little bearing on the actual meaning of the office and the range of tasks these officials carried out. The significance of this office and its development will unfold over the course of this dissertation.

³ Under the Republic, bills were nominally vetted by the senate before being voted on by an assembly that was open to all adult male citizens (Lintott 1999: 196).

ignored him. This sequence of events would have been extraordinary, except that such things had become commonplace in recent decades, and such behavior was in keeping with Saturninus' character. What happened next, in contrast, was indeed extraordinary: while the people were voting on the law, Caepio, the very quaestor who had informed the senate that the treasury could not pay for this law, gathered together a gang of like-minded individuals, attacked the voting assembly, and destroyed the voting machinery; perhaps their most symbolically charged act was to break the small bridge which the citizens had to cross, single-file, in order to cast their votes (*Rhet. Her.* 1.21). The unknown author of the *Rhetorica ad Herennium* then informs us that Caepio was charged with *maiestas*, treason (1.21).

The quaestor's behavior is unusual. Civil violence was nothing new in Rome in 100 BCE, but the magistrates⁴ who normally took matters into their own hands were the consuls and the tribunes (often against one another). That is not to suggest that there were rules for civic violence — it is, by its very nature, an abnegation of rules — but that there were patterns to the ways in which violence unfolded. The people who led the charge were the ones who could best claim to be justified in doing so: the consuls were the highest magistrates and Rome's leaders in war, while the tribunes were the *vox populi* tasked with the defense of the people against abuses by the elite. The urban quaestor was, by contrast, the lowest and most cloistered magistrate.

Caepio's behavior begs explanation.

The *Rhetorica ad Herennium*, from which we have this story, offers some insight. A handbook on oratory of unknown origin from the mid-first century BCE, the *Rhetorica* uses copious fragments from speeches as examples, some of which have been dated to the beginning

⁴ In contrast to the anglophone world, where "magistrate" suggests an official in a court of law, in the Roman world, "magistrate" was a broad term that encompassed almost any elected official, excluding, technically, the tribunes of plebs, who nonetheless are normally grouped in among the magistrates (Abbott 1901: 217).

of that century,⁵ and so it is reasonable to suspect that the author of *Rhet. Her.* 1.21 was close, temporally, to the events he describes. It is therefore important that, in addition to describing Caepio's actions against the popular assembly, the author chooses to include Caepio's earlier testimony to the senate, which could have been elided from the story without a loss of coherence. The most likely reason to include the earlier episode was because Caepio's assault on the popular assembly was understood to be a continuation, by other means, of his report that the *aerarium* could not afford Saturninus' law. The bill upon which the people were voting was a grave threat to the solvency of the treasury, and so as custodian of the *aerarium*, it was, along one line of thinking, Caepio's duty to defend it. He chose to do so in a very literal way.

An altogether different line of thinking held that the tribune had every right to propose a law to the assembly, regardless of whether the senate had discouraged him from doing so, and that to use violence to break up the voting was a violation of the rights of that assembly, and perhaps even the sacrosanctity of the tribune. Under this line of thought, Caepio was guilty of *maiestas*, and he was therefore charged with treason.

This episode illustrates how *ad hoc* the Roman state could be. There was no standing rule for what should happen if an irresponsible magistrate proposed removing from the treasury money that did not exist,⁶ and the result was a conflict between the understood duties of the quaestor and the rights of the popular assembly, which had to be worked out by means of a treason trial. Caepio was found innocent, so it appears that in this instance, the voters who showed up that day considered his behavior appropriate.⁷

⁵ Mouritsen (1998) 134-6 argues that *Rhet. Her.* 4.13 is a fragment of a speech from the Valerian trials of 91-90 BCE.

⁶ The prospect of running a deficit never seems to have occurred to the Romans. However capable of driving up massive debts they were as private citizens, they were averse to allowing their state to be in debt. The sole exception was during the darkest period of the Hannibalic War, when they borrowed money from their citizens to continue financing the army.

⁷ *Rhet. Her.* 1.21, 2.17, 4.35; *Sal. Hist.* 1.62M.

While Caepio's "defense" of the treasury is the most striking question to appear in *Rhet. Her.* 1.21, it is far from the only one. Indeed, this passage is thick with the inner workings of the Roman state. We see elected officials presenting bills to the senate, the latter consulting another official, who had been allotted a *provincia*, "task," for information about his *provincia*, the senate giving (or, in this case, withholding) their approval of a law, an official convening an assembly to vote, a veto being interposed, and ignored. All of it is mentioned in cursory fashion by our unknown author as he sets the stage for his definition of *maiestas*.

This shortness of details is typical, however. The Romans of the Republican and early Imperial eras rarely seem interested in spelling out how their government worked in their literature, and what information they choose to relay often comes in the form of oblique, insider references. There are, of course, exceptions. We have numerous inscriptions that survive from this era, which can offer a wealth of details about the workings of the Roman state. Meanwhile, Cicero's incomplete work *de Re Publica*, and book six of Polybius' histories (likewise incomplete) both outline theoretical frameworks for the Roman state. These latter two works are, however, short on details and seek to outline the various organs of the Roman state, not to understand the details of its functioning.

Met with a paucity of material on the Roman state, a number of modern scholars, most famously Theodor Mommsen in his *Römisches Staatsrecht*, have sought to piece together the workings of the Roman state using all of the aforementioned extant materials: passing references, anecdotes, inscriptions and theoretical treatises. Most of these works have proceeded by attempting to outline — or even just assuming — a constitutional theory and have busied themselves with trying to flesh it out and bridge the gap between theory and practice. Such an approach has merit, as it gamely proceeds from an idea that had currency in ancient intellectual

circles (constitutionalism),⁸ and seeks to relate that theory back to the workings of everyday life that inspired it. It is problematic, however, because, as Pierre Bourdieu observes of anthropological attempts to theorize practice, it tends to assume a direct relationship between what people do and how they rationalize it.⁹ I think the relationship between the two is far more complicated.

Instead, I want to start from the position that practice emerges from the interaction between cultural norms and circumstance, while theory is often (though perhaps not always) an attempt to summarize and explain practice in an internally consistent way, structured by drawing on cultural norms. An influential theory can itself become one of the cultural norms that influences practice, but the relationship between them is never direct. For example, in American society, constitutionalism, the idea that our way of government has a rigid and nigh-immutable skeleton (the articles outlined in the United States Constitution) that constrains and guides political action, has a powerful impact on the way Americans think about government, but it would be wrong to say that all, or even most, of what goes on in American politics is dictated by this theory.

The topic of this dissertation will be the development of Roman political life from around the beginning of the third century BCE through the dictatorship of Sulla in 82 BCE. I am interested, broadly, in how the Romans went about running a city, and my focus will be on the roles played by the quaestors and the aediles¹⁰ in the creation of a workable urban community.

⁸ See Fritz (1954) for a fuller discussion of Greek constitutional theory and Roman adaptations thereof. The idea of the constitution as a way to “taxonomize” states and describe their structures seems to have had currency in Greek literary and intellectual circles since at least the fifth century BCE (Hdt. 3.80-82 retrojects into the Persian royal court an interesting, but anachronistic and culturally tone-deaf debate about the best type of Constitution before the ascension of Darius I), but the theory does not appear to have found any traction among Roman elites until around the time Polybius began circulating his histories in the mid second century BCE.

⁹ Bourdieu (1977) 18. cf. Geertz (1973) 3-32, who touches on this same problem in his first chapter.

¹⁰ Aedile translates roughly as “building/temple official,” but, as with the quaestor (see no. 2 above), a translation of the name of the office is not very helpful and actually misleading.

My reasons for singling these two magistrates out are manifold; they are some of the most understudied magistrates, which is surprising (or, at least, should be surprising), because they were the ones most responsible for ensuring the continuation of business as usual in Roman public life.

The quaestors and aediles are also the ones who receive the least attention from our literary sources. While the narratives of Livy, Dionysius, and Polybius abound with anecdotes of consuls waging war and receiving conquered enemies, dictators magnanimously laying down office at or before its expiry, and tribunes riling up the urban poor against the political establishment, stories about quaestors and aediles are few and far between. This is not because, as Ernst Badian once suggested of the quaestorship, these offices were “essentially unimportant,”¹¹ but because they did not capture the imagination of Roman authors. That does not mean that a discussion of the Roman state can afford to be unconcerned with them.

The administration of the city of Rome is worthy of more general attention, however, because the Romans’ approach to civic life, and the thinking and cultural assumptions that underpin the decisions they make, are different from our own. These differences can be deceptive. The Roman state has been of concern to political thinkers since at least the Renaissance. It featured in Machiavelli’s *The Prince* (and even more in his *Discourses on the first Ten Books of Livy*), was a topic of interest for Montesquieu, and for Rousseau.¹² This unusual situation, in which a topic has been under more or less continuous scrutiny for centuries, presents two, interrelated problems. First, up until the twentieth century (and even well into it), readings of the Roman Republic have been insensitive to anachronism and ahistorical thinking. Put plainly, Machiavelli is unaware of his own cultural baggage, and so makes little attempt to avoid reading Livy like a Renaissance Florentine. Mommsen’s *Romans* (and *Italians*),

¹¹ Badian (1983) 168, quoted in Prag (2014a).

¹² Machiavelli (1979), *passim*; Montesquieu (1965) *passim*; Rousseau (2001) 292-3.

meanwhile, are caught up in the patriotic fervor of a nascent nation-state,¹³ and Lily Ross Taylor's Romans, at least in her earlier work, are sensible, middle class voters.¹⁴ Each reading is informed by centuries of predecessors and escaping the intellectual gravity well of past luminaries can be difficult.

Secondly, many of the earlier luminaries had, in their turn, an influence on modern political developments. The impact of Roman authors on America's founding fathers has been treated at length and needs no discussion here. Less famously, the tribunate became an inspiration for centuries of revolutionary leaders, and the Aventine Hill and *Mons Sacer* became potent symbols of resistance to elite domination for men as disparate as Simón Bolívar and Cola di Rienzo.¹⁵ At the same time as we try to make the Romans more like us, we also try to make ourselves more like the Romans.

Thinking about the Roman state can thus be a potent exercise in a number of important historical problems, such as how we accommodate the differences of other cultures (even when they can seem similar) in historical writing, how we can track institutions in flux and, relatedly, how institutions can change in response to culture and circumstances, often in ways that go unnoticed by historical actors. The Roman state can also be a way to think about strategies that premodern societies with little or no bureaucracy or infrastructure employ to organize and to shape an urban community, and how we can work around a paucity of evidence (a perennial problem, to varying degrees, in premodern historiography).

¹³ A single quote illustrates this point: "Pyrrhus proposed to the [Italian] prisoners taken on the Siris, whose brave demeanor the chivalrous king requited by the most honourable treatment, that they should enter his army in accordance with the Greek fashion; but he learned that he was fighting not with mercenaries, but with a nation" (Mommsen, *Röm. Ges.* 2.7).

¹⁴ Taylor (1949).

¹⁵ Mignone (2016) 184-202; Edwards (1996) 22; Gibbon (1840) 258-9; Rotker (1998) *passim*.

While there has been a steady stream of scholarship on the Roman state since antiquity, almost none of it has concerned with the lower magistrates, or their roles in making the city run. Mommsen dealt with both the aediles and the quaestors at some length,¹⁶ but at a century old, his work is badly dated, and his exploration of the state using the language of constitutionalism is, as I have argued above, problematic. His focus, likewise, on the trivia of magistracy, such as what apparel they were allowed to wear, and what assembly elected them, while important, misses what is vital and interesting about these magistrates. More recently, Andrew Lintott's *The Constitution of the Roman Republic*¹⁷ is an invaluable source of information on these and other magistrates but is schematic in much the same way as Mommsen. I am interested in different questions from these scholars. Anne Daguey-Gagey has recently published a book on the aedileship in the late Republic and Imperial periods, and there is a very recent German monograph published by Maximilian Becker on the Republican aedileship. While I respect his scholarship and his ability to construct persuasive arguments based on confusing and contradictory evidence, he spends a great deal of time on the aedileship of the early Republic,¹⁸ a period about which I think we can know very little. He focuses, moreover, on legal transformations and their implications for the aediles' role in public life. While that is a part of what I study, it will emerge in the next section that I am also interested in the more gradual changes in perception that underpin these constitutional changes. Meanwhile, there have been no books written on the development of the quaestorship.

Although our topic will be the management and development of the Roman state as focalized through the aediles and quaestors, inquiry will nevertheless range far outside of the city

¹⁶ For his work on the aedileship see *Röm. Staatsr.* 2.472-522. On the quaestorship, see *Röm. Staatsr.* 2.523-73.

¹⁷ See Lintott (1999) 129-37 for his treatment of the aedileship and quaestorship.

¹⁸ Daguey-Gagey (2015); Becker (2017) 37-139.

of Rome. Many Roman magistrates, including the quaestors, served outside of the city and had spheres of influence that extended beyond the *pomerium*, the sacred boundary of the city.

Another way of framing our central question is, how did the Roman state, more specifically the senate and the various voting assemblies, attempt to use magistrates to solve problems?

In this first chapter, I explore Roman assumptions about the ways government ought to work, and its dynamics. I then describe, as accurately as possible, given the paucity of sources, the character of the government these assumptions helped create from the last decade of the fourth century BCE down to the end of the war with Pyrrhus in 275 BCE. Many of the conclusions I draw will be tentative, even impressionistic, but I believe it is better, in the absence of solid information, to piece together the picture we can, rather than to claim pure agnosticism.

What emerges, in the late fourth and early third century down through the war with Pyrrhus, is an administrative model in which the aediles and quaestors were vested with control of the city of Rome. The aediles had a wide array of jobs concerning the maintenance of the urban community. In fact, it would be no exaggeration to say that they *were* the magistrates in charge of maintaining the urban community. The quaestors, meanwhile, were given a series of smaller, often *ad hoc*, albeit crucial, tasks to introduce them to public life and acclimate them to the many roles that a *vir publicus* was expected to perform.¹⁹

Chapter two focuses on the nature of *potestas*, the formal power with which magistrates were invested that empowered them to look after the *res publica* and traces the development of the quaestorship from the first Punic war down into the early second century. Scholarship on the

¹⁹ Gruen's discussion (concerning the period a century after our start date) is relevant here. In Chapter 6 (pp. 203-249) of *The Hellenistic World and the Coming of Rome*, he argues that perceived expertise in a particular field played little or no role in determining the allotment of tasks to magistrates by the Roman senate, and in fact that the senate avoided assigning tasks to people who were perceived as qualified, likely because they saw the creation of meritocratic power blocks as a threat to their aristocratic ethos; a true *nobilis* was capable in whatever field he applied himself, and "...the system assumed competence in those who attained political success" (Gruen 247).

Roman state has traditionally ascribed the power of the magistrates to *imperium*, which scholars have extended from the right to command troops (and to enforce punishments, including death, upon them), to a sort of governing authority. As we shall see, this was not the case, and the recent work of Fred Drogula has opened up a new field of inquiry for us to explore. Chapters three will explore the gradual arrangement of Rome's offices into a hierarchy, and the effects of this process on the aedileship. The fourth chapter explores what the quaestors actually did and how they did it during the heyday of the Republic in the second century BCE. Chapter five adopts a similar approach for exploring the wide array of tasks for which the aediles were responsible in looking after the community and the urban fabric of Rome.

1.2 (Anti-)Constitutionalism — Toward a Model of the Roman Experience of Public Life

The study of Roman civic institutions has long been of interest to historians and classicists, and the bibliography on this topic is vast. An exhaustive exploration of the different opinions that have been articulated about the Roman state would be both unfeasible and unproductive. Before discussing my opinions on the matter, however, it is important to sketch the lay of the field and point out some landmark works. A more specific review of the scholarship on the aediles and quaestors will be included in section 1.4.

There are two major tensions that define the scholarship of Roman civic institutions. The first is the question of whether we want to treat these institutions as artifacts of law, or of culture. The obvious answer is that we should do both, but this is easier said than done. The expertise and rigor required to satisfy the legal scholar are frequently at odds with the defter touch expected of a cultural historian, and most works on Roman public life tack in one direction at the expense of the other.

The second tension that defines the field is indirectly related to the first, and the approach that one takes to the first question will often condition one's stance on the second: how relevant is Rome's early history to a study of Roman government, and what should we do about the deplorable condition of the sources? The Romans, as is well known, only began writing down their history in the very late third century, roughly three hundred years after they believed the Republic had begun, and more than five centuries after they believed their city had been founded. A more comprehensive discussion of this debate can be found in section 1.4 with the review of the scholarship on the aediles, but this question matters for our purposes because many scholars believe, not unreasonably, that in order to understand a given civic institution, one must understand where it came from. Scholars of law want to understand the legal thinking that underpins the institution's creation, while historians and classicists want to include the early history as part of the development of the institution. If, however, Rome's early history is unknowable, then that presents a major problem.

In the study of Roman civic institutions (and Roman history more generally), Theodor Mommsen looms large and has arguably done the most important work on the Roman state of the past two centuries. Mommsen's dual experiences as jurist and classicist allowed him to balance the competing claims of law and history in his approach to the Roman state, although by now his approach seems more legal than historical. As Becker observed, Mommsen's legal theory is also so strong that it occasionally twists the evidence to fit the model (Becker 2017: 27). While he was more cautious than many of his contemporaries in accepting the evidence of Rome's early history, Mommsen nevertheless tends to assume that, if the textual tradition says an event happened, then it must have happened, and he freely uses Dionysius and the early books of Livy to reconstruct a legal foundation for the Republican government. The result is a legally

positivist constitution of the Roman state comparable to Walter Bagehot's *The English Constitution*: there were rules, everyone knew the rules, and only bad men broke the rules. While Mommsen is alert to constitutional developments in the Roman state, these changes are envisioned as resulting from formal mechanisms (decrees of the senate or votes of the assembly) and assumed to reflect a detailed, coherent, and relatively consistent model of public life.

The most devastating and comprehensive response to Mommsen has been that of Jochen Bleicken, whose 1975 monograph, *Lex Publica: Gesetz und Recht in der römischen Republik*, constitutes a sustained assault on the theoretical foundations of Mommsen's work. His most salient points, for our purposes, are as follows: it is fruitless to write a descriptive constitution, as Mommsen does, because states are historical processes and the institutions that compose the state are not based on any sort of consistent internal logic; as such, there was no identifiable locus of sovereignty in the Roman state (28ff.); until the last decades of the Republic, it never would have occurred to the Romans that law could be used to change the existing social order (217-243). In terms of the tensions outlined above, where Mommsen leaned toward legalism and credulity of the annalistic tradition, Bleicken rejects both. While he still makes use of evidence from the annalistic tradition, he uses its inconsistencies to argue against the kind of legalistic thinking that Mommsen represents. While Bleicken sparked some controversy at the time with his provocative claims,²⁰ the assertions here detailed are now relatively uncontroversial, and most scholars now regard the kind of constitutionalism that underpins Mommsen's work as untenable.²¹

²⁰ Crawford (1978) savaged Bleicken's work, and Frier (1977) saw major problems, but Crook (1977) gave a favorable review.

²¹ e.g. Lintott (1999) 2, who acknowledges this point early on, although he seems to take a dim view of Bleicken's work as a whole (1999: 6), while Straumann (2016) 23-7 argues that the Roman state was characterized by "inchoate" constitutionalism.

While the value of Bleicken's work is now generally acknowledged, writing a history of the Roman state that reflects his contributions proved elusive in the ensuing decades. Lintott and Brennan do not assert the sort of legal positivism envisioned by Mommsen, and, indeed, Lintott explicitly abjures it,²² but their works otherwise look a good deal like the sort of scholarship that Mommsen did. That does not make their scholarship bad, and Lintott's work in particular is invaluable as a primer on the Roman state and as a mine of information about what the sources tell us, but both scholars do present an overall picture that is rather neater and more coherent than our sources would suggest.

More recently works on the Roman state have responded, directly or indirectly, to the challenge of Bleicken by treating Roman civic institutions as aspects of culture and shifting our focus away from Rome's early history. So, the recent edited volume on the Consulship by Hans Beck *et al.* takes a more multifaceted, less synoptic approach (which is, of course, easier to achieve in an edited volume than in a monograph), but stakes out, at the beginning, an approach based on practice, rather than legal theory (2015: 1-16). Fred Drogula's 2015 book on *imperium* likewise argues from the assumption that Roman institutions were extremely mutable and were being reinterpreted and reimagined over the course of the Republic.²³ Cristina Rosillo-López, meanwhile, has an excellent monograph on the formal and informal mechanisms through which information was disseminated and public opinion shaped in the Roman Republic, and she embraces the cultural turn in studies of the Roman state.²⁴

²² Lintott (1999) 2; Brennan (2000). Neither presents a picture of the Roman state that is in any way simple, but I think it is fair to suggest that the Roman state in their works seems more like an edifice, and less like the "historical process" of Bleicken.

²³ Drogula has a number of points that he argues, and his position on *imperium* cannot be succinctly stated, but it is fair to say that all of his positions depend on the idea that *imperium* was evolving and being messily reinterpreted all along the way. See pp. 374-382 for a synopsis of his findings.

²⁴ Rosillo-López (2017) 18-9 is particularly concerned with informal politics, a field of study that presumes that elements of politics and public life that are not enshrined in law are equally important to the operation of the state as the legal institutions that have traditionally been the field of study for political science.

In this dissertation, I situate myself firmly within this trend of scholarship. I operate under the assumption that the aedileship and quaestorship can more productively be discussed as cultural phenomena, and that the early, problematic evidence about these offices is less useful than the evidence from periods about which we are well informed. This work does seek to outline the legal foundations on which these offices rested, where possible, but it must be born in mind that the Romans of the early and middle Republic were not legal scholars. The process of constructing a legal justification for political power was very much a project of the late Republic and Imperial periods.²⁵ Put simply, the Romans laid most of the foundation for their house after they had already built it and had been living in it for some time.

Before turning to a discussion of early Roman history and a review of the scholarship on the aediles and quaestors, however, it is important for us to construct a model for Roman public life. The scholarship of the past few decades has rightly followed Bleicken in rejecting the existence of a detailed and coherent Roman constitution, but most scholars have neglected to replace it with anything. One of the best has been Straumann, who speaks of “inchoate constitutionalism,” a sort of proto-constitutionalism. This still seems inadequate to me. Inchoate constitutionalism does little to fix the problems that have been raised with constitutionalism, but rather only makes the concept murkier. It cannot be used, for example, to explain the consulship of Scipio Aemilianus, who in 147 BCE was elected consul at the age of thirty-seven,²⁶ in spite of the *lex Vilia annalis* of 180 BCE, under which he was six years too young and had skipped one mandatory and one optional magistracy.²⁷

²⁵ Drogula (2015) 59; Schiavone (2012) 5-41; Mousourakis (2007) ix.

²⁶ Liv. *Per.* 50 states that he was exempted from the law, but this was under duress and does not suggest that supposed constitutional norms were taken very seriously.

²⁷ The praetorship and the aedileship (App. *Pun.* 112; Liv. *Per.* 49). See Astin (1967) 61-9 for a discussion of Scipio's election to the consulship.

Scipio's case is all the more striking because, as A.E. Astin suggests, he exerted a powerful influence on the political thinking of his friend, the Greek historian Polybius, who was the first historian to talk about a Roman Constitution (1967: 288-93). If Scipio was party to Polybius' discussion of the Roman constitution (and he surely was), then his utter disregard for the supposed norms of that constitution is remarkable, to say the least.

Any discussion of the underlying assumptions of the Romans about the way government should work therefore has three hurdles in its path: first, what principles gave structure to Roman public life, second how to integrate into this synopsis the Roman propensity to break their own rules, and third, how these principles can be shared across an entire culture. Discussions of rules, however, miss the point. In an early passage from Bourdieu's *Outline of a Theory of Practice*, the French anthropologist discusses honor codes in traditional societies (the art of receiving and responding to a gift or an affront). As he observes, one is quite capable of drawing up a set of rules detailing the proper response in every imaginable scenario, but such an inclination (common enough, we might imagine, among his peers), misses the point and attempts to reduce a culture down to a flow chart.

“The abstract diagram which has to be constructed in order to account for that logic is liable to obscure the fact that the driving force of the whole mechanism is not some abstract principle...still less the set of *rules* which can be derived from it, but...a disposition inculcated in the earliest years of life and constantly reinforced by calls to order from the group, that is to say, from the aggregate of the individuals endowed with the same dispositions, to whom each is linked by his dispositions and interests.”²⁸

Each action carried out within the Roman state is embedded in the shared culture of the community. When Scipio Aemilianus chooses to run for consul at age thirty-seven, he is not “breaking the rules,” but making a play within the cultural field he inhabits. He is making

²⁸ Bourdieu (1977) 15.

statements about who he is (in his case, the scion of the two most illustrious families in Rome), who he intends to be (an extraordinary man, like his adoptive grandfather, Africanus, who held multiple offices at uncommonly young ages, and another office that was entirely unprecedented),²⁹ and his position *vis-à-vis* his fellow *nobiles* (higher). Each political act tacitly (or, often, explicitly) draws upon many different *exempla* from great ancestors (often associated with a place, or a monument³⁰), and is at once used by the agent creatively to circumscribe a field of activity that is *fas*, “proper,” “allowable,” “equitable,”³¹ and to justify his choice of actions within the field. The boundaries of this field are, however, elastic, and greater or lesser latitude is afforded to actors, depending on such factors as status, relationships, and timing — the “tempo” that Bourdieu observes (1977: 15).

The Romans also, of course, had an evolving body of public law that began increasingly to direct the flow of public life in the second century BCE, perhaps even as early as the third century. This accretion of customs, *exempla*, and laws might even be said to resemble the English constitution in its general form. I resist the temptation to describe it as a constitution, for a number of reasons, however. First, the Romans had no such word, and there is little reason to think that they thought in these terms prior to encountering Greek political philosophy in the mid-second century. Next, the word constitution sees wide use in the present day but has different associations for members of different cultures. Such associations are strong and enduring, and resistant to attempts at redefinition. It would therefore be fruitless to apply my

²⁹ Scipio the grandfather held the aedileship at the age of 23 and the consulship at the age of 31. Neither of these candidacies was illegal, *per se*, as they occurred decades before the passage of the *lex Villia annalis* in 180, although it was unusual. More problematic is his command in Spain, where he appears to have been given a *provincia* and a military command without having been elected to any office by the Roman People. He was a commander without an office, although his contemporaries seem to have taken some pains to treat him as though he was a consul or *pro console* — e.g. Scipio had a quaestor during the Spanish campaign (Liv. 27.19).

³⁰ Hölkeskamp (1996) *passim*; Roller (2018) 1, 4-10.

³¹ Oxford Latin Dictionary (1982) 677. s.v. *fas*.

own, narrow definition to the word, and irresponsible to use the word in the absence of a detailed definition. Third, the word constitution puts the focus on the more formal elements of the Roman state: laws, decrees, edicts. I wish instead to focus on the interplay of these elements with the more nebulous attitudes, associations, and assumptions that underpin them, and which are subject to more gradual change. I therefore prefer what Clifford Geertz termed a “thick description,” and the words “constitution” and “constitutionalism” will be used only in discussions of Roman political philosophy as a literary genre.

1.3 Exploring the Cultural Field

If political life is a cultural field, then an examination of it must first investigate its “pathways,” that is, the shared assumptions of its inhabitants about the means by which things happen within it, and the form political action takes. In central Italy during the third century BCE, and earlier, we see an administrative style that makes frequent recourse to the executive power of magistrates as a way of getting things done in the state. The assumption seems to be that whenever a task needs to be carried out, it should be carried out by one man (or sometimes a board of men) with sweeping powers within the confines of their mandate.³²

In his recent book, *Commanders & Command*, Fred Drogula has articulated the way this system worked among holders of *imperium*. Most striking is the case of the dictator, who is frequently represented by more modern scholarship as an autocrat to whom the state gave absolute power in the hope (which to modern readers can seem altogether credulous) that he

³² Most treatments of the Roman state, starting with Mommsen, have emphasized the importance to the Roman state of every magistrate having a colleague, framing it as a check against abuses of power. What such treatments fail to account for is the extent to which, during the middle Republic, magistrates tended to operate alone. Tasks were allotted by the senate, and it was unusual for multiple members of a college of magistrates to be assigned to the same task. Simply put, most of the time, a magistrate was isolated from his colleagues, and had free rein to do as he saw fit.

would use it justly. What Drogula brings out is the extent to which this supposedly unlimited power was in fact delimited by the task outlined in the “*causa*” of his title.³³ The dictator had unlimited power, but only within the confines of his mandate. If he tried to operate outside of those confines, his authority would evaporate rather quickly, as L. Manlius Imperiosus, *dictator clavi figendi causa*,³⁴ “dictator for the purpose of driving in the sacred nail,” discovered when, having completed his task, he tried to use his power to acquire a military command. The tribunes compelled him to step down.³⁵

While their tasks and the nature of their power may have been less dramatic than those of a Roman dictator, I argue that sweeping power circumscribed by a task can be generalized as a feature of most Roman magistracies, and this concept will be explored at greater length in the second chapter.³⁶ Tasks among other magistrates appear to have been apportioned out in much the same way, and quaestors, praetors and consuls received new tasks each year from the senate. If the aediles did not regularly receive new tasks, it was because their broad mandate to maintain civic order was relatively constant and rendered them semi-autonomous.³⁷

³³ *Causā*, “for the purpose of” or “for the sake of,” was a part of the dictator’s title that outlined the purpose for which he had been appointed and provided definition for his powers. The formula was *dictator causa* + genitive, “dictator for the purpose of...” For a lengthier discussion of the dictator’s *causā*, see Drogula (2015) 169-81.

³⁴ A law that the Romans believed dated back to the monarchy required the “*praetor maximus*” to drive a nail into the wall of the Temple of Jupiter Optimus Maximus each year on the 13th (Ides) of September. This date was the anniversary of the dedication of the temple, and so the number of nails was used to mark the number of years since the dedication. *Praetor maximus* has been taken to mean, and probably did mean, the chief commander, and in regular years this would be one of the two consuls. In years when both consuls were out of town (that is, when they were both on campaign), however, a dictator might be appointed (Liv. 7.3.5-8; Lintott 1999: 104 no. 47; Cornell 1995: 220, 227).

³⁵ Drogula (2015) 169-81; Liv. 7.3.9.

³⁶ One of the most striking features of Roman public life is the sweeping authority given to magistrates to accomplish their tasks. More modern scholars, such as Mommsen, have responded by trying to identify (or even impose) a series of checks and balances on the Roman state. This is not wrong, *per se*, as means of resistance were available, most famously in the form of the ten plebeian tribunes, but such a line of inquiry leads to an anachronistic discourse about civil rights, rights of the governed, etc. It is striking that, when faced with abuse of power by magistrates, the Roman solution was to invent new magistrates with *even more* sweeping power to oppose them.

³⁷ The use of voting assemblies in order both to outline a task and to assign a magistrate (or even a private citizen) to carry out the task appears to be a feature of the Late Republic.

All this is not to dismiss the power of the people and their ability to have a real impact on civic life in Rome. Rather, I seek to underline the preponderance of authority that rested with magistrates in the Roman state. It is remarkable that, by and large, it seemed natural to the Romans to achieve political goals through recourse to that authority. As we shall see in the following paragraphs, the Romans were not unique in the emphasis their culture placed on the actions of magistrates, but theirs was not the only way in which would could conceive of organizing a state.

Our evidence is scanty, but it appears that the Sabellic peoples of south-central Italy inhabited a cultural field that was similar in its assumptions about magistrates. Sabellic public life was organized around varying gradations of **Meddis**, a generic Sabellic word that our Latin sources suggest corresponded to their word *magistratus* (Festus p. 110 L). The varying **Meddix** (the plural of “**Meddis**” in Sabellic and, confusingly, the word into which the singular “**Meddis**” is rendered in Latin) carried out a variety of functions within their culture.³⁸

With so little evidence and so much of it Roman, there is little that can be said for certain about Sabellic civic institutions, and we should not ignore the possibility that our Roman lens places more emphasis on the **Meddis** than it should. Epigraphic evidence for the *Sabelli*, however, paints a similar picture, and magistrates of varying stripes appear throughout extant Italic inscriptions.³⁹ The highest **Meddis** appears to have been the **Meddis Tuvtics**, “public magistrate,” who fulfilled a role analogous to a Roman consul, dictator, or perhaps *rex*. Many of these Sabellic magistrates, however, bear titles such as **aídil**, **keenzstur**, and **kvaísstur**, which

³⁸ Salmon (1967) 85.

³⁹ For a fuller sense of the types of things these Italic magistrates were doing, see *Imagines Italicae* Abella 1-3, Atina 1, A, Bantia 1.2, 1.18-20, 1.27-9, Histonium 1, 3, Incerulæ 1-2, Mervania 2, Nola 4, Pompeii 12, 13, 14, 16, 18-20, 21, 23-5, Potentia 4, Terventum 4, 8-10.

are borrowed from Rome,⁴⁰ and made their way into Italic culture as segments of the population became more urbanized.⁴¹

While the emphasis that the Romans placed on executive authority was not unique, it was hardly universal to other peoples either, and theirs was not the only approach to civic life that existed in the Mediterranean during this period. Athens, the city from the Greek world with the most extant evidence, presents a very different picture. The Athenian democracy put the greatest authority in the hands of a variety of governing assemblies. Individual magistrates, such as generals, archons, and *prytaneis*, existed, but their power within the Athenian state appears limited when compared to the authority wielded by the *boulē* (Council of 500) and the *ekklēsia* (popular assembly).⁴²

Even more striking is the system of liturgies, in which the wealthiest members of the citizen body were compelled to pay, often all by themselves, for expensive civic projects, such as annual festivals, or the construction and outfitting of a warship.⁴³ None of this is controversial, and a full discussion of Athenian civic institutions is far beyond the scope of this dissertation. The point I wish to make is that the “pathways” of Rome’s political cultural field were not the

⁴⁰ We know that these are cultural borrowings, rather than parallel developments, because the names are derived from Latin, rather than Sabellic, or otherwise Italic, roots. The “q” in Latin usually equates to a “p” in Sabellic, the “ae” diphthong becomes a simple “e,” and the “d” becomes an “f.” We would thus expect the *aedilis* and *quaestor* to be rendered as something like *efil* and *pestur*, if these were native Italic titles. Instead, the titles appear to have been transliterated into the Sabellic alphabet and furnished with the appropriate word endings.

⁴¹ Much of the Sabellic population, however, did not live in an urbanized environment, however, but were pastoral, and organized themselves around religious sanctuaries. It is therefore difficult to say much about a culture whose peoples were so diverse but left so little textual evidence. Their world was different from that of the Romans, although there were perhaps some common threads in the way they approached government. What this suggests is that many of the features of this Roman political-cultural field were common to many of the peoples of Italy, and that they were by no means unique in the emphasis they placed on the executive power of elected officials

⁴² There has been a steady stream of scholarship on Athenian civic institutions extending from antiquity to the present. At present, the two most influential works are Hansen (1991) and Ober (1989), who debate the importance of institutions versus more informal mechanisms. From my point of view there is no need to decide between the two. For a discussion of the *boulē*, see Hansen (1991) 246-65; Ober (1989) 138-41. For the *ekklēsia*, see Hansen (1991) 125-60; Ober (1989) 71-2, 132-7.

⁴³ For a fuller discussion of liturgy as an Athenian institution see Hansen (1991) 110-5; Ober (1989) 199-201, 231-2.

only ones imaginable, even at the time, and the Athenian approach, in which the task of ordering and arranging civic life is the exclusive preserve of the citizen body as a unit, and in which the wealthy must pay for their privileged place in society, is worlds apart from what we see in Rome.

1.4 *Archaeologia*

Before we turn to discuss the roles of the aedile and quaestor in Roman civic life at the end of the fourth century and during the first few decades of the third century BCE, I want to discuss in brief what we can say about Roman civic life during the century or so that precedes our start date in order to give some background to what I argue was happening in the early third century. Such a discussion touches upon one of the fiercest debates in Roman historiography: the credibility of the Romans' own narrative of their early history. As was touched upon in 1.2, the Romans are agreed to have begun compiling information about their past into historical narratives in the last quarter of the third century BCE.⁴⁴ Narratives of events after that date, or even a few decades before, could be based on firsthand accounts, and there is no serious doubt about their basic historicity. The first ten books of Livy, which cover the period from 753-293 BCE, therefore represent an important point of contention for Roman historians. The extent to which we can use these books to understand Rome's archaic past is an open question and will remain so in perpetuity. In addition to reviewing the various approaches that have been taken to deal with the early Republic, the aim of this section will be to provide a review of what can be known about the aedileship and quaestorship prior to our start date of 310 BCE.

Much of the debate about Archaic Rome centers on the extent to which we can use Dionysius and especially Livy to "fill in the gaps" left by the archaeological narrative, and, as

⁴⁴ Wiseman (1996) 311; for a discussion of the creation of the annalistic tradition, see Frier (1999) 255-284, 322-4, *et passim*.

Andreas Alföldi observed, opinions on this topic represent a pendulum swing between those who treat the annalistic tradition as a complete fiction, and those who “...endeavor to vindicate even the last bit of the written tradition as authentic” (1965: 318-9). In the middle of the twentieth century, this debate was dominated by Alföldi himself, a skeptic, and Robert Palmer, who argued for a more traditional narrative that envisioned the *comitia curiata*, the oldest of Rome’s voting assemblies, as an integral part of the regal power structure in Rome, and a major battleground in the conflict of the orders (1970: 189-281). In more recent decades, their places in this dyad have been taken, albeit with different arguments, by Peter Wiseman and Tim Cornell, respectively. The former takes a hard, agnostic position and argues that Rome’s early history is irrecoverable, while the latter uses archaeology as the backbone of his arguments while treating the literary tradition as accurate in any situation where it is not refuted by the archaeological evidence.⁴⁵

The situation of our evidence on the aediles and quaestors is unsurprisingly no better, and in addition to the unverifiable nature of the sources, we are hampered by the fact that, at least in the case of the aediles, the account provided by the annalistic tradition is both discordant with the role that the aediles played in later periods and is tied into the highly-tendentious account of the struggle of the orders. In Dionysius’ account, the plebeian aediles were created along with the plebeian tribunes after the first secession of the plebs in the 490s BCE and served as the

⁴⁵ For Cornell, the narratives of Livy, Dionysius, and others, are reconcilable with the archaeological evidence and most of their stories contain a recoverable kernel of truth (Cornell 1995: 1-30). See also Armstrong, who uses a similar combination of archaeology and Livy to argue that archaic Latium (including Rome) was dominated by a series of highly mobile warlords, each supported by his *gens* (an extended kinship group of family members, adherents, and warrior-companions), and that, as they settled down, these *gens*-based elites gradually morphed into the patricians of the middle and late Republic (Armstrong 2016: 18-47). For him, this process of warlords becoming patricians resolves most of the puzzles of the early Republic. e.g. the praetorship of the early Republic, the existence of consular tribunes, and the creation of the so-called Servian constitution. While I am skeptical of treating warlords as a panacea for all the problems of the early Republic, Armstrong’s basic model of mobile *gentes* fighting over control of cities in the sixth and early fifth centuries before becoming tied to individual cities is persuasive. Wiseman (1996) *passim* makes the point that there are many unknown variables in the creation of the annalistic tradition, and we do not have the original material from which the annalists were working, so we cannot know when a given author is embellishing, embellishing on somebody else’s embellishment, retrojecting contemporary elements into the past, providing analysis based on incorrect material, or even flat out lying.

assistants of the tribunes in criminal trials.⁴⁶ He also tells us that they were entrusted with the games at the Latin Festival (*Ant. Rom.* 6.95.4). Livy, meanwhile, provides no account of these aediles' creation and begins mentioning them, without any introduction, in book 3, where it is unclear what their duties are.⁴⁷ He is far more generous in his narrative of the creation of the curule aediles. The setting for their creation is the lengthy conflict that produced the Licinio-Sextian laws. When a compromise was reached whereby the plebeians would be admitted to the consulship in exchange for an exclusively patrician new office, the praetorship, the senate proposed adding one day to the traditional games held by the plebeian aediles to celebrate the agreement. The aediles allegedly balked at this and refused to shoulder the cost, so two patricians stepped forward and volunteered to do it instead. They were then elected aediles in a special election, and the curule aedileship was established as an exclusively patrician office (Liv. 6.42.14). In the next scene, as the dust settles in the conflict over the Licinio-Sextian laws, the plebeians are able to shame the patricians into making the new curule aedileship admissible to plebeians and patricians in alternating years (Liv. 7.1.1-6).

Furnished with few details from a narrative of dubious historicity, scholars have been quite creative in their attempts to reconstruct the history of the aedileship. Mommsen's position is the one that most closely resembles the picture painted by our sources, and his general approach seems to have been to integrate the accounts of Dionysius and Livy and then argue away any inconsistencies or issues that he finds troubling: he thus argues that Livy forgot to detail the creation of the plebeian aediles at the first secession of the plebs, and that the early aediles were subordinates of the tribunes as suggested by Dionysius (*Röm. Staatsr.* 2.1.470). He

⁴⁶ For the creation of the plebeian aediles, see D.H. 6.90.2-3. They appear later in his narrative at 6.95.4, 7.26.3, and 7.35.3-4.

⁴⁷ Liv. 3.6.9, 3.55.7, 3.55.13.

seems to believe their later duties of looking after public buildings (religious and secular alike) began quite early and was the source of their name (*Röm. Staatsr.* 2.1.479). It will be significant for our discussion of *potestas* in chapter two that Mommsen wanted there to have been a law providing for the creation of the curule aediles, even though there is no evidence of such a law in either Dionysius or Livy.⁴⁸ Kunkel & Wittmann, while disagreeing with Mommsen at times, have likewise taken a position that is relatively close to what our sources tell us was the case (1995: 474-89).

Other opinions have been quite divergent. Part of the difficulty here is that the information is so sparse that rejecting even a single piece of evidence as inauthentic can radically alter our picture of the aedileship, and the range of different opinions on the early history of this office is disconcertingly wide. Perhaps the chief piece of evidence that has been contested is Dionysius' claim that the aediles were invented in the wake of the first secession of the plebs. By pointing out that Livy does not mention aediles being created, scholars can up- or downdate the invention of the aedileship by a century or more. Thus, in 1913, Rosenberg was able to argue that the Romans copied the aedileship from a similarly named priesthood in Tusculum that was responsible for performing the *lustrum*, a civic ritual of purification. He therefore argues that the Roman aedileship was originally a priestly position associated with the temple of Ceres.⁴⁹ Variations on this opinion have been put forward by Bonfante (1923), De Francisci (1926), Sabbatucci (1955), and Lupinetti (1969) all of whom abandoned the Tusculan connection and simply argued that the aediles were originally the priestly heads of the plebeian community on

⁴⁸ Mommsen, *Röm. Staatsr.* 2.1.480. Livy says that the senate advised that the patrician volunteers should be elected to a new office, and the dictator went and held an election (6.42). Mommsen assumes that Livy is omitting a step where the dictator, M. Furius Camillus, took the decree of the senate to the assembly and ratified it as a law, which would therefore be called the *Lex Furia de Aedilibus Curulibus*.

⁴⁹ Rosenberg (1913) 1-15.

the Aventine hill. More recently, Ernst (1990) returned to the Tusculum hypothesis, but simultaneously sought to down-date the creation of the plebeian aediles to the Licinio-Sextian laws. He argues that the ὑπηρέται in Dionysius, which are normally assumed to be the aediles, were in fact a different group of officials that evolved into the plebeian aediles when the curule aediles were created in 367-6 BCE.⁵⁰

The most recent and, I think, most plausible reconstruction has been that of Becker, who remains agnostic on whether the plebeian aediles pre-existed the Republic. He argues, however, that, from having some association with the temple of Ceres, they attained the responsibility of market oversight partly due to the proximity of the *forum boarium* to the temple of Ceres and partly because of the real interest that the plebeians had in regulating the markets, in contrast to the patricians, who were a warrior aristocracy. In the early fourth century, however, Rome was on the backfoot and military victories were fewer and farther between than they had been in the previous century. The patricians therefore turned to farming and finance as alternative forms of aristocratic self-display, and the aedileship began to have a real attraction for them. When the opportunity arose in 367-6 BCE, they created their own version of the aedileship.⁵¹ Becker's model has the advantage of conforming to the basic picture of early Republican Latium that has been reconstructed by sources such as Cornell and Armstrong. It also does not rely too much upon the literary tradition being accurate in its details. I accept it with some reservations. I would caution that it shares a basic problem with all of its competitors, and indeed, much of the scholarship on early Rome: it is impossible to confirm. The next scholar to come along will

⁵⁰ Bonfante (1923) 95f., De Francisci (1926) 172-8, Sabbatucci (1955) 255-333, Lupinetti (1969) 315, Ernst (1990) 89-100, 108.

⁵¹ Becker (2017) 37-139, esp. 136-9, which provides a valuable summary of his main points.

certainly contend that this or that piece of textual evidence that Becker accepted should be rejected, or vice versa, and construct a model that looks radically different.

In order to build a model of what type of state Becker's early aediles were operating in, however, we are going to have to find some way around the problem of verifiability that was raised just now. We are fortunate that such a path forward already exists. Exploring a methodology proposed by Arnaldo Momigliano in a 1963 article, scholars like Ramsay Macmullen and Fred Drogula have chosen to operate on the assumption that much of what Livy presents to us characterizes the Romans accurately, but that it is impossible to know whether a given anecdote is true or false.⁵² It is therefore more productive to look at these anecdotes in their aggregate and identify trends and themes that are more reliable than individual episodes. These trends do not give us a full narrative of the period, *per se*, but can be combined with archaeological evidence to give us a better narrative than we might otherwise have. This is the methodology I intend to use in order to discuss the Roman state prior to our start date in 310 BCE.

First and foremost, the century and a half before our start date is characterized by a great many irregular magistrates, that is, magistrates who were elected or appointed as the need arose,⁵³ rather than on any sort of annual schedule. The Romans themselves believed that the Licinio-Sextian laws of 367 BCE brought about a number of dramatic changes to the state, as detailed above.⁵⁴ While it is not certain that all of these changes occurred in that specific year, it

⁵² Momigliano (1963) 96-108 *et passim*; Macmullen (2011) vii-xi, Drogula (2015) 1-7, esp. 4-5. Macmullen and Drogula employ this methodology in different ways. The former uses it more impressionistically to explore the Roman character. The latter, meanwhile looks for recurring details, especially ones that are discordant with Rome's later history, and treats those as factual, on the assumption that such details would have been unlikely to be invented.

⁵³ By the late Republic, most of the minor magistrates were elected (Lintott 1999: 137), although these were almost all regular magistrates who served on a yearly basis. The most well-attested irregular magistrate is the dictator, and this was an office that was appointed, not elected (Lintott 1999: 110).

⁵⁴ Liv. 6.42; D.H. 14.8-10; Plu. *Cam.* 40-2; *dig.* 1.2.2.26; Lyd. *Mag.* 1.38.

is probable that the decades surrounding the year 367 saw a number of changes that regularized the way the Roman state operated. The Romans thereafter had a solid core of regular magistrates, elected annually,⁵⁵ who could carry out most of the functions of the state; the aediles were established in more or less the form they would have until the end of the Republic,⁵⁶ and the Romans themselves believed that in this year the praetorship was established and their ancestors brought an end to the haphazard alternation between patrician commanders and military tribunes with consular power,⁵⁷ choosing to elect two consuls each year.⁵⁸

Nevertheless, before our start date, the Roman state appears far more disorganized than it would be in the third century. Between 450 and 310, the Romans appointed fifty-six dictators, a great many of them with *causae* (assignments) like *comitiorum habendorum* (“holding elections”), *clavi figendi* (“driving in the sacred nail”), *ludorum faciendorum* (“holding games”), or *feriarum constituendarum* (“holding a religious festival”).⁵⁹ Most of these functions were the duty of the highest regular magistrate, and the presence of all these dictators carrying out the functions of the consuls in the record suggests that the Roman state was having trouble balancing the military and religious duties of this office, and so had to resort to an irregular magistrate.

⁵⁵ except for the censor, of course, who was elected once every five years for a term of office not exceeding a year and a half.

⁵⁶ i.e. two curule and two plebeian aediles, who were tasked with looking after the urban and cultural fabric of Rome and putting on games each year.

⁵⁷ What was alleged to have existed before was a complicated system whereby each year the Roman state would elect either two patrician “praetors” (essentially consuls) who were tasked with leading Rome’s armies, or up to six “tribunes with consular power,” who carried out the same function but could be either patrician or plebeian.

⁵⁸ Drogula has argued for a revisionist model wherein 367 was the year when the right to declare and wage war became the exclusive preserve of the state (as opposed to individual *gentes*), and the Roman state began electing three praetors annually, two of whom would go to war each year and become known as consuls, because they “consulted,” *consuluerunt*, each other on matters of war (Drogula 2015: 184-209). Regardless of what interpretation we favor, mid-way through the fourth century, Rome appears to have undergone a number of political changes that led to a more regularized Roman state.

⁵⁹ Broughton *MRR* vol. 1 (1951) 46-161 s.a. 450-311.

Livy's narrative of the decemvirate in book three (3.33-48) likewise speaks to the prevalence of irregular boards of magistrates.⁶⁰

More directly relevant to the topic of this dissertation is the presence of irregular quaestors. Discussions of the early quaestorship are dominated by the issue of its alleged judicial functions in murder trials (*quaestores parricidii*), in spite of there being very little evidence.⁶¹ Mention of quaestors functioning as judges in murder trials drops out of Livy's narrative after the first half of book three (around the time of the decemvirate episode) and never reappears in any of the numerous extant books. Aside from this, there are just a few brief mentions in the works of authors with antiquarian interests, including Pomponius, who claims that mention of the *quaestor parricidii* occurred in the twelve tables (*dig.* 1.2.2.22-3), and in Festus (258-9L).

Whether these homicide quaestors⁶² were elected annually or only when a heinous crime demanded state intervention is never stated, but Festus' brief mention of them is suggestive: his one-sentence overview of the homicide quaestors, by way of explanation of their functions, preserves the phrase *causa rerum capitalium quaerendarum*, "for the purpose of investigating capital charges." This construction, in which a magistrate's functions are outlined with a gerundive, often (as here) with an ablative *causa*, matches the formulae for the titles of irregular

⁶⁰ I am not by any means convinced that the decemvirate existed, or that they were players in the dramatic plot that Livy spins for us, but their existence in the annalistic tradition says something about the types of things Roman historians of the late third and early second centuries thought were appropriate to the fifth and fourth centuries. Whatever we may think of the quality of narrative of this period to which Livy and his antecedents had access, it is striking that boards of ten men constituted with absolute power did not seem out of place to them.

⁶¹ Mommsen spends a lengthy portion of his treatment of the quaestorship in *Röm. Staatsr.* 2.1.523-90 detailing their supposed judicial functions, attempting to reconcile those functions with the functions of later quaestors, and trying to explain how a magistrate without *imperium* could inflict death sentences as a judge. His suggestion that this power was delegated to them by the consul they served is creative but predicated on his mistaken emphasis on *imperium* as the sole power within the Roman state.

⁶² I opt to translate *parricidium* more loosely as "homicide" because the word in Latin can be used more generally of any sort of horrible crime, and because it is not at all clear that these quaestors were involved only in cases where the victim was a relative of the accused.

magistrates.⁶³ The survival of this formula, so characteristic of irregular magistrates, and unattested for regular magistrates, suggests that the homicide quaestor was another irregular magistracy, likely created whenever there was a crime that escaped the self-regulation of the *gentes*.⁶⁴ As Lintott suggests, the homicide quaestor likely had nothing to do with the quaestors who were elected each year, although our sources regularly conflate the two.⁶⁵

The origin of quaestors (the regularly elected magistrate) is more obscure and, in contrast to the aediles, there has been no real scholarship on them. They first appear in Livy in 421 BCE, when a move to add two new quaestors, who will serve the consuls, to the two who already serve the senate is stalled by the tribunes, before a compromise is reached that allows the number of quaestors to be increased to four (Liv. 4.43). From Livy it would therefore appear that the original quaestors, created at some unknown point, served the Senate, while those who looked after supplies for a consul in the field were a late-fifth century innovation. Tacitus, however, suggests nearly the opposite. He says that there were quaestors in the regal period who served the kings, and that when the Republic was founded, the consuls continued to appoint quaestors to serve them. In 443 BCE, the Roman people gained the right to *elect* the quaestors. Then, at some point in the ensuing decades, two more quaestors were added to serve the senate (Tac. *Ann.* 11.22).

While I am generally inclined, when it comes to the Republic, to take Livy over Tacitus, since the latter's treatment of the Republic is almost always cursory, and, as we shall see in chapter two, even this passage has some problems, Tacitus' reconstruction may be closer to the

⁶³ e.g. *dictator clavi figendi causa, dictator rei gerundae causa, decemviri sacris faciundis, tresviri rei pulicae constituendae, tresviri agris dandis adsignandis*.

⁶⁴ It also suggests that the homicide quaestor bears little or no relation to the regularly elected quaestors of the middle and late Republic and are irrelevant to a discussion of the latter.

⁶⁵ Lintott (1999) 134 no. 49; Cloud (1971) 18-26.

truth. His portrait of the quaestorship is consistent in that he presents them as quartermasters for armies in the field from the regal period down into the early Republic. This is a demonstrable need, since even raiding parties, which most early Republican armies likely were, would need someone to look after the weapons, supplies, and spoils. By contrast, the need for the senate to have assistants in the city of Rome at such an early period is less obvious, especially since, as we shall see presently, the senate of the fifth and early fourth centuries had significantly less clout than it would have under the high Republic. Regardless of whether we prefer Livy or Tacitus, however, the quaestorship seems to have existed at least as far back as the early fifth century and was distinct from the more irregularly elected homicide quaestors, although these were somewhat common.

If the prevalence of irregular magistrates suggests a rather disorganized Roman state, the existence of what I term “irregular laws” is even more indicative. It is significant that the *lex Hortensia* of 287 BCE, which gave plebiscites passed by the *concilium plebis*, the plebeian assembly, the force of law, was not the first, or even the second, law that the Romans had passed to validate plebiscites.⁶⁶ There had been two other laws over the past century or so that appear to have done the same thing as the *lex Hortensia*. In spite of these previous laws which made plebiscites binding, the consuls of 312 seem to have tried to ignore an important plebiscite that had been passed just a few years before, and the validity of that plebiscite had to be renegotiated.⁶⁷

Bleicken argues strongly, based on the *lex Hortensia*, and other similar *leges*, that the *leges* of the fifth and fourth centuries should not be regarded as “laws” in the sense that we

⁶⁶ Abbott (1901) 31. The other two laws had been the *lex Valeria-Horatia* of 449 BCE and the *lex Publilia* of 339 BCE.

⁶⁷ Humm (2005) 185. The plebiscite in question was the *plebiscitum Ovinium*, which transferred the right to select the senate from the consuls to the censors.

would understand them (long term decrees of public policy that are binding on the polity that sets them until they are either repealed or reach an explicit expiration date), but as *ad hoc* decisions by the community on a particular issue. There is no sense of permanence to the *leges* passed by the Roman state until around the start of the third century, but instead they are bound to a particular situation and a particular moment.⁶⁸ Traces of this conception of law can be seen in later civic institutions, such as curiate laws that granted *imperium*⁶⁹ and declarations of war and peace.⁷⁰ This impermanence (or irregularity) is important because it renders the Romans unable to supplement the *habitus* of public life with actual laws to define the details of how their state should operate. Until a late date, as we see with the censorship of 312, the Romans still had no clear answer to some of the most basic questions of government. Instead, they needed to negotiate and renegotiate the terms under which their state operated.

Yet in spite of the profound disorganization that characterizes the Roman state in the fifth and fourth centuries BCE, the existence of two treaties with Carthage, preserved in Polybius 3.22-24 (one from the end of the sixth century, one from the middle of the fourth century), suggests that the Roman state was capable of making deals with other states, and had some body of citizens that was capable of negotiating, ratifying, and enforcing treaties. This was probably an early incarnation of the senate, at that point a body composed of the heads of all the *gentes*.⁷¹

⁶⁸ Bleicken (1975) 72-82.

⁶⁹ We should proceed with some caution here, as it is not unclear what the *lex curiata de imperio* actually did. The most conventional view has been that it bestowed *imperium* on the magistrate for whom it was passed, but other opinions abound. Magdelain (1964) claimed it contained language delimiting the powers of magistrates, Nicholls (1967) thought it merely confirmed the vote of the *comitia centuriata* that had voted to elect the magistrate, while Develin (1977) has argued that the *lex curiata* conferred the right to take the auspices. Most recently, Drogula (2015) 105-11 has argued a variation on the *communis opinio* that it conferred *imperium*, in which he limits *imperium* to mean only military power in the field. All agree, however, on the point that the *lex curiata* was not a long-term law, but only affected the magistrate for whom it was passed, and only so long as he remained a magistrate.

⁷⁰ Bleicken (1975) 106-37.

⁷¹ If Drogula is right that 367 was the moment at which the Roman state acquired a monopoly on the use of military force, then it is difficult to imagine how any governmental body prior to 367, other than the heads of all the *gentes*, would have had the authority to ratify such an alliance.

We can, however, say something about the character of the senate in the fifth and fourth century Roman state. Sometime between 317 and 312 BCE,⁷² the *concilium plebis* passed the *Plebiscitum Ovinium*, which transferred the right to determine the composition of the senate from the consuls to the censors. Festus tells us that *...ut reges sibi legebant...quos in consilio publico haberent, ita post exactos eos consules...coniunctissimos sibi quosque...legebant* “as the Kings chose those whom they had in their deliberative body, so, after they had been driven out, the consuls were in the habit of choosing those tied to them” (290L). The ramifications of this change for the role of the senate in the Republic should not be ignored, and Lintott is right to introduce this passage into his chapter on the senate at an early point.⁷³ If the consuls, down until the penultimate decade of the fourth century, could select the senate each year, then the senate’s position with respect to the consuls could only be subordinate.⁷⁴

1.5 The Quaestorship and the Aedileship from 310-275 BCE

It is with this picture of the Roman state in mind that we can now start discussing its character at the end of the fourth century BCE. Our picture at this point is somewhat clear, albeit fragile. As Drogula has argued, most years, both consuls, and sometimes the praetor, would be away at war.⁷⁵ The frequent absences of the praetor on campaign meant that, in the years when

⁷² We are told that the censors of 312 B.C.E were the first to be allotted the *lectio senatus*. This would suggest that the *plebiscitum Ovinium* was passed sometime since the previous census, which would have been in 317.

⁷³ Lintott (1999) 67-8.

⁷⁴ When the consuls proposed a motion or, while on campaign, indicated to the senate that they supported someone else’s motion, there was significant pressure on the senate to give their approval. Of course, we can imagine that there were certain people whose reputations were so great that they could scarcely have been excluded from the senate, and there would have been a solid core of men who remained in the senate each year, but the *lectio senatus* afforded the consuls great power to set policy in Rome, even while abroad, and it is difficult to imagine, prior to the *plebiscitum Ovinium*, a situation like that of 59 BCE, when the newly inaugurated consul, Julius Caesar, proposed a bill to the senate and was stonewalled.

⁷⁵ Drogula (2015) 183-209. cf. Brennan (2000) 58-78, esp. 61-2, who also argues that the praetors were originally military commanders.

he did remain at home, he would have had no fixed role in government, at least not in the way that the other magistrates did. That is not to say he would have been left with nothing to do, but instead that the uncertainty of his position, from year to year, would have hampered his integration into the political structure of the city. He had no regular role, but instead carried out such functions as the senate could find for him.

An example close to our start date is illustrative. In 300 BCE, the people (spontaneously, we are told by Livy) wanted to elect Q. Fabius Maximus as consul for 299.⁷⁶ Maximus had already had a dazzling career: he had been *magister equitum* in 325 BCE, consul in 322, dictator in 315, consul again in 310 and 308, and censor in 304. He was a successful general. When the people seemed inclined to make him consul again, he spoke to them and told them that, since they were not at war, there was no point in making him a general, and that he would be of greater use to them as a civil magistrate. The people then elected him curule aedile (Liv. 10.9.11). In other words, when they wanted to give him the highest military office and he declined, they

⁷⁶ When dealing with Q. Fabius Maximus Rullianus we must proceed with some caution, as his biography is riddled with inconsistencies and errors: he is also attested serving a prior aedileship in 330 BCE (Liv. 8.18) during a curious episode involving poisoning charges that sounds like a second century retrojection. More problematic for our present purposes is the fact that in 10.9.11, Livy notes that there is a debate over whether the aediles of 299 were Fabius and L. Papirius Cursor, or Cn. Domitius Calvinus and Sp. Carvilius Maximus, and says he prefers the latter interpretation, citing Piso as his authority. Münzer, however, rejects this interpretation, on the grounds that the curule aedileship was supposed to be held by patricians and plebeians in alternating years, and that 299 was a patrician year. It has been demonstrated that the Romans adhered to this division of officeholding for the period from 218-91 BCE, after which the practice fell into abeyance. Prior to 218, our record of who held the curule aedileship in each year is very fragmentary, but for the periods where we know the names of the curule aediles, the patterns of officeholding also conform to this pattern (Oakley 1997 vol. 2, p. 33). If this is so, then neither Domitius nor Carvilius, both of whom were plebeians, would have been eligible to hold the office in 299, while the patricians Fabius and Papirius would have been. A possible solution is to move the curule aedileships of Domitius and Carvilius down to 298 (a plebeian year), or to posit that they were plebeian aediles in 299 (the occupants of both colleges are unknown), but this is mere conjecture. In contrast to Münzer, Oakley is noncommittal, but appears to lean toward the opinion that Domitius and Carvilius were aediles that year, because Fabius and Papirius were the type of *maiores* whose careers the annalists tended to embellish, and because this episode is the first in a series of instances where Fabius attempts, with varying success to recuse himself from the consulship (Oakley 1997 vol. 4 p.139-44). Oakley's concerns are reasonable, and Fabius' place in the annalistic tradition is problematic, but I argue the well-demonstrated pattern of the Romans giving the curule aedileship to patricians and plebeians in alternating years should have greater weight than our worries about the annalists: Fabius' *recusatio* may be fabricated, but his aedileship is not. Regardless of any embellishments, however, the whole episode illustrates Roman attitudes toward the aedileship.

decided that the civil office that would be most worthy of his dignity as an experienced and decorated leader was not the praetorship, but the aedileship.

A portrait of the Roman state during the early third century should therefore start from a recognition that, much of the time, the consuls and the praetor would have been away on campaign and would have had little role in the operation of the city. This may seem obvious, but most treatments of the Roman state understandably examine the individual magistrates and their roles in the state separately, rather than together.⁷⁷ Doing so can create a less confusing picture and allow the scholar to deal with each component of the Roman state individually, but something is lost in the process. A view of the Republic which attempts not only to explain the actions of all the individual magistrates, but also to show how they move together, paints a different picture from the one we see if we examine them individually.

What will emerge in the following sections is that the aediles and quaestors were integral to the functioning of the state. The aediles were the magistrates tasked with control of the city and, as such, were what passed for civic administration in the middle Republic. The quaestors, meanwhile, were adjutants, both to the senate and the senior magistrates, and were assigned many important, if simple, tasks to ensure that the state kept running. The quaestors were not without experience, and some would already have served in minor capacities as military tribunes or one of the many boards of irregular magistrates, such as the *tresviri capitales*. They did not however, have a great deal of experience, and one of the recurring themes in our treatment of them will be the extent to which they were given positions that allowed their work to be overseen and evaluated by those with greater experience.

⁷⁷ e.g. Mommsen, *Röm. Staatsr.*; Lintott (1999). To a large degree this is unavoidable, and this dissertation will focus in on individual magistrates quite a lot as well, but it is helpful to occasionally return to the big picture.

Many of the tasks that we discuss here will be explored in greater detail in chapters four and five, during our discussion of these offices in the second century. It may seem strange to treat some of the same material twice, but a basic assumption of our approach to the Roman state is that these offices changed significantly over time and that managing the *aerarium*, for example, was not the same job in the late fourth century as it was in the second century.

1.5.1 *Quaestores Consulares*

When the consuls went on campaign, they took with them two of the four quaestors then in office. We are on rather solid footing with the quaestors who served under the consuls. Most prominently, the consular quaestors each served as the quartermaster for the army with which they were stationed, and they performed the crucial task of keeping track of all supplies in the camp, as well as requisitioning supplies from allies.⁷⁸

We also see the consular quaestor, however, serving as the *aide-de-camp* of his consul, and, in this capacity, he would perform a wide variety of tasks. During the sacking of Syracuse in the second Punic war, the consul Marcellus instructed his quaestor to take a detachment of men and guard the city treasury, so that it would not be looted by his own soldiers, so that Marcellus himself could then loot it and include its contents among the spoils that he carried back to Rome (Liv. 25.31). At around the same time, during his Spanish campaigns, Scipio Africanus assigned his quaestor on a couple of occasions to deal with foreign captives, sometimes for the purpose of

⁷⁸ Plutarch's life of Gaius Gracchus contains a memorable scene in which Gaius, as quaestor in Sardinia, is tasked with requisitioning clothes from the locals. After interference from the senate makes his task more difficult, he uses oratory to persuade the locals to give him the requisite clothing (2.9).

enslaving them, at other times in order to restore them to their people, depending of course on the type of message Scipio was seeking to send (Liv. 26.49, 27.19).⁷⁹

These examples give us a solid impression of the types of things a quaestor was expected to do on campaign. He was, of course, a quartermaster, but this category is rigid to the point of being misleading. He was, first and foremost, the assistant of his consul, and he was expected to do anything and everything that the latter asked. His work often included things that were beneath the dignity of the consul, but he could also find himself receiving assignments in situations where the consul could not be in two places at once and needed a competent representative to carry out his instructions.

The relationship between a consul and his quaestor was celebrated as a special one within Roman society and was a cultural commonplace.⁸⁰ Cicero speaks of the relationship as being almost paternal and plays with this trope in his writings. He upbraids Verres for betraying his consul, Cn. Carbo, to Sulla, when he was the former's quaestor (*Ver.* 2.1.34-7). On his return from exile, Cicero takes care to thank both his quaestor from his consulship, and the man for whom he himself had been a quaestor (*Red. Sen.* 21). Conversely, toward the end of his governorship in Cilicia, he agonizes over whether he should leave his quaestor, whom he thinks is incompetent, in charge of the Province on the expiry of his governorship.⁸¹ The fact that Cicero publicly cultivated ties between consuls and quaestors while in private expressing reservations about his quaestor suggests to us that the consul's mentorship and patronage of the quaestors was a long-standing cultural norm that he thought he could not ignore.

⁷⁹ The example of Scipio and his quaestor is an interesting one, because, during his Spanish campaigns, Scipio held no magistracy, regular or irregular, within the Roman state. The senate had given him *imperium* and the *provincia* of fighting the Carthaginians in Spain, without any office attached to it. Nevertheless, the presence of a quaestor in his camp would suggest that, regardless of his official position, the senate and his soldiers endeavored to treat Scipio as a consul in all but name.

⁸⁰ Mommsen, *Röm. Staatsr.* 2.563.

⁸¹ *Att.* 6.3, 6.4, 6.6; *Fam.* 2.15 = SBA 117, 118, 121; SBF 96.

The quaestorship was an opportunity, not just to “learn the ropes,” but to build ties of *amicitia*⁸² and to network with people who could help the quaestor advance his own position in public life. By serving under a consul and helping him to advance his own interests, the quaestor was doing a favor, not so much one that the consul was obligated to return, but one that he would be embarrassed to be unable to return.

This discussion of the consular quaestors has focused on their role on campaign to the exclusion of what they would have done in those months (or years) when the consuls stayed at home. Here we are hampered because quaestors are not usually singled out, and so if they are not in the field with a general it is very difficult to tell whether they are urban quaestors or consular quaestors. This is in part a result of the pronounced lack of interest of Roman sources in the activities of the lower magistrates, but it may suggest that the role of a consular quaestor *domi*, at home, was not much different from his urban colleagues.

1.5.2 *Quaestores Urbani*

With the magistrates *cum imperio* away, the city would have been left in the care of the four aediles, the plebeian tribunes, and two of the four quaestors elected each year. The urban quaestors appear to have been tasked with a wide array of crucial, albeit often simple, civic tasks, the aim of which was to allow them to gain experience in the types of things that were expected of them as public officials, in an environment that was either low pressure or at least afforded them recourse to advice from those with more experience. The urban quaestors have been regarded as Rome’s state treasurers, and indeed by the end of the Republic, probably even by the second century, this was their most important function.

⁸² “Friendship,” although *amicitia* has a more political thrust than our English word, and often denotes people who are plainly political allies.

It is not clear, however, that this function was so important at our start date. While translators are happy to gloss *aerarium* as “treasury,” its more literal meaning is “the place where the bronze is kept.” This distinction is significant when we consider the state of the Roman economy at the turn of the third century: the Romans do not begin minting coinage until around the end of the war with Pyrrhus in 275 (Crawford 1985: 30). That is not to suggest that the *aerarium* was never used to hold money, or that the Roman economy was not monetized on some level.⁸³ Rather, the presence of state-minted money indicates a certain degree of interest on the part of that state in what happens in the economic sphere. If there is no such state intervention, it is difficult to imagine that state will have a sophisticated apparatus for bringing in and paying out money. While money was held in the *aerarium*, Livy also has the quaestor being ordered to fetch the battle standards for the army out of the *aerarium* on two occasions during his first ten books (3.69, 7.23). These passages contain a potential anachronism, since we have no solid evidence for the use of standards by the Roman army until around the beginning of the first century BCE,⁸⁴ but they are indicative of the types of things the Romans thought ought to be kept in the *aerarium*. Less problematic is the mention by numerous sources⁸⁵ that decrees of the senate, inscribed in bronze, were stored away in the *aerarium*. The *aerarium* of the third century BCE was less Fort Knox, more government warehouse and state archive. Moreover, while control of the *aerarium* was one of the tasks assigned to the urban quaestors at the start of the third century, it was only assigned to one of the two urban quaestors, and it is unlikely that this task monopolized his time. It was one of many functions he performed for the senate.

⁸³ There is reason to think that the Romans made some use of foreign coinage. This practice can seem peculiar to modern people, but n.b. that in an era before fiduciary currency, money had little value beyond the metal it was coined out of. It mattered little to the Romans what face was stamped on the coinage, since it was likely the face of some deity that they had in common with the people who had minted the foreign money.

⁸⁴ Armstrong (2016) 266-7 suggests that the *triarii*, *rorarii* and *accensi* in the early Roman army may have made use of standards similar to those which Marius would later introduce to the Roman army, but this is ultimately uncertain.

⁸⁵ Plu. *Cat. Mi.* 16-17, Tac. *Ann.* 3.51, etc.

Beyond control of the *aerarium*, it is not clear what roles the urban quaestors carried out within the Roman state around the beginning of the third century BCE, since our literary sources for this period are both scarce and uninterested in the quaestors. We may suppose that they were kept busy running errands or seeking out information that could influence decisions in the senate. At any rate, they were evidently busy enough that, shortly after our end date, around the year 267, the senate expanded the office so that there were eight quaestors appointed each year. We will discuss this development and the expansion of the quaestorship at greater length in the next chapter, but what matters for our purposes here is that in the third and second centuries, it was not unusual to assign to quaestors tasks relating to foreign policy in some capacity, such as relaying messages from the senate to Rome's allies. We can therefore posit, I think, that the quaestors of the early third century held diplomatic posts on occasion, although their tasks varied. At the same time as their two colleagues served the consuls, it was the duty of the urban quaestors to attend to the needs of the senate, and to carry out any tasks which that body might assign to them. The majority of these tasks were simple, and the tasks that were more involved, such as oversight of the *aerarium* allowed for a great deal of supervision. There appears to have been a desire to keep the more difficult tasks, where serious missteps might occur, out of the public eye.

1.5.3 *Aediles Curules et Plebis*

As the authority of the quaestors was so confined, that of the aediles was correspondingly wide. Each year, the Roman people elected two curule aediles, and two plebeian aediles. The distinction between the two offices deserves some comment, although there was already significant overlap in their duties. By the end of the Republic, the distinction had almost

completely elided, but at this point it was still noticeable. The curule aedileship was open to all Roman citizens, with patricians and plebeians holding it in alternating years, although this strict division had broken down by the Late Republic. They were distinguished by the curule chair, a portable seat that was the preserve of the senior magistrates, and the toga praetexta, a toga with a broad purple stripe that was the garb of a senator. The plebeian aediles, by contrast, could be held only by members of the plebs, and had neither of these privileges.

The curule aedileship appears more prestigious, and the story of Cn. Flavius, curule aedile of 305 BCE (Liv. 9.46, Gel. 7.9.2), suggests that it was the preserve, if not of the patricians, then at least of the city's political elite. This assessment is reinforced by the number of curule aediles from this era who also served as consul: of the twelve curule aediles whose names survive down to us, eight held the consulship at some point in their careers, in contrast to the two surviving names of plebeian aediles, neither of whom made it that far.

The aediles were tasked with a dizzying array of duties that included repairing such infrastructure as Rome had, keeping the streets clean (or more accurately, compelling citizens to keep any streets that abutted on both their houses and on public property clean and in good repair), repairing temples, overseeing the maintenance of aqueducts, overseeing the markets, burning books deemed immoral, prosecuting poor behavior of any stripe, including fraud, adultery, subversive or offensive speech, sorcery, and even criminal conspiracy, provided the latter did not constitute an existential threat to the state.⁸⁶

Discussion of the aediles comes, per force, to the *cura ludorum*, their duty to provide games each year for the entertainment of the people. By the end of the Republic this was their

⁸⁶ In such cases when a criminal conspiracy did threaten the state, the senate tended to involve itself, and the investigation and eradication of the conspiracy was delegated to the consuls or the praetor. c.f. the Bacchanalian scandal, in which the aediles were instructed to do much of the legwork for the consuls, who were in overall control of the investigation.

most important duty, and a number of letters exchanged between Cicero and his friend Caelius illustrate how seriously many aristocrats took this obligation (Cic. *Fam.* 2.8-16, 8.1-17). A memorable show was an invaluable springboard into the higher magistracies, and there is a sense in our sources from the first century that an aedile's primary duty was, in effect, to campaign for the praetorship. That is not to say it was his only duty, and in his *Verrines*, Cicero (who was then plebeian aedile elect⁸⁷) enjoyed reminding the jury that he would soon be in an even more commanding position to prosecute the defendant once he took office (Cic. *Ver.* 2.5.151, 173). As will emerge in chapters three and five, the priorities of the aediles shifted over the course of the Republic.

This state of affairs does not appear to have prevailed in the early third century. Anecdotes about aediles from this period make almost no mention of games. In fact, there is some debate about whether both colleges of aediles even had responsibility for games prior to the Hannibalic War, and we should consider this argument carefully before we turn to discuss the role of the aediles in the Roman state during our time period.

Of the five games for which the aediles were responsible by the end of the Republic, one (the *ludi Romani*) is definitely from the fourth century or before, two (the *ludi Florae* and the *ludi Megalenses*) are confirmed to have been created in the decades surrounding the Hannibalic war, and two (the *ludi plebeii* and the *ludi Ceriales*) are disputed. If these last two were created around the time of the Hannibalic war, as many scholars suggest, then it would mean that, in the early third century, only the curule aediles were responsible for any games at all. This was the position of Mommsen, Bernstein, and, most recently, Becker, who uses the advent of these

⁸⁷ Taylor (1939) raises a number of arguments for why Cicero was a plebeian aedile, not a curule one, but her strongest is that it is unlikely that Cicero would have failed to refer to himself as a curule aedile, if he could have done so.

games to explain the ramping up of costs of the *ludi*, as well as the noticeable reorientation of the aedileship around games in the second and first centuries BCE.⁸⁸

The question of when we date the creation of these games is unexpectedly important for Roman history and has become a source of controversy because T.P. Wiseman, as part of his argument for the unreliability of the early annalistic tradition, has argued that *ludi scaenici*, theatrical productions that occurred in the course of the games, were an important source used by the annalists to *create* Roman history. He thus wants the games whose dates are not secure to be early so that the *ludi scaenici* can be a source to which Fabius Pictor was looking back (Wiseman 1995: 129-44). Critics of Wiseman's approach to Roman history, meanwhile, would like to see a late date for most of the games so that they Fabius can be exonerated on the charge of having relied on theatrical productions for the composition of his history.

For the reasons outlined in 1.4, I am more sympathetic to Wiseman's position on the annalistic tradition in general, but there is reason to be skeptical of the existence of *ludi scaenici* in the fourth century.⁸⁹ I would like to point out, however, that the early existence of these festivals and of theatrical productions in the fourth century are separate issues. It is perfectly possible to argue that the *ludi plebeii* and *Ceriales* existed alongside the *ludi Romani* from an early date, but that theater only became a part of these games later on.⁹⁰ While I remain agnostic on the broader question of *ludi scaenici* as a source for Roman history, I will be arguing that the

⁸⁸ Mommsen, *Röm. Staatsr.* 519-20; Bernstein (1998) 79-80, 158-63, 358; Becker 188-201, 224-8. Scullard is non-committal on the age of *ludi ceriales*, only noting that they are first attested in 202, but does endorse the idea that the *ludi plebeii* were created just before the Hannibalic war (Scullard 1981: 101, 196-7).

⁸⁹ Bernstein 's fourth chapter (1998: 227-312) explores the Roman aristocracy of the late fourth and early third century, arguing that the philhellenic style of self-presentation was a development of the late third century, and therefore that *ludi scaenici* would not have been a part of the games put on in the late fourth or early third century. Flower (1995), meanwhile, argues that *ludi scaenici* of the kind Wiseman describes were features of votive games, not public games.

⁹⁰ The disconnect between the games and theatrical depictions of Roman history was already recognized in Harriet Flower (1995).

plebeian games and probably the games to Ceres were an early development. But first, we must consider the evidence for when these games were founded.

The argument that the *ludi plebeii* and *Ceriales* did not exist until the end of the third century tends to start from the point that both go almost unmentioned prior to this period. This is true, as far as it goes, but even the *ludi Romani*, which were the most important games in the Roman state, and which are agreed to date to the early Republic, are barely mentioned at all prior to the second Punic war. Livy mentions them precisely once (6.42.14), in the passage on the creation of the curule aediles that we discussed in 1.4. Dionysius mentions that the plebeian aediles were made responsible for games shortly after their creation (6.95.4) and provides a description of the games a book later (7.72.1-73.1-4). Annalists describing the early Republic were not very interested in the games, and so their silence about the *ludi plebeii* and *Ceriales* should not surprise us.

From here, arguments for the late creation of these two sets of games diverge. Mommsen proposed that the *ludi plebeii* were held in the Circus Flaminius, based on a passage of Valerius Maximus that describes the Plebeians holding games there in 491 BCE (1.7.4). This passage is anachronistic, since the Circus Flaminius was not built until 220 BCE,⁹¹ but Mommsen believed that Valerius was describing the games as they occurred in his own time, and that the *ludi plebeii* had always been there, meaning that they did not predate the construction of the Circus Flaminius (*Röm. Staatsr.* 519-20).

The argument for a late creation of the *ludi Ceriales* rests on a coin that was minted in 56 BCE by C. Memmius, in which he claims that his ancestor, an aedile, was the first to put on the

⁹¹ Liv. *Per.* 20, cf. Scullard (1981) 196-7, cf. Fowler (1899) 252. On the anachronism, see Wiseman (1995) 211 no. 29.

games of Ceres.⁹² The first Memmius to show up in the list of Roman magistrates is a praetor of 172 BCE. Since the first mention of the *ludi Ceriales* comes in 202, and since we know who all of the plebeian aediles were from 210-196 BCE, Broughton concluded that the first games of Ceres were put on sometime in the decade or so before 210 by the father or grandfather of the praetor Memmius.⁹³

Whether or not we endorse Wiseman's larger argument about *ludi scaenici*, his refutation of the arguments for an early date for the *ludi plebeii* is sound. He argues first that they were never held in the Circus Flaminius, because the space was not large enough to accommodate the chariot races that were central to the *ludi*.⁹⁴ Second, given how much information we have about the games that we do know were created during this period, it seems very unlikely that the second-most important games in the Roman state could have been created at this time without anyone recording it (Wiseman 2008: 169-72). This second point has not been emphasized strongly enough. Bernstein argues that we have early traditions of the *ludi Ceriales* and *ludi plebeii* due to the influence of the early annalist Fabius Pictor (1998: 91-3), but the late date at which he is arguing these games were created was during the lifetime of Fabius Pictor. It is scarcely credible that these games could have been created in Fabius' own day without him knowing about it.

Wiseman's third point is that Cicero's description of the *ludi plebeii* as the ...*ludos antiquissimos, qui primi Romani appellati sunt*... "the most ancient games, which were first called [*ludi*] *Romani*" (Cic. Ver. 2.5.36) suggests an historical argument, probably attributable to Licinius Macer, to the effect that in 367 the games had not been *transferred* from the plebeian to

⁹² Crawford (1974) 451-2 no. 427. The coin bears the legend *MEMMIVS AED. CERIALIA PREIMVS FECIT*.

⁹³ Broughton *MRR* 1.273 s.a. 211, cf. Bernstein (1998) 358, who treats as an actual date what in Broughton had effectively been a *terminus ante quem*.

⁹⁴ Wiseman (1995) 211 no. 29; argued at greater length in (2008) 169-72.

the curule aediles, but instead had been *split* between the two elected offices. That argument would only bear weight if the *ludi plebeii* were of an age comparable to that of the *ludi Romani*, or at least old enough that the Romans did not remember when they had been created. Fourth, the parallels between the *ludi plebeii* and *Romani* – both put on by aediles, both honoring the same gods, featuring the same events, and taking place in the fall – suggest that these two festivals were conceived as a pair, and their positioning in months that had no other important festivals suggests that they already existed when the Roman civic calendar was created in the fourth century, at the latest (Wiseman 2008: 169-72).

Wiseman's argument against a late date for the games of Ceres, meanwhile, is less conclusive, and does not preclude the possibility that the argument put forth by Münzer about the ancestor of Memmius is correct. He points out, however, that, while we have no Memmii recorded as holding public office prior to 172, the family was extremely old and claimed descent from the Trojan kings. Both in their pedigree and in their absence from the list of magistrates prior to the second century, they are similar to the Sicinii, who nevertheless managed to have an ancestor inserted into the annalistic tradition as part of the first college of plebeian tribunes in 493 BCE. Memmius may have been attempting a similar move with his minting of coins in 56. If so, the Romans must have believed the *ludi Ceriales* were genuinely old, probably dating back to the fourth century or earlier.⁹⁵

I think we can go a little further than this in arguing for the likelihood of an early date for the games of Ceres. This goddess was associated with the plebs from a very early date, and Becker's own argument about the creation of the plebeian aediles rests on this association.⁹⁶

⁹⁵ Wiseman (2008) 172-4. For the Sicinii among the first plebeian tribunes, see Broughton *MRR* vol. 1 (1951) 15 s.a. 493.

⁹⁶ Becker (2017) 50-62 rejects the idea that the plebeian aediles were priests of Ceres but does think they were associated with the cult.

Games for Ceres organized by the aediles of the plebs therefore look like an early invention. The *ludi Ceriales* also centered on the *fordicidia* on 15 April, a sacrifice that was organized by *curiae*. The arrangement of public ritual around the *curiae* is quite archaic and the *fordicidia* almost certainly dates to the early Republic.⁹⁷ That does not necessarily mean the games that bookended it are equally old, but all of this together, along with the absence of any story for the creation of the *ludi Ceriales*,⁹⁸ does suggest that they are rather older than the date of 211 that has been given to them. They likely already existed by our start date of 310 BCE but may have been created during the early third century.

Going forward, we will proceed from the assumption that in the late fourth and early third century, the curule aediles were responsible each year for the *ludi Romani*, while the plebeian aediles were responsible for the *ludi plebeii* and probably the *ludi Ceriales* as well. While I agree with Becker that the aediles became increasingly preoccupied with games in the second and first centuries, this was not the result of the plebeian aediles acquiring for the first time the responsibility of holding games. My own explanation for this phenomenon will emerge over the course of chapters three and five.

So far as we have seen, the games were a regular event put on each year by both colleges of aediles, but they do not appear to be a topic of much interest to the Roman historians. Instead, anecdotes emphasize their duties prosecuting frauds and usurers (Liv. 10.23.11), fining immorality (Liv. 10.31.9) and managing the markets to keep prices low. In the latter instance, Livy even goes so far as to compare a successful aedile to a general: ...*qualis in bellicis rebus*

⁹⁷ Palmer (1970) 121, 183 certainly treats the *fordicidia* as a feature of the early Roman state.

⁹⁸ Significantly, the two *ludi* that we know to be from around the late third to early second century both have elaborate accounts of how they were created, involving the construction of a temple, the one-time performance of games, the intermittent repetition of said games, and a decision by the senate, a decade or more later, to make the games an annual event.

multis tempestatibus fuerat, talis domi tum in annonae dispensatione praeparando ac convehendo frumento fuisset. "...as he had been in military matters on many occasions, so he was then at home in taking care of the stewardship of the market and bringing in grain" (Liv. 10.11.9).

If we turn away from anecdotes and take a more quantitative look at the people who achieved office during this period, a similar picture emerges. This is an exercise that Becker undertakes briefly as well,⁹⁹ but his decision to group together all of the aediles from 367 BCE down to the dictatorship of Sulla in 81 prevents any clear conclusions from being drawn. It is better to consider together numbers from the same twenty- or thirty-year period, and contend with a paucity of numbers, for which we can compensate.

The consulship during the period under consideration was to a large degree dominated by a dozen or so great men who each held the office multiple times over the course of their careers. The result was that the number of aediles, from 310 to 275, who had the opportunity to make it to the consulship was low, and it appears (although it is difficult to say for certain), that these were overwhelmingly curule aediles: Of the sixteen attested aediles during this period, nine held the consulship as well. This total (56%) is above the theoretical maximum number of ex-aediles who could reach the consulship (50%),¹⁰⁰ and suggests the unsurprising conclusion that our sources favor the careers of successful politicians. Moreover, of the nine who made it to the

⁹⁹ Becker (2017) 140. Becker's approach here is simply to count all of the aediles known from 367 down to 81 and calculate the percentage of them that made it to the consulship. Taking a simple average, as he does, erases fluctuations in the later success that these officials had and assumes either that there was no difference in the career paths of aediles in the third and first centuries BCE, for example, or at least that those differences were not interesting.

¹⁰⁰ Since there were four aediles and two consuls each year, it followed that only fifty percent of aediles could go on to the consulship. Of course, people could run for consul a second or third time, if they failed at their first attempt, and so it was possible that, in a given year, all of the aediles *might* be future consuls, but if so then two of those aediles would be taking the opportunity to serve as consul away from the aediles of some other year, thus preserving the fifty percent maximum.

consulship, six made it to multiple consulships, and two made it to at least three consulships. Livy's narrative is not just highlighting the careers of successful Romans, but of *wildly* successful Romans, and we can conclude that the number of aediles who made it to the consulship was much lower.

This bias of the numbers is itself informative, however. Every consulship comes with an opportunity cost: when one Roman is elected to that spot, none of his peers can be. What this means is that every consulship beyond the first is a consulship that another former aedile will not be able to hold, which therefore reduces the percentage of ex-aediles that can make it to the consulship during our period by about 1.4% (one out of 72 consular positions). There were twenty-four "additional" consulships held during this period, ergo the maximum number of aediles who could have made it to the consulship was 33% (72 consular positions, minus 24 "additional" consulships, and divided among 144 aediles). This is a theoretical maximum and operates under the assumption that every consul was a past or future aedile. The actual percentage of aediles who made it to the consulship is unknowable but was probably somewhere in the range of 20-25%.

When considering the outcome of elections, some game theory will be helpful at this juncture: the Nash equilibrium discusses the way that individuals operate in situations where one person stands to gain at another person's expense. Nash argued that we cannot understand people's motivations in a vacuum, but only in conjunction with those of other people. He further asserts that in competitions, such as a sporting event — or, for that matter, an election — the amount of effort exerted is correlated with the perception that effort will affect the outcome. If a person believes either that he (I use the masculine pronoun since the subjects in our case were all men) will win no matter what, or that he has no chance of winning, his effort will be minimal. If

the contestant or candidate believes more effort will affect the outcome, he will put in that effort (Szymanski 2009: 30-2). It follows, then, since rather few aediles made it to the consulship (and probably almost no plebeian aediles), that Roman aristocrats would have had little desire to hold the aedileship as a stepping stone, since it was not an effective strategy for reaching the highest office. The prospect of making it to the “higher” magistracies was not what motivated these men to campaign for the aedileship.

This argument is confirmed when we look at some of the people who held the aedileship during this period. In at least two of the cases, those of Ap. Claudius Caecus in 305 and Q. Fabius Maximus Rullianus in 299, the aedileship was held *after* these men had already served as consul. Fabius’s case is striking, because, as mentioned before, by the time he ran for aedile in 299, he had already served as consul three times, censor, dictator and *magister equitum*.¹⁰¹ He was not holding this office as a springboard to some other position, especially since, at the election, the people offered him the consulship and he turned it down in favor of a civil magistracy (Liv. 10.11.9). On the other end of the spectrum is Cn. Flavius, who was a scribe and client of Caecus, and held the curule aedileship the year after his patron did. He had no designs even on a seat in the senate, much less hope of a consulship.¹⁰² If the aedileship was not a springboard to bigger and better things, then it was desirable in its own right, and it is not difficult to see why. As mentioned previously, the aedile’s duties included a very wide array of disparate tasks that made the him one of the most important men in the city.

The diverse nature of the aedile’s responsibilities is itself a problem, and Mommsen’s attempt to flesh out a full Roman constitution is at its weakest when he attempts to integrate the

¹⁰¹ Broughton *MRR* vol. 1 (1951) 147 s.a. 325, 167 s.a. 304, 173 s.a. 299.

¹⁰² At his election, the tribunes objected to him as a candidate because it was disgraceful that somebody with a job should sit in the curule chair, and Flavius was forced to take an oath that he would quit his job if elected before he was allowed to stand for the office (Gel. 7.9.2; Liv. 9.46).

aediles into that theory. A constitutional approach to government entails specific spheres of competence for the various organs of state.¹⁰³ The aedileship baffles attempts to categorize it in such a way, and Mommsen's explanation for the rationale behind these duties is both scarce and weak.¹⁰⁴

The rationale behind this diversity of function comes into focus when we consider the context in which the aediles were operating at the start of the third century (which was not all that different from the circumstances going back to the office's inception). Much of the time, they and the urban quaestors, whom we have already established were kept on a short leash by the senate, were the only magistrates in the city. Their competence was not determined topically, as in a constitution, where titles such as "attorney general" or "housing and urban development secretary" make perfect sense. Instead, the competence of the aediles embraced all of Rome's urban life. Their role was to provide for the smooth operation of the city, whether that entailed seeing to it that the streets were clear, that the buildings did not catch fire or collapse, that people were kept safe from disease, sorcery, and fraud, or that they did not create strife through public dissidence. In special circumstances, such as when an extended investigation was required, or when a particular task would interfere with the aedile's duties, a special board of a few men might be constituted for that specific task, but otherwise most civic tasks fell within the aedile's competence.

¹⁰³ For example, the President of the United States is envisioned as the chief executive of his country, and most of the office's duties can be traced back to the twin roles of commander-in-chief and chief law enforcement officer.

¹⁰⁴ e.g. in 2.509 he claims that the aediles were in charge of book burnings because they were in charge of preventing fires in the city and could ensure that there would be a controlled burn. This explanation is wholly inadequate. First, it treats book burnings as a public safety issue when they are more an issue of public morality. Second, it ignores the larger issue of the disconnect between the aediles' duties as supervisors of public morality, maintainers of infrastructure, and regulators of the markets.

The wide competence of the aediles also brought them into frequent contact with the ten plebeian tribunes. When the consuls and praetors were away, the tribune was the only remaining official in the city capable of convening the senate.¹⁰⁵ This meant that, any time the aedile wished to ask the senate for their *sententia*, opinion, on a given matter, he was dependent on the tribune to call them into session and to pose the question to them. The tribunes were the only men remaining in the city with any legislative capacity, and with the recourse to obtain any wider consensus from the community. The aedile was tasked with a wide variety of very public tasks, but if he wished to have guidance on an unusual matter when the senior magistrates were away, he needed not just the acceptance, but the active collaboration of the tribunes. If either the praetor or the consuls were in the city, then the cooperation of the tribunes was unnecessary, but the unpredictability of this situation (well into the third century, war with some community on the Italian peninsula was common), as well as the ability of a hostile tribune to impose a veto, gave the aediles every interest in maintaining good relations with the tribunes.

1.6 *Faciendum Coeravit Eidemque Probavit*

Before concluding our discussion of the quaestorship and aedileship of the early third century, I want to draw our attention to one of the most important functions carried out by both of these offices (and, indeed, by nearly all magistrates, in varying circumstances¹⁰⁶): the letting out of contracts from the state to private contractors. Mommsen argued that this was a function confined to the higher magistracies and that quaestors rarely carried it out when ordered to do so by other organs of the state. His reasoning was that there are only three references to its

¹⁰⁵ Gel. 14.7.4; Lintott (1999) 75 no. 45. By contrast, the aediles could summon the *comitia tributa* and the *concilium plebis* (Lintott 1999: 43).

¹⁰⁶ Most famously the censors, whose most important function, so Polybius claims (6.13), was letting out contracts.

occurrence,¹⁰⁷ and in all of those cases, the quaestor's *probatio* came at the behest of either the senate or a senior magistrate (*Röm. Staatsr.* 2.1.426). More recent discoveries, from after our time frame, however, have cast doubt on this conclusion. A series of eleven bronze ship's prows (termed "rams" because they were designed and used in order to ram the sides of enemy vessels) have been discovered in the last decade or so off the northwest coast of the Egadi islands, artifacts of the last battle of the first Punic War. Seven of these rams are inscribed with the names of the magistrates who *probavit*, "approved" them,¹⁰⁸ and with the exception of one ram that was approved by a board of six men – Prag's group III (Prag (2014b 44-7) – all of these rams were approved by quaestors.¹⁰⁹

Which type of quaestor approved the rams is more difficult to discern.¹¹⁰ At the time when the rams were created,¹¹¹ the Roman treasury was likely depleted by the length and expense of the war, so these quaestors were not approving the removal of bronze from the treasury, *per se*, but approving the contract to have the raw materials transported from their point of origin in Etruria and forged into rams for a fleet. On those grounds, it is possible that the *probatio* was made either by the urban quaestors or consular quaestors. The presence of two quaestors on each ram in group II, however, suggests that the *probatio* was made by the urban

¹⁰⁷ Cic. *Phil.* 9.16; *CIL* VI 358 = *ILLRP* 160; *Fron. Aq.* 96.

¹⁰⁸ the remaining four are either illegible, in Punic, not yet cleaned, still on the ocean floor, or some combination of the above.

¹⁰⁹ Prag (2014b) 36-44 organizes these rams into two groups: of the first group, the inscription of egadi 8 is typical: L. QUINCTIO C. F. QVAISTOR PROBAVET, *L(ucios) Quinctio(s), C(aii) F(ilius) quaestor probavit* ("Lucius Quinctius, son of Caius, the quaestor, approved this"). The inscriptions of the second group are similar in their content, but each list two people, both quaestors, and abbreviate the office down to a "Q," and the *probatio* down to a "P."

¹¹⁰ They are not Mommsen's *quaestores classici*, "fleet quaestors," because, we shall see in the next chapter, those never existed and arise from too much faith in Johannes Lydus, a source who is both very late and difficult to reconcile with any of our other sources.

¹¹¹ Prag (2014b) 58-59 suggests that these two groups represent ships that the Carthaginians had captured at Drepanum, and then hastily redeployed when they were caught by surprise by Catulus' fleet in 241. If he is right, and I think he is, then the likely date of construction was sometime during the decade of the 250s.

quaestors;¹¹² the presence of only one quaestor on each of the group I rams could suggest that those rams were approved by one of the consular quaestors, but more likely suggests inconsistent inscriptional practices. In any event, the probable source for the *probatio* is the urban quaestors.

The order to let out a contract, then, came down from the senate, but that is not the end of the story, and the rams still have more to tell us. The *probatio* mentioned in the inscriptions denotes only the last step in a longer process: the final inspection and approval, during which the quaestor affirmed that the work had been adequately completed. Other inscriptions from in and around Rome offer more information. The *Pons Fabricius*, which connects the Campus Martius to Tiber Island, bears the following inscription (*CIL* VI, 1305): *L(ucius) Fabricius C(ai) f(ilius) cur(ator) viar(um) faciundum coeravit eidemque probaveit* (“Lucius Fabricius, son of Gaius, caretaker of the roads, presided over the building process and approved it.”). Likewise, *CIL* VI, 1313: *[Q(uintus) Lu]tatius Q(uinti) f(ilius) Q(uinti) n(epos) C[atulus co(n)s(ul)] / [de s]en(atus) sent(entia) faciundu[m coeravit] / eidemque [p]rob[avit]* (“Quintus Lutatius, son of Quintus, grandson of Quintus, Catulus, consul, on the opinion of the senate, presided over the building process and approved it.”). The magistrate in charge of testing the finished product to see to it that it was up to standard was also tasked, therefore, with letting out the contract and overseeing (if only formally) the construction.

The *probatio* also implies, however, a set of standards according to which the finished product would be judged, and we are lucky to have an example of these standards in the *lex parieti faciendo puteolana* (*CIL* X, 1781). The latter is a lengthy inscription for a wall built in

¹¹² Roman commanders avoided campaigning together, so as to avoid stepping on each others’ toes, and so it is very unlikely that each consul’s quaestor would be in a position to offer a joint *probatio*, as we see in group II. While only one quaestor was in control of the treasury, the two urban quaestors were capable of working together, and were more likely to do so in a given year than the consular quaestors. The peculiar format of the *probatio* reinforces this interpretation: while two quaestors are listed, the “p,” for *probavet* only comes after one of their names, probably that of the *quaestor aerarii*.

105 BCE by a local duumvir named Marcus Avianius, who was financing the wall himself. I have included the text of the inscription, with a translation, in the appendix, but what matters for our purposes is that the contract contains three columns of detailed instructions, including the wall's required length, composition, and method of construction, complete with a perfunctory *opere effecto probatoque* ("since the work was completed and approved") denoting the *probatio* at the end of the process. We can thus well imagine that the contracts for the Egadi rams (and the other components of the ships) would have been similarly detailed and contained all the specifications necessary both to communicate to the contractors what was expected of them and, conversely, to provide grounds for the state to reject shoddy workmanship.

We may therefore infer from the *probatio* on the Egadi rams that magistrates letting out contracts had access to and consulted specialists (shipwrights, in this case) who could outline for them what was needed for a given building project and help them write the contract language. Whether these specialists were government employees, personal adherents of the magistrate, or were themselves contracted to provide information (probably the same people did not write the contract and fulfill it) is unclear. I incline toward the latter view, as it would be the most efficient way to proceed for a state that was already paying private companies to provide goods and services to the state.

While we might suppose that the aediles employed a similar process in their routine duties to the state, the presence of surviving inscriptions attesting to their involvement in the Roman system of contracting means that we can rely on substance rather than supposition. Most prominently, the *Tabula Heracleensis*, written sometime in 45 or early 44 BCE (Crawford 1996: 360-2), outlines for us the process for the maintenance of the road system. The *Tabula Heracleensis* is at a great remove from early third century Rome, but while we must exercise

caution and avoid retrojecting the details of a Caesarian law back to the age of Appius Claudius Caecus, the general process offers some insight into the way that the care of Rome's infrastructure proceeded during the period under consideration.

Lines 24-49 of the inscription describe the administrative process of road maintenance. The aediles then in office were to divide the city into quadrants, for one of which each of them was responsible. Any road along which there was a public building or temple was under the jurisdiction of one of the aediles. If he deemed that a private individual who also owned property along that road had been lax in maintaining it, he was to post a notice in the forum announcing the contract for repairing the road (and serve notice to the owners of the property), including relevant information such as what road was to be repaired, whose property abutted it, and when the contract was to be let out. The actual letting out of the contract would occur ten or more days after the initial posting, and the cost was to be paid by the owner of the property.

There are a number of striking details about this inscription. First, the general procedure of magistrates identifying a problem, bringing in private entities, providing information on what would be entailed in the work and seeing to their payment suggests that we are operating within similar horizons to those of the quaestors who contracted the forging of the Egadi rams.

Second, the Roman state, even at a late date, seems to have had little interest in maintaining roads that did not abut public buildings. While we can speculate that Rome was dotted with enough temples that most of the urban road system would have been maintained by the aediles, it is important to recognize that their mandate to maintain infrastructure was not all-encompassing, and any of the (numerous) small roads and back alleys that did not feature a temple or public building would have escaped their purview. This limitation of their mandate

could have been an innovation of the Late Republic, but on balance it seems more likely that it was an old practice.

Third, the state appears to have sought to encourage private initiative in maintaining infrastructure: the aedile's involvement was triggered once he deemed that the care shown by a private citizen for the road had been insufficient, and even when he ordered the repair of the road, the cost of the contract redounded to that same private citizen. The aedile's job under these circumstances was nothing more than enforcing compliance with community-minded goals.

The process outlined in the *Tabula Heracleensis* was likely unique to road maintenance, where a public works project can be said to benefit private business at least as much as the needs of the state. It is therefore unlikely, when letting out contracts for temples and public buildings, that the aediles compelled payment by private citizens as they did when repairing roads. Instead, we can posit that when an aedile identified a need for repairs to a building in his section of the city, he would post a notice in the forum announcing that a contract would be let out, with a level of detail similar to the *lex parieti faciendo puteolana*. After a set amount of time, he would let out the contract to the lowest bidder and would give his approval after the project's completion. Who would bear the cost is a more difficult question. It is possible that some of these works were financed by the *aerarium*, but the amount of money in the state treasury of the third century, and even for much of the second century seems to have been low, and what money there was earmarked for military-related expenditures. Most of the time, the cost was born by the aediles themselves, or by a wealthy volunteer, who would of course be rewarded by being allowed to put his name on the rebuilt temple.

The numerous public contracts preserved in the epigraphic record imply to us a complex process. Every year, contracts were let out by the Roman state. The magistrate in question

consulted specialists and drew up a contract with specifications for the project, then farmed it out to the lowest bidder. At the project's completion, he would then inspect the final product, with the aid and advice of the specialist who had advised on the composition of the contract, and give his *probatio*, signaling the fulfillment of the contract.

1.7 Conclusion

The purpose of this chapter has been to paint a picture of the role of the aedileship and quaestorship in the early third century BCE. They were neither marginal, nor “essentially unimportant” (Badian 1983: 168), but were offices central to maintaining order in an already large urban society and initiating the next generation of political elite. While Rome's military leaders brought the Italian peninsula under the city's control, the aediles were the senior magistrates operating in the city and were responsible for the maintenance of Rome's urban fabric through a complex contracting system. As we have seen with Q. Fabius Maximus, their clout was respectable in its own right. In the next chapter, we will examine how the Romans conceived of *potestas*, the power that gave magistrates their authority, and see how the role of these offices in the Roman state evolved in response to developments of the later third century BCE, and into the second century.

Chapter 2

Quaestors and *Potestas*

2.1 Introduction

When Lucius Postumius Albinus and Marcus Popillius Laenas were consuls (173 BCE), one of the censors, Quintus Fulvius Flaccus, undertook the construction of a temple to *Fortuna Equestris* in fulfillment of a vow he had made while serving in Spain. Flaccus' career — while noteworthy for his competence in military and civil duties, and a remarkable talent for generating enthusiasm among the voters — was nevertheless marked by numerous displays of tactlessness and bad behavior: already in his censorship, he had raised eyebrows by expelling his own brother from the senate,¹¹³ and eleven years prior, in 184, he had caused an uproar when he campaigned for the empty seat of a praetor who had died in office while he himself was still curule aedile.¹¹⁴ After Flaccus had refused to be dissuaded from his campaign, the senate cancelled the election just to prevent him from holding two curule magistracies at once.¹¹⁵

¹¹³ Liv. 41.27; V. Max. 2.7.5. It is probable, if unverifiable, that Flaccus intended this act to be seen as a display of *severitas* of the kind demonstrated by Cato the Elder in his own famous censorship a decade before. If so, its mention by Livy (who seems to regard Flaccus as a political boor) would suggest it was not universally received as a sign of stern uprightness, and that many remembered him as obnoxious.

¹¹⁴ While Livy has him as only aedile-elect at the time, Mommsen, *Röm. Staatsr.* 1.513f and Broughton *MRR* vol. 1 (1951) 375 s.a. 184 have him as sitting in office, on the grounds that Flaccus would have been ineligible to hold the office in 183, which was a plebeian year, and that the senate's objection at his candidacy makes more sense if he was currently aedile.

¹¹⁵ Liv. 39.39. There was no statute on the books that forbade tenure of multiple magistracies (let alone multiple curule magistracies) simultaneously, although there also was no precedent for doing so. This taboo appears to have been another facet of the *habitus* of public life: the Romans clearly never thought to make a rule forbidding this practice, and yet the senate appears to have been offended when Flaccus tried to do so.

Flaccus was a man whose moves within the cultural field of public life were frequently clumsy.

In spite of these awkward missteps, however, Quintus Fulvius had been enviably successful, and the construction of a temple to commemorate his success in Spain was meant to be the capstone to a glorious career. Livy tells us Flaccus ...*faciebat enixo studio, ne ullum Romae amplius aut magnificentius templum esset* "...was constructing it with great zeal, so that there would be no temple at Rome that was larger or more magnificent." (42.3.1) It was in this spirit that he went down to Bruttium, in the toe of Italy, and ordered that half the roof tiles of the magnificent temple of Juno Lacinia be stripped off and shipped to Rome to adorn his new temple. The locals, so Livy tells us (42.3.3), were too intimidated by his authority as a censor (*auctoritate censoria sociis deterritis*) to oppose him. The work was done, the tiles were loaded onto a boat and shipped to Rome, and not a word was said publicly of their provenance.

As one might expect, there was no need for Flaccus to announce their origin publicly. Rumors flew around the city, outraged citizens demanded the consuls look into the matter, and Q. Fulvius Flaccus the censor was soon being upbraided in the senate for his gross sacrilege. After an obligatory passage where Livy waxes rhetorical about the shame (and irony) of a censor, the supervisor of public morals, defacing a temple and leaving its interior exposed to the elements, we are given the coda to the episode: expiatory sacrifices were offered to Juno, and the tiles were returned, but nobody knew how to put them back as they had been, and so they were left sitting in the temple precinct.

This episode of Livy is entertaining: the audience is treated to a Roman magistrate behaving like a thief, the ridiculous image of a temple left half-roofed, the surreptitious attempt to pass off ill-gotten building materials as legitimate ones, public outrage, and the culprit receiving a public shaming. The image of roof tiles left in the temple precinct also supplies an

element of the tragic, and signals, ominously, the very real, often deleterious impact of Roman rule on the cultural landscape of Italy.

Just as interesting as these historiographical elements, however, is why Flaccus was able to take those tiles in the first place. Livy suggests the Bruttians were frightened off by his *censoria auctoritas*, but that is only another way of saying that they believed stealing the roof tiles was within his power. Flaccus' understanding of the situation appears to have been similar to that of the Bruttians. The senate, of course, decided, after the fact, that he did not have that power, but it is worth noting that their outrage is directed at the desecration of the temple. Lip service is paid to the idea that Roman magistrates should not plunder Roman allies (42.3.8), but this remark is an afterthought compared to the four sections Livy devotes to religious outrage, and it is hard to dismiss the thought that if Flaccus had chosen to denude the roof of a bathhouse or domicile, he would have gotten away with it, albeit perhaps with a few stern frowns from his peers.

The source and limits of a magistrate's power will be the dominant theme of this chapter, using as a case study the development of the quaestorship during the century (275-180 BCE) from the end of the Pyrrhic war to the passage of the *lex Villia annalis* that fixed the quaestorship as the mandatory first step in the *cursus honorum*. This use of a war to delimit a discussion of civic magistracies may seem a peculiar choice, but a theme of this chapter will be the ways that military crises forced the Romans to reinvent themselves and to adapt old practices and institutions to new uses. Warfare abroad occasioned great change at home for the Romans. Developments in the aedileship will be discussed in the next chapter as part of a wider discussion of the development of the *cursus honorum* itself. What will emerge in this chapter is that power is the ability to constrain the field of actions of another, and *potestas* was the power allocated by

the senate to magistrates to transact the business of the Roman people. As we have seen with the *exemplum* of Flaccus, with which I opened this chapter, during the third century BCE and through much of the second century, *potestas* was vaguely defined, and, in many instances, what limits it had were based on the magistrate's task, *provincia*, assigned by the senate, as well as social pressures to conform to the *exempla* of prior magistrates. The nature and limits of *potestas* will emerge in more detail over the course of this chapter.

2.2 What is Power?

My discussion of magistracy in the Roman State so far has been remiss in that I have not defined the power with which Roman magistrates were invested. Indeed, there has not even been a general definition of power itself. In this, I am in good company, as the question remains opaque, in spite of a healthy body of scholarship on the topic, both within Roman studies and in philosophy generally, to the point where Foucault was able to remark, in a conversation with Gilles Deleuze, that “the question of power remains a total enigma.”¹¹⁶ I will therefore begin with a general model of what power is and how it operates within societies in general, before turning to a more detailed discussion of its operation in Roman society in the third century and into the second century. The discussion that follows innovates little, and it does not solve the problem. It is intended to present a workable model for an exploration of *potestas* going forward.

At its most basic level, power is the capacity to inflict violence, and violence is a demonstration of that capacity,¹¹⁷ but this definition has very little explanatory power in and of

¹¹⁶ Foucault (1977) 213

¹¹⁷ The association of harm with power has its dissenters. Most prominently, perhaps, Hannah Arendt argued that violence and power are in fact antithetical, arguing that (e.g. in a situation of civil war), violence occurs because people agree to obey orders. As Stathis Kalyvas has demonstrated, in civil conflicts, massacres are far and away most frequent in areas where neither side holds a monopoly of power. Kalyvas' observation (i.e. one employs

itself because violence and power are meaningless — indeed, cannot exist — without a subject, an object, and a context. Power, therefore, is a type of relationship between persons or institutions, in which the capacity for violence can be, to varying degrees, hidden or overt.

This violence need not constitute bodily harm. The Italian philosopher, Giorgio Agamben, identifies the original power in western society¹¹⁸ with the old German concept of *Ban*, which signifies both the power of a sovereign to exclude a citizen from the community and the status of a citizen who has been so excluded.¹¹⁹ Power, at its limit, is the capacity to destroy a citizen's communal identity and reduce that person to a state where he or she may be killed without a crime being committed. The sovereign entity ("sovereign is he who decides on the state of exception"¹²⁰) exists in the paradoxical, liminal, state of existing both within and outside of society. The sovereign is the gatekeeper between βίος (way of life, communal existence), and ζωή (in archaic Greek, as Agamben renders it, the bare existence of being physically alive, as opposed to dead). This is the overhanging threat of power: the extinction of one's life as a member of the community and a return to the originary violence of nature. The violence that characterizes power can, therefore, manifest itself not as bodily harm, but as exclusion from the community or the deprivation of the resources necessary to maintain one's way of life within the community.

violence where one does not have power) would seem to support Arendt, but the logic is circular: Kalyvas' observation only supports Arendt if one has already embraced Arendt's hypothesis about the basic antipathy between violence and power. If, instead, we posit that brute force is but the crudest demonstration of power, and is employed when subtler, more fine-tuned methods of control are impossible, as Foucault suggested, then the relationship between power and violence is maintained.

¹¹⁸ "Western society" is a flawed concept, as there is little evidence that the various European cultures had any such communal identity before modernity. This problem is in fact characteristic of Agamben who, despite his impressive erudition on ancient sources, is occasionally insensitive to anachronism, and often assumes that ancient societies did not change very much over time.

¹¹⁹ Agamben (1998) *passim*, esp. pp. 1-14 and 104-111

¹²⁰ Agamben (1998) 11

While I am in basic agreement with Agamben about the nature of power, his work lacks attention to the subtle ways in which power structures itself and embraces a society or societies. He explores the concept, and its development from the ancient world to modernity, but not the complex ways in which it proliferates itself throughout society. As far as Agamben's reader can know, his sovereign is an absolute monarch cut off from human contact, a state of affairs that has never existed.

The context within which power operates is all the more urgent because, without it, the reader could be forgiven for thinking that he believes every exercise of power comes with an explicit threat of either bodily harm or abandonment. This is not so. Power, at its limit, is the ability to take life, but, paradoxically, power is never weaker than when it exercises that ability. Acts of overt violence provoke resistance, or at least a desire to resist.¹²¹ Power lies in the threat, not the act, and there are a cosmos of threats imbued with power that are both more subtle and allow power to be exercised with more finesse than the threat of bodily harm:¹²² loss, the deterioration of a valued relationship, judgment from one's peers, social ostracism, etc. These are the more mundane, pervasive and, perhaps, more useful instruments of social and political power.

Power operates within a network, and, in order to understand this network, I turn to Thomas Wartenberg's model of power. Wartenberg may seem an unusual scholar to embrace on a topic that has been discussed by giants such as Arendt, Foucault, and Agamben, but Wartenberg's strength is his ability to incorporate the ideas about power developed by other thinkers into his model, and the ease with which his model can be applied to historical situations.

¹²¹ Wartenberg (1990) 79-88.

¹²² Foucault's *Surveiller et Punir* argues in much the same vein: the development of less brutal, more insidious techniques of control, enabled by a host of social and technological developments, is a general feature of modernity.

Wartenberg defines power at its most basic as the capacity to limit another agent's field of possible actions.¹²³ Killing, or, to follow Agamben, imposing the *Ban*, is the most extreme use of power (a corpse has no field of possible actions), and it is also in many ways the most limited use of power. From here, Wartenberg identifies three types of power that can be exercised, each of which corrects a problem of the previous type, but also limits the object's field of possible actions less directly than its predecessor. Force is the most basic exercise of power; its object is its audience. It is uneconomical because it requires effort, it only exists in the moment in which it is exercised, and because it provokes resistance from its object. A threat, meanwhile, can reach a wider audience than force, requires far less effort, and the power that it embodies can linger. It still provokes resistance, however — no one much likes a leader who goes around threatening people. Finally, influence employs words (in the form of logical appeals, emotional appeals, or appeals to authority) as the means of power, and corrects the problem of resistance by making the object of power a willing accomplice.¹²⁴ These uses of power are overdetermined, in that a single act can represent different types of power for the benefit of different audiences.¹²⁵ For example, if the leader of a faction in a civil war orders his soldiers to round up and murder civilians who had collaborated with his enemy, he is using his influence (of authority) over his soldiers to convince them to exercise brute force against one target (the collaborators) in order to threaten another target (people who might collaborate in the future).

This example also brings out another feature of power: power almost never exists strictly between two people. Rather, it exists in a field. The leader has social power over his troops (and through them, over the populace), because they believe he serves their interests and/or the

¹²³ Wartenberg (1990) 79-88.

¹²⁴ Wartenberg (1990) 93-109.

¹²⁵ Wartenberg (1990) 113-114.

interests of their cause.¹²⁶ If they were to lose faith in his ability to serve their interests, because what he wants is unjust or ineffective, or because of pity, he would have more difficulty controlling them. He might even find himself the object, rather than the agent, of their violence. Influence exists because a wider group gives it and gives it conditionally.

Equipped with a workable model of power, we can apply this model to the Roman Republic. If magistrates had institutional influence (as the censor Flaccus so evidently did), we must ask what the ultimate source of this power was. In other words, where did sovereignty lie in the Roman State? Sovereignty is a concept that lies at the heart of modern political theory, and the plethora of opinions on it are a product of the very Enlightenment philosophical debates that produced the concept of constitutionalism that we have been keen to avoid so far. Foucault was right to consider sovereignty a modern preoccupation.¹²⁷ Agamben's definition of sovereignty (taken over from Carl Schmitt), however, has the power to frame this question in a different way, and, even if we conclude that a clear locus of sovereignty was not a very Roman idea, pursuing the question can provide a clearer image of power in the Roman state.

According to Agamben (and Schmitt), sovereignty defines the state of exception.¹²⁸ In other words, sovereignty is the ability to break or ignore the rules with impunity. Such a definition, while not at variance with the philosophical tradition that has grown up around sovereignty, sharpens the question and allows us to look for specific qualities of power, rather than deciding which entity's power is most important. I propose using this definition, however, not so that we can answer the question of where sovereignty lay in the Roman state, but in order to demonstrate that the question of sovereignty is itself an anachronism, and that the Romans of

¹²⁶ Wartenberg (1990) 169-178.

¹²⁷ Rouse 92

¹²⁸ Agamben (1998) 11, Schmitt (1922) 5-35

the third and second centuries BCE had no clear answers to that question, if indeed they asked it at all.

2.3 Power in the *Res Publica Populi Romani*

In general, the Romans had a shared sense that the people had the right to vote on an issue, and that, whatever actions the magistrates or the senate might take, the people had the final word. In 264 BCE, if we can believe Polybius,¹²⁹ when a debate stalled in the senate over whether to send aid to the Mamertines in Sicily,¹³⁰ a decision that would lead to the outbreak of the first Punic war (264-241 BCE), the consul, Appius Claudius, walked out of the senate and took the matter to the people. The legitimacy of the war was never in doubt. Similarly, in 214, when Publius Scipio ran for aedile, he was told that he was too young. He responded, ‘*Si me...omnes Quirites aedilem facere volunt, satis annorum habeo*’ (Liv. 25.2.7) “‘if all the citizens want to make me aedile, I am old enough.’”¹³¹ A similar sentiment is expressed in 199, during the election for the next year’s consuls, when the tribunes objected to the candidacy of T. Quinctius Flamininus, on the grounds that it was disgraceful that he (among others) was snubbing the aedileship and praetorship, and campaigning for the consulship after having only served as quaestor. *Patres censuerunt, qui honorem quem sibi capere per leges liceret peteret, in*

¹²⁹ There is some reason for skepticism. Our sources for this period are sparse, and this is the period of Polybius’ history that was at the furthest remove from the author’s own time. Polybius also had a number of hurdles to leap in his first book, including convincing an audience that was in large part Greek that they should want to read a history of Rome, establishing his own credentials as an historian in the same league as Thucydides and Xenophon, and setting the stage for the Second Punic war. All of these factors could, and in some instances did, lead to distortions in the narrative. For example, Polybius says that the senate was reluctant to intervene in Sicily out of a fear of looking hypocritical by giving aid to the Mamertines, whose crimes were no different from those of the *legio campana* that the Romans had punished. This scene in large part resembles Thucydides’ description of the dispute over Corcyra, which led to the outbreak of the Peloponnesian war (1.31-44). Bleckmann (2011) 172, meanwhile, has argued convincingly based on Zonaras’ summaries of Cassius Dio, that the senate was reluctant to let Appius Claudius intervene in Sicily because they knew he would cover himself in glory.

¹³⁰ Plb. 1.10-11; Zonar. 8.8.

¹³¹ This passage contains an anachronism, as there would be no minimal age for office until the passage of the *lex Villia annalis*, 34 years later, but is illustrative of Roman attitudes, and consonant with other, more solid evidence.

eo populo creandi quem velit potestatem fieri aequum esse (Liv. 32.7.11) “The senate decreed that it seemed proper that the right should reside in the people to elect anyone they chose who sought an office it was legal for him to hold.” Both Scipio and Flaminius were elected. Of course, we might also cite the most famous example of this sort, Tiberius Gracchus’ decision to take his agrarian law before the people in 133 BCE, in spite of the senate’s rejection of the bill, although that is outside of this chapter’s time frame. These examples would appear to suggest a shared understanding among the Romans that the people had the final word on the laws that would govern the community.

There are a number of episodes from Livy’s third decade, however, that suggest quite the opposite. In book twenty-four, during the consular elections for the year 214, the consul, Quintus Fabius Maximus, who was *de facto* leader of the war effort, was holding an election. When the *centuria praerogativa* — the voting century, selected by lot, that voted first in each election¹³² — chose candidates he considered unsuitable for the task of carrying out the prolonged war against Hannibal, Fabius intervened, delivered a speech reminding the people of the perils presented by the enemy general, and ordered them to vote again.¹³³ They did so, and ultimately chose Fabius himself to be consul for the following year. Similar episodes appear in 210 and 209.¹³⁴ These repeated examples of contested elections suggest that the exigencies of the war were causing real upheaval among Rome’s political class, as strategic concerns came into conflict with the traditional electoral process. We will discuss this phenomenon, and its impact on the Roman state, in the next chapter, but for now we should confine ourselves to the question of sovereignty.

¹³² Vishnia (2012) 123

¹³³ Liv. 24.7.12-24.9.2

¹³⁴ Liv. 26.22; 27.6.

It is possible to explain away these counter-examples, as Lily Ross Taylor has suggested that the occasional demand that the people vote again, which violated popular sovereignty, was an expedient response to the pressure the state was under during the Hannibalic war.¹³⁵ She is certainly correct, for these episodes are rare in Livy,¹³⁶ and in the instances where the *centuriae praerogativae* were compelled to vote again, Hannibal is invoked as the reason for this apparent infringement upon the people's rights.¹³⁷ When the person raising the objection did not invoke such an existential threat, as in the consular elections of 209 and 199 (Flaminius), and the Aedilician elections of 214 (Scipio), he was induced to respect the rights of the people.

There are other violations of popular sovereignty, however, that are not so easy to dismiss, and in the last decade of the period under discussion, the 180s BCE, a number of other anti-democratic uses of power arise: as mentioned in section 2.1, when Q. Fulvius Flaccus sought to fill the vacancy created by the death of a praetor when he himself was holding the aedileship, the senate as a body decided to cancel the election, rather than let the people decide on his eligibility. Here, at least, the senate had no existential threat to justify their interference with popular will.

The senate's response to the Bacchanalian crisis of 186 and the poisoning scandals in the later 180s, meanwhile, have a number of features in common with the later *Senatus Consultum Ultimum*, and, while the responses to these scandals never actually violated popular sovereignty, they did betray a desire to circumvent it through any means possible. The first decree passed by

¹³⁵ Taylor (1966) 94

¹³⁶ Another example is the episode, discussed in 1.5, where Fabius persuaded the voting assemblies to give him a civil magistracy, rather than the consulship (Liv. 10.9.11).

¹³⁷ N.b. it is unknowable whether the actual speeches delivered in 214 and 210 invoked Hannibal, or if it was supplied by Livy, but at the very least, the rhetorical use of Hannibal suggests something about the circumstances under which Livy thought the demand for the centuries to vote again was justified, and Livy was an informed reader.

the senate after being informed of the conspiracy of the Bacchanals¹³⁸ asked the consuls to conduct an investigation, *extra ordinem*,¹³⁹ that would occur in the city of Rome and throughout the *fora et conciliabula* of Italy, and sought to attract and protect informers who could help identify members of the Bacchic cult.¹⁴⁰ Livy then tells us that the consuls *imperarent*, “commanded,”¹⁴¹ the aediles to search out and surveil the priests of this cult. The inscription unearthed at Tiriolo, meanwhile, suggests that the urban praetor was instructed to hear cases from allies who wished to be allowed to worship Bacchus (ll. 4, 8, 17, 21), while the *triumviri capitales* were entrusted (whether by the senate or the consuls is unclear) with placing guards throughout the city, and the *quinqueviri uls cis Tiberim* were each ordered to see to the security of the buildings in their own district.¹⁴²

¹³⁸ This decree should not be identified with the inscription recovered at Tiriolo, the *SC de Bacchanalibus*. The Tiriolo inscription should be identified with the second of three decrees passed in 186 BCE by the senate concerning Bacchic worship, and if we can trust Livy’s narrative of the investigation, which I believe we can, then the Tiriolo decree was inscribed well after the extirpation of the cult was under way, and was meant to instruct non-Romans of the role that the senate expected them to play in the destruction of the cult.

¹³⁹ What is intended by this phrase in Livy is unclear. Some scholars have argued it nullified *provocatio*, but Briscoe argues that *provocatio* would have been of scant use in this instance, with the upper classes united behind the senate. Briscoe himself suggests *extra ordinem* denotes that the consuls were expected to complete the investigation before they took up their *provinciae* in Liguria (Briscoe 2008: 247). This is likely correct, although, as we shall see, the senate and magistrates took some unusual measures in dealing with this crisis, and it is not inconceivable that the phrase *extra ordinem* was also meant to denote these measures. Moreover, it is difficult to understand why so many would have fled the city (Liv. 39.175) if that was the sole place where their right of appeal remained in force. This act only makes sense if the first Bacchanalian decree explicitly or implicitly nullified *provocatio*, or perhaps if the tribunes had indicated that they would do nothing to protect the accused.

¹⁴⁰ Liv. 39.14.5-10

¹⁴¹ 39.14.7. The use of the verb *imperare* presents a potential problem, in that it is unclear whether this use of the verb was technical (i.e. that the consul exercised *imperium* over an aedile) or stylistic. This meeting of the senate was being held at the temple of Bellona, outside of the *pomerium*, so it is not inconceivable that the consuls were exercising *imperium*, although it would be irregular, and would suggest that the consuls had arrived at that meeting prepared for bloodshed, as they would have had to leave the *pomerium* and conduct the appropriate rituals before going to the meeting, if they intended to exercise *imperium* in the senate. A survey of Livy’s use of the verb within a three-book radius of the Bacchanalian scandal (i.e. from books 36-42), suggests that Livy’s use of the word is technical, and only four out of the twenty-seven uses that occur in these books appear to be non-technical. One of those four, however, occurs earlier in the Bacchanalian episode, when Aebutius is “commanded” by his father-in-law to join the Bacchic cult (39.10.3). Livy’s source for this episode appears to have been fond of hyperbole, and it is therefore doubtful that the consuls exercised *imperium* in order to coordinate their responses with the other magistrate.

¹⁴² Liv. 39.14.7.

The degree of coordination displayed by the Roman state in the persecution of the cult was not the norm in the second century. While individual magistrates might often work together, as the aediles and the quaestors often did,¹⁴³ a top-down coordination of the response was unusual, perhaps almost without precedent. Nearly all of the regular magistrates who were in the city were redirected toward the investigation of the cult, with the consuls in overall control of the persecution. In this respect, the senate's response to the Bacchanalian conspiracy seems to foreshadow the creation of the *Senatus Consultum Ultimum* later in the second century, which likewise directed all the magistrates then present in the city to follow the lead of the consuls in the extirpation of a perceived threat to the state.¹⁴⁴ The two decrees differ in the explicit latitude of the ultimate decree to summarily execute citizens, although, as we shall see presently, this supposed limitation of the first Bacchic decree did little to protect Roman citizens.

Following the meeting of the senate, the consuls held a *contio*, a public meeting, during which the Roman people were informed of the situation and the contents of the decree. A panic then ensued and Livy tells us that many (whom he suggests were guilty) attempted to flee in the night, but were caught by the guards posted by the *tresviri capitales*,¹⁴⁵ while many more made good their escape.¹⁴⁶ That they chose to flee suggests that those in danger in large part were not citizens, otherwise the city, with the protection of *provocatio* would have been the safest place for them. It may also have been that the relative safety of the city was unclear to them in the heat of the moment, or, conversely, that *provocatio* had been nullified, either by the senate or by a

¹⁴³ e.g. *tab. Heracl.* 37ff. The aediles' charge of maintaining the urban fabric brought them into frequent contact with the quaestor in charge of the *aerarium*, as contracts to repair or construct buildings usually required funding from the treasury.

¹⁴⁴ See *Caes. Civ.* 1.5 for the first description of this decree as "ultimate." Discussions of the *SCU* have been a regular element of constitutional treatments of the Roman state going at least as far back as Mommsen. For a helpful summary of various opinions on the *SCU*, see Lintott (1999).

¹⁴⁵ *Liv.* 39.17.5.

¹⁴⁶ *Liv.* 39.18.1

declaration of the tribunes.¹⁴⁷ It may also have been the case that many or most of those who left the city did so for innocuous reasons,¹⁴⁸ but were then cast under suspicion by the very act of leaving, and so found themselves accused.

At this point, the consuls determined that in order to root out the conspirators, they needed to comb the *ager Romanus*, for that was where the guilty were supposed to have gone to ground.¹⁴⁹ The consuls began their search of the *ager Romanus* throughout Italy (how thorough this search was is uncertain. That they were able to conduct it in a month or so suggests it must have been just thorough enough to find a large number of people to persecute) and held summary trials to decide on the guilt of the accused and pass sentence. Those who had been initiated into the Bacchic cult were given life imprisonment. Those found guilty of having participated were killed. Women under *patria potestas* or who were married *in manu* (a form of marriage in which the bride passed into the custody of her husband, instead of remaining in the custody of her father)¹⁵⁰ were turned over to their fathers or husbands for punishment — death or perpetual confinement. Otherwise, sentence was passed and carried out by the state. Livy tells us that more were killed than imprisoned.¹⁵¹ None of this was an illegal use of the consul's power, per se, but the use of *imperium* to execute large numbers of Roman civilians was a stark departure from the norm and was probably without precedent.

¹⁴⁷ The *Tribuni Plebis* were not obligated to respond to appeals from the people, as a famous episode from Plutarch's life of the Gracchi makes clear (Plu. *CG* 12.2).

¹⁴⁸ Even at this early date the population of the city was in the hundreds of thousands, and there must have been hundreds of people coming and going from the city each day.

¹⁴⁹ It is tempting to suggest this was because the number of Bacchic worshipers was much smaller than the "second state" (Liv. 39.13.14) their informants had reported, and most of the "guilty" were people who had chosen the wrong time to travel, but this is unknowable.

¹⁵⁰ For a helpful discussion of *manus* marriage, see Treggiari (1991) 16-34. For a discussion of the legalities of this institution, and the way the law operated in various scenarios, see Frier (2004) 88-95.

¹⁵¹ 39.18.4-6

More obscurely, in the next book, Livy also tells us about a pair of scandals, in which prominent members of the state who had taken ill and died were rumored to have been poisoned. The magistrates were again instructed by the senate to investigate the surrounding towns and round up the guilty.¹⁵² The focus on the surrounding towns is peculiar, as the location of the alleged crimes was Rome. The choice to send the consuls to the towns around Rome suggests that the senate was keen that these investigations occur in a space where there was no *provocatio*, and the consuls would be able to decide who was guilty and pass sentence. Sending the consuls outside of the zone of *provocatio* to investigate crimes was not a suspension of the rules as Agamben would have it, but these episodes suggest that toward the end of our period, the senate was interested in evading the normal protocols in order to root out perceived enemies of the state.

The picture that emerges from these episodes is rather muddled. Even when we use a narrow definition of sovereignty, which frames it as the right to determine when the rules no longer apply, a locus of sovereignty in the Roman state remains elusive. Simply put, the Roman state appears to have too many sovereigns. The absence of any clear answer to this question at the same time explains the divergent views that exist on this topic and suggests that we are misunderstanding the issue.

Another approach, which circumvents the question of sovereignty, is suggested by an examination of the way the Romans talked about public life. Rather than think of the Roman state as being defined by one entity that has the power to break the rules and is therefore capable of directing all the others, a mode of thought appropriate to the Enlightenment and its intellectual legacy, I will propose a different way of thinking about societal organization. The Romans

¹⁵² Liv. 40.37, 40.43

instead conceived of their state as being organized around a shared conception of the roles of different groups in society and their obligations to each other. Such a division of roles produced conflict however, as determining which body ought to do what in a given situation was a subjective decision. The Roman conception of these roles was likewise fluid and subject to change, especially during periods of stress and social tension.

2.4 Honor, Exemplum, Provinciaque

In the sixth book of his history of Rome and the Greek world, Polybius begins his discussion of the role of the people in the state with an unusually lucid statement:

...καταλείπεται μερίς καὶ τῷ δήμῳ, καὶ καταλείπεται γε βαρυτάτη. τιμῆς γάρ ἐστι καὶ τιμωρίας ἐν τῇ πολιτείᾳ μόνος ὁ δῆμος κύριος... “...there is also left a part for the people, and a most important part is left indeed. For the populace alone in the state is in charge of honors and punishments...” (Plb. 6.14.3-4). The explanation that follows concerns the people’s role as jurors in the trials that determine the guilt or innocence of their social betters. Polybius does not elaborate on what he means by τιμή, “honor,” in all likelihood because it would have been self-evident to his audience in both the Greek world and among the Roman nobility. One of the most common meanings of τιμή is elected office,¹⁵³ and from our knowledge of the way the Roman state operated, there is little doubt that this is what he means.

This much is uncontroversial. What seems significant, however, is that the idiom Polybius chooses to use in order to describe the Roman people’s electoral ability is “conferring honors.” In so doing, he does not seem to be imposing a Greek idea on the Romans, for the Latin

¹⁵³ “Τιμή.” Liddell & Scott’s Intermediate Greek-English Lexicon, Oxford: Clarendon Press, 1889, pp. 807.

word *honor* operates in much the same way as the Greek τιμή.¹⁵⁴ Polybius, moreover, pairs and contrasts this conferral of honors with criminal trials, and in so doing sets up elected office almost as the antithesis of being found guilty of a crime.¹⁵⁵ In both instances, the *populus Romanus* is rendering judgment on the character and deeds of their fellow citizens, and if a guilty verdict is to be read as the *populus* finding one's character and deeds wanting, then election to office, which, incidentally, occurred in the same assemblies as jury trials, ought to be read as the people approving of those same qualities.

In other words, down into Polybius' day there appears to have been a conception that was shared (for an elite audience could evidently agree to it as well) that the role of the people in the Roman state was to choose the best men for high office, with "best" being defined in terms of personal qualities. There has been a great deal of scholarship in recent years on moral *exempla* in Roman literature.¹⁵⁶ Matthew Roller in particular has led the way in this field, and in his latest book, *Models from the Past in Roman Culture*, he explores how the Romans festooned (one might almost say mythologized) historical figures with memorable character traits and reduced those men down to the character trait they were meant to embody.¹⁵⁷ Significantly, most of the men so lionized had held high office. Chief among the qualities that were celebrated was *virtus*, a mix of courage and bellicosity, but there was also *fides* (faithfulness toward friends and allies), *pietas* (harmonious familial relations), *gravitas* (a serious demeanor that was thought to suggest moral conviction), and a whole host of other qualities that figures from the past were seen to

¹⁵⁴ e.g. Caes. *Civ.* 1.77; Cic. *Brut.* 68; *Sul.* 29.82; *Ver.* 2.4.37, 2.5.14; Hor. *S.* 1.6.15; Juv. 3.178, 7.88; Liv. 9.26.14, 9.46.9; Sal. *Cat.* 49.2; Suet. *Aug.* 26; *Cl.* 9; Tac. *Ann.* 11.12; and, of course, the very phrase *cursus honorum*. See also the LSJ's entry for τιμή, cited in the previous footnote, which makes note of the parallels between the two words.

¹⁵⁵ Such an antithesis would appear dubious, naive even, to anyone who has picked up a newspaper in the last year or so.

¹⁵⁶ e.g. Hölkeskamp (1996), Solodow (2009), Roller (2011), Roller (2018).

¹⁵⁷ Roller (2018) 3-17 for a synthesis of his position on exemplarity. Deployments of his model, each of which adds a new wrinkle to the topic, occurs throughout the book's eight chapters.

model. All of this is relevant for our study because it suggests that personal excellence was not just a desirable trait for high office, it was the defining trait.

Elections, then, were, quite literally, popularity contests, in which the *populus Romanus* would decide which elites best embodied the shared values of the community. Once they had done so, those elites, now magistrates, would transact the public business of the Roman people, serving abroad as generals, ensuring that the city was well run, maintaining the community's relationship with its gods, putting bills to the senate and, eventually, to the very people that had elected them so that those bills could be ratified.

In the above formulation, then, the role of the people was to choose their favorites for elected office. That of the senate, by contrast, was to assign tasks for those elected officials to carry out and, generally, to make decisions for the well-being of the community. They did so by writing decrees and assigning *provinciae*, "tasks," a term with a rather complex evolution over the course of Roman history.

By the early Empire, Rome's imperial holdings were divided up, geographically, into *provinciae*, territorial units that received as governor an ex-consul, an ex-praetor, or, in the case of those provinces under the administration of the Emperor, a hand-picked legate. This had not been the case in previous centuries. During the third century BCE, the term appears not to have had any geographical connotations and suggested a task allotted to a magistrate by the senate. These tasks could range from waging war against an enemy (if the magistrate in question had *imperium*), to more mundane assignments like having one of the aqueducts repaired or conducting an investigation.

How a bit of administrative jargon morphed into the term for territorial governing units in the Roman Empire (and beyond) has been treated at length by a number of scholars,¹⁵⁸ and need only detain us briefly here: even in the third century, it was not unusual for the *provinciae* assigned to consuls and praetors to have a geographical dimension. When Scipio was instructed to fight the Carthaginians in Spain during the middle part of the Hannibalic war,¹⁵⁹ his task had an obvious territorial dimension to it. This territorial dimension was incidental to the task, however. Scipio's assignment was to eliminate Hannibal's base of power, not to govern the territory. As Roman power expanded in the Mediterranean during the second century, however, the senate increasingly found itself having to send administrators, most of them praetors, to govern regions under Roman suzerainty. A full discussion of the lengthy evolution of the Imperial provinces is well beyond the scope of this discussion, but what matters for our purposes is that *provincia* the territorial unit did not so much replace *provincia* the task as come to exist alongside it.¹⁶⁰ Well into the late Republic, and even the Imperial period, one could speak of a *provincia* and be understood to mean a task, a territory, or both.

In the normal course of events, the senate would decide on the appropriate tasks for each college of magistrates to fulfill, with larger tasks being designated before the magistrates took office, while smaller or more sudden ones might be decided on the spur of the moment.¹⁶¹ The magistrates of each college would then decide amongst themselves, either by private agreement, or by the drawing of lots, who would carry out each task.¹⁶²

¹⁵⁸ The most important, and most nuanced, of these is Jean-Marie Bertrand's 1989 article, *À Propos du Mot Provincia*. Drogula (2015) pp. 131-181 also has a lengthy discussion of this topic, as does Richardson (2008).

¹⁵⁹ Liv. 26.18.

¹⁶⁰ Bertrand (1989) 194-6.

¹⁶¹ Drogula (2015) 134.

¹⁶² Drogula (2015) 135.

The rather simple model which I have outlined above, under which the people chose their favorites and the senate gave those favorites things to do, is in need of qualification, however. It would be absurd to suggest that the *populus Romanus* had no voice in policy for, as I demonstrated in the previous section, the Roman people did vote on issues, and those votes were binding. In fact, it might be observed that the Roman people were consulted on any matters that would impact them: war and peace most obviously, but also laws that would govern the community. But there were also moments, several of which were cited in the previous section, when the people voted on policies that had not been put forward by the senate. These actions were valid as well, although the tone with which our sources discuss such moments leaves us in no doubt that voting on a bill that had not made its way through the senate did not sit well with established custom and was morally uncomfortable for all parties involved.

It might likewise be objected that this model I have put forward is an elite model, and one quite congenial to their worldview. I do not contest this point, but I would like to point out the recent work of Lisa Mignone looking at urban neighborhoods in Rome, which has demonstrated conclusively that Rome's neighborhoods were not segregated by class. Rome's most blue-blooded citizens oftentimes lived right next door to working class people. Rich and poor therefore encountered each other quite a lot, and they had to be able to talk to each other. If a member of the ruling class referred to his election as an *honor*, it is reasonable to think that his implications were understood by his audience, and that they were conversant in this discourse as well.

The model I have proposed in this section should not be taken as any sort of rule. Instead what we are doing is tracing the outlines of what *populus* and *senatus* do in the Roman imagination, as preserved in early Roman institutions and in the idioms that the Romans used to

talk about public life. The people were envisioned as the arbiters of who the best men in the community were, while the senate crafted policy that could be executed by those best men or put to an up-or-down vote by the people. It is significant that political dysfunction in Roman historical sources is framed as both sides failing to do their duty with regard to the other, with the senate putting forth policies that are harmful to the community, while the people elect men whose personal qualities are vicious and ignoble.¹⁶³

This model was, however, subject to historical change, and the Hannibalic war in particular produced a new way of thinking about office that elevated the role of the people and demanded of them the ability to judge more than just personal qualities. Roller's discussion of Fabius Maximus, one of the most prominent generals from the war with Hannibal, explores the paradoxical *exemplum* that he represented. By all accounts, Fabius had realized, when faced with a military genius the likes of Hannibal, that conventional warfare — which prized directness, courage, and aggression (i.e. *virtus*) — could produce only great military disasters and had adjusted his approach accordingly. In the short term, this made him unpopular at home and he was derided with the nickname *Cunctator*, “delayer,” but after other generals failed spectacularly, both the people and his peers saw the wisdom of his approach and he was remembered as a hero. Fabius' *exemplum* is paradoxical because it is an *exemplum* of *not* fighting. Whereas conventional Roman values identified aggression in war with the good of the community, Fabius had recognized that, in the case of Hannibal, there was a great gap between

¹⁶³ For complaints about Senate policy, see Gaius Gracchus speech on the *lex Aufeia* (Gel. 11.10.1), which he prefaces by saying that all of the people speaking are doing so from self-interest, and not out of public-spiritedness. For examples of the rhetoric of the *populus* electing bad men, see the tribunate of M. Livius Drusus in 122 (Plu. *CG* 9), which appears to be an instance of the senate parodying the type of candidate they think appeals to the masses. One might also look at just about anything Cicero ever said about Clodius.

the two, and had chosen to pursue the communal good, even at the expense of his own reputation.¹⁶⁴

The salience of the Fabian *exemplum* for our argument is brought into focus by the episode discussed in the previous section, where Fabius instructs the *comitia centuriata* to vote again. As he emphasizes, the candidates they had chosen, while *virtuus* men, were not equal to the task of fighting Hannibal and would only produce further military disasters. By making this argument, Fabius is inviting the *populus Romanus* to serve as judges, not just of the personal qualities of candidates, but of their more obscure talents as strategists and policy makers. Under his reckoning, the Roman people as a body are capable of judging more than just personal qualities and the favorability of a bill that has been read out for them. Instead, they can be — indeed, must be — sophisticated judges of strategy and a man’s administrative qualities.

Fabius’ activities at the *comitia*, while authoritarian in their presentation, thus have a democratic undertone and suggest an emerging, competing vision of the role of the *populus Romanus* as nuanced judges of policy. This vision might be seen to find its fullest expression nearly a century later, when Gaius Gracchus, in debate over a *lex Aufeia*, invites the Roman people to question the motives of *everyone* who tries to persuade them toward one policy or another, and judge for themselves what is in their own best interests.¹⁶⁵ Gracchus’ rhetoric is Fabian, because at the same time as he is suggesting all of the speakers are self-interested, he is asking the people to forego something that only *appears* good in favor of a policy that appears bad, but is ultimately good. He treats the people as policy experts who do not need magistrates or a senate to tell them what to think.

¹⁶⁴ See Roller (2011) and (2018) for extensive and insightful discussions of this process of *exempla* formation.

¹⁶⁵ Gel. 11.10.1; cf. Hodgeson (2017) 49-53, who uses this passage to explore the rhetoric of *res publica* as a possession of the people.

While Fabius' rhetorical turn was eventually radicalized into a democratic sentiment, his position never replaced the older notion that the people conferred honors while the senate crafted policy. This was the idea at the core of Roman political thought, insofar as such thought existed, for the Romans appear to have had no discreet notion of politics. It was all embedded in their ideas about personal values, culture, and community. *Potestas* and its legitimate use were thus divided between people and senate. It was conferred in election by the *populus Romanus* and its use was legitimated through direction by the senate. Since a magistrate in the field, or even in the city, could not consult the senate on every decision he made, this (il)legitimation often came after the fact. When Flaccus removed the roof tiles from the temple, he could believe his use of *potestas* was legitimate, but the senate was able to decide it was not.

The model we have deployed is likewise able to explain the existence of dictators and *privati cum imperio*, "private citizens with *imperium*." The senate was giving direction to men who had not been given *honor* by the people in situations where elected officials either were lacking or had failed at the tasks they had been assigned. Such moments were uncomfortable for all involved in much the same way (though perhaps not to the same degree) as the various instances we have discussed of the *populus* voting on issues that had not passed the senate.¹⁶⁶ The state was not operating in the way the Romans imagined it should.

2.4.1 Against Older Views of Magisterial Authority

The model of *potestas* outlined in the previous section is unapologetically historicizing and seeks first and foremost to understand elected office as Romans of the middle Republic

¹⁶⁶ The discomfort the Romans felt about giving magisterial power to someone who had not been elected is exemplified by the episode from Livy where Scipio is made a *privatus cum imperio* after the deaths of his father and uncle in Spain. Livy takes care to set up a dramatic scene in which a crowd of people are asked if they would like to take charge in Spain, and only Scipio raises his hand (Liv. 26.18).

would have. Legal scholars will likely not find this model of *potestas* concrete enough for their liking, insofar as it argues that a magistrate's authority to, e.g., fine a citizen or pay money out of the treasury was founded on the ad hoc "advice" of the senate and custom, rather than some sort of foundational law, or a concept such as *imperium* which can be understood in terms of modern concepts such as sovereignty and the state's monopoly of violence. While I acknowledge that this represents a problem from the standpoint of political theory, I contend in this section that it is not a *new* problem. Previous attempts to work out the foundations of a magistrate's power have been coherent from the standpoint of legal theory but are unconvincing because they contradict or distort the evidence of our historical sources. A conception of Roman magistracy based on custom is strong not only because, as I observed in the previous chapter, the Romans of the middle Republic were not legal scholars, but because such a weak foundation for Roman magistracy makes sense in light of the problems of the late Republic.

Mommsen, working backward from Justinian's Digest, believed *imperium* was the foundation of all magisterial authority, but that it was divided between the unmitigated power of life and death of a magistrate outside of the city, and the more limited *imperium domi* of a magistrate within the *pomerium*, which was often termed *potestas* (*Röm. Staatsr.* 1.22-4). This *imperium* was the original power of the kings during the monarchy, but with the establishment of the Republic was split between the various magistrates who had inherited the king's power. The straightforward coherence of such a schema should give us pause, particularly since *imperium* was the foundation of the Emperor's power, and Drogula has suggested that the elaboration of a theory of *imperium* was a project of the early Empire. Roman law likewise underwent considerable changes.¹⁶⁷

¹⁶⁷ Drogula (2017) 59. On the broader transformation of Roman Law under the Empire, see Mousourakis (2007) ix, and Schiavone (2012) 5-41.

The immediate problem that Mommsen's schema of *imperium* faces, however, is that, of the regular magistrates, only the consul and the praetor definitely had *imperium*. The aediles were described in two sources as having *imperium*, but after an emendation to one of them, an inscription,¹⁶⁸ the only source left which might suggest the aediles had *imperium* is a passage from Apuleius whose evidence is arguably not relevant to the Republic, and who does not seem to be using the term in a technical sense.¹⁶⁹ People who endorse Mommsen's model of *imperium*, or a variant thereof, therefore tend to argue that the actions of magistrates *sine imperio* were predicated on the *imperium* of the consuls and praetors. This works tolerably well in the case of a quaestor serving as a quartermaster under a consul or praetor in the field but becomes a problem when the magistrates are in the city of Rome. First and most generally, it treats the junior magistrates as subordinates who are under the command of the senior magistrates when, as we saw in 2.3, this was the case only in extreme circumstances. In the normal course of events, it was the senate that gave orders to the magistrates.

Secondly, the logic of delegated *imperium* tends to lead to some very strange places as soon as one starts thinking through its implications. It would not make sense for the quaestors in charge of the *aerarium* to have their power delegated from another magistrate since Polybius tells us the senate had the power of purse (Plb. 6.13). Likewise, Franz Wieacker has attempted to predicate the powers of the aediles on the *imperium* of the praetor, and cites a passage from Cassius Dio, which will be discussed at greater length later on, where the Romans failed to elect

¹⁶⁸ Camodeca (2000) 53-76, esp. 55.

¹⁶⁹ Apul. *Met.* 1.25 *Demonstro seniculum – in angulo sedebat – quem confestim pro aedilitatis imperio voce asperrima increpans...* “I point out the little old man – he was sitting in the corner – whom he immediately begins berating in the harshest voice, by virtue of his aedileship (lit. “conforming to the *imperium* of his aedileship”). *Pro imperio/potestate* seems to have been something of a stock phrase, however, and shows up in Pl. *Capt.* 244; Ter. *Ph.* 196; Cic. *Ver.* 2.4.10; *Fam.* 13.50.1; Liv. 1.51, 2.56.12; Tac. *Ann.* 13.28. The Oxford Latin Dictionary recommends translating both *pro imperio* and *pro potestate* simply as “by virtue of” (1982: 1463 s.v. “pro”) and it is entirely believable that Apuleius had no interest in the distinction between *pro imperio* and *pro potestate* and used whichever came to him first.

aediles one year, and the senate decides to divide their duties between the praetors and the tribunes (D.C. 49.16.2). Wieacker concludes that this must mean, in the absence of aediles, their power returned to the praetor who was the source of it (1988: 478-9).

I do not think we can extract a constitutional principle from what, in context, seems to be the senate coming up with an ad hoc solution to an immediate problem, but there are other issues with Wieacker's argument as well. He ignores the fact that, in this episode, the duties do not all go to the praetor, but are divided between that office and the tribunate. We might charitably assume that he meant that the duties of the curule aedile returned to the praetor, while those of the plebeian aedile returned to the tribune, but this is a very strange solution. Under Wieacker's reading, all of the duties that had previously been shared between the curule and plebeian aediles would now be shared between the praetors and the tribunes. This would mean that some of the markets would be policed by the tribunes, and others by the praetors. The tribunes would be enforcing the edict of the curule aediles which was now being maintained by the praetors. The grain supply likewise would be split between them. Wieacker's attempt to predicate the powers of the aediles on praetorian *imperium* thus starts to look very strange once one tries to think through what it would mean in practice. The more likely reading of this passage of Dio is that individual duties were parceled out to different colleges of magistrates. So, for example, the praetors might take charge of the markets, while the tribunes might handle the grain supply. If so, then the powers of the aediles were not "returning" to anyone. The senate had simply picked the two offices adjacent to the vacant office in the *cursus honorum* and split the extensive duties of the aediles between them.

Another way that scholars have attempted to provide some grounding for the powers of a magistrate has been through recourse to the *lex curiata de imperio*. Every year, after the

centuriate assembly had elected the magistrates who were supposed to have *imperium*, the curiate assembly convened in order to pass a law on the *imperium* of that magistrate.¹⁷⁰ Cicero likewise mentions a *lex centuriata de potestate censoria* that was analogous to the *lex de imperio*, except that it was passed in the centuriate assembly and for the censors (Cic. *Agr.* 2.26). This double election, in which a magistrate was chosen and then voted on again by a separate assembly has puzzled many, and, in the middle of the twentieth century, A. Magdelain put forward the argument that the *lex de imperio* (and *de potestate*) outlined the duties of the magistrates and gave definition to their power.

There is a problem with Magdelain's position: there is no evidence to support it at all. He recognized the lack of a foundation for the powers of the magistrates, and the mysteriousness of the *lex de imperio* and decided to use one gap in our knowledge to fill another. This solution is rendered less plausible because, if the *lex de imperio* defined the powers of a magistrate, then we would expect it to be invoked in the course of any of the numerous episodes in which magistrates misbehave. We would expect, for example, that someone might have told the censor Fulvius Flaccus that he had violated the terms of his *lex centuriata de potestate censoria*. This is never the case. What we do see invoked quite often during these episodes, however, are customs and exemplary virtues,¹⁷¹ the very ideas that I have argued defined magistracy.

¹⁷⁰ On the *comitia curiata*, see Cic. *Agr.* 2.31; *Rep.* 2.14; Liv. 1.13.6, 9.38.15; D.H. 2.50.3. There have of course been a number of hypotheses as to why this strange second election took place. Mommsen, going off of Cic. *Agr.* 2.12.30, suggested it was the *lex curiata* that gave a magistrate his military powers (*Röm. Staatsr.* 1.590-1 no. 1), and most arguments about the curiate law are basically in agreement, *mutatis mutandis*: Cornell (1995) 115 simply agrees with Mommsen. Develin (1977) argues that it conferred the right to take the auspices, which legitimated the military powers of a commander. Brennan (2000) 18-20, Smith (2006) 219-23, and Pina Polo (2011) 17 take similar views. Drogula (2015) 105-111 argues that it conferred on the magistrate the right to take up *imperium* and command armies when he left the city. The outlier here is Nicholls, who sees the vote by the curiate assembly as confirming the decision of the centuriate assembly, almost like the putative role of the United States electoral college.

¹⁷¹ So, for example, see Liv. 27.8.4-10, 39.39, 42.3.

A third possible foundation for the powers of the magistrates was posited by Mommsen, who believed that the powers of the magistrates were established through laws passed when the office was created. So, for example, he argues for the existence of a *lex Furia de aedilibus curulibus* on the grounds that Livy tells us that, when the senate decided to create the curule aediles, they appointed a dictator, M. Furius Camillus, to hold the election.¹⁷² The trouble, as Becker has pointed out, is that none of the three sources that detail the creation of the curule aediles mention any sort of legislation.¹⁷³ A dictator was appointed to hold the election, he held it, and then he resigned. The absence of any such law for the curule aedileship is especially significant, since we would really like to have some legislative grounding for the edict which they maintained and enforced. Beyond the curule aedileship, however, Magdelain is right to point out that there is no evidence for any sort of ordinary legislation for any of the magistrates that existed prior to the third century (1964: 198-200).

In short, none of the various attempts to provide the powers of the magistrates with a firm juridical foundation are able to persuade. One both requires and produces strange readings of our ancient sources in order to hold together, while the other two are purely speculative. The model I have put forward does not provide a robust foundation for what the magistrates did, but it does have the advantage of conforming nicely to what the sources tell us. In the next section we will turn, at long last, to a discussion of the quaestorship. Armed with this model built upon the mutual roles of different groups in society, we will seek to explore a murky expansion of the quaestorship that occurred in 267 BCE, in order to understand why this expansion happened, how the quaestorship's role in the Roman state changed over the course of the third century

¹⁷² Mommsen, *Röm. Staatsr.* 2.1.480

¹⁷³ Becker (2017) 120-1. The sources he cites are Liv. 6.42.14-7.1.6; Lyd. *Mag.* 1.38.10; and Pomp. *Dig.* 1.2.2.26.

down to 180 BCE, and what limits, if any, there were on the *potestas* granted by the Roman people and given direction by the senate.

2.5 The Expansion of the Quaestorship

The *potestas* of a magistrate, then, was power delegated by the people and directed by the senate to look after the communal possessions and the public business of the Roman people. Whether the will of the people was the explicit foundation of that power, or they had the customary privilege of choosing which wealthy man would occupy an office whose foundation of legitimacy lay elsewhere, is ambiguous and probably was not a question to which the Romans gave much thought, prior to the second century BCE.

Having explored the source of a magistrate's power, we now turn to the question of what the scope of that power was. To answer this question, the quaestorship of the mid-third century will be employed as a test case. At the heart of this discussion is a mysterious expansion of the office. What these quaestors were up to is nowhere explicit in our sources, and a number of very different hypotheses to answer this question have arisen over the last few decades. In this section, we will try to untangle when and how many new quaestors there were, which is suggestive of how the Romans intended to make use of them. The next section discusses their role in the settlement of the Italian peninsula that came together as the Romans re-exerted control after the Pyrrhic war. What emerges is a picture of the most junior magistrate operating with surprising latitude and independence from the end of the war with Pyrrhus (275 BCE) to the end of the second Punic war (203 BCE).

Down into the third century, there were four quaestors each year,¹⁷⁴ but after the war with Pyrrhus, the number expanded. How many quaestors there were after this expansion, and why the expansion happened at all are difficult questions. In large part, our struggles arise out of the poverty of our sources. The relevant books of Livy, the source we would want to have, exist only in summaries, *periochae*, composed by a later author. No less an authority than Peter Brunt was able to call them “wretched.”¹⁷⁵ Our other two sources, Tacitus and John Lydus, are, respectively, vague and flawed.

Our best source for the expansion of the quaestorship lies in *Perioche* 15, which covers the period between the Pyrrhic war and the first Punic war. It is not an ideal source. As Brunt observes in his 1980 article highlighting the deficiencies of relying on summaries and fragmentary quotations to help us access lost works, Livy’s periochist is inconsistent in both the level of detail and space allotted to the various books of Livy’s history. In instances where we have both Livy and his periochist, the latter often waxes on about details to which Livy pays scant attention or spends very little time on topics to which his source devotes a good deal of space. He also is not immune to error.¹⁷⁶ As such, we will be able to give more credence to what *Perioche* 15 has to say about quaestors if we can verify that the rest of its summary of that book of Livy is not only accurate, but in the proper order. Since it is so short, we can afford to quote the summary of book 15 in full:

Victis Tarentinis pax et libertas data est. Legio Campana, quae Regium occupauerat, obsessa deditione facta securi percussa est. Cum legatos Apolloniatium ad senatum

¹⁷⁴ Liv. 4.43-4; cf. Mommsen, *Röm. Staatsr.* 2.527; Abbott (1901) 238. From an original number of two, Livy tells us that the quaestorship had been expanded to four in 421 BCE, at the instigation of the consuls, and after a political quarrel with the tribunes that resulted in a failure to hold elections for the following year and was only resolved by a sagacious Interrex. The credibility of this episode is subject to debate, as is nearly every story from Livy’s first ten books, but what we can say with a high degree of certainty is that, by the third century, the Romans had four quaestors each year, and this state of affairs had been the case for so long that they felt they could date it to the fifth century BCE.

¹⁷⁵ Brunt (1980) 488.

¹⁷⁶ Brunt (1980) 488.

missos quidam iuuenes pulsassent, dediti sunt Apolloniatis. Picentibus uictis pax data est. Coloniae deductae Ariminum in Piceno, Beneuentum in Samnio. Tunc primum populus R. argento uti coepit. Umbri et Sallentini uicti in deditionem accepti sunt. Quaestorum numerus ampliatus est, ut essent <octo>.

Peace and freedom were given to the defeated Tarentines. The Campanian Legion, which occupied Rhegium, was besieged and, having made an unconditional surrender, they were beheaded. Since certain young men attacked ambassadors whom the Apollonians had sent to the senate, they were given over to the Apollonians. Peace was given to the conquered Picentes. Colonies were established at Ariminum in Picenum, at Beneuentum in Samnium. Then for the first time the Roman people began to use silver coinage. The Umbrians and Sallentinians were conquered and their unconditional surrender was accepted. The number of quaestors was expanded to eight.

The periochist's summary of Livy in this book is generally accurate and chronological.¹⁷⁷ Yet two details present problems and should receive special consideration. First, the attack on the Apollonian embassy, which has been preserved in the works of several authors.¹⁷⁸ Broughton dated this incident to 266 BCE,¹⁷⁹ which would mean that it is out of sequence in Liv. *Per.* 15. None of the sources he cites, however, provide any internal evidence (such as a consular year) to date the episode, nor can we date the episode based on its order in the narratives of these other authors, as they are all either fragmentary (Dio & Zonaras), or uninterested in providing an historical narrative (Valerius Maximus). Our best guess, based on Livy's periochist, is that it occurred between 270 and 268.

The innovation of silver coinage is a rather more complicated issue. Based on the sequence of *Per.* 15, it should be dated either to 268 or 267 BCE, but Pliny the Elder dates the introduction of silver coinage to Rome to the year when Q. Ogulnius and C. Fabius were consuls,

¹⁷⁷ The treaty with the Tarentines occurred in 272 BCE (Rutter p. 16), the expulsion and execution of the *Legio Campana* in 270 (Scullard 1951: 539-40), the treaty with the Picentes occurred in 268 and colonies were founded at Ariminum and Beneuentum in the same year (Vell. 1.14.7). Meanwhile, the surrender of the Umbrians and the Sallentinians occurred in 267 (Zonar. 8.7, Flor. *Epit.* 15). The expansion of the quaestorship has also been dated to 267, based on John the Lydian

¹⁷⁸ V. Max. 6.6.5; D.C. fr. 42; Zonar. 8.7.

¹⁷⁹ Broughton *MRR* vol. 1 (1951) 200 s.a. 267. Broughton assumes the incident happened one year after the man's aedileship, which is therefore dated to 267.

269 BCE (*Nat.* 33.13.13). It is conceivable that Livy and Pliny were operating from different versions of the consular lists, or that they were operating from a common list that differed in minor details from that compiled by Broughton in the middle of the twentieth century. With these possibilities in mind, it is striking that Pliny further specifies that the date of the introduction of silver coinage was five years before the first Punic war (*Nat.* 33.13.13), which began in 264 BCE. Since the Romans counted inclusively,¹⁸⁰ that would give us the year 268 BCE, bringing this event back into chronological sequence with the other items from *per.* 15.

Tacitus, while discussing a senate meeting where P. Cornelius Dolabella proposed that gladiatorial games should be given by the quaestors elect, gives us a truncated history of the quaestorship:

...quaestores regibus etiam tum imperantibus instituti sunt, quod lex curiata ostendit ab L. Bruto repetita. Mansitque consulibus potestas deligendi, donec eum quoque honorem populus mandaret. creatique primum Valerius Potitus et Aemilius Mamercus sexagesimo tertio anno post Tarquinius exactos, ut rem militarem comitarentur. Dein gliscentibus negotiis duo additi qui Romae curarent: mox duplicatus numerus, stipendiaria iam Italia et accedentibus provinciarum vectigalibus: post lege Sullae viginti creati supplendo senatui, cui iudicia tradiderat. (Ann. 11.22)

Quaestors were appointed even when the Kings still ruled, which a *lex Curiata* renewing them by L. Brutus shows. And the power of selecting them remained with the consuls, until the people demanded that privilege too, and Valerius Potitus and Aemilius Mamercus were elected first, so that they would attend to military duties, in the sixty-third year after the Tarquins were driven out. Then, as difficulties increased, two were added, who took care of matters at Rome: then the number was doubled, due to the tribute of Italy and the growing profits of the provinces; after a law of Sulla, twenty were elected to expand the senate, to whom he gave the juries.

¹⁸⁰ Beck (1838) 175.

Tacitus' account has a number of problems, besides his decided aversion to providing dates.¹⁸¹

As Malloch points out,¹⁸² Tacitus seems to see the original quaestors as military officials, and the addition of two new ones as treasury officials, while Livy (4.43-4) suggests the opposite. Both historians, moreover, are envisioning an expansion to four quaestors in the fifth century BCE, more than a century before the Romans even began coining money. That is not to say that there was no treasury prior to that point, but it is doubtful that it would have employed two quaestors. Finally, the phrase *accedentibus provinciarum vectigalibus*, if taken seriously, suggests the date 227 BCE, when Sardinia was added as Rome's second overseas province.¹⁸³ This is four decades after Livy suggests the expansion occurred.

Finally, John Lydus, an early Byzantine scholar with years of experience in the Empire's treasury, whose work survives in only a single manuscript (which poses a problem for reading him from the stand-point of textual criticism), gives us the following account:

τῷ δὲ τρίτῳ καὶ <τεσσαρακοστῷ καί> διακοσιοστῷ τῶν ὑπάτων ἐνιαυτῷ ἐπὶ τῆς ὑπατείας Πηρύουλου καὶ Ἰουνίου κρινάντων Ῥωμαίων πολεμεῖν τοῖς συμμαχήσασσι Πύρρῳ τῷ Ἡπειρώτῃ, κατεσκευάσθη στόλος καὶ προεβλήθησαν οἱ καλούμενοι κλασσικοί, οἴονεὶ ναύαρχαι, τῷ ἀριθμῷ δυοκαίδεκα κβαίστορες, οἷον ταμίαι καὶ σθναγβεῖς χρημάτων. (*Mag.* 27.1)

In the 243rd year of the consuls, in the consulship of Regulus and Junius,¹⁸⁴ when the Romans decided to wage war against the allies of Pyrrhus the Epeirote, a fleet was prepared and they elected those called 'fleet quaestors,' as ship captains, twelve in number, as paymasters and collectors of money.

¹⁸¹ *Mox*, which is normally translated as "soon," provides no indication of when this happened, as Tacitus frequently uses it as a synonym for *deinde*, "then," indicating the next item in a chain of events (Gerber 1903: 871).

¹⁸² Malloch (2013) 333-4.

¹⁸³ Harris (1976) 94; cf. Malloch (2013) 334. Harris himself presents an issue, as the man's legacy in Classics is deeply problematic. In 2017 a case for sexual harassment and assault was brought against him by a female Columbia graduate student. It has since been discovered that this was the last in a string of episodes. Harris' whole career stands tainted by his crimes, and one of the questions gripping the field of ancient studies right now is how we should treat his work and the work of similarly problematic scholars, and whether it is acceptable to engage with it. While I am sympathetic to those who wish a complete *damnatio memoriae*, choosing not to cite problematic scholars does nothing to erase the influence of their ideas and, worse, allows them to be forgotten. I therefore choose to engage with Harris' work while not ignoring his misdeeds.

¹⁸⁴ There is no consulship of Regulus and Junius recorded in any of the consular *fasti*. Lydus must mean Regulus and Julius, which would be the consulship of M. Atilius Regulus and L. Julius Libo. This would date the addition of new quaestors to 267 BCE.

John the Lydian's account is discordant with the other two, to the point where W.V. Harris was able to observe that "no modern scholar has even discussed the possibility that he was right."¹⁸⁵ King Pyrrhus' erstwhile allies had been Italian, and so, while the Romans might well have made use of a fleet against those on the coast, there is no reason to think that they would have needed to resort to inventing new quaestors to attack cities that shared the same peninsula with them.

More fundamentally, the tripling of the number of quaestors (or quadrupling - it is unclear whether the twelve fleet quaestors are in addition to the previous four or are a new total) would have been an extraordinary act. As Harris observes, doing so would have debased the social value of the office,¹⁸⁶ and there is no reason to think that Rome's administrative needs had ballooned in the way we would have to imagine they did if we wanted to accept Lydus' claim. Mattingly and Harris have both tried to amend *δωκαίδεκα*, "twelve" to *δύοι καί δέκα*, "two-and-ten."¹⁸⁷ Rather than treating the phrase as one number, they propose to treat it as a number (two) followed by the new total of quaestors. Harris then argues that *δέκα* should be read as *ἕξ*, "six,"¹⁸⁸ although this is an unlikely error for a scribe to have made. While John the Lydian's account probably has some basis in reality,¹⁸⁹ the truth is irrecoverable. Previous attempts to reconcile Lydus with Tacitus and Livy have managed to lead us away from the rather intelligible

¹⁸⁵ Harris (1976) 93. While no one has been willing to endorse Lydus' account, many have sought to reconstruct where he went wrong, in order to bring him into line with Livy and Tacitus.

¹⁸⁶ Harris (1976) 93. The social prestige of office is based in part on the idea that obtaining it is competitive. A dramatic expansion of the number of people admitted to it each year diminishes the office's value.

¹⁸⁷ Mattingly (1969) 511, Harris (1976) 96.

¹⁸⁸ Harris (1976) 96

¹⁸⁹ Harris speculates, plausibly, that he was conflating the creation of *duumviri navales* with the expansion of the quaestorship.

accounts set out by the latter two,¹⁹⁰ and so I propose to ignore this passage of John the Lydian completely. Enough of his discussion of the quaestorship is wrong that we should not give the benefit of the doubt to the rest.

The problem represented by the expansion of the quaestorship is twofold: how large an expansion was it, and when did it happen? The most apparent answer is that it occurred between 267 and 264 BCE,¹⁹¹ and there were four new slots, but this has faced resistance on two fronts in recent decades.

Harris has argued that the number of quaestors was expanded by two in 267, and then by another two after the end of the first Punic war, justifying this argument by pointing out that Tacitus does not say that the doubling of the college occurred all at once.¹⁹² Such an interpretation is attractive in that it allows us to posit more gradual change, and to envision a Roman administration that was expanding in step with needs. Harris' interpretation is flawed, however, in that it requires an unlikely reading of Tacitus. Rather than make the sources say what we want, we should try to understand why they say what they do.

Jonathan Prag has an altogether different approach: noting that in the second and first centuries, praetors who had been assigned a provincial governorship often had a quaestor, he seeks to down-date the expansion of the quaestorship to the end of the third century so that they

¹⁹⁰ e.g. Mommsen, *Röm. Staatsr.* 2.571, envisioned four new "quaestores Italici," created in 267, who were assigned to various cities along the Italian coast for the purpose of constructing fleets. The construction of fleets at this juncture would suggest preparations for the first Punic war, which would begin only a few years later. Our historical narratives for the time period, however, suggest that Rome's entry into Sicily was haphazard and unplanned, and that Rome did not give serious consideration to beating Carthage at sea until several years into the war. While it is true that Rome and Italy were not as cut off from the Mediterranean as Polybius would have us believe (see Isayev 2017: 231-6 for a convincing refutation that uses Polybius' own evidence against him), the creation of four new quaestors to maintain a navy several years prior to the first Punic war is not credible.

¹⁹¹ The last event Livy's periochist lists in *Perioche* 15 before the expansion of the quaestors is the surrender of the Umbrians and Sallentinians in 267, and the next dateable event after the expansion of the quaestorship is the outbreak of the first Punic war in 264, mentioned in *Perioche* 16. In all likelihood, John the Lydian was right to date the expansion to 267 BCE.

¹⁹² Harris (1976) 94.

can be assigned to the praetorian provinces.¹⁹³ While Prag is right not to view Lydus 27.1 as much of a stumbling block to down-dating the quaestorship,¹⁹⁴ his decision to ignore Livy, who places the expansion around 267, is more problematic. While it is difficult to reconstruct the number Livy gave with certainty, the *Periochae* are clear that the quaestorship expanded between 267 and 264 BCE.

Fundamentally, what is at issue is an uncomfortable gap: in the mid-third century the quaestorship was expanded, by two or, more likely, by four. These new quaestors could not fulfill the same functions as their urban and consular colleagues, nor could they have the role that they would later have in the second century because there was, as yet, only one praetor, and the praetorship would not expand until 243. The reconstructions of Harris and Prag both seek to smooth away this problem in different ways by down-dating the expansion of the quaestorship to a period that is more comfortable for our assumptions about the office. Going forward, I assume that Livy was not wrong, and that the quaestorship was expanded by four in the years between the war with Pyrrhus and the outbreak of the first Punic war. This is the position that best fits the evidence provided by our sources.

2.6 The Role of the New Quaestors

The conclusion that the quaestorship was expanded in the period between the Pyrrhic war and the First Punic war renders starker the issue of what these quaestors were doing. The simple fact is that we do not know. Indeed, many of the disparate interpretations discussed above arise out of a *horror vacui* on the part of historians, who want either to fill the gap with information we do not have or nullify the gap by claiming there were no new quaestors until the second

¹⁹³ Prag (2014) 201-208.

¹⁹⁴ Prag (2014) 196.

century, or some other combination of the previous two. This is a “known unknown.”¹⁹⁵ What follows will necessarily be based on informed speculation and I will endeavor to begin with the more probable before moving on to the speculative. While I take issue with many of the rationales for the expansion of the quaestorship provided by historians, ancient and modern, they are right to see the expansion of this civic magistracy as a response to war, which had upset the apple cart and required the Romans to innovate new systems of government through which to exert power over people who lived hundreds of miles away.

In addition to telling us (probably) how many new quaestors were created and when, Liv. *Per.* 15 tells us something about the context in which these new magistrates were created. What strikes the reader of *Per.* 15, is the plethora of surrenders that dominates this book, and indeed, nearly all of these defeated peoples were Pyrrhus’ allies on the peninsula during the war that had just ended.¹⁹⁶ While we must be careful about stating the character of a book we do not have,¹⁹⁷ the final cleanup of the Pyrrhic war and the establishment of a new settlement and network of relationships on the Italian peninsula appears to have been a major theme in Book 15. It is in this context, I think, that we should understand the creation of the four new quaestors. Their existence was tied to Rome’s post-Pyrrhic war settlement, although it is unclear in what specific capacity.

Tacitus’ description, ...*mox duplicatus numerus, stipendiaria iam Italia et accedentibus provinciarum vectigalibus* “...then the number (of quaestors) was doubled, due to the tribute of Italy and the growing profits of the provinces” (Tac. *Ann.* 11.22), has been taken by Harris to

¹⁹⁵ Rumsfeld, Donald. U.S. Department of Defense News Briefing. February 12, 2002.

¹⁹⁶ The sole exception are the Picentes, who had revolted in the wake of the Pyrrhic war, and the “Campanian legion,” who were Roman allies that had gone rogue during the Pyrrhic war while garrisoning Rhegium. They had butchered the wealthier citizens of Rhegium and seized their property. Rome’s treatment of them, which was harsher than that received by any of Pyrrhus’ allies, reflects the embarrassment their perfidy had caused.

¹⁹⁷ For an arresting indictment of this practice, see Brunt (1980) 477-8 *et passim*.

mean that Tacitus thought their creation was a response to the increase in revenues of the Roman state.¹⁹⁸ This may be inferring more than Tacitus intended, a perennial danger, given the ubiquity of Tacitean innuendo.¹⁹⁹ Even if it was what Tacitus intended, we need to remember that he was reading the quaestorship through an early Imperial lens, by which point it was understood that, under the Republic, the quaestors were treasurers and quartermasters. As we established in the previous chapter, such an understanding is anachronistically specific. The urban quaestors of the third century were, first and foremost, the adjutants of the senate, and guarding the treasury was but one of a host of different tasks they carried out. Moreover, a sharp increase in Roman state revenue is not visible until the second century BCE,²⁰⁰ so it is unlikely that in the mid-third century the Romans would have needed more quaestors to look after the books.

Instead, I think we should envision the creation of new quaestors as a response to the need to secure the peninsula in the wake of the Pyrrhic war. As the two urban quaestors were adjutants of the senate in Rome, so the four new quaestors could be the senate's representatives across the peninsula, being dispatched to communities where the senate saw tensions, and capable, both of making the wishes of the senate and the Roman People known, and at the same time of being a Roman presence on site that could monitor relations with these communities and report back to the senate. In this respect they operated in ways similar to the praetorian governors of the second century, albeit without *imperium*. Indeed, it was this drawback of quaestorian representatives that eventually led to the expansion of the praetorship and the creation of the first praetorian provinces.

¹⁹⁸ Harris (1976) 94

¹⁹⁹ For a fuller discussion of Tacitus' penchant for being vague and allusive, especially on topics of possible imperial scandal, see Syme, *Tacitus*, 378-407 ("The Accuracy of Tacitus" and "The Skeptical Historian"), and 521-546 ("Tacitean Opinions" and "The Personality of Tacitus").

²⁰⁰ Kay (2014) *passim*.

2.7 The Quaestorian *Provinciae*

The idea that the four quaestors created in the 260s were assigned new *provinciae* is not new, and was proposed by Mommsen.²⁰¹ In his discussion of the new quaestors, whom he called “fleet quaestors” (*quaestores classici*), he suggested²⁰² postings at Ostia, Cales (the modern town of Calvi Risorta), the Po Valley (which he took to mean Ravenna) and, just possibly, Lilybaeum. His sources for these claims are, respectively, Cicero’s *Pro Sestio* 17.39, Tacitus’ *Annales* 4.27, Plutarch’s *Life of Sertorius* 4, and guesswork.²⁰³

A number of problems present themselves. The most immediate one is that these sources are all late and describe provincial assignments that range from two to three centuries after these quaestors and their tasks would have been created. A less obvious, but still serious issue is that Mommsen imagined that these *provinciae* were all permanent posts, whereas we have seen in 2.4 that, with a few exceptions,²⁰⁴ *provinciae* tended to be ephemeral until the late Republic. Another problem is that Mommsen, following John Lydus, believed these quaestors were all managing the logistics of a Roman fleet, and therefore forces some of these postings to be located on the coast when his sources suggest otherwise.

In what follows, I reevaluate the evidence for the tasks assigned to the new quaestors of the 260s in light of the more recent body of scholarship on the term *provincia*, as well as a more cautious sense of source skepticism. The following list does not (indeed, cannot) aim to be exhaustive, but is instead meant to offer a generous sampling of the types of things the new

²⁰¹ Mommsen, *Röm. Staatsr.* 2³ 570-2

²⁰² The idea that there was a quaestor in Sicily, as we shall see, has some textual basis, although Mommsen does not cite it, and he is clear that he is guessing.

²⁰³ Mommsen, *Röm. Staatsr.* 2³ 572 no. 1-3.

²⁰⁴ e.g. the *aerarium* for the quaestors, the two Spains for the praetors starting in the second century, although that one could be upgraded to a consular *provincia*.

quaestors might have been doing, and proceeds in descending order of probability. Some of these tasks could only have emerged toward the end of the first Punic war, or after, and so cannot have been what the senate had in mind in the 260s. In the aftermath of the war with Pyrrhus, however, Rome was now in control of Italy, and the senate was aware of a need to administrate. It was better to expand the quaestorship a little beyond their need than to find themselves shorthanded.

2.7.1 *Cal(l)es*

Mommsen based his proposed quaestor at Cales on a passage from Tacitus' *Annales*, in which a dangerous slave revolt growing in the countryside is nipped in the bud by the quaestor Curtius Lupus, *cui provincia vetere ex more Cales evenerant*“ to whom had fallen as a task, by old custom, Cales” (Tac. *Ann.* 4.27.2). The problem for this reading is that *Cales* is disputed by textual critics, and most readings instead favor *calles*, a term that can mean “mountain pastures,” “cattle tracks,” or “mountain pass.” Suetonius, moreover, in his biography of Julius Caesar, notes that the consuls of 59 were at first assigned the *silvae callesque*, “the forests and pastures/cattle tracks” (Suet. *Jul.* 19.2) of Italy, indicating that the *calles* were in fact an assignment that the senate might give out. Indeed, the assignment of the *silvae callesque* to a consul was read as a slap in the face to Caesar, a reading that would make a good deal more sense if the *calles* were known as a quaestorian *provincia*.²⁰⁵ It was beneath his *dignitas*, and *dignitas* was something that mattered to Caesar. Going forward, my assumption will be that Tacitus was referring to *calles*, not Cales.

²⁰⁵ Suet. *Jul.* 19.2. Suetonius presents this as an attempted hindrance to Caesar's career, but in light of the long-standing unrest in Rome's hinterland stemming, *inter alia*, from fallout from the Social War, Sulla's pogrom against the Samnites, the Spartacus revolt, and the Catilinarian conspiracy, there may have been a real need for a senior magistrate or two with excellent administrative skills to bring order to the Italian countryside.

What was expected of a magistrate assigned to the *calles*? One might speculate that they were assigned the task in order to collect duties from cattle herders, but this seems unlikely: as we saw in the previous chapter, the Romans had, even from an early date, a sophisticated contracting system, and so it is difficult to see why they would not resort to tax farmers instead, as they did in the later Republic.²⁰⁶ The more likely reason for the creation of this *provincia* is the reason for which it crops up in Tacitus: to keep an eye on backroads and mountain passes, and the various hill peoples (including the Samnites) that inhabited them.²⁰⁷ Their task was to coordinate with their people's allies and to be a Roman presence in the area during times of tension.

How old this *provincia* was is impossible to say for certain: Tacitus' language suggests that it was a very old task, certainly Republican, and perhaps even one that was no longer considered very useful. It was probably pre-Sullan, since the literature of Sulla's day presented the dictator as having exterminated the Samnites, and it would make little sense for Sulla to innovate a new quaestor to watch over the *calles* right after claiming to have solved that problem. This would suggest that the task originated sometime in the third or early second century BCE, most likely after one of the wars in which the Samnites sided against the Romans. The Hannibalic War is an attractive option, but the Pyrrhic war may be more so: the period after the war with Pyrrhus is already associated with an expansion of the quaestorship, and so this was an era when the Romans saw changes to the quaestorship as an effective way of accomplishing policy objectives and resettling the peninsula after a major war that had pitted different Italian

²⁰⁶ Var. R. 2.1.16

²⁰⁷ It is worth noting, at this juncture, that the *calles* were assigned as a consular province for 59 BCE, the year of Caesar's first consulship. The assignment of consuls to watch the *calles* has been regarded as an attempt to degrade Caesar, but this is doubtful because the provincial allotments were made before the elections were held. If the *calles* were meant to humiliate Caesar, which they may have been, then a substantial portion of the senate must have been confident well in advance that Caesar was going to win.

communities against one another. The innovation of a new task at this time would make sense. I therefore suggest that the *calles* were a periodic posting for one or more of the newly-minted quaestors of 267-264.

2.7.2 Assignment to a Praetor

Prag has argued that, during the second century, quaestors (who lacked *imperium* and could not command armies) were often assigned to praetors who had been given a military assignment.²⁰⁸ This was the case in the mid-third century as well, although it was rather uncommon for praetors to be given such an assignment in those years. When they were assigned to a praetor, then their duties would have been the same as those of the consular quaestors discussed in the previous chapter. During the first Punic war, however, the Roman state rarely needed more than two commanders in the field, and often did not even need that. The result was a sedentary praetorship, and it is unlikely that he was assigned one of these new quaestors with any great frequency. After the annexation of Corsica and Sardinia in 238, however, there was a praetor in Sardinia every year for the next decade,²⁰⁹ and they probably took quaestors with them.

2.7.3 Sicily

According to a fragment of Appian, at the end of the first Punic war, the Romans στρατηγὸν ἐτήσιον ἔπεμπον ἐς Σικελίαν “sent a *stratēgos* on a yearly basis to Sicily” (App. *Sic.*

²⁰⁸ Prag (2014) 201-208. Although quaestors themselves lacked the requisite *imperium* to command an army, they did serve as quartermasters, could command detachments of troops in an army under the command of a magistrates with *imperium* (Liv. 25.31), and might command the army on an interim basis in emergencies, such as if the magistrate with *imperium* was killed in action (Liv. 25.17-9).

²⁰⁹ See Fest. 430L; Plb. 1.88.8-12; Liv. *Per.* 20; Zonar. 8.18 for the annexation of Sardinia.

2.6). This sentence has been the cause of many furrowed brows, because *stratēgos*, in addition to being the generic word for “commander” or “general,” is also the word used to render the Latin “praetor” into Greek, and we know that the Romans did not begin sending praetors to the island until almost fifteen years later.²¹⁰ Another source of puzzlement is the presence, by the late Republic, of a praetor and not one but two quaestors on the island. We will tackle the former problem first. The solution for the second problem will emerge in the course of discussion.

Two explanations for Appian’s claim have been proposed: that he was wrong, or that *stratēgos* designates another magistrate. Appian is not immune to error, but is known for reproducing what his sources tell him, and there would have been a need for a Roman presence in this new stretch of land that had come under their control,²¹¹ as well as someone to maintain relations with their ally, King Hiero, who controlled the remaining third. There are also, as Corey Brennan has pointed out, a number of uses of *stratēgos* in Appian where we know that he does not mean a praetor.²¹²

It therefore seems likely that Appian means the Romans sent a magistrate. Given that Appian’s mention of this magistrate comes right after a sentence talking about the tax system that the Romans imposed on Sicily in 241, it is probable that this magistrate was meant to collect the tithes of Sicily. The natural person to do that would be a quaestor. He may also have served as the senate’s voice on the island. In 227 BCE, however, the Romans decided that a magistrate with *imperium* was needed. This could have been because there had been unrest in the Sicilian cities. A simpler solution, however, is that the revolt in Sardinia had caused the Romans to

²¹⁰ Solin. 5.1. cf. Liv. *Per.* 20, Liv. 33.42.8; *Dig.* 1.2.2.32, which do not mention Sicily, but do mention the expansion of the praetorship to four men, which would have been necessary in order continually to be sending praetors abroad.

²¹¹ Significantly, the passage of Appian under discussion mentions the *stratēgos* right after a brief discussion of the Roman taxation of the island after the end of the first Punic war.

²¹² Brennan (2000) 88, citing στρατηγός ἐτήσιος being used for *privati cum imperio* (App. *Hisp.* 38.152) and proconsuls in the imperial period (App. *Mith.* 121.596).

rethink the way they handled territories (of which Sicily and Sardinia were two) that were in Rome's control but outside of the network of alliances that had been built on the Italian mainland. As a result, Gaius Flaminius became the first praetor of Sicily,²¹³ and brought with him another quaestor. The quaestor who had previously been sent each year was folded into this new system, however, and continued to oversee the tithe.

2.7.4 Ostia

During the later Republic and early Empire there was a quaestor at Rome's port city of Ostia, whose task was overseeing the port and the regular importation of grain into Rome. It is first attested sometime in the last decade of the second century BCE, when it was assigned to (and taken away from) Saturninus.²¹⁴ It certainly did not exist before the expansion of the quaestorship in the 260s, for the senate only had two quaestors at its disposal each year. Beyond these *termini ante et post quem*, we must rely on speculation. To that end, a consideration of what the *quaestor ostiensis* might have been doing can offer possible suggestions as to when the *provincia* arose.

Care of the city's grain supply has been attributed to the *quaestor ostiensis*, but this simple answer presents a number of problems. First and foremost, the Tiber is not the ideal river for the transportation of grain inland;²¹⁵ ships of any great size — including most maritime vessels — would not have been able to travel upstream to Rome, due to how narrow and shallow the river is. Those that could make the journey would have found the pace agonizing — the

²¹³ Solin. 5.1. This was the same Flaminius who built the Via Flaminia and lost the Battle of Lake Trasimene during the Hannibalic War.

²¹⁴ Cic. *Sest.* 39, D.S. 36.12

²¹⁵ Plin. *Ep.* 6.31, Str. 6.4.1, cf. Tchernia (2016) 204, Isayev (2017) 86.

twenty mile journey took three days.²¹⁶ Indeed, when the Romans did first begin to cope with the need to have a proper harbor town, in the wake of the second Punic war, they chose Puteoli, some 150 down the coast. Ostia did not become Rome's default harbor, or the site of major grain importation, until the first century BCE.²¹⁷

Next, a concern for the urban grain supply is anachronistic to the third, and even the early second century BCE,²¹⁸ and Prag has attributed continued attempts to date it to the mid-third century to the persistent influence of John Lydus.²¹⁹ If the Ostian quaestor was the "grain quaestor," then this was a late development, and he would not have been stationed at Ostia. If there was a *quaestor ostiensis* dating to the third or early second century, then his task had nothing to do with importing grain or supervising the construction of a fleet.²²⁰

Erdkamp raises the intriguing possibility of a *quaestor ostiensis* during the first Punic war overseeing the shipment of supplies — among them, grain — to Sicily for the troops.²²¹ This is, in principle, possible, although we should not imagine that his location at this early date was Ostia. Instead of an Ostian quaestor, I propose that we can envision an occasional quaestorian

²¹⁶ Tchernia (2016) 204.

²¹⁷ Tchernia (2016) 207. By the middle of the first century CE, likewise, Ostia had been supplanted as the place where grain entered Italy by Portus, the artificial harbor constructed by the Emperor Claudius on the opposite bank of the Tiber, on the site of the present-day Fiumicino Airport.

²¹⁸ Erdkamp (2000) 62-3. Erdkamp argues, *inter alia*, that a sustained policy of government intervention in the food supply was not a feature of Roman government until the second Punic war. The occasional famine might warrant state intervention if it was severe enough that social mechanisms (i.e. borrowing from neighbors, patrons, or relatives) were unable to make up the shortfall, as we saw with Fabius Maximus Rullianus' aedileship in the previous chapter (Liv. 10.11.9). These instances, however, were isolated, and did not involve the creation of anything like the mechanisms for bring in food that would develop in the second century BCE. Even when these mechanisms did develop, Erdkamp argues, they were created to facilitate feeding the legions (pp. 62-67) Cf. Garnsey, *Famine and Food Supply in the Graeco-Roman World: Responses to Risk and Crisis* pp. 69-86 for the various strategies employed by city-states, among them buying food from friendly cities elsewhere, to deal with agricultural shortfalls.

²¹⁹ Prag (2014b) 198-9.

²²⁰ Plb. 1.20.9 assert that the Romans did not begin constructing their own warships until well into the first Punic war (although they could make use of the navies of their coastal allies). While Polybius overstates the Romans' unfamiliarity with ships, his assertion that they did not have a navy of their own prior to the first Punic war is almost certainly correct.

²²¹ Erdkamp (2000) 63.

posting, going back perhaps as far as the first Punic war, that was tasked with facilitating the shipment of materiel, as well as interfacing with Rome's naval allies in order to make the senate's wishes known and to be on the lookout for trouble, whether it be from the allies themselves, or from pirates or raiders. As the inflow and outflow of goods and people to and from Rome increased, over the course of the late third and early second centuries, this *provincia* evolved as well. The growing concern for the food supply in the second century and economic development created a need for bureaucracy in the ports along the Latin coast, and the quaestorship grew to accommodate these needs. This broader scope is supported by Cicero's *In Vatinius*. In section twelve of the speech, Cicero upbraids one of the quaestors of 63, who had been assigned to the Ostian *provincia*, for failing to prevent (and indeed, enabling) the export of silver and gold from Puteoli. Even in the mid first century, the "Ostian" quaestor could be expected to range all along the central Italian seaboard.

2.7.5 *Gallia Padana*

Quintus Sertorius was assigned the Po valley as his *provincia* early in the first century BCE.²²² It is possible that there was a quaestor assigned to northern Italy sometime in the mid-third century, for as Arthur Eckstein has demonstrated, the Celts in the Po Valley were a perennial concern to the Romans in the late third century, and the senate was wary of Rome's neighbors to the north.²²³ It is probable that the Po was assigned to a quaestor sometime between the conquest in 225 and the outbreak of the second Punic war in 218, when many of the locals sided with Hannibal. It is, however, possible that the post began even earlier, and that a quaestor

²²² Plu. *Sert.* 4

²²³ Eckstein (1987) 24-70. Eckstein divides the conquest of the Po valley into four phases of interaction but is careful to demonstrate that conquest was not Rome's immediate goal as tensions arose.

was dispatched to the northern border of Roman influence to keep the senate informed of the situation. This is, however, speculation.

2.8 Quaestors and *Potestas*

At the end of the war with Pyrrhus, the Roman senate was faced with the problem of how to exert power over other cultural or ethnic groups in a stable and reliable way. This very problem would continue to bedevil the Romans well into the Late Republic and would result in the creation of the praetorian provinces as well as a new, territorial understanding of *provincia*, as discussed in section 2.4. Before the senate decided, however, that their agents abroad needed armies at their beck and call,²²⁴ they experimented with giving the job of representing Roman interests and carrying out state functions to quaestors furnished with their customary *potestas*. We may suppose that, starting in the mid-260s, there were frequently two quaestors assigned to the *calles*, one stationed in the north, around Ariminum, and a fourth who was on hand should the need arise. As new areas of influence opened up, these posts were redistributed, and further quaestors were sent abroad. The senate and people had no qualms about sending Roman magistrates to exercise power among their allies: the very fact of having been defeated by Rome (or of having begged Rome's aid) put these states in a position subordinate to the Roman people, and sending a magistrate vested with the power to transact Roman public business with them seemed proper.

When it became clear, starting in the early 220s, that their administrators abroad needed to be able to back up their commands with a threat more visible than just the possibility of future

²²⁴ The decision to assign foreign administration to magistrates who could command armies, having been innovated at the time of the revolt in Corsica and Sardinia, became regularized in Spain after the Hannibalic War, where the Romans faced perennial, low level (at least compared to the Punic wars) conflict for the better part of a century.

Roman retaliation, the state began sending praetors. The old system, however, was never scrapped. quaestors were still sent to Sicily each year, the *calles* on occasion, and to the Po valley as well. We might even speculate that they continued to be sent on their own to Corsica, Sardinia, and Sicily when there weren't enough praetorian governors to go around (as may often have been the case in the second century, when Spain dominated the scene).

To return, then, to the question with which we began this chapter, *potestas* was the power to act on behalf of the Roman people and represent their interests at home and abroad. Within a distance of one mile from the *pomerium*, the limits of *potestas* were defined by the oversight of the senate and by *provocatio*, the right of appeal possessed by all Roman citizens. Down into the second century, however, the limits of *potestas* outside of the one-mile mark were nebulous and mostly defined *post factum*, when the senate or people decided that a magistrate had behaved inappropriately, as we saw with Quintus Fulvius Flaccus in section 2.1.

In this chapter, we examined the nature of the magistrate's *potestas* in the third and early second century BCE. In many ways, this chapter has been defined by wars. While this emphasis on warfare is not what one would expect for a discussion of civil magistracies, it should not be surprising: conflict on the Italian peninsula and beyond upset the mechanisms of control that the Romans had set up in order to exert power over foreign peoples and necessitated the innovation of new means for maintaining dominance: first an expanded quaestorship, then, supplementing but not replacing it, an expanded praetorship.

Chapter 3

The Aedileship and the Development of the *Cursus Honorum*

3.1 Introduction

In the consulship of Lucius Cornelius Lentulus and Publius Villius Tappulus (199 BCE), a stir arose at the election to choose the consuls for the following year. The long and grueling war against Hannibal had ended two years before, and another war, this time against King Philip V of Macedon, had already begun. There is every reason to think that the new war was not terribly popular. At the vote to declare war against Philip, the war-weary Roman people had voted the motion down. They were eventually constrained by their leaders to reconsider.²²⁵ The *pro consule* conducting the war against Philip, P. Sulpicius Galba Maximus, had made scant headway: no serious defeats, but no great victories. His army was mutinous.²²⁶ It was against this backdrop that the Roman citizens divided into centuries in order to elect consuls.

One of the candidates that year was the quaestor Titus Quinctius Flaminius. He cut something of a flamboyant figure. He spoke Greek fluently,²²⁷ and, if Plutarch can be believed, had a reputation for extraordinary generosity to his friends and mild, if determined, enmity to

²²⁵ Liv. 31.6. This episode has engendered a debate about the aggressiveness of Roman foreign policy. For the former, see Eckstein (1987) 271 no. 7, Harris (1979) 218, Scullard (1951) 87-8.

²²⁶ Liv. 32.3.2. See Eckstein (1987) 271-2 for a discussion of Galba's rather lackluster performance. The *pro consule* in Greece was unable to bring Philip to a pitched battle and alienated Greek allies through the brutality of Roman warfare.

²²⁷ It has for a long time been supposed that Flaminius was awarded the Greek command because he was perceived to have some expertise in Greek culture (see, e.g. Badian: 1971 110, Briscoe: 1972 42). More recent scholars have argued persuasively against this point. Gruen demonstrated that the Senate was ideologically committed to the idea that each aristocrat should be competent in whatever field he entered, and therefore that they did not assign tasks based on special cultural knowledge (1.207-8), and Eckstein (1987) has shown that Flaminius in fact had a rocky relationship with Rome's Greek allies for much of his command (272-4). His knowledge of Greek would have been regarded by voters as peculiar and perhaps even suspicious, not as a selling point.

those who had done him a bad turn.²²⁸ He was also young - not yet thirty.²²⁹ Despite his age, he had served with distinction in the war against Hannibal. He had been a military tribune to the great general M. Claudius Marcellus shortly before the latter died in battle, and had then been given charge, despite not holding any formal office,²³⁰ of the recaptured city of Tarentum, with whose people he had proved popular.²³¹ He was perhaps on friendly terms with Scipio Africanus,²³² the general who had brought a successful end to the war with Hannibal, and, in 200, Flamininus had been part of a special commission that assigned land to Scipio's veterans. Now, finally a quaestor, he sought the consulship.

At the election, however, the tribunes, Marcus Fulvius and Manius Curius, vetoed the proceedings, claiming *iam aedilitatem praeturamque fastidiri nec per honorum gradus, documentum sui dantes, nobiles homines tendere ad consulatum, sed transcendendo media summa imis continuare* "that the aedileship and the praetorship are now being treated with disdain, and the nobles are seeking the consulship, not giving proof of themselves through a hierarchy of offices, but, skipping the middle ones, they join the highest office to the lowest"

²²⁸ Plu. *Flam.* 1.2. Plutarch may be mistaking his foreign policy for his personality.

²²⁹ Plu. *Flam.* 2.2. Münzer (1999) 117 has him being born in 228 BCE and is followed by Badian (1971) 103. This is likely about right.

²³⁰ Badian (1971) p. 109 claims that he held the quaestorship in 206. This is mere supposition and is contradicted by the fact that Flamininus was quaestor in 199. There is no reason we can imagine why an ambitious young man like Flamininus would choose to hold the quaestorship twice.

²³¹ Plu. *Flam.* 1.3-4. Flamininus' career has been the subject of some discussion, as much because of his unusual career path as his meteoric rise. Badian (1971) argued, through a combination of prosopography and textual emendation, that he was the nephew of the previous governor, Q. Claudius Flamen, and that this explained his appointment to the province. The logic is weak, and we need no special explanation to rationalize Flamininus' promotion: Rome had a dearth of senior statesmen in the last years of the war. Tarentum had already been subdued and was no longer a danger. Flamininus, meanwhile, had experience in the south of Italy from his prior service with Marcellus. He was a good candidate, given the circumstances.

²³² Scullard (1951) 97-109, esp. 98-99. Flamininus' political leanings have long baffled scholars. Münzer confessed himself unable to make sense of how he got a leg up in politics (113). Scullard (1951) saw him as a compromise candidate between Africanus, who shared Flamininus' philhellenism, and the "Fabian faction" to whom Flamininus was supposedly connected via Marcellus (97-109). Badian (1971), meanwhile, sees him being promoted through the agency of his (alleged) uncle (109-110). Much of this is reliant on unwarranted assumptions. Many have noted, however, the similarity in personal styles of Flamininus and Africanus, and it is not much of a stretch to suppose, at this point in time at least, that the two were on amiable terms.

(Liv. 32.7.10). The matter was referred to the senate, which, with perhaps a hint of sympathy for the tribunes' position, ruled that the people should have the right to elect any person they wished, provided he was legally eligible, which Flaminius was (Liv. 32.7.11). Flaminius and Sex. Aelius Paetus (another candidate who could perhaps have been described as "joining the highest office to the lowest"²³³) were elected.

This episode presents a problem that is not easily resolved. The reference to a *gradus honorum*, "hierarchy of offices," seems to invoke the *cursus honorum* nearly two decades before it was codified as law in the *lex Villia annalis* of 180 BCE. The easiest resolution to this problem is to dismiss the wording as an anachronism supplied by Livy, who lived in the last decades of the first century BCE, over one hundred and fifty years after the *cursus honorum* became law. This does little to resolve the problem posed by this episode, however, because, even if we suppose that the indirect speech supplied by Livy was fictional (a reasonable supposition), that does nothing to explain why Flaminius' candidacy was objectionable.

One response to this problem is to suggest that the *cursus honorum* was already custom by this point,²³⁴ which would mean its codification as law in 180 BCE was a formality. This understandable conclusion presents multiple problems; it is facile, in that it attempts to resolve the problem without really explaining anything. The speech Livy gives to the tribunes is correct, moreover, that Flaminius was far from the only person with a short résumé to seek the consulship in recent years. Where Livy is wrong is in suggesting this trend was a recent development. Proceeding directly to (or after having held only one or two other offices) the

²³³ Paetus had been aedile in 200 but had not held the praetorship. His career path was thus more normal than that of Flaminius, as it had not been uncommon in the past century to hold the consulship before one had been praetor. Cf. Lintott (1999) 108, cf. Broughton *MRR* vol. 1 (1951) 164 s.a. 308, 175-8 s.a. 297-5, 180-2 s.a. 293-2, 188 s.a. 283, 191 s.a. 280, 208 s.a. 257, 211 s.a. 253. In fact, prior to the decade of the 240s, all of the praetors we encounter had already held the consulship. Around the time of the creation of the second praetorship, the pattern appears to have reversed itself, and henceforth, very few of the praetors are ex-consuls.

²³⁴ e.g. Heinemann (1935) 32.7 no. 6.

consulship had been common in the early third century. In this chapter, I will resolve this problem in full.

In order to answer this question, we will make extensive recourse to the career paths of Roman aristocrats, both individually and in aggregate, in order to identify patterns and trace the way these offices changed over time. This is an approach to understanding magistracy that has been used only by Hans Beck, in his monograph *Karriere und Hierarchie*, albeit to ask questions that were different from those of the present work.

Our general question going forward will be how magistracy in general and the aedileship in particular changed from the end of the war with Pyrrhus in 275 BCE to the passage of the *lex Villia annalis* in 180 B.C.E This is a topic that Becker has treated in his recent monograph on the aedileship, and he argues that the advent games for the plebeian aediles created an atmosphere of competition with the curule aediles that caused the cost of games, both in terms of time and money, ramped up over the last two centuries of the Republic.²³⁵ While I agree with Becker on the result, I differ with him on the cause. An increase in the number of games did indeed ensure that more time and money would be spent on them, but as we saw in 1.5.3, the plebeian aediles likely already had games for which they were responsible. The reorientation of this office toward games, moreover, is an interesting historical process that is linked with the development of the *cursus honorum* and is worthy of a lengthy discussion. The advent of the *cursus honorum*, meanwhile, has received very little attention in the scholarship, and Heinemann's assumption that it had simply been custom seems common.²³⁶

²³⁵ Becker (2017) 195-200. Under Becker's reconstruction, the situation went from one in which the curule aediles had one set of games, while their plebeian colleagues had none, to one in which the curule aediles had two while the plebeian aediles had three. Under my reconstruction, the curule aediles start our period with one festival and the plebeian aediles two, and then each college gained a festival.

²³⁶ Heinemann (1935) 32.7 no. 6.

In this chapter, the aedileship will be a lens through which to examine the evolving network of relationship between the various offices, and their re-orientation into a fixed hierarchy. As we shall see, magistracy was remarkably responsive to social pressures during this period. The creation of the *cursus honorum* as law, in the *lex Villia annalis*, was not a simple codification of age-old practice, as is sometimes supposed, but a more immediate response to the exigencies of the Hannibalic War and the change that war brought to Rome's position in the Mediterranean world. As a result of the rapid expansion of the praetorship from 242-227 BCE, as well as the irregularities of office holding during the Second Punic War, and the tremendous influx of wealth that occurred in the first part of the second century BCE, the aedileship was transformed from the locus of civic administration in the city of Rome to a stepping stone on an aristocrat's path to the consulship.

3.2 A Plethora of Praetors

Section 2.6.4 argued that the expansion of the praetorship, and the assignment of the new praetors to foreign provinces, starting in 227 BCE, reversed a previous policy of employing quaestors to help manage Rome's network of allies and subject states, and altered the scope of the quaestorship. In this section, we will explore the impact that same expansion, as well as a previous one in 242 BCE, had on the aediles and their role in the Roman state. As before, we operate under the premise that the various colleges of magistrates did not exist in a vacuum: they cooperated with (and resisted) one another, and it was expected and understood that members of one college had often held, or would go on to hold, office in other colleges. These individual elected positions were, in the Roman imagination, part of a constellation of different positions,

and were understood in relation to one another. An expansion of one college, or a change in the scope of its duties, altered the way the others were perceived.

The addition of a second praetor, in 242,²³⁷ and two more in 227,²³⁸ complicated the situation that had existed in Rome for at least the last century and meant that the aedile was rarely the senior magistrate operating within the city. This series of expansions²³⁹ represented a stabilization and regularization of Roman control over “acquired” territories. The sole praetor elected previously each year had been part of a pool (together with the consuls) of potential commanders who might or might not be allocated provincial commands.²⁴⁰ Now, with the addition of one, then two, then, in 197 BCE, four more praetors, the role of the praetor was more regular, and that role often included an urban jurisdiction.²⁴¹ The addition of more praetors diminished not only the social value of this office, but of other offices as well, particularly those with overlapping functions. Like the aediles, praetors assigned a civic task by the senate had judicial functions and were meant to look after the well-being of the city. Unlike the aediles, they could wield *imperium*,²⁴² and could convene the senate and the popular assemblies. The effect was the partial marginalization of the four aediles, who had once been the senior magistrates in the city much of the time.

²³⁷ Liv. *Per.* 19; cf. Lyd. *Mag.* 1.38; Gel. 13.15.4; Lintott (1999) 107; Beck (2005) 35.

²³⁸ Liv. *Per.* 20; cf. Lintott (1999) 107; Beck (2005) 35.

²³⁹ The process of adding more praetors would continue over the last centuries of the Republic, until the death of Julius Caesar, when the number of praetors had swelled to sixteen.

²⁴⁰ Drogula (2015) 182-231, esp. 183-192. Drogula somewhat radically suggests that the praetor and the consuls were originally part of the same college of magistrates and only came to be distinguished from one another by the consuls being given military commands on a regular basis. This suggestion may be dubious, but Beck’s wider point that the praetor originated as a military office is sound. cf. Brennan (2000) 58-84, who likewise sees the early praetorship as a primarily military office.

²⁴¹ Hence the designation *praetor urbanus* to denote the ranking praetor in the college. The urban praetor was widely understood to be the original praetorship in the college of praetors. *pace* Brennan (2000) 85-8, who sees the *praetor peregrinus* as another military office.

²⁴² As Drogula (2015) 46-56 argues, the praetor was not capable of exercising the unmitigated power of *imperium* within the city, but the potential to exercise *imperium* that was implicit in his office would have enhanced his clout.

3.3 The Middle of the Third Century – A Pattern Emerges?

Concurrent with, and perhaps related to, the expansion of the praetorship and partial marginalization of the aediles, was the normalization of career paths which occurred over the course of the third century. In 1.5.3 we saw that, in the last decade of the fourth century and the first decade of the third century, there was no *cursus honorum*. Roman elites could, and did, pursue career paths that their descendants would have found bizarre.²⁴³ By the start of the war with Hannibal in 218, however, career paths had become far more regular: the quaestorship was normally held first, followed by the aedileship or tribunate,²⁴⁴ although these latter two offices were optional. Then one would hold the praetorship and consulship in any order, although it was becoming normal to be praetor before one was consul.²⁴⁵ Last of all was the censorship, which was held by two men once every five years. The order was thus: quaestor, (plebeian aedile, curule aedile, or tribune of the plebs), praetor, consul, censor.

This career path became normal sometime between the start of the war with Pyrrhus, and the start of the war with Hannibal (i.e. between 280 and 218 BCE), but it is difficult to trace this development, due to the absence of Livy's second decade, which would have covered this time period.²⁴⁶ As a result, we know the names of only fifteen aediles from this time.

²⁴³ e.g. Q.Fabius Maximus Rullianus (*magister equitum* in 325, consul in 322, dictator in 315, consul again in 310 and 308, censor in 304, curule aedile in 298, consul again in 297 and 295), Ap. Claudius Caecus (censor in 312, consul in 307, aedile in 305, consul again in 296, dictator in 292 and 285).

²⁴⁴ Interestingly, one could hold the tribunate without having held the quaestorship, as the tribunes do not appear to have been covered by the laws on office holding. There were indeed some men who chose this peculiar career path, suggesting that they entered politics with the aim of holding that one office, and progressing no further (Mouritsen 2017: 140, Hantos 1988: 20, Wiseman 1971: 99).

²⁴⁵ This process may be posited as a direct result of the expansion of the praetorship in 242 and 227. The greater number of praetors meant that competition was now less intense than for the two consular slots, and therefore diminished the praetor's prestige.

²⁴⁶ Hans Beck (2005) despairs of being able to know much about the early career patterns of Roman magistrates during this period due to the paucity of sources (62-3). The number of quaestorships that we know of from this period (1 quaestor known) does indeed preclude any conclusions, our rather larger body of data for the Aediles (15 names known) allows us to draw some careful, tentative conclusions.

Table 3.3 – The Aediles of the Middle of the Third Century BCE²⁴⁷

| Name | Career |
|--|--|
| Q. Fabius | aed. cur. 267 |
| Cn. Apronius | aed. cur. 267 |
| L. Cornelius Scipio | aed. cur. 261, cos. 259 |
| P. Claudius Pulcher | aed. cur. 253, cos. 249 |
| C. Furius Pacilus | aed. cur. 253, cos. 251 |
| C. Fundanius Fundulus | aed. pleb. 246, cos. 243 |
| Ti. Sempronius Gracchus | aed. pleb. 246, cos. 238 |
| L. Publicius Malleolus | aed. pleb. 238 |
| M. Publicius Malleolus | aed. pleb. 238, cos. 232 |
| Q. Fabius Maximus Verrucosus Cunctator | aed. cur. 235, cos. 233, 228, 215, 214, 209 |
| M. Valerius Laevinus | aed. cur. 229, pr. 227, cos. 220, 210 |
| M. Claudius Marcellus | aed. cur. 226, pr. 224? cos. 222, 215, 214, 210, 208 |
| Scantinius Capitolinus | aed. pleb. 226 |
| C. Terentius Varro | aed. pleb. 221, aed. cur. 220, pr. 218, cos. 216 |

This body of data does not engender much confidence. It represents just over six percent of the theoretical 248 men who held the aedileship during the period from 280-218. It also does not offer a representative sample: since Livy is absent, we are forced to rely on biographers like Plutarch, antiquarians like Varro, collectors of anecdotes like Valerius Maximus, and, sometimes, the (well-informed) speculation of T.R.S. Broughton.²⁴⁸ Our ancient sources for the aediles of this period, therefore, had a particular interest in moral *exempla*. Our data set reflects

²⁴⁷ Broughton *MRR* vol. 1 (1951) 200 s.a. 267, 205 s.a. 261, 206 s.a. 259, 211 s.a. 253, 213 s.a. 251, 214 s.a. 249, 216 s.a. 246, 217 s.a. 243, 221 s.a. 238, 223 s.a. 235, 224-5 s.a. 233-2, 228-230 s.a. 229-6, 231 s.a. 224, 232-6 s.a. 222-20, 237-42 s.a. 218, 247-62 s.a. 216-4, 277-94 s.a. 210-208. Varro held the Aedileship twice, hence the table only includes 14 names when we know of 15 Aedileships.

²⁴⁸ Broughton *MRR* vol. 1 (1951) 231 s.a. 224.

these biases: of the fifteen aedileships whose holders are known,²⁴⁹ 73% (11) went on to become consul at least once, and 20% (3) held the consulship two or more times. By contrast, two of the four aediles who did not go on to be consul are known to us because of scandals in which they became embroiled after their tenure of office.²⁵⁰ The data set thus favors both the famous²⁵¹ and the infamous.

Nevertheless, the data is suggestive. The first person known to have followed the aedile-praetor-consul career path that would later become typical (Laevinus) comes in 227, the very year when the praetorship was expanded to the point that there were more of them than there were consuls. Marcellus may have followed a similar trajectory,²⁵² and Varro (his strange iteration of the aedileship notwithstanding) certainly did. This data is better in part because a greater number of praetors elected each year increases the likelihood that one or two of those names will survive. Meanwhile it is inconceivable that no one prior to 227 held office in the order of aedile-praetor-consul (or even those same offices in some other order). It is therefore difficult to assess the significance of this trend. Despite the manifest shortcomings of the data set, it is significant that there are no records of anyone following what would become the career path of the *cursus honorum* from 280 down until 227. This, combined with the expansion of the praetorship that occurred in the decades after the First Punic War, and the fact that, by the time our data improves at the start of the war with Hannibal, this career path had become

²⁴⁹ Varro counts twice for our purposes, since he held the plebeian aedileship in 221, before moving on to the curule aedileship the next year.

²⁵⁰ V. Max. 6.6.5; D.C. Fr. 42; Zonar. 8.7; Liv. Per. 15. Q. Fabius and Cn. Apronius ruined their careers by harassing ambassadors from Apollonia in the street.

²⁵¹ Cunctator and Marcellus were storied persons in their own right, while Gracchus, Scipio and Pulcher were themselves famous, but had even more famous descendants.

²⁵² Marcellus' praetorship is not attested in any of our Roman sources. Broughton *MRR* vol. 1 (1951) 229 s.a. 226 puts it in 224 BCE on the premise that Marcellus could not have proceeded directly from the praetorship to the consulship without a year in between. This is reasonable speculation, but it ignores the possibility that Marcellus either held his praetorship after already having been consul, or that he never held the praetorship at all.

commonplace, leads me to conclude, tentatively, that proceeding from aedile, to praetor, to consul became more common in the 230s or early 220s.²⁵³

If this career trajectory was starting to become the norm during this time period, then the gap between the aedileship and the consulship is worth noting as well: the average amount of time an aristocrat during this period had to wait from his aedileship to his consulship (assuming he made it to the consulship) was four or five years (avg. 4.7). Early in the period it is lower (Scipio and Pacilus only had to wait two years), which further supports the idea that elites of this era often proceeded from the aedileship to the consulship without a praetorship in between.

During the middle of this period, around the end of the First Punic War, there are a pair of spikes in the data, as Ti. Sempronius Gracchus and M. Valerius Laevinus each had to wait nearly ten years between their aedileship and consulship. This wait likely has to do with the trajectories of these men's careers. As aedile of the plebs in 246, Gracchus was one of the men who prosecuted Claudia for loudly wishing in public that the crowd in Rome would perish in a naval disaster.²⁵⁴ Prosecuting her carried favor with the voters, for Gracchus' colleague as aedile was elected consul three years later. It was not enough to help Gracchus, however, for he had to wait until 228. When he did make it to Rome's highest office, he was responsible for the annexation of Sardinia,²⁵⁵ suggesting he favored an especially aggressive policy toward Carthage's holdings. Such a policy was pointedly not in favor among Roman voters in the mid-240s (Plb. 1.55.1-4), and his career may have suffered accordingly.

²⁵³ As noted in no. 9 above, we see a nearly concurrent change in the praetorship, in which the incidence of elites serving as consul before serving as praetor, which was extremely common in the first half of the century, comes to an abrupt halt in the 240s.

²⁵⁴ Suet. *Tib.* 2.3; cf. Liv. *Per.* 19.

²⁵⁵ Fest. 430 L; Plb. 1.88.8-12; Liv. *Per.* 20; Zonar. 8.18.

The case of Laevinus is murkier. He was aedile in 229, when it is possible that he was the first sitting Roman magistrate to be dragged into court.²⁵⁶ If he was the first, however, it did not hurt him, for he was elected praetor two years later, as part of the newly expanded four-man college of praetors. As praetor, he governed Sardinia, when both that island and Corsica were in revolt, and he appears to have handled the situation well enough but did not make it to the consulship until 220. The best explanation here is that, after his tenure, war broke out (not for the first or last time) with the Celts of the Po valley, a threat which the Senate took seriously.²⁵⁷ There's some evidence that the Roman people felt experience was needed, as in 224, both of the consuls had already held that office before, and this may have delayed Laevinus' advancement. Spikes in the middle aside, by the end of this era, the Romans appear to have settled into a regular pattern of four- or five-year gaps between the aedileship and consulship, with a praetorship in between.

It may be tempting, at this juncture, to conclude that the problem of the *cursus honorum* is solved, that the Romans organized the various offices into a hierarchy based on the numbers elected per year into each college: when there was only one praetor each year, elites typically held that office after the consulship, but as the number of praetors expanded, the office's value was correspondingly debased. Such a conclusion has two faults. First, we know the organizing principle of the hierarchy, not why there needed to be one at all. As was noted in chapter one, a situation in which Roman elites held the offices in no particular order was not impossible. Second, such a conclusion does nothing to explain why this hierarchy was codified as law in the *lex Villia annalis*. One might suppose that they did so because certain people were ignoring the

²⁵⁶ Gel. 13.13.4. It may also have been a descendent. Broughton *MRR* vol. 1 (1951) is agnostic on this point (228 s.a. 229).

²⁵⁷ See Eckstein (1987) for an extremely detailed diachronic discussion of Senatorial policy in the Po Valley. Harris (1979) 42-67, 193-200 unsurprisingly takes a different view.

hierarchy, but the picture is both more complex and more interesting than such a simple formulation. The question of the reason why there came to be a hierarchy, as well as the reason it became law, will dominate the remainder of this chapter.

3.4 Crisis and *Cunctator*

The Hannibalic War, which began in 218 and ended in 201, offers us opportunities we have not experienced heretofore in our discussion of aediles. Livy returns, and his sources for the third decade are much better than they were for his second pentad. We are thus treated to a mostly complete list of who held these offices during the last two decades of the third century BCE. During this section, we will take a detour from the aediles themselves to the actions of the consuls during the Second Punic War. This detour is justified because the colleges are interlinked, and so a change in the circumstances of one college influences the others.

The repeated military disasters inflicted by Hannibal upon the Romans in the first two years of the war had a profound effect on tenure of the consulship (and, therefore, on career paths in general) for the next decade, as the catastrophic defeat at Cannae validated the more cautious strategy advanced by Quintus Fabius Maximus.²⁵⁸ The pattern of office-holding that emerges in the wake of the battle is striking:

Table 3.4 – The Consuls of the Second Punic War²⁵⁹

| Year | Consul | Consul |
|------|---------------------|--------------------|
| 216 | L. Aemilius Paullus | C. Terentius Varro |

²⁵⁸ What Fabius' policy was is a matter of some dispute because the sources are contradictory. All agree that Fabius opposed fighting on Hannibal's terms, but whereas Polybius seems to have Cunctator avoiding engagements until he could catch Hannibal at a disadvantage, Livy casts him almost as the inventor of guerrilla warfare. Paul Erdkamp (1992) has argued strongly, however, that Polybius is to be preferred in this instance (143), and that Livy was working from a tradition that was anxious to exonerate Fabius of any possible charges of passivity in his response to Hannibal (145).

²⁵⁹ Broughton *MRR* vol. 1 (1951) 247 s.a. 216, 253 s.a. 215, 258 s.a. 214, 262 s.a. 213, 267 s.a. 212, 272 s.a. 211, 277-8 s.a. 210, 285 s.a. 209, 289-90 s.a. 208, 294 s.a. 207, 298 s.a. 206, 301 s.a. 205.

| Year | Consul | Consul |
|--------------|------------------------------|------------------------------|
| 215 | Ti. Sempronius Gracchus | L. Postumius Albinus |
| <i>suff.</i> | | M. Claudius Marcellus |
| <i>suff.</i> | | Q. Fabius Maximus Verrucosus |
| 214 | Q. Fabius Maximus Verrucosus | M. Claudius Marcellus |
| 213 | Q. Fabius Maximus | Ti. Sempronius Gracchus |
| 212 | Q. Fulvius Flaccus | Ap. Claudius Pulcher |
| 211 | P. Sulpicius Galba Maximus | Cn. Fulvius Centumalus |
| 210 | M. Valerius Laevinus | M. Claudius Marcellus |
| 209 | Q. Fabius Maximus Verrucosus | Q. Fulvius Flaccus |
| 208 | M. Claudius Marcellus | Quinctius Crispinus |
| 207 | C. Claudius Nero | M. Livius Salinator |
| 206 | Q. Caecilius Metellus | L. Veturius Philo |
| 205 | P. Cornelius Scipio | P. Licinius Crassus Dives |

By the time the battle of Cannae occurred, on 2 August 216 BCE, the elections to choose the consuls of 215 had already occurred. Late in 216, however, one of the two consuls-elect, L. Postumius Albinus, was killed in action in northern Italy (Liv. 23.24.6-13). Gracchus, who was serving as Dictator in the wake of Cannae, held another election in his capacity as Dictator to replace his colleague-elect. The people chose Marcus Claudius Marcellus, a highly experienced commander, who supported Fabius' policy of only engaging Hannibal on terms that were entirely to the Romans' advantage.²⁶⁰ The results of this election were vitiated, however, when thunder

²⁶⁰ Liv. 23.31.12-14; cf. Oros. 4.6.12. The partnership of Fabius and Marcellus is another reason to follow Erdkamp (1992) (and Polybius') reading of Fabian tactics: Marcellus was aggressive on the battlefield, so much so that he came to be referred to, posthumously, as the Sword of Rome, in juxtaposition to Fabius, who was the Shield of Rome. If Fabius advocated a strategy of starving Hannibal and avoiding any combat larger than a skirmish, then his ability to work with Marcellus, who engaged with Hannibal's forces on several occasions would appear suspect. If we accept Polybius, then they would both appear to have been experienced generals who sought to engage Hannibal only when they perceived that they held the advantage.

was alleged to have been heard, and it was supposed that the gods did not approve of having two plebeian consuls. Marcellus stepped down, and in his place, the Roman people elected Fabius himself.²⁶¹ In 214 the Roman people chose Marcellus and Fabius again, this time together,²⁶² and in 213, Fabius' son was elected alongside Gracchus, who had been the colleague of Fabius the elder in 215.²⁶³

In the year 212, neither of the consular slots was occupied by a Fabius or Marcellus: in their stead were Ap. Claudius Pulcher, who was *pro praetore* for Marcellus in Sicily the previous year,²⁶⁴ and Q. Fulvius Flaccus,²⁶⁵ another old general of Fabius' and Marcellus' generation, who was the father of the boorish censor discussed in chapter two. In 210, Marcellus again held the consulship, this time with M. Valerius Laevinus, yet another old general from his generation.²⁶⁶ In 209, Fabius Maximus again held the consulship, this time with Q. Fulvius Flaccus,²⁶⁷ who had held the office just three years before. In 208, Marcellus was in as consul again, but was killed in action during an ambush.²⁶⁸ One of the two consuls of 207, M. Livius Salinator, had held a previous consulship, while the other, C. Claudius Nero had served under Q. Fulvius Flaccus as praetor in 212.²⁶⁹

²⁶¹ Liv. 24.7; Plu. *Marc.* 9; *Fab.* 19. Scullard (1951) 58 represents this episode as a bit of political theater, in which Marcellus, who was more well-liked, conspired with Fabius to be elected and then have his election vitiated, in order to conciliate the people to the more abrasive Fabius. The reward for Marcellus was that he would be Fabius' colleague the next year. The picture is problematic, in that it presumes far too great a control of the political machine on the part of elites, a perennial problem of prosopography, and presents Fabius, who had a great reputation for religiosity in antiquity, making the idea that he would orchestrate the falsification of a ritual unlikely. An ingenuous reading of this episode makes more sense. cf. Münzer (72-3), who agrees in principle that this was political theater, but does not assert knowledge of the motives behind said theater in as great a level of detail as Scullard does.

²⁶² Liv. 24.7-9; cf. Taylor (1966) 94 for a discussion of the exceptional nature of these occurrences.

²⁶³ Quad. fr. 57; Liv. 24.43.5-44.1.

²⁶⁴ Broughton *MRR* vol. 1 (1951) 264 s.a. 213.

²⁶⁵ Liv. 25.2.4; cf. V. Max. 2.4.7; App. *Hann.* 37.

²⁶⁶ Liv. 26.22.12-3; cf. Broughton *MRR* vol. 1 (1951) 277-8 s.a. 210.

²⁶⁷ Liv. 27.6; cf. Plu. *Fab.* 19; Cic. *Agr.* 2.90; *Brut.* 72.

²⁶⁸ Plb. 10.32; Liv. 27.26-7.

²⁶⁹ Livy presents Salinator as having withdrawn from public life in bitterness over having been found guilty of misuse of spoils a decade before. His very public reconciliation to the *nobiles* just prior to his election, in the wake

3.4.1 Confronting Problems of Prosopography

The whole situation outlined above looks like an oligarchy. Indeed, there is much more information here to suggest an oligarchic clique, which we will explore presently. First, however, it will be salutary to strike a cautionary note, for such a line of thinking leads us into precarious territory. For much of the twentieth century, the historiography of Roman political life was dominated by prosopography, a field of study that seeks to use the biographical details of elites, including major milestones of their careers and their networks of familial and personal relationships, in order to draw historical conclusions about the social and political dynamics between members of this class. This field of study was introduced to Roman history by the German philologist Friedrich Münzer, who was soon followed by Sir Ronald Syme, “the first prominent and indeed most eloquent representative of this ‘Münzer school,’” as he was deemed by Karl-Joachim Hölkeskamp,²⁷⁰ and H.H. Scullard, among others.

The trajectory taken by prosopographical works varied wildly. Münzer sought to identify familial ties and long-standing relationships among the elite, and while his work lacks the theoretical foundation that is a prerequisite for scholarship today, his ability to bring women back into the equation and make them integral to elite politics was far ahead of his time and is still remarkable.²⁷¹ Syme’s work traced career paths, and sought to treat the details of elite Romans’ careers as data that could be analyzed to identify patterns and draw broader conclusions about political power in the Roman Empire.²⁷² A more problematic approach was pursued by

of Marcellus’ death is detailed in Liv. 27.33, and illustrates how the Roman elite were able to close ranks in this crisis.

²⁷⁰ Hölkeskamp (2001) 94.

²⁷¹ e.g. Münzer (1920) 259-364.

²⁷² e.g. Syme (1953) 152; Syme (1957) 133; Syme (1958) 50.

Scullard, who presupposed the existence of large, enduring political factions, not unlike modern political parties, which were based on alliances of kinship groups and sought to trace those alliances using whatever means were available. Syme was not immune to this kind of thinking, but it was not typical of his work.²⁷³

The types of arguments employed were likewise inconsistent. Sometimes prosopography was able to proceed based on demonstrable long-standing ties between individuals and could produce observations about Roman society and politics of great insight. By contrast, arguments could also be based on more dubious evidence: one aristocrat marrying his daughter to another, speaking in defense of the other at a trial, presiding at the election where the other was victorious, or even being in office at the same time as the other.

The prosopography of the Roman Republic has some deep methodological flaws, especially in the work of Scullard. As Peter Brunt argued in a famous article on the subject, ancient authors never refer to there being any factions within the Roman state, except during the late Republic, when the term *factio* was used to denote different sides in a civil war.²⁷⁴ He likewise points out that the idea of kinship groups forming monolithic blocks to advance their own members at the polls finds scant support in the surviving works of Roman authors; different wings of families had very different rates of success at election time, suggesting that the more successful did little to help the less successful.²⁷⁵ Moreover, there are many attested examples of

²⁷³ e.g. Scullard (1951) *passim* esp. v, 1-5; Syme (1939) 349-368.

²⁷⁴ Brunt 445 e.g. *Pompeiani, Caesariani* for the supporters of the two belligerents of the civil war of 49 BCE. Proof that this linguistic construction connoted civil war is provided by the scandal surrounding the death of Germanicus in 17 C.E. One of the charges against Piso, who was accused of murdering Germanicus and fomenting civil war, was that he condoned and encouraged his soldiers to refer to themselves as *Pisoniani*, i.e. members of Piso's faction (AE 1996.885, ll. 55-6).

²⁷⁵ Brunt (1988) 452; cf. Stone (1987) 59, who makes a similar point about prosopography as a wider field of study. Prosopography can ascribe too much weight to kinship relationships, as researchers of the English civil war realized when they discovered a distant blood relationship between Charles I and Oliver Cromwell.

relatives who could not work together,²⁷⁶ or who even outright disliked one another.²⁷⁷ Likewise, an unhappy marriage was as likely to drive families apart as a happy one was to bring them together. The marriage itself is evidence that the two families were on good terms when it was contracted, not proof of long-lasting amity.²⁷⁸

To the last claim, namely, that elections can be used to reconstruct alliances, Brunt adduces a thought experiment *cum reductione ad absurdum*, in which he demonstrates that if we were forced to rely on prosopography to reconstruct the Late Republic (where our sources are, in fact, excellent), we would be led to a number of conclusions that are ridiculous, given the information that we have: prosopography would lead us to believe that Caesar was allied with M. Calpurnius Bibulus, who was his colleague as curule aedile, praetor, and consul, and that he was an ally of L. Domitius Ahenobarbus, who was chosen to be praetor at an election over which Caesar presided. In fact, Caesar loathed both of these men and was loathed by them.²⁷⁹

Brunt's critique of prosopography and its methods, along with that of Shackleton Bailey,²⁸⁰ has been influential, and in the last few decades, Republican prosopography has been nearly an empty field. This is, in many ways, a shame. The approach taken by Scullard, and occasionally followed by others, led to bad arguments, and the methodologies of Syme and Münzer were imperfect,²⁸¹ but we should take the valuable criticisms raised by Brunt and

²⁷⁶ Brunt cites the example of the two Metelli, Q. Caecilius Metellus Caprarius and Q. Caecilius Metellus Numidicus, who, as censors, could not agree on whether to expel Saturninus from the senate (1988: 452; cf. App. *BC* 1.28).

²⁷⁷ There was apparently no love lost between Scipio Aemilianus, who was both a cousin by adoption and the brother in law of Tiberius Gracchus. Upon hearing that the latter had been slain by a mob of angry senators in 133, Scipio is said to have pronounced that Gracchus had been justly killed.

²⁷⁸ Brunt (1988) 454; Stone (1987) 59.

²⁷⁹ Brunt (1988) 456.

²⁸⁰ Bailey (1960) no. 2 253-267.

²⁸¹ As Stone (1987) notes, the reliance of prosopography on financial records and family genealogies can lead to a rather gloomy picture, in which all politics is reduced to a small group of interrelated people pursuing their own financial advantages (58).

Shackleton Bailey as problems of method, not calls to abandon the field. The claim that we can reconstruct whole political factions while treating coincidences as evidence of relationships is ridiculous, but Roman familial relationships did matter, and for that we need no better witness than the numerous letters of Cicero puzzling over the ancestry and familial relationships of his peers in the senate.²⁸² Likewise, the details of individual aristocrats' careers are important data, and should be used to draw broader conclusions, especially in studies of the Republic, where information is precious and often sparse. As Lawrence Stone noted in his consideration of the value of the discipline, "if past errors can be avoided, and the limitations of the method are recognized, the potentialities are very great....Prosopography does not have all the answers, but it is ideally fitted to reveal the web of sociopsychological ties that bind the group together."²⁸³

My interest, at this juncture, is to make clear that I do not intend to use the kind of thinking employed by Scullard *et al.*, however much the term "oligarchic clique" smacks of their kind of work. I differ from these scholars in a number of respects. First, I do not consider such a domination of the state by a handful of men to have been the norm. As will emerge later on, I consider this clique that surrounded Fabius Maximus to be an unusual phenomenon, an exigency of the crisis created by Hannibal, and not indicative of Roman politics in general. Secondly and thirdly, I do not consider this clique to have been very large, nor do I consider it to have been organized based on kinship. A famous episode from Livy, discussed in the previous chapter, in which Fabius prevented a relative of his from being elected consul,²⁸⁴ actually militates against

²⁸² See e.g. Cic. *Att.* 12.20.2, 12.22.2, 15.11.2 = SBA 258.2, 261.2, 389.2; cf. Münzer 248.

²⁸³ Stone (1987) 65.

²⁸⁴ Liv. 24.7.12-24.9.2. This episode illustrates the contortions prosopographical works have often needed to make in order to make sense of the material. Fabius argued against the election of his brother-in-law, Otacilius, and was content to have Marcellus, the half-brother of his sister's husband (ironically, therefore, the half-brother of Otacilius) (Münzer: 1999 p. 80), as his colleague. Both Scullard and Münzer have thus had to turn this episode into a conspiracy in order to make some sense of it. Münzer even goes so far as to suggest that Otacilius was complicit (73), and that he was compensated for losing the consulship by being given another praetorship. No Roman

kinship being an important criterion. The circle of men who ran the Roman war effort for most of the Second Punic War was defined less by family relationships than by proven military ability and by a shared policy of only engaging Hannibal when all the circumstances were in their favor. Having made clear that I wish to avoid the type of thinking employed by Scullard, I will make the case that we can see such an oligarchic group directing Roman policy for most of the war with Hannibal, before turning to a discussion of how this political development affected the aedileship.

3.4.2 *Per Dominationem Factionis Vindicata*

The body of data paints a compelling picture. During the ten-year period between 215 and 206, Fabius (and son²⁸⁵), Marcellus, and Flaccus accounted for ten out of twenty of the consulships held, and one of these men was in office in seven out of the ten years. Such a number of iterations of office is striking,²⁸⁶ but if we had only the consular *fasti*, we might conclude that this was the will of the people expressing itself. Our information is better than that. Thanks to the number of sources for this period that survive, we have rather more complete information, and a look at who was holding the praetorship, (occasional) dictatorships, and the various promagistracies and legateships reinforces this already rather remarkable picture of a military command dominated by a small group of individuals.

Marcellus was elected consul for 215 but was immediately removed from office because his inauguration would have entailed two plebeian consuls. He was then elected alongside the

aristocrat would have viewed this as a fair exchange, and it is easier to make sense of this episode if familial relationships were a comparatively insignificant factor in Fabius' thinking.

²⁸⁵ For the purposes of this argument Fabius the younger will be treated as an extension of his father: they were on good terms (Liv. 24.44.9-10) and the father served as his son's legate (V. Max. 2.2.4, Plu. *Fab.* 24), implying that the son's consulship was a continuation by other means of the father's.

²⁸⁶ The only comparable rate of success before the principate is that of the Caecilii Metelli near the end of the second century.

man who replaced him, Fabius, for 214, 210, and 208. In between those years (in 213, 212, 211 and 209), he served *pro consule*. In short, through a combination of consulships and prorogations, Marcellus held *imperium* continuously from 214 until he died in 208. Flaccus gives us a slightly less impressive, though similar picture: consul in 212 and 209, praetor in 214 (even though he had already served as consul in 237 and 224). In 213 he was *magister equitum* to the dictator who was holding the elections. Flaccus himself was chosen to be consul at this very election. He was then *pro consule* in 211, 210, 208 (in 209 he was consul), and 207. He was also appointed dictator for holding elections by Marcellus in 210: the victors at those elections were himself and Fabius Maximus. With the exception of the year 213 (when he was *magister equitum* for a short time) he held *imperium* continuously from 214 to 207. Of the three, Fabius ironically has the least impressive career: consul in 215, 214, and 209, as well as his son's legate when the latter was consul in 213. In 209 the censors chose him as *princeps senatus*, "first man of the senate"²⁸⁷ a position which allowed him to speak first in the senate on any issue, and which offered (as the Romans would later discover) considerable latitude to direct policy.²⁸⁸ Finally, Fabius was appointed *interrex* in 208 after Marcellus was killed in action. For his part, the son was praetor in 214 when his father was consul, and served as legate in 212, 209, 208, and 207,

²⁸⁷ Liv. 27.11.9-10, cf. Münzer (1999) 95, and Broughton *MRR* vol. 1 (1951) 285 s.a. 209 for a commentary on this episode.

²⁸⁸ Mouritsen (2017) 164-172 offers a provocative analysis of senate decision making. The peculiar speaking order of the senate, in which speaking order was determined by previous magistracies held, was meant to build consensus within the senate, so that they could present their *consultum*, "advice," to the people with a united voice. The structure thus encouraged unanimous, or nearly unanimous, decisions, with the result that a few opinionated individuals could sway dozens or hundreds of senators to their side. This suggestion is a bit schematic and has the unfortunate potential to occlude the very real fact that there were disagreements about policy, many of which are preserved (and embellished) in Livy, but Mouritsen's point does have merit: not every senator spoke in the senate, and most senators, who were not senior statesmen, were content to be persuaded by their more august colleagues. The position of *princeps* was thus a potent one, as it allowed Fabius to be the first out of a handful of men who would speak on a given issue.

although usually with rather simple assignments such as conveying troops from one place to another.

I see Fabius (and son), Marcellus, and Flaccus²⁸⁹ as the core, or at least the most active members, of this clique. Other consuls, such as Ap. Claudius Pulcher (cos. 212), C. Claudius Nero, and Ti. Sempronius Gracchus have demonstrable ties to these three men: Pulcher appears to have held some kind of military position in 214,²⁹⁰ when he commanded troops in Sicily until Marcellus arrived to take charge of them. He then continued to serve in this role under Marcellus in 213 and was then elected consul for 212. He was *pro consule* in 211 alongside Flaccus at the siege of Capua, where he was killed in action. C. Claudius Nero served as praetor in 212, *pro praetore* at the siege of Capua alongside Flaccus and Pulcher in 211 and 210, and then won the consulship in 207. Gracchus, meanwhile, served as Fabius' colleague in 215 and then served as the colleague of Fabius' son in 213. He also was *pro consule* in 214, when he won a minor victory in Apulia. He again served as *pro consule* in Apulia in 212, where he was killed in action.

Anecdotal evidence from Livy paints a similar picture to the one seen in the above analysis of office holding. In book 27, after his election as consul for 209, Fabius is depicted as

²⁸⁹ Flaccus presents a potential problem because Scullard (1951) presented him as a bitter enemy of Fabius (33-4, 58) because, when the former was elected censor in 231 BCE, the latter had found a religious procedural error in the election, which resulted in Flaccus and his colleague being forced out of office. Fabius was chosen in his stead. This argument is in fact emblematic of the problems with Scullard's thinking. He starts from the assumption that none of the Roman elites believed in their own religion and that religion was just a weapon in the Roman political arsenal (a belief he states explicitly on pp. 25-30), and proceeds to assume that this incident would cause erstwhile friends and allies to become life-long enemies. To the first assumption, it should be stressed that all of the evidence gives us reason to credit that the Romans believed ritual mattered, and that a magistrate elected through faulty ritual could bring on the anger of the gods. Fabius in particular had a reputation for his religiosity, and so we should not suppose that his vitiation of the election was mere chicanery. If we start from the assumption that the Romans took these matters seriously, then this episode appears in a different light: true it was a moment of tension between Flaccus and Fabius, but a ritual fault was a ritual fault, and these men would have been able to move past this awkward moment, especially since, as we shall see later on, in the late third century, the censorship was a much less important office than it later became, and by the time the war with Hannibal broke out, the incident between Flaccus and Fabius was more than a decade in the past.

²⁹⁰ Polybius (8.3.1) refers to him as ἀντιστρατηγός, which could mean he was either *pro praetore* or legate.

coordinating policy among the various commanders so as to maneuver Hannibal away from central Italy (Liv. 27.12). Fabius instructs Marcellus to engage Hannibal as aggressively as possible. Such a characterization is out of keeping with Livy's portrayal of Fabius, who almost invariably is shown avoiding confrontation with Hannibal,²⁹¹ and suggests that this episode is unlikely to be a fabrication of the annalistic tradition. Fabius thus appears to have been in a position of unusual influence over the actions of his fellow commanders.

Similarly, in the set piece debate concerning the Scipionic strategy, Flaccus is the only senator other than Fabius and Scipio to whom Livy gives a speech, and its content benefits Fabius (Liv. 28.45). In reality, of course, there were others who spoke, and it is unknown what information Livy might have had when he composed this debate, but his portrayal of Flaccus is suggestive of what Romans of the late Republic thought Flaccus' political allegiances were. Flaccus' pointed hostility to Scipio is all the more intelligible in light of his relationship with Fabius: the hard-won successes of the last decade, which Scipio would either surpass or undo, belonged to Flaccus nearly as much as they did to Fabius.

Much of what has been demonstrated and suggested in the previous few paragraphs depends on an idea that has been taken as simple fact by Scullard and others: that the person who presided at a Roman election was capable of controlling, or at least influencing the outcome.²⁹² Peter Brunt was able to argue convincingly that this was not the case, at least under the vast majority of circumstances.²⁹³ We do, however, have good reason to think the Second Punic War

²⁹¹ Erdkamp 129, 137 *et passim*.

²⁹² Scullard (1951) 18-25. The presiding magistrate had the ability to accept or reject a candidate (20). Scullard further speculates that he could fix the century that would be selected as *centuria praerogativa*, whose vote the other centuries tended to follow (22), and that many voters would blindly vote in favor of the candidate whom the presiding magistrate let it be known he preferred (23).

²⁹³ Brunt (1988) 454-5. Instances of presiding magistrates rejecting a candidate are rare, and there are too many recorded instances in which the victorious candidates and the presiding magistrate disliked each other to believe that the president was controlling the outcome. If he had the ability, it was but rarely exercised.

was an exception. In section 2.3, as part of a discussion of sovereignty (or its inapplicability) in the Roman Republic, we discussed a number of examples during the war with Hannibal, in which the people seemed inclined to elect consuls who might have endangered the war effort, until they were persuaded to vote again. In 215, Fabius instructed the people to do just that, with the result that he was iterated with Marcellus as his colleague for 214.²⁹⁴ In 211, the people selected T. Manlius Torquatus, an aged man who had gone blind, until the latter got up, reminded them that he was in no state to fight Hannibal, and asked them to vote again. They chose Marcellus and M. Valerius Laevinus.²⁹⁵ Finally, just the next year, when the people voted to make the Dictator holding the election, Flaccus, consul along with Fabius Maximus, the tribunes objected to the iteration of consulships, especially when the beneficiary was the man holding the election. They were persuaded to withdraw their veto when Flaccus pointed out to them that the senate had authorized iterated consulships for the duration of the war (Liv. 27.6). In all three of these instances, the election was contested, and the beneficiaries were Fabius, Marcellus, and Flaccus. Whenever the people seemed disinclined to elect Fabius, or one of his *amici*, the specter of Hannibal was used as a justification to interfere and induce the people to vote again. All this was done with the approval of the senate, which had passed a measure allowing for the iteration of consulships until the war was over.

Our picture of this decade is therefore decisive. From 215 through 207, Fabius or one of his *amici* held one or both of the consular slots every year except for 211, as well as a number of the following offices: *pro consule*, *pro praetore*, dictator, *magister equitum*, *interrex*, and legate.

²⁹⁴ Liv. 24.7.12-24.9.2; Plu. *Marc.* 9, 13; *Fab.* 19

²⁹⁵ Liv. 26.22; Flor. 1.22.25; Plu. *Marc.* 23. Laevinus does not appear to have had any substantial ties to Fabius or Marcellus prior to his election as consul but had been praetor in 215 and *pro praetore* waging naval warfare against Philip V of Macedon ever since then. Fabius and his *amici* were happy to leave Laevinus unsupervised, so long as he was not anywhere near Hannibal.

Even in 211, the year when none of them was consul, three of these men were *pro consule* (one in Sicily and two at the siege of Capua). The senate prorogued them again and again, and whenever the Roman people seemed disinclined to elect them, they were instructed to reconsider. The influence of Fabius and company seems to have been on the wane in 208 (Marcellus was consul and Flaccus *pro consule*, but almost no one else was in a position of authority). Their successes had been great, but hardly satisfying; they had reconquered most of the allies that had betrayed Rome after Cannae, and avoided any further military disasters, but Hannibal was still loose on the Italian peninsula. The death of Marcellus in battle this year appears to have hobbled this clique. Fabius may have been appointed *interrex*,²⁹⁶ but this in-group was able to secure few other magistracies: too many of them were dead, and Hannibal had not been defeated. In 206, the Roman people chose as consul for the next year P. Cornelius Scipio, who favored a policy diametrically opposed to that of Fabius: an invasion of North Africa in order to draw Hannibal into a pitched battle far from Italy.

3.5 The Scope of the Aedileship During the Hannibalic War

We have seen, then, that in the wake of Cannae, and for the decade that followed, the war with Hannibal was dominated by a small in-group of no more than six or seven individuals. This has led us rather far afield from the aedileship, whose development is the topic of this chapter. This lengthy detour is justified because the different colleges are interlinked, and a change in the circumstances of one college influences the others. Having established what was transpiring with

²⁹⁶ This is one of the gaps in our knowledge: *Inscr. Ital.* 13.3.80 suggests that Fabius was named *interrex* to elect new consuls. The *Fasti Capitolini*, however, suggests that T. Manlius Torquatus was made Dictator for holding elections with C. Servilius Geminus as his *magister equitum*. In any event, we know of no *consules suffecti* for 208, which is a problem as well. Mommsen's solution was that Fabius held the elections, but instead of electing *suffecti*, elected the consuls of 207 as well. Livy agrees in principle but maintains that the dictator Torquatus held the election.

Rome's military offices during this period, we will now discuss the effects that this dramatic change in the demographics of the consulship had on Roman office holding in general, and the aedileship in particular. What will emerge is a spike in the amount of time that aediles had to wait before being allowed to hold the consulship, a spike that is the result of the domination of the consulship by Fabius and his *amici*.

The following table lists all of the aediles (their names abbreviated²⁹⁷) from 217-201,²⁹⁸ along with the year that they held the consulship, if they did at all, in parentheses:

Table 3.5 – The Aediles of the Second Punic War²⁹⁹

| Yr. | Curule Aedile (cos) | Curule Aedile (cos) | Plebeian Aedile (cos) | Plebeian Aedile (cos) |
|-----|------------------------------|---------------------------------|-----------------------|--------------------------|
| 217 | Ap. Claud. Pulcher (212) | | | |
| 216 | C. Laetor. | Ti. Sempron. Gracch. (215, 213) | M. Aurel. Cotta | M. Claud. Marcell. |
| 215 | Q. Fab. Maxim. (213) | | | |
| 214 | P. Sempron. Tuditan. (204) | Cn. Fulv. Centumal. (211) | | |
| 213 | P. Cornel. Scipio (205, 194) | M. Cornel. Cetheg. (204) | M. Fundan. Fundul. | L. Vill. Tappul. |
| 212 | P. Licin. Crass. (205) | | | |
| 211 | | | | |
| 210 | L. Vetur. | P. Licin. Var. | Q. Cat. | L. Porc. Licin. (184) |
| 209 | L. Cornel. Lentul. | Ser. Sulpic. Galba | C. Servil. (203) | Q. Caecil. Metell. (206) |
| 208 | Q. Caecil. Metell. (206) | C. Servil. Gemin. (203) | C. Mamil. Atell. | M. Caecil. Metell. |
| 207 | Cn. Servil. Caepio (203) | Ser. Cornel. Lentul. | M. Pompon. Matho | Q. Mamil. Turrin. |
| 206 | | | Sp. Lucret. | Cn. Octav. |
| 205 | Cn. Cornel. Lentul. (201) | L. Cornel. Lentul. (199) | Ti. Claud. Asell. | M. Iun. Penn. |
| 204 | C. Liv. Salinator (188) | M. Servil. Pulex (202) | P. Ael. Paet. (201) | P. Vill. Tappul. (199) |
| 203 | M. Valer. Falto | M. Fab. Buteo | M. Sext. Sabin. | Cn. Tremell. Flacc. |
| 202 | L. Licin. Lucull. | Q. Fulv. Gillo | P. Ael. Tubero | C. Laetor. |

²⁹⁷ *Praenomina* have received their standard abbreviations. *Nomina* have had the *nomen*-forming -ius ending removed, and any *cognomina* that are in the second declension have had the -us ending removed. In the case of people with multiple cognomina, only one *cognomen* has been recorded.

²⁹⁸ The aediles of 218 are unknown.

²⁹⁹ Broughton, *MRR* vol. 1 (1951) 244 s.a. 217, 249 s.a. 216, 255 s.a. 215, 259 s.a. 214, 263 s.a. 213, 268 s.a. 212, 279 s.a. 210, 286 s.a. 209, 291 s.a. 208, 295 s.a. 207, 298 s.a. 206, 302 s.a. 205, 306-7 s.a. 204, 311-2 s.a. 203, 316 s.a. 202, 320 s.a. 201; cf. Wiseman (2008) 272-4 for why the interpolation of a Memmius as plebeian tribune in 211 is almost certainly incorrect.

| Yr. | Curule Aedile (cos) | Curule Aedile (cos) | Plebeian Aedile (cos) | Plebeian Aedile (cos) |
|-----|------------------------|----------------------------|-----------------------|-----------------------|
| 201 | L. Valer. Flacc. (195) | L. Quinct. Flaminin. (192) | L. Apust. Fullo | Q. Minuc. Ruf. (197) |

The Hannibalic war leaves its mark on the aedileship. From 217-215 BCE, the amount of time taken to reach the consulship from the aedileship conforms to the pattern of the previous forty years (as discussed in section 3.3): three of the seven aediles during that period went on to be consul, and of those three, the number of years it took to reach the consulship was five, three, and one. The proportion of aediles from 209 through 207 who make it to the consulship is lower (three out of ten), but for those who succeed, the wait is similar: a maximum of six years and a minimum of three. Our point of interest, however, is the period from 214 through 212 BCE.

Of the seven men who held the aedileship during this period, two did not advance to the consulship at all, one of them made it after an average wait (three years), but the remaining four had to wait nearly a decade to hold the highest office. We will pass over the case of Scipio for the moment — he held the aedileship at a young age and his career path was anything but ordinary — and focus on the other three. There were occasional long waits for the consulship in section 3.3, but whereas the two men discussed in the previous section were scattered across a twenty year period, had striking extenuating circumstances to explain their long wait, and had, moreover, little in the way of consular ancestry, the three aediles we are discussing here are concentrated in a three year period, have no extenuating circumstances, and are blue blooded: all three of them had consular ancestors, and one of them was a patrician.

This spike in the data is a direct result of the sway Fabius and his clique had over the state. The aediles of 217-215 were the praetors of 215-213. They therefore were in a subordinated military role at the moment when Fabius, Marcellus, and Flaccus were taking control: Fabius and Marcellus were consuls in 215 and 214, and Fabius 'son was consul in 213. As praetors, the aediles of 217-15 were perfectly placed to prove themselves to the clique in

charge of the war effort, and several of them are attested as serving with Fabius or Marcellus. Their careers advanced normally: they became the consuls of 212 and subsequent years, and as consuls they appear to have adhered to Fabius' strategy. Those who held the aedileship after 215, however, did not have this opportunity, and so were kept out of the highest office until Fabius' strategy fell out of favor, around the time of the election of Scipio as consul for 205.

It is easy at this juncture to be dismissive of the political setbacks of these men. A longer wait to be consul would have been a nuisance but compared to the calamities suffered by the Roman people and their state during this grueling war of nearly two decades, it pales into insignificance. It is a "first world problem" more than two millennia before there was a "first world." This perspective benefits from hindsight. A decade-long wait for the consulship seems trivial to us, because of the great distance of time, because elected office is not integral to our identity in the way it was to Roman elites,³⁰⁰ and because we know that that wait came to an end: some of these elites did make it to the consulship in 205 and following. In the middle of the Second Punic War, however, this would have been far from evident. Progression to high office and leadership in the state were integral to Roman political culture and had been inculcated in Roman men from a young age. It was part of their *habitus*. When the aediles of 214-212 repeatedly failed at the polls in subsequent years, they would have thought their careers were over, and the aediles of 210-207, having only the success rate of their predecessors to go on, would not have been much more hopeful. The repeated elections where the Roman people were

³⁰⁰ See Beck (2005) 31 for an excellent discussion of the role of magistracy and officeholding in Roman elite culture. Tenure of office was constitutive for the Roman elite in that it defined their hierarchy and allowed them to define themselves both against each other and against the *populus Romanus*. Such an understanding is also suggested by Hölkeskamp (1996) 323-6 *et passim*.

all but instructed to vote for men who had already held the consulship two, three, or more times would have been further salt in the wound.

This stoppage on the path to the consulship is not the only irregularity in career paths from this period, however. The yearly prorogation of *imperium* for Marcellus and Flaccus, discussed in the previous section, could not have helped but engender resentment. Likewise, the extraordinary career of P. Cornelius Scipio: aedile at a young age,³⁰¹ then *imperium* and the *provincia* of Spain while still formally a private citizen. He was not at that point a praetor, consul, or any other magistrate capable of wielding *imperium*, nor had he ever held any of those offices. When he reached the consulship in 205, he was barely in his thirties.

We know that all of these irregularities produced tension in Roman society because Livy discusses those tensions. The repeatedly acrimonious consular elections speak to the extraordinary circumstances and the tensions that were brewing among the elite and in the wider community. In the first episode, when Fabius instructed the *centuria praerogativa* to vote again, one of the rejected candidates accused Fabius of attempting to keep the consulship all to himself and withdrew his objection only when Fabius threatened to have him killed.³⁰² It is not difficult to sympathize with the candidate.

The Roman people do not appear to have been much happier with the situation. The second episode especially, in which the people chose the blind Torquatus for their highest military office (Liv. 26.22), looks like a protest vote. Torquatus had evidently not put himself forward as a candidate, and it is difficult to credit that not a single member of the *centuria*

³⁰¹ Approximately twenty-three, although it is unknown exactly when he was born. Scullard reconstructs the year of his birth as 236 based on statements about how old he was at various moments of his life by Polybius and Livy. This is should not be far wrong.

³⁰² Liv. 24.9.2: *admonuit cum securibus sibi fasces praeferri* “[Fabius] warned that the *fasces* were carried before him with their axes,” i.e. a thinly-veiled reminder that they were outside of the *pomerium*, where Fabius had *imperium* and was therefore within his rights to kill the jilted candidate.

praerogativa was aware of his physical infirmities and made them known. Regardless of how serious these alternative choices were, however, the Roman voters balked at having their generals effectively chosen for them and had to be prodded to make the prudent decision.

In addition to the disputes over the outcome of the consular elections which we have already discussed, we can see disputed candidacies even in the aedilician elections. The increased policing of access to the consulship had created more competition for the other offices, and in times of such tension, the suitability of a candidate came to be defined conservatively. Thus, when Scipio ran for curule aedile for 213, the praetor holding the election rejected Scipio's candidacy on the grounds that he was too young.³⁰³ A legal age requirement for holding office is a blatant anachronism, as the law that created such a requirement was not passed until 180 BCE, but that does not mean the praetor's objection is a fiction: while the minimum age of for holding office was not yet governed by law, it was understood that a candidate should be an adult.³⁰⁴ Since this sense was a part of Rome's political *habitus*, it could, of course, be elastic. An unusually young candidate — as Scipio was, at the age of twenty-three — might be accepted or rejected depending on the circumstances (being blue blooded could not fail to help his case). Fabius and company had disrupted the normal course of office holding, and the praetor was

³⁰³ Liv. 25.2. Scipio responded witheringly '*Si me...omnes Quirites aedilem facere volunt, satis annorum habeo*' (Liv. 25.2.7) "if all the citizens want to make me aedile, I am old enough."

³⁰⁴ This passage has been the subject of some controversy as, by the middle of the second century, when Polybius was writing, there was statute in place stipulating ten years of military service as a prerequisite for the quaestorship (Plb. 6.19.4). How long this had been the case is uncertain. Mommsen took this episode to indicate that the ten-year prerequisite was not in place in 213, since the presiding praetor objected to Scipio's age, not the length of his military service (*Röm. Staatsr.* 1.2.505). Astin (1958), however, points out that an age qualification was a blatant anachronism, since the *lex Villia* was more than three decades away. He therefore suggests that the objection to Scipio's age was an invention of Aemilianus in 147, well after the passage of the *lex Villia* when he was seeking the consulship at a young age. If this was the case, then the original objection likely was to Scipio's non-completion of military service (63 no. 1). Astin's hypothesis is as plausible as it is unprovable. Regardless of whether the objection was to Scipio's age or his service record, the rules were elastic enough that the people were able to elect him anyway.

reluctant to accept a candidate who was twenty-three years old in a situation where candidates in their mid-thirties were having trouble advancing.

It should not perhaps come as any surprise, then, that at the consular elections of 199 BCE, when the war was over and the emergency had ended, Flaminius' candidacy was objectionable: he was probably a friend of Scipio, whose career path he seemed to be following (at least in the broader strokes),³⁰⁵ and was an aristocrat of impeccable pedigree. He had only ever held the quaestorship and now sought to take Rome's highest office and lead his people to victory in an altogether different war. He thus exemplified all that was irregular, disorderly, and extraordinary about the previous two decades. Those elites whose careers had dwindled or been put on hold during the previous war, many of whom were members of the senate, had every reason to object and to desire a system that would make their careers and those of their peers less haphazard. The tribunes issued their veto, saying *...iam aedilitatem praeturamque fastidiri nec per honorum gradus, documentum sui dantes, nobiles homines tendere ad consulatum, sed transcendendo media summa imis continuare* "that the aedileship and the praetorship were now being treated with disdain and the nobles were seeking the consulship, not giving proof of themselves through a hierarchy of offices, but, skipping the middle ones, they joined the highest office to the lowest" (Liv. 32.7.10).

The previous sections have explored how the crisis of Hannibal's invasion produced tensions in Rome's political sphere and created a set of conditions that favored the advancement

³⁰⁵ Scullard also recognized the similarities of the character of Scipio and Flaminius: "In some respects, he resembled Scipio Africanus. His magnetic personality, his enthusiasm, his Hellenic culture, the tact and adaptability which he displayed instead of the blunt and often brutal self-assertiveness of the Roman, all these found their counterpart in Scipio. But shallow and vain, ambitious and domineering, he lacked that soundness of character a loftiness of soul which were felt by all who came into personal contact with Africanus" (101). Scullard's hagiography of Scipio aside, the assessment of the affinity between their characters, at least as far as it is presented in Polybius and Livy, is sound.

of those who were uniquely gifted, blue blooded, or both. This state of affairs was tolerable so long as Hannibal was loose on the Italian peninsula and the war continued but produced a backlash almost as soon as the dust had settled on the battlefield at Zama. This analysis makes clear why certain members of the Roman state saw a need for there to be a hierarchy of offices, but what remains unclear is why they waited more than twenty years to enshrine that hierarchy of offices in law. The war had been an extraordinary time, and those elites, whose careers had suffered over the past decade or so, probably hoped that electoral practices would settle back into the pattern that had prevailed in the 230s and 220s. The fact that they eventually had to pass a law mandating the proper career path suggests that this was not what happened. The remainder of this chapter will investigate the political climate of the early second century. It will show that the vast influx of wealth that occurred during this period changed the scope of office holding in Rome, as the consulship became, if anything, more competitive than it had been in the late third century, and the censorship became a more potent vehicle for public munificence. The result, which was designed to police access to the offices associated with money, power, and glory, was the *lex Villia annalis*, as well as the further marginalization of the aediles, whose resources for investing in public infrastructure were limited by comparison, and who could only hope to use their office to gain access to higher offices.

3.6 *Spolia et Stipendia*: The Rewards of Empire

In 201 BCE, the victorious *pro consule*, Scipio, celebrated a triumph for bringing the devastating war with Carthage to a victorious end. At this parade, his army carried one-hundred thirty-three thousand pounds of silver into the city as spoils, and deposited this money in the

aerarium.³⁰⁶ This large figure is a pittance compared to the indemnity that Scipio had exacted from the defeated Carthaginians as war reparations: roughly eight hundred thousand pounds of silver to be paid out in equal parts over fifty years.³⁰⁷ This influx of money into the Roman state, far from being an isolated event, was repeated, on varying scales, more than a dozen times over the course of the next half-century, as the Roman state skipped from victory to victory against the wealthy Hellenistic kingdoms of the eastern Mediterranean, and the mine-rich province of Spain.

The details that Livy and other authors give us about these and other sources of income during the early second century, as well as two isolated pieces of information — that the *aerarium* was more or less empty at the end of the Hannibalic war, and that in 157 BCE it contained coins and ore to the value of 22.5 million *denarii*³⁰⁸ — have led to a number of attempts to reconstruct Roman state finance during the intervening period.³⁰⁹ None of these attempts, however erudite, can be anything more than informed speculation, as the numbers vary in their reliability: the spoils brought back from campaign and the indemnities imposed on defeated enemies are certain, as a number of different sources independently verify each, suggesting that these authors had concrete numbers, likely treasury records, from which to work.³¹⁰ Other receipts and expenses are more dubious. We can say with confidence that a Roman legion, depending on the size, cost between two thirds and three quarters of a million

³⁰⁶ Liv. 30.45.3. See Frank, *Econ. Survey* 1.126-38, esp. 127-8 for a discussion of the money brought in by Roman warfare.

³⁰⁷ Plin. *Nat.* 33.51; cf. Liv. 30.37.5, who describes the figure as ten thousand talents and Plb. 15.18, who describes it as two hundred talents a year for fifty years. All our sources agree more or less on the figure, with some slight variations.

³⁰⁸ Frank, *Econ. Survey* 1.126; Plin. *Nat.* 33.55.

³⁰⁹ Most famously that of Tenney Frank in his first contribution to the series *An Economic Survey of Ancient Rome*. See also the first section of Philip Kay's intelligent book, *Rome's Economic Revolution*, and Michael Crawford's *Roman Republican Coinage*.

³¹⁰ Frank, *Econ. Survey* 1.127; cf. Kay (2014) 21-4.

denarii per year,³¹¹ but it is only possible to estimate the amount of money spent on letting out contracts for public works each year, or the amount of money generated by the Spanish silver mines.³¹² Furthermore, errors in our guesswork tend to compound when we attempt to calculate state spending over more than forty years.

We need not wade into this messy debate. Our interest lies in the amount of money being brought into the Roman state through conquest, as this influx of wealth contributed to a perception on the part of the elite that access to high office needed to be more strictly controlled. Thankfully, the amount of wealth brought in through conquest is, in general, reliably known.³¹³ During the first two decades of the second century,³¹⁴ Roman commanders in the field brought home (usually as part of a triumph or *ovatio*) the equivalent of 1.18 million pounds of silver in spoils, and 2.01 million pounds of silver in indemnities.³¹⁵ A more detailed chart, showing the amount brought in as spoils over time, is shown below. Spoils taken in war hit several astronomical peaks following the victories over Hannibal (201), Philip V (196-5), and Antiochus and the Aetolian League (189-7) before settling back down to more run-of-the mill spoils to be gained from defeating less-wealthy enemies. Although we may look at this chart and be

³¹¹ Roughly 100 talents: 120 *denarii* each for the 4200 or 5200 soldiers, twice as much for the 60 centurions, and thrice as much for the 300 cavalymen. This figure is confirmed by Plb. 6.39.12 which helpfully informs us that Scipio brought 400 talents with him to Spain to pay his four legions.

³¹² Plb. 34.9 suggests that the Spanish silver mines were producing nine million *denarii* or thirty-five tons of silver each year, but, as always, dubitation impinges: we might readily believe Polybius that this was the case around the time he visited the mine (circa 140 BCE), but it is impossible to know how long this had been the case, or what its level of productivity had been in the early second century.

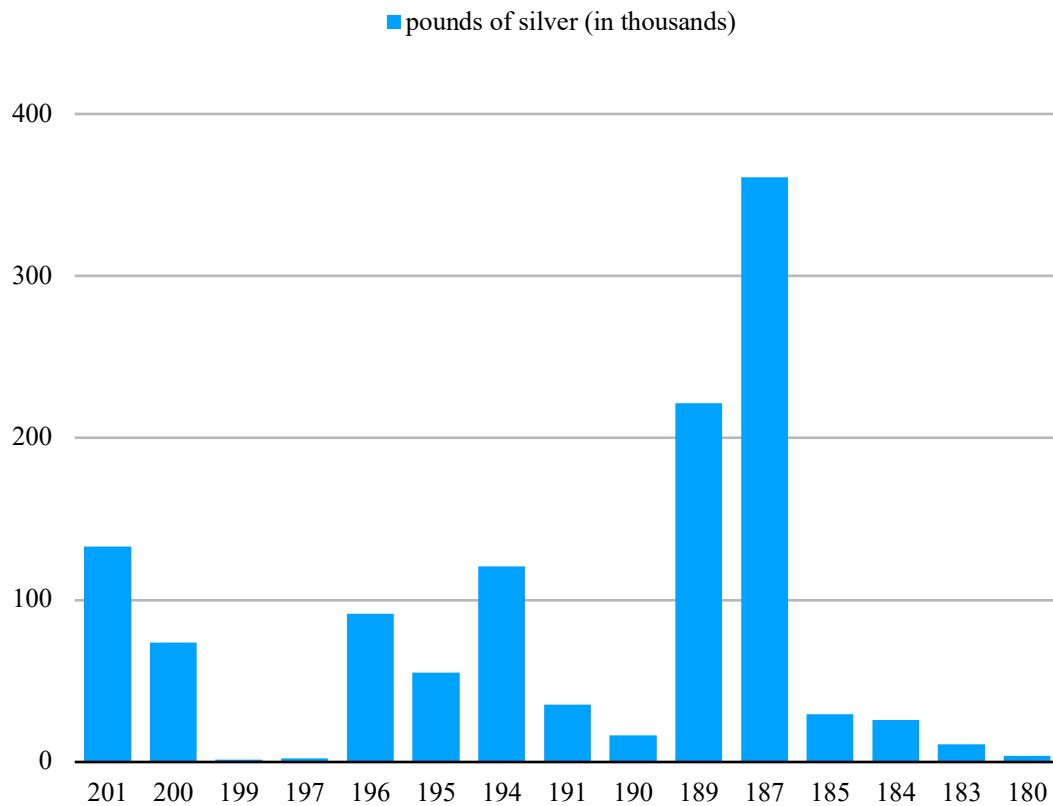
³¹³ The only potential wrinkle is the question of when the Spanish silver mines were turned over to the *publicani*, and Roman commanders ceased to be able to count it as booty. Frank dated this change to 178 BCE, based on notice from Livy that the censors of 179 made changes to the taxation of the mines, and on the relative paucity of subsequent Spanish triumphs. Kay, meanwhile, dates the change to Cato's governorship of the province in 195. None of this causes too much trouble, for us, however, since the amount of money carried in triumphs and brought in via indemnities was the same, regardless of whether it came from the mines or not.

³¹⁴ What occurs after 180 is interesting, but irrelevant to a discussion of how the *cursus honorum* became law.

³¹⁵ 1,183,115.82 pounds as spoils, and 2,014,285.71 pounds as indemnities, to be precise. These figures are calculated based on the passages of Livy quoted in Frank, *Econ. Survey* 1.127-136. Where the spoils came in the form of gold or various denominations of coined money, the present work follows Frank's guidelines for converting the figures into pounds of silver.

impressed with the peaks, while at the same time being conscious of how isolated they are, to a Roman audience, these spikes on the graph would have been of far more enduring memory. Six times over the course of two decades, nigh unfathomable (and increasing) masses of wealth were carried through the city of Rome, with the entirety of the urban populace watching and cheering, in an immense public display of imperial power. Peppered between these extraordinary triumphs were other triumphs and *ovationes* that might be described as modest only by comparison. They likely were grander than most of the triumphs that had occurred in the third century BCE. In the eyes of the Roman people, and their leaders as well, the wealth of the eastern Mediterranean was not coming into the city in isolated spikes, but in a flood, and the men bringing this money into Rome, in a very literal sense, were the consuls.

Figure 3.6 - Roman Spoils in the Two Decades Following the Hannibalic War³¹⁶



³¹⁶ Calculated based on numbers taken from Frank, *Econ. Survey* 1.127-36.

This dramatic change in the scope of military victories affected perceptions of office holding in Rome. Much of the wealth appears to have been used to finance further wars, or found its way into private hands, either through the distribution of spoils to private individuals, which the victorious consul controlled,³¹⁷ or through state contracting. The victories of the early second century thus enriched a great many people, not least the triumphant general himself. Victory allowed him not only to gain great material wealth, but also carried great social currency: the triumph most obviously, but also his ability to give gifts to friends, prospective friends, and supporters.

As the material and social rewards for victory became exponentially more lucrative than they had been in the past, the consulship became more desirable, and Rome's elites had good reason to police access to it. If the people could elect anyone that they wished to be consul, then the apportionment of looted wealth would be controlled by the community as a whole, and the matter would be out of the senate's hands. Far better, so far as the elites were concerned, that the list of candidates be confined to those who had held other offices. Increased wealth made it advantageous to ensure that the consulship would be monopolized by what we would call "political insiders."

The glory to be won by serving well in other magistracies, far from being comparable, paled by comparison in the Roman imagination. The success of a Roman aristocrat's career came to be defined by the consulship. A successful member of the most elite families reached the consulship. An elite of more modest pedigree might define success as making it to the aedileship or praetorship, so that his children might make it to the consulship. What is important here is that

³¹⁷ Kay (2014) 31; Davies (2017) 117-20; Rosenstein (2011) 133-8 *et passim*.

such a reorientation of success diminishes the importance of other magistracies. In the early third century, there was a constellation of possible reasons why a Roman man might want to be aedile. He might want to build his résumé so that he or his descendants could have enough name recognition to be elected to the consulship, but he also might see it as an opportunity to put his name on a public building (thus reminding the community of his, or his ancestors' previous successes), to help maintain the temples of the city (due to a sense of religious piety, or a desire to appear pious), or to prosecute some civic matter that struck him as urgent. All or most of these potential motives were self-interested, but they were not oriented toward as singular an objective as the consulship. Whereas before, holding the aedileship or praetorship might advance one's prestige and one's standing in the community in any number of ways, in the second century the attraction of these offices was their proximity to the consulship.

At the same time as the aedileship came to be more greatly overshadowed by the consulship in terms of social currency, it also came to be overshadowed by the censorship. Whereas through much of the fourth and third century, the censorship could be held at any point in one's career,³¹⁸ in the second century the office came to be the preserve of ex-consuls. Hans Beck has remarked upon the progressive elevation of the censorship, and notes that the creation of a hierarchy of offices led to an immense gain in prestige that catapulted the social currency of the censors even beyond that of the consuls.³¹⁹ The cause for this surprising phenomenon was the extraordinary military victories of the early second century BCE. As Karl-Joachim Hölkeskamp has argued, the ancestors, *exempla*, and monuments were bound up in an almost kaleidoscopic

³¹⁸ After the consulship was most common, but there are several notable exceptions, such as Ap. Claudius Caecus (censor 312, cos 307) and P. Licinius Crassus Dives (censor 210, cos 205) who held the censorship several years before the consulship (Broughton: 1951 160 s.a. 312, 278 s.a. 210).

³¹⁹ Beck (2005) 76-85. After this point, it was unheard of for a censor not to be a consular, and indeed, it was assumed that he would use resources gained abroad for the benefit of the Roman people.

process by which important statesmen came to be symbolized by individual virtues, which in turn came to be symbolized by the buildings those men had created.³²⁰ From this point of view, the associations of the censorship with moral rectitude and their traditional task of engaging in public building³²¹ was an unparalleled opportunity for a Roman statesman to commemorate his own deeds in war. When the Roman people voted for the censors, they were choosing who would be allowed to inscribe his achievements and his virtues on the urban fabric of Rome.

3.7 *Aedilitas Minuta*

The way in which the rise of the censorship impacted the aediles, and the means by which both offices funded their building projects should receive some discussion. As will emerge, in the second century, the censorship came to have greater scope for self-aggrandizement through public building, and the aediles responded to this competition by focusing more narrowly on the activities that distinguished them from other magistrates and offered them the opportunity to advance their careers.

In their dual roles as supervisors of public morality³²² and the regulators of the markets in Rome, the aediles imposed fines on Roman citizens each year. The *lex Tarentina*,³²³ a first century BCE inscription from Tarentum, suggests that the regular practice was for the aediles to contribute half of the money they gathered by means of fines to the treasury, and to use the other

³²⁰ Holkeskamp (1996) 323-6 *et passim*.

³²¹ see Davies (2017) 36-8 for a discussion of fourth and early third century censorial building projects. Censors building things was nothing new in the early second century. What was new was the scale and frequency with which censors were undertaking these projects, and this was a result of both the influx of wealth that occurred at this time, and the elevation of the consulship far above almost any other magistracy.

³²² “public immorality” could include varying types to personal immorality, such as adultery, to speech *in rem publicam*, “against the public interest.” Claudia is a memorable example (Suet. *Tib.* 2.3 cf. Liv. *Per.* 19 “utinam frater meus uiueret: iterum classem duceret.”). The aediles took a rather dim view of such speech and Claudia was fined.

³²³ CIL 1.590 = *AE* 1896.93. See Crawford (1996) 301-312 for commentary on this text.

half for public munificence, whether it be games, temples, or infrastructure.³²⁴ A Pompeian inscription of the first century outlines a similar procedure.³²⁵ Although one might quibble over whether the Romans of the third and second century divided the revenue of fines in just such a way, it is fair to assume that aedilician fines partly went to the treasury and partly were used by the aediles themselves, since Italian states modeling their magistrates from Rome usually borrowed the functions as well as the names of magistrates.³²⁶

The revenues to be gained from fining Roman citizens were considerable: as Sofia Piacentin points out, one fine imposed on the Claudii was more than twice the amount of money required to qualify for membership in the first census class.³²⁷ The fines were used for a number of projects:³²⁸ on two occasions, a road connecting temples either to the city of Rome or other towns in the vicinity,³²⁹ and, on many other occasions, various types of religious donatives, wrought out of bronze, silver, or gold. The censors, holding office rather less often than the aediles,³³⁰ were given the *vectigal* — the taxes collected from public land, mines, salt works, and rents to be collected from state property — of one year so that they could let contracts for building and infrastructural projects.³³¹ Both aediles and censors might supplement the funds provided to them with their own private resources.

³²⁴ Davies (2017) sees this practice, plausibly, as having taken off in the curule aedileship of Cn. Flavius in 304 BCE, when the controversial aedile in question vowed a temple to Concord if he could effect a reconciliation between elites and commons. When he succeeded, this set off a trend of aedilician building projects (44-6).

³²⁵ *CIL* 2.5439 = *AE* 1946.123. See Crawford (1996) 393-454 for commentary.

³²⁶ As discussed in chapter one, most of the aediles we encounter outside of Rome are engaged in public building projects of the type that were common for Roman aediles until the early second century BCE.

³²⁷ Piacentin (2018) 123; Suet. *Tib.* 2.3; Liv. *Per.* 19.

³²⁸ The *ludi romani* and the *ludi plebei* were in large part paid for by the state (Scullard: 1951 24), and so the aediles theoretically had no need to use fines to pay for these games. Aristocratic competition, however, ensured that most ambitious aediles supplemented the funds provided by the state, either with their own money, or revenues from fines.

³²⁹ Liv. 10.23.11, 10.47.9.

³³⁰ A roughly one-and-a-half-year term once every five years (Lintott: 1999 116).

³³¹ Frank, *Econ. Survey* 1.144; cf. Lintott (1999) 119-120.

The torrent of spoils and war indemnities that entered the Roman state affected this system in three ways, all of them to the benefit of the censors, but not the aediles. Conquest brought more lands under state control, thus increasing the *vectigal*. The acquisition of the Spanish mines, especially, had the potential to impact state finances, and by the late second century, the mines were producing 35 tons of silver *per annum*.³³² Likewise, greater revenue led to economic intensification, which made state properties more productive, thus increasing the *vectigal*. Finally, since censors were all, by this point, former consuls,³³³ the increase in spoils (which the consuls themselves had brought home) in the early second century increased the private resources that they were able to draw upon in order to engage in public building projects. In short, as the resources available to the censors to engage in public munificence increased during this era, those of the aediles remained largely the same.

The effects of this shift are visible in the narratives of Livy and other Roman historians. The elections for the censorships of 199 and 194 appear to have been rather sedate: Livy notes that the censors of 199 were harmonious but does not record them as having constructed any buildings (Liv. 32.7). This is unsurprising, as the Roman state was nearly bankrupt at the end of the war with Hannibal,³³⁴ and was only now recovering thanks to the spoils of Zama and the newly arrived indemnity payments from Carthage. There was not enough revenue to allow the

³³² Plb. 34.9.8-9. This number has justifiably been deemed problematic, as Polybius is only providing us with a snapshot of the mines' productivity at the time when he visited them, and it is difficult to know how far we can generalize this picture across the second century BCE. We can, however, say that, whatever the exact figure, the Spanish mines were quite productive, and would have had a significant impact on Roman state revenue (Kay: 2014 43-58).

³³³ It is unclear at what point this became the case. It was certainly a provision of Sulla's *lex annalis*, but how far previously this had been the case is uncertain. It is within the realm of possibility that there had been no fixed rule prior to the first century, but that the prestige of the position kept it out of the hands of junior statesmen. Comparison to the position of *pontifex maximus*, however, suggests that, no matter how august a position was, ambitious young politicians would try and occasionally succeed at besting their senior colleagues. On balance, it is more likely that the consulship was made a prerequisite of the censorship in the *lex Villia*.

³³⁴ Frank, *Econ. Survey* 1.126.

censors to engage in lavish public building. While the censorial elections of 194 were not marked by particular rancor, we can see the effects that the increased revenues, resulting from the defeat of Philip V, had on state finances: the two censors were able to let contracts to rebuild and expand the *Atrium Libertatis* and the *Villa Publica*, both of which were monumental buildings in the vicinity of the forum.³³⁵

In contrast to these two censorships, 189 is a surprise. Livy notes that *...censuram multi et clari uiri petierunt. Quae res, tamquam in se parum magni certaminis causam haberet, aliam contentionem multo maiorem excitauit*. “...many distinguished men sought the censorship. Just as this affair was too little cause for a great struggle, it stirred up a much greater controversy” (37.57). The frontrunner was M'. Acilius Glabrio, a political outsider, but also the man who had defeated King Antiochus in Greece two years before. He had been lavishing war spoils upon the crowds in Rome ever since. Arrayed against him were Flamininus, a Scipio, L. Valerius Flaccus, M. Claudius Marcellus (son of the general discussed in sections 3.4-5), and M. Porcius Cato, another new man, who had served as Glabrio's legate in Greece.

As money was Glabrio's advantage, so was it his downfall. Rumors began circulating that part of the spoils from the battle against Antiochus had “disappeared” on their way back to Rome, with heavy innuendo that the missing loot might be found in Glabrio's house. Glabrio was brought to trial on charges of theft, and Cato, in an unfortunate move, showed up to testify against Glabrio while still wrapped in the garb of a candidate. He was quite literally wearing a reminder of what he stood to gain from Glabrio's prosecution. None of this painted either Glabrio or Cato in a very flattering light: the former appeared an embezzler, the latter a political opportunist. Glabrio salvaged what he could of his reputation and withdrew from the campaign,

³³⁵ Liv. 34.44. See Davies (2017) 132 for a discussion of the significance of these building projects.

professing that ...*quod taciti indignarentur nobiles homines, id aequae nouus competitor instabili periurio incesseret*. “what the nobles bore in silent resentment [sc. a censor of humble origins], a competitor just as new [sc. as I am] attacked with abominable perjury” (Liv. 37.58.7). The charges against Glabrio were dropped shortly thereafter. Flamininus and Marcellus were elected censors and had the honor of beginning work on a temple on the Capitoline and of constructing a road, made of flint, from the Capena gate to the Temple of Mars.

The censorship of 184 was another mad scramble for victory, and one need not look very far in order to understand why: the Roman state was flush with cash from the victory over Antiochus at Magnesia — from which Scipio Asiaticus had brought back 360 thousand pounds of silver in spoils — and the censors of 184 would be able to spend a great deal on infrastructure and public munificence. They did: six million *denarii* on a complete overhaul and expansion of Rome’s sewer system, as well as a dike at the Neptunian waters, a road over the hill at Formiae, two markets in the region of the *Lautumiae*, and Rome’s first basilica, the *Basilica Porcia*.³³⁶ From simply a prestigious office, the censorship had become a rare prize that offered lucrative, and apparently expanding, opportunities for self-aggrandizement.

The same cannot be said of the aedileship, and the trend over the course of the third century and into the second century leads in a different direction. In 296, 295, and 292 BCE, respectively, fines collected by the aediles were used to provide bowls to the Temple of Ceres on the Aventine, build a temple to Venus, and to pave a road from the Temple of Mars to the nearby town of Bovillae.³³⁷ This is some of the earliest data on the public munificence of the aediles. As argued in chapter one, the number of inscriptions set up by non-Roman aediles in the second

³³⁶ D.H. 3.67, Liv. 39.44, Cic. *Sen.* 19, Nep. *Ca.* 17-19. See also Davies (2017) 132-7 for discussion of the censorship of 184.

³³⁷ Liv. 10.23.11, 10.31.9 (the name of office is not given, but since the official in question is listed as fining people, aedile can be assumed), 10.47.4.

century BCE, however, suggests that large scale building projects were often undertaken by third century aediles. The absence of Livy's second decade, and the rather less detailed nature of his sources have most likely occluded these projects from the historical record.

When Livy picks up again in the third decade, the pattern continues more or less where it left off: donative offerings punctuated by occasional larger building projects. In 208 BCE, the plebeian aediles dedicated three statues (the material is unspecified, and so likely bronze) at the Temple of Ceres, and four years later, their curule colleagues placed a gilded four-horse chariot in the Temple of Jupiter on the Capitoline. In 202, the plebeian aediles dedicated three silver statues, then three silver standards five years later.³³⁸ In 196, the aediles paid for the construction of a temple on Tiber Island. Livy records three gilded shields for the Temple of Jupiter in 192, followed the next year by a gilded four-horse chariot, as well as twelve gilded shields, and a portico. Finally, in 189 BCE, Livy tells us that the curule aediles dedicated twelve golden shields, while the plebeian aediles dedicated a pair of gilded statues.³³⁹

After 189 BCE, records of these types cease altogether. Livy continues to record the actions of aediles on a regular basis going down to 167 BCE, when his history drops off, but there is no further notice of either religious donatives or building projects being undertaken by the aediles. From this point forward, aediles are overwhelmingly mentioned in their capacity as masters of ceremonies at the *ludi romani* and *ludi plebei*,³⁴⁰ which they held (and bankrolled) each year.

³³⁸ Liv. 27.36.9, 29.38.8, 30.39, 33.25.

³³⁹ Liv. 33.42.10, 35.10.11-12, 35.41.9-10, 38.35.5-6.

³⁴⁰ One of the few exceptions, in Liv. 39.39, is illustrative of contemporary attitudes to the aedileship: in 184 BCE, Q. Fulvius Flaccus (the roof-stealing censor of 174) caused a controversy for attempting to skip the aedileship and move on to the praetorship.

What is to be made of this abrupt halt? Piacentin, noting an aedilician inscription from the late second or early first century BCE, chose to ignore the gap and attributed the loss of further records to the loss of Livy past 167 BCE.³⁴¹ Ziolkowski and Orlin, by contrast, both concluded that public munificence was a short-lived phenomenon of the third and early second century BCE, and that the aediles could not compete with the resources available to the censors. Finally, Davies has suggested that there was a spike in aedilician building after the end of the Hannibalic war as a result of less competition from the censors (who, as discussed previously, had little money to spend on buildings at this point), increased opportunities for career advancement as a result of the expansion of the praetorship in 197, and popular resentment of elite bad behavior, which made the aediles quite successful when prosecuting malfeasants. This spike in aedilician building settled down as state finances recovered.³⁴²

To a great degree, this question hinges on the significance of the twenty-two-year gap between 189, when Livy records his last aedilician dedication, and 167, when his narrative ends completely. As suggested above, curule and plebeian aediles had been making dedications every few years for the past three decades, and likely had been doing so as well through the middle of the third century (the absence of Livy's second decade makes this impossible to know entirely). The absence of any such dedications for the last twenty-two years of his history therefore seems important. We might consider the possibility that Livy's sources changed around 189, and no longer recorded the gifts of the aediles to the community (and to the gods), but these gifts were a matter of public record, and so information about them would have been available both to Livy and to his sources, and it is therefore difficult to see why Livy or his sources would have ceased

³⁴¹ Piacentin (2018) 121-3. It is unlikely that such a gap is a coincidence, given the frequency of aedilician dedications in the years that precede it.

³⁴² Ziolkowski (1992) 258-60; Orlin (1997) 134-5; Davies (2017) 82-3.

to record these dedications. Laying the blame on a change in Livy's sources is just exchanging one puzzle for another. Far better to accept that Livy's narrative reflects a genuine drop off in the number of religious donatives and building projects.

Piacentin is not entirely wrong, however, for these dedications did not cease, but continued sporadically, and the attempt of Ziolkowski and Orlin to dismiss the dedications that did occur as exceptional ignores the fact that these dedications had been occurring as far back as there is even semi-reliable data. Similarly, Davies' interpretation of this phenomenon, while likely partly right, seems to suggest that after 189, aedilician building returned to the frequency it had been at before the end of the war with Hannibal. And yet, there is a great deal of evidence for aedilician building prior to 201 BCE and very little after 189. The dedication of buildings and gifts to the gods had been a regular practice of the aediles going back into the fourth century, and the desuetude of this practice is a phenomenon that reflects the changing role of this office in the Roman state.

In 189 BCE, the election for the censorship was unusually heated. The censors who were elected that year, flush with cash, undertook a number of large building projects on behalf of the Roman people. Shortly thereafter, the aediles stopped undertaking building projects and religious donatives, almost altogether. The logic behind this choice is not difficult to grasp: the path to the consulship and censorship was becoming precipitous, and they could not hope to match the suddenly-huge *vectigal* of the censors, no matter how many fines they collected. For the sake of advancing their careers, it was prudent mostly to shift from these activities to those that would win them the most enthusiasm from the crowd: games.

3.8 The Content of the *Lex Villia Annalis*

Having spent so many pages considering the reasons why the *lex Villia* came to exist, it seems prudent to examine the law itself, its contents and its aims. This is easier said than done, however, since, far from having a complete text of the law, we do not even have much of a description of it. Our best source for the law is Livy: *eo anno rogatio primum lata est ab L. Villio tribuno plebis, quot annos nati quemque magistratum peterent caperentque. Inde cognomen familiae inditum, ut Annales appellantur.* “In that year (sc. 180 BCE) for the first time a proposal was carried by the tribune of the plebs, L. Villius, concerning at what age and which magistracy men could seek and hold. From this a cognomen was given to his family, so that they were called Annales” (40.44.1). Livy’s disinterest in the law is underlined by his meager punchline.³⁴³

Unsurprisingly, this unhelpful gloss on a rather important law has led to a long debate. Mommsen argued that the *lex Villia* mandated ten years of military service as a prerequisite for elected office, made the quaestorship a prerequisite for the praetorship, and the praetorship a prerequisite for the consulship, and imposed a two-year gap between curule offices (*Röm. Staatsr.* 1.2.526). What Mommsen did not envision the Villian law doing was imposing minimum ages, which seems like a mistake on the great historian’s part, given that imposing minimum ages appears to be all that Livy describes the law doing. Following this logic, De Martino argued that the law only imposed minimum ages for tenure of office.³⁴⁴ This in turn has its own problems as, under this interpretation of the law, a Roman could skip all of the offices and run for consul, provided that he was old enough. Between these two extremes, there have been a number of moderate positions, and since a pair of articles in 1957 by A.E. Astin,³⁴⁵ the

³⁴³ Through the cognomen, L. Villius (*Annalis*) came to be virtually synonymous with his law, the *L(ex) Villia Annalis*. For a thorough list and discussion of Livy’s recourses to humor in his histories, see Catin (2009) 191-200.

³⁴⁴ De Martino (1973) 362 ff.; followed by Lundgreen (2011) 53-120.

³⁴⁵ Astin 1957 & 1958.

communis opinio has been that the *lex Villia* mandated the quaestor-praetor-consul career path,³⁴⁶ a two-year gap between curule offices, and minimum ages for each of the principal offices.³⁴⁷

This *communis opinio* seems to me the best understanding of the law based on our limited knowledge of the law itself and our extensive knowledge of subsequent elite career patterns. My interest lies in the *lex Villia* as an event, and what the content of this law has to say about Roman elites and their aims at the time when it was ratified. The decade of the 180s was characterized by great success abroad even as government at home became volatile and dysfunctional. The Senate “uncovered” a violent and dangerous religious cult (Liv. 39.8-19) as well as two conspiracies to poison leading members of the state (Liv. 40.37, 40.43). In each case, they crushed the alleged malefactors. They also suppressed the discovery of religious books allegedly written by Rome’s second king and had the books burned.³⁴⁸ The most brilliant general of the age, Scipio Africanus, fell from grace as he was hounded by charges of having inappropriately disposed of war booty, and chose exile rather than face further recriminations from his enemies. All of this was in addition to the phenomena discussed in this chapter: the extraordinary careers of the Second Punic War, the vast influx of wealth after the victories in the east, and the reorientation of career paths to center on the consulship.

Jochen Bleicken has argued that Roman *leges* of the fifth and fourth century were not laws as we would understand them, but ad hoc decisions by the community on a particular issue.³⁴⁹ By contrast, the second-century *lex Villia* appears surprisingly modern, perhaps even liberal, in its attempt to use legislation to recreate elite society in accordance with its authors’

³⁴⁶ The aedileship and tribunate might be held between the quaestorship and praetorship.

³⁴⁷ Lintott (1999) 145, 181 represents this opinion admirably.

³⁴⁸ Liv. 40.29.2; August. *C.D.* 7.34-5. See MacRae (2016) 1-10 *et passim* for a discussion of the place of written texts in Roman religion.

³⁴⁹ Bleicken (1975) 52-71.

vision. Per the Villian law, all consuls would be senior statesmen, who had held office in the “normal” order and had shared power along the way by allowing others to be elected in between their own tenures of office. The purpose of the law was thus to regulate Rome’s governing class and establish criteria for high office in a way that was calculated to make the present look more like its authors’ vision of the past — a past which, incidentally, had never existed.

3.9 Conclusion

We are faced with two different constricting forces that created the *cursus honorum* as it appears to us. The vicissitudes of the Hannibalic war created a bottleneck at the consulship and accelerated the advancement of a few while slowing or halting the advancement of other elites. This unstable, untenable situation produced a backlash almost as soon as the war had ended; in 199, Flaminius faced opposition to his very candidacy when he campaigned for the consulship after only having served as quaestor. The influx of wealth in the early second century, meanwhile, enhanced the value and desirability of the consulship and censorship, which gave the elites of the community an incentive to police access to these offices in ways that they never had before. The ultimate result was the passage of the *lex Villia annalis* in 180, which regularized the system of advancement and mandated a specific career path which all *viri publici* would follow. Rather than enhancing the prestige of the aedileship, this move, along with the cultural and political forces described in this chapter, narrowed the prospects of the aedileship. Heretofore a prestigious office in its own right, its chief attraction was now as a stepping stone to higher climes.

Chapter 4

Baby Steps on the *Cursus Honorum*

4.1 Introduction

In the consulship of L. Iulius Caesar and C. Marcus Figulus (64 BCE), the treasury was in uproar. One of the quaestors assigned to the *aerarium* that year was M. Porcius Cato, most likely the grandson of the censor we encountered in 3.7,³⁵⁰ and he had a name to live up to. At this first step on his public career, he intended to make a statement. According to Plutarch's biography, Cato delayed presenting himself as a candidate for the quaestorship so that he could study the job and what it entailed (Plu. *Cat. Mi.* 16.1). When at last he was elected, and assigned to the treasury, he began a campaign of house-cleaning that turned both the clerks and the other quaestors in the treasury against him (16.3). The clerks (*scribae*), it transpired, were accustomed to being able to run circles around their quaestorian supervisors, since they, as professional bureaucrats, knew the job of running the treasury far better than the junior, annually elected magistrates who were nominally in charge (16.2). As a result, the more experienced *scribae* were skimming off the top and allegedly taking bribes for depositing fraudulent senatorial decrees in the treasury, while the less experienced clerks did not know what they were doing.

Cato pursued a policy, Plutarch tells us, of educating the incompetent and firing or prosecuting the corrupt (16.3). When he attempted, however, to prosecute the most experienced of these clerks for breach of trust in the case of an inheritance, he found that the man he was

³⁵⁰ Münzer (1999) 301-5. There is some dispute over whether he would be the grandson or great-grandson of Cato the Censor, as the latter re-married very late in life. Münzer cautiously concluded that the younger Cato was a descendant of this second marriage, and I accept his authority on this matter.

prosecuting had the legal support of one of the censors of that year, Q. Lutatius Catulus. Plutarch then paints a picture of Cato in the courtroom, publicly shaming the censor, and suggests that the jury was on the verge of finding the defendant guilty. The author then reluctantly acknowledges that the accused was acquitted. Cato was forced to content himself with not employing the corrupt *scriba* (16.3-5).

Like the anecdotes with which I have begun previous chapters, this episode paints an engaging picture of quarrelsome magistrates trying to discover—and persuade others of—the limits of acceptable public behavior in a community where these limits were ill-defined. This passage is interesting for other reasons, however. Plutarch’s account of Cato’s quaestorship represents some of our best evidence for a quaestor going about his duty, and serves as a reminder that, for all the ambitions and jockeying for position that characterized Roman magistrates, fundamentally they were men with jobs to do. It is these jobs that will be the subject of the final two chapters. Previous chapters have explored the evolving role of the aediles and quaestors in public life, and what these offices symbolized at different points in time, for the people who held them in particular, and for the Roman people in general. Such a conception, however, cannot be divorced from what these magistrates actually did, because what people saw these magistrates doing influenced the public discourse about magistracy. While the scholarship of Roman magistracy has often concerned itself exclusively with outlining a theoretical, constitutional framework in which to understand public office,³⁵¹ in these chapters, I shift our focus to what magistrates actually did, based on the conviction that what these elected officials were doing and were seen doing will paint a more vivid picture of their place in Roman society and the associations that they held for most Romans.

³⁵¹ e.g. Mommsen, *Röm. Staatsr.*; Abbott (1901); Taylor (1966); Lintott (1999).

Our temporal frame in these chapters encompasses the period from the passage of the *lex Villia annalis* in 180 BCE, which redefined the roles of the aediles and quaestors in public life, to the outbreak of the Social War in 91 BCE, which began a decade of internal wars that would dramatically change the citizen body and the way the government was perceived to operate. After a series of lucrative victories over the various Hellenistic kingdoms and leagues in the eastern Mediterranean during the first half of second century, Rome was the unquestioned superpower of the Mediterranean. This new enhanced role in the region entailed an expansion of activity for the Roman state, as the senate and people were faced with the question of how to respond to the expectation that the conquerer would govern and make itself accessible to the governed. It is this change in Rome's role and function in the Mediterranean that has led me to devote two chapters to the tasks of the aediles and quaestors, even though we have treated this topic in brief for the third century in chapter one. Put simply, the aedileship and quaestorship were different offices in the second century than they had been in the fourth and third centuries.

Paired with Rome's phenomenal success abroad, however, was a growth in wealth inequality, as the spoils of foreign conquests partly accumulated in the hands of the elite, and partly were spent out of the treasury on expensive state building projects that enriched public contractors and grew them into an elite class all their own. Even more lucrative than these building projects, however, were the contracts let to private companies of men to collect the taxes from Rome's new holdings abroad. Rome's lower class of farmers was economically left in the dust. The traditional account of this process, which originates in antiquity, has held that extended military service abroad kept Rome's agrarian class away from their farms, which diminished their harvests, leading them to sell their plots to elites, who used slaves to farm the land. Since owning land was a prerequisite for military service, this process of encroaching

poverty was a threat to Roman military might.³⁵² This explanation has been criticized or revised from many different quarters,³⁵³ and is no longer considered current, but what matters for our purposes, and for Roman political history, is that anti-establishment politicians were able to *convince* the Roman masses, seemingly without much difficulty, that military service was costing them their farms, while the elites were taking more than their fair shares of the profits of empire. From 133 BCE on through the end of our period, the bread and butter of these populist politicians were laws to redistribute publicly owned land to the poor, and to provide subsidized grain to the urban population. Much of the senate vehemently opposed both of these measures, often with violence, and the mortality rate among populist politicians in the ensuing decades was alarmingly high.

What will emerge in these two chapters, however, is that this dysfunction did not extend to the lower magistrates. While tribunes and consuls quarreled and (sometimes literally) fought with each other, the aediles and quaestors continued to do their jobs. This entailed a number of duties, some of them new, that were designed to help an up-and-coming aristocrat build connections with members of his peer group and more far-flung allies, and to acquire experience running the ship of state. Some of these tasks, such as the management of the food supply and the stewardship of the *aerarium*, became more onerous as the state's intervention in public life expanded.

I begin, in section 4.2 with a discussion of the practicalities of office holding that were common to all offices, along with a consideration of what a magistrate's life might look like,

³⁵² App. *BC* 1.7.26-1.8.34; Plu. *TG* 8

³⁵³ The bibliography on the agrarian crisis is long. The classic treatment of it can be found in Brunt (1971) 77 *et passim*. More recent scholarship has taken various and occasionally-contradictory positions on this topic, ranging from Rathbone (2003) 175, who doubts that there was much *ager publicus* left by the time the agrarian crisis hit, to Rosenstein (2004) 52-3, who lays the blame for the crisis not on the elite, but on the end of colonization and of lucrative wars in the later second century, to Roselaar (2008) 597 *et passim*, who carefully supports the traditional view, even as she layers it with greater nuance.

before moving on to discuss the quaestors in 4.3. The aediles will be discussed in the next chapter. Each treatment follows the course of magisterial duties throughout the calendar year, beginning with assignments that had to be performed more-or-less continuously.

Our approach in these chapters entails some danger of anachronism, for there is no single year when the activities of these magistrates are well-enough attested to serve as a case study of their own, and so what emerges is a composite sketch of aedilician and quaestorian duties in the second century BCE. Admittedly, such an approach runs the risk of treating as rather static a situation that was fluid. In the absence of better information, however, a composite sketch is the best that can be done. I have endeavored to choose a period in which the duties of the magistrates remained relatively stable and, in instances where change did occur, I discuss the transformation, and its implications for office holders.

4.2.1 Visibility

As we begin to discuss some of the common experiences of magistracy, we must first tackle a problem that was suggested, but not acknowledged, in the introduction. I argued that practice matters because what people are seen doing influences discourse and *habitus*, but that ignores the important question of who is doing the seeing, and what subsection of society they represent. In the absence of a more detailed discussion of this question, we run the risk of treating the Roman community as though it were some sort of hive mind, in which all perception is shared and coordinated within the group. This is certainly not the case, and it may be tempting to conclude that a detailed discussion of magistracy can only reflect the perceptions of a very small senatorial elite who held these offices.

I do not think we need to be so pessimistic, however. Roman culture prized visibility and transparency, especially on the part of its elites, to a degree that would seem strange to some modern Europeans and Americans. An illustrative example can be found in one of their earliest law codes. The twelve tables punished crimes that occurred in the dark (e.g. burglary) more harshly than those that occurred in daylight, even when the crime was the same (*XII Tab.* 8.12-13). Likewise, Livy’s description of the Bacchanalian scandal contains language capitalizing on the fear of what groups of elite men and women were doing at night and in secret: *Ex quo in promiscuo sacra sint et permixti viri feminis, et noctis licentia accesserit, nihil ibi facinoris, nihil flagitii praetermissum* (“From the time when the rites began to be held in common, men mixed in with women, and the freedom of night was added, no misdeed, no shameful act, was overlooked,” Liv. 39.13.10) Likewise: *Multitudinem ingentem, alterum iam prope populum esse; in his nobiles quosdam viros feminasque* (“Their numbers were enormous, by now almost a second state,³⁵⁴ among them were certain noble men and women,” Liv. 39.13.14)³⁵⁵ The Romans imagined, almost feverishly, a sort of shadow government of elite Romans that made decisions affecting the public and might overthrow the state (while presumably debauching themselves) where no one was in a position to know what they were doing. The authenticity of Livy’s account of the Bacchic scandal has rightly come under scrutiny, and Briscoe has suggested that the drama involving Aebutius and Hispala is at least partly fictionalized, but the basic details of the case as Livy presents them are credible.³⁵⁶ Regardless of the authenticity of the episode, however, the narrative reflects Roman fears about the possible political consequences of large

³⁵⁴ A fear that is reiterated in the speech of Postumius in 39.16.4 (Briscoe 2008: 267).

³⁵⁵ That the speaker, Hispala, is not referring to her own mistress when she mentions “nobiles,” but to other members of the cult is well established by Briscoe (2008: 267).

³⁵⁶ Briscoe (2008) 234-6. See Leo (1913) 144 and Nissen (1863) 222 for more dismissive interpretations of the Bacchanalian episode.

numbers of elites socializing in secret, both amongst themselves and with non-elites.³⁵⁷ This fear is paralleled in the *Senatus Consultum de Bacchanalibus*, a senatorial decree from the year of the conspiracy and its eradication that has been unearthed in southern Italy:

*Homines plous V oinuorsei uirei atque mulieres sacra ne quisquam
fecise velet neve inter ibei virei plous duobus mulieribus plous tribus
arfuisse velent nisei de pr(aetoris) urbani senatuosque sententiad utei suprad
scriptum est (ll.19-22).*

“Let no one in a group of more than five persons, men and women, want to perform the rites, nor among them there let there have been present more than two men, three women, unless with the opinion of the urban praetor and the senate, as has been written above.”

While Livy’s presents us with fears of an elite conspiracy that are cloaked in pearl-clutching about crime and sexual deviancy, the above inscription is much more direct. The concern here is not with sex or debauchery: it would not be difficult for two men and three women to have an orgy. The aim is to isolate the private activities of elites and limit their ability to operate without the knowledge of the senate. All of this illustrates the suspicion with which the Romans regarded activity, in particular elite activity, that took place in private.

A more detailed discussion of Roman attitudes is provided by Andrew Riggsby. As he argues in a philological study of the Roman *cubiculum*, roughly translated as “bedroom,”³⁵⁸ whereas modern European societies celebrate privacy as a right, Roman elite culture³⁵⁹ treated publicity as the norm, and begrudgingly accepted the *cubiculum* as a space where indecorous behavior could be confined. The Roman bedroom is the space not just for sleeping and sex, as

³⁵⁷ See Hopkins (1993) 8 for a similar approach to slavery. When seeking to write a cultural history that maps out Roman attitudes to morality, fictionalized narratives are just as useful as factual ones, perhaps more so.

³⁵⁸ Only “roughly” because, as Riggsby argues, the Roman *cubiculum* does not precisely parallel the modern Euro-American bedroom in either its functions, or its role in Roman culture.

³⁵⁹ He remains agnostic on the question of how far into the lower echelons of society this practice went.

we would expect, but also for reception of close personal friends, crass speech, displays of luxurious art, as well as murder and suicide.³⁶⁰ It is the “backstage” where elite Romans could stop performing their role for the public gaze.³⁶¹ By extension then, all things outside the bedroom, including other parts of the house such as the atrium, were regarded as public.³⁶²

In light of this rather radical attitude to transparency, we may expect that nearly all the tasks of the Roman magistrates were performed in the full light of day. Senate meetings tended to be open-door affairs.³⁶³ Even the doors of the *aerarium* were likely open during daylight hours, for both ideological reasons and for the convenience of having a breeze. This does not mean, however, that magistrates were equally visible to all segments of society, for even when the doors are open, there needs to be an audience in order for what goes on inside to be seen. Certain classes of people would have been less aware of magistrates and what they did. Farmers were, perforce, in the countryside most of the time, although their engagement with Rome’s public life would increase on market days (which occurred every eight days),³⁶⁴ at any festivals they might attend, when they were conscripted to fight in the Roman army, and during the census every five years. Tradesmen and businessmen likewise were quite busy, but much of their work took place in the city of Rome, often even in the vicinity of the forum (Rosillo-López 2017: 57-9). They were therefore able to observe the actions of the magistrates in passing, or more actively if their business came under the scrutiny of the aediles. Many of these people might be seen

³⁶⁰ Riggsby (1997) 37-43. The unifying theme is that these are all acts that it would be shameful *to be seen* doing.

³⁶¹ Riggsby adopts Goffman’s theory of back regions, a dramaturgical metaphor for the space that is designed to be outside of the view of the public audience in order to preserve the illusion that the actors on stage seek to create. See Goffman (1959) 111-140 for further reading.

³⁶² Riggsby (1997) 50; cf. Cicero *Comment. pet.* 17, 35, which suggest that even what happened what happened in one’s own house could be expected to get back to one’s competitors.

³⁶³ Rosillo-López (2017) 48; cf. Liv. 42.14.1 for an example of a closed-door meeting, when tensions between Rome and Macedonia were escalating in the lead-up to the third Macedonian War.

³⁶⁴ See the *Fasti Antiates Maiores* for a detailed outline of the Roman periodization of time. In addition to days of the month and notes about which days are *fastus*, comitial days, etc., each day is assigned a letter from A-H (the first eight letters of the alphabet).

hanging around in one of Rome's fora: during the Republic, the *forum Romanum*, the *forum boarium* (cattle market) and the *forum holitorium* (produce market), but also on benches placed outside of shops and on side streets (Hartnett 2017: 53-66). The actions of magistrates were most visible to the senatorial elite, who often lived in close proximity to the forum and who met to discuss public business on a regular basis.

The street in general and Rome's various *fora* were also occupied by *circuli*, large groups of loiterers of varying social classes, some of them on break, others talking as they worked, still others looking for their next job, who gathered out of doors to discuss the news (and gossip) of the day (Hartnett 2017: 45-53). While elite authors such as Cicero sneer at them,³⁶⁵ they formed a mechanism by which society could police the behavior of its members, and the actions of magistrates provided fertile material for their speculation, complaints, and gossip.

While the ability to see the actions of magistrates was roughly correlated with class and with political involvement in the city of Rome, there remained a high degree of visibility for all involved. Going forward, my assumption is that the actions of the magistrates were quite visible to Roman society, and thus that the *habitus* of Roman public life was responsive to what they did. I will, however, touch back on this issue as we proceed, in order to consider which actions were more or less visible and who was watching.

4.2.2 The Daily Life of a Magistrate

Having considered the visibility of magistrates in Roman society, we now turn in the next two sections to what their schedule was like and the people whose company they kept, beginning with elections. Our purpose here will be to get a sense of the rhythm of daily life in the

³⁶⁵ See for example *Off.* 1.150-2 and *Fin.* 5.56, in which Cicero disparages both those who are working for having menial jobs, and those who are not working for being lazy.

Republican state, how time was “punctuated,” and when and where magistrates might be seen. Understanding the election of Rome’s magistrates is made no easier by the fact that the Romans treated it as common knowledge that needed no comment. From as early as we have information, election day for the consuls, praetors, censors, curule aediles, plebeian aediles and quaestors took place sometime in the second half of *Quinctilis* (July), although only the 17th, 18th, 20th, 22nd, and 26th-31st (10 days) were days on which the *comitia* could meet to hold an election³⁶⁶ due to a variety of religious prohibitions on the other days of the month, including festivals and days that were simply regarded as *nefas*, unsuitable for the conduct of public business. By the mid-first century BCE, the whole system had become so dysfunctional that the elections were often held in *Sextilis* (August),³⁶⁷ or even later, but in the second century it still functioned rather well. The tribunes of the plebs, meanwhile, seem to have had their elections in September or early October.³⁶⁸

The election of consuls, praetors, and censors took place in the *comitia centuriata*, the voting assembly that nominally organized the citizens as soldiers in fighting units, and that weighted the votes to favor the well-heeled. The curule aediles and the quaestors were elected in the *comitia tributa*, which organized the citizens into the rather more egalitarian tribes.³⁶⁹ Finally, the tribunes and plebeian aediles were elected in the *concilium plebis*, a voting assembly, also organized by tribes, but which excluded the participation of patricians.³⁷⁰ Of these, the centuriate assembly, at least, met and voted on the *campus Martius*, since military officers could

³⁶⁶ See the *Fasti Antiates Maiores*, and its various reconstructions, for a fuller guide to what days were permissible for elections. Only days marked “C,” for *comitalis* were admissible as days on which to hold an election.

³⁶⁷ Mob violence frequently disrupted public business, but even if there were no riots, public business could be shut down if a magistrate witnessed lightning in a clear blue sky. There really needed only be one, well-placed nay-sayer for the Romans to take a raincheck on election day.

³⁶⁸ Taylor (1966) 141 no. 12; Cic. *Orat.* 3.1-6. Or at least, that was the case in 91 BCE

³⁶⁹ Liv. 2.55.10-ff; cf. D.H. 9.43-9.49; Patterson (1976) 30; Taylor (1966) 60; Lintott (1999) 130; Abbott (1901) 231.

³⁷⁰ Lintott (1999) 130, cf. Abbott (1901) no. 231, Plu. *Cat. Mi.* 46.3.

not be elected inside the sacred boundary of the city.³⁷¹ Magistrates were elected in descending order (i.e. consuls, praetors, censors, curule aediles, plebeian aediles and quaestors) and elections were presided over by one of the consuls, although, in the early and middle Republic, dictators chosen for the purpose of holding elections were common. In dysfunctional periods, when the elections in the centuriate assembly were stalled, it was also not unheard of for the *comitia tributa* and *concilium plebis* assembly to elect aediles, tribunes, and quaestors anyway.³⁷²

The curule aedileship, despite its patrician associations, was held by patricians and plebeians in alternating years (patricians in what *we* would call odd years, plebeians in even) for most of the Republic.³⁷³ By Cicero's day, this had broken down, and the office was shared indiscriminately between members of the two orders. The likely reason for the breakdown was a lack of eligible patrician candidates, although the fragmentary and occasionally erroneous nature of the list of magistrates makes it difficult to say for certain when this occurred. Patterson establishes firm *termini post et ante quem* of 135 and 91 BCE.³⁷⁴ It is likely that this was a gradual process of relaxing the patrician requirement in years when candidates could not be found.

Inauguration for all magistrates except for the tribunes occurred, down into the late third century, on May 1st. From sometime between 233 and 217 BCE until 153 BCE, inauguration

³⁷¹ This was because the *pomerium* was the boundary for *imperium* and, except in extraordinary circumstances, a Roman commander could not hold *imperium* within the *pomerium*, even for electing his successors to office (Drogula 2015: 50-1, 110-17). For a broader discussion of the Roman conception of urban space, see Isayev (2017) 360-94.

³⁷² Cic. *Fam.* 8.4.3 = SBF 81.3; cf. Patterson (1976) 35-7.

³⁷³ Lintott (1999) 129-30; cf. Mommsen, *Röm. Staatsr.* 2.1.482.

³⁷⁴ Patterson (1976) 43, based on the earliest date when we know they violated this basic order, and the last known date when they followed it.

day was March 15th. Thereafter, the beginning of the consular year became January 1st.³⁷⁵ The new tribunes were inaugurated throughout the Republic on December 10th.³⁷⁶

The consuls, praetors, and curule aediles were distinguished from the other magistrates by the *toga praetexta*, a white toga with a broad purple stripe running along the edge, as well as the curule chair, a seat with curved legs that was light enough to be carried from place to place by the magistrate's attendants so that he could transact public business from what amounted to a throne. There was thus a striking visual incongruity between the curule aediles, who had both of these paraphernalia, and the plebeian aediles, who had neither. Patterson has raised a persuasive argument that, by Cicero's day, the *toga praetexta* and possibly the curule chair had been extended to the plebeian aediles as well,³⁷⁷ thus virtually erasing the distinction between the curule and plebeian aediles, but in the second century BCE this was very likely not the case.

Once a magistrate had taken office, his daily schedule involved an early morning *salutatio*,³⁷⁸ at which his clients would greet him, ask favors and receive instructions. This was the basis for his political support, and he would inherit many client relationships from his father and gain more over the course of his career. After the *salutatio*, the magistrate would then spend the rest of the day attending the senate or conducting public business with the help of his attendants.

The months of January through March were some of the busiest in the Roman senate, as it was during these months that most of the significant business of the year took place: new

³⁷⁵ Gargola (2017) 21.

³⁷⁶ Taylor (1966) 141 no. 12; cf. Liv. *Per.* 47.

³⁷⁷ Patterson (1976) 47-52: Plu. *Moralia* 283B refers to the Tribune as the only magistrate that does not wear the *toga praetexta*, ps.-Asc. *In Div.* 48 does not mention the plebeian aediles in the list of magistrates who lack the curule chair, Cic. *Red. Sen.* 5.12 refers to the aediles ceasing to wear the *toga praetexta* on hearing that the author might be exiled.

³⁷⁸ Riggsby (1997) 41-2 suggests that the *salutatio* occurred in the *cubiculum*, although this was likely only the case for close friends and peers or near-peers. The wider *salutatio* of clients would have taken place in the *atrium*. Cf. Patterson (1976) 85.

legislation introduced, foreign embassies received (the latter primarily in February),³⁷⁹ provincial concerns addressed. This was also the period of the year when the consuls, most of the praetors, and the quaestors assigned to them were most likely to be in town, as the formal start to the campaigning season, a festival known as the *tubilustrium*, was on the 23rd of March. April and the first half of May had few senate meetings,³⁸⁰ and, a century later, Cicero normally went to his rural estates during this period.³⁸¹ This was likely the case for his colleagues as well. The senate seems to have been back in session in June, before going back to the countryside for much of the summer.

Throughout all this, however, the junior magistrates remained busy. The aediles' public administrative duties required them to be present in the city of Rome almost year-round,³⁸² and those quaestors that remained in the city also had daily duties. What we can see from the Roman political calendar is that a magistrate's year in office was quite busy compared to that of an ordinary senator, who could attend meetings or absent himself from the city as he liked. On the *dies fasti*, roughly half of each month, the urban praetor presided over the permanent courts, while the other praetors and the consuls were frequently away in the provinces. The daily life of the lower magistrates was especially busy, as they were tasked with most of the mundane duties of managing the city and had comparatively little experience on which to draw (although their backgrounds as military tribunes and perhaps one of the minor magistrates, such as the *tresviri capitales*, no doubt helped them along). In completing their duties to satisfaction, they were aided by *apparitores*, "attendants."

³⁷⁹ Isayev (2017) 249; Ferrary (2007) and (2009).

³⁸⁰ Patterson (1976) 86, although the more junior magistrates still had duties to which they attended.

³⁸¹ Wiseman (2015) 82-5 makes the point that, as a senior statesman, Cicero likely regarded himself both above, and a potential target for, the satirical content of the games in Spring, after he executed several Roman citizens without trial during his consulship.

³⁸² Patterson (1976) 86; cf. Cicero, *Comment. pet.* 43, which suggests that up-and-coming candidates as well should always be present in the city.

4.2.3 The *Apparitores*

A magistrate was attended by a coterie of specialists designed to aid him in any way he asked. In fact, it would be no exaggeration to say that a magistrate going about his duty would have resembled not so much an individual as a crowd.³⁸³ Most famously, there were the lictors, who served as a sort of honor guard for magistrates with *imperium* and carried the fasces which were their symbols of office.³⁸⁴ Magistrates with *imperium* (and with *auspicium*, the right to conduct the auspices) also had the help of religious specialists, such as the *haruspices* who interpreted divine signs, and the *pullarii* who kept the sacred chickens used for divination.³⁸⁵ There were surveyors and doctors, the latter to look after the health of the magistrate and members of his staff, but more generally lictors who carried the *fasces*, the ceremonial bundle of rods that symbolized a magistrate's power to enforce obedience. Since they lacked both *imperium* and *auspicium*, neither the aediles nor the quaestors had any of these followers (Jones 1949: 39), but they otherwise had many of the same *apparitores* as the other elected magistrates: messengers (*viatores*) to facilitate communication at a distance, e.g. to deliver messages to other magistrates, political allies, or family members, heralds (*praecones*) to gather the people together for assemblies and convey information at state events,³⁸⁶ and most importantly, clerks (*scribae*).

³⁸³ For an illustration, see Cic. *Att.* 13.52 = SBA 353, in which Cicero plays host to Caesar during the latter's dictatorship. Leaving aside the soldiers who made camp outside of Cicero's villa, Caesar and his retinue still filled four dining rooms. This is undoubtedly an extreme example, as, by the time of his dictatorship, Caesar almost constituted a whole branch of government unto himself, but it is suggestive of what we might expect to see among more normal magistrates.

³⁸⁴ Lintott (1999) 96; Jones (1949) 38-9; Purcell (1983) 148-52.

³⁸⁵ The sacred chickens were used to consult the gods on contemplated actions. Whether said action accorded with the wishes of the gods was determined by the enthusiasm with which the sacred chickens ate their food. Their most famous appearance comes during an episode from the first Punic War, when, prior to a naval battle, they refused to eat at all, and the frustrated commander threw them overboard. He lost (Cic. *N.D.* 2.7, Suet. *Tib.* 2.2). See Jones (1949) 38 no. 5 for more detailed information on the *pullarii*.

³⁸⁶ Jones (1949) 39 no. 6-7: *viatores* are attested for both aediles and quaestors, while *praecones* are attested for quaestors but not for aediles. cf. Bond (2016) 36.

There has been a respectable body of work on the *apparitores*, done by such scholars as Theodor Mommsen (1888), A.H.M. Jones (1949), Nicholas Purcell (1983), and Ernst Badian (1989). The Sullan *lex de XX quaestoribus* and the Caesarian colonial charter known as the *lex coloniae Genetivae* are likewise invaluable sources of information about these obscure figures. The attendants were organized into different panels based on what college of magistrates they served,³⁸⁷ and it is interesting to note that, while we know that consuls and praetors made use of clerks just like the lower magistrates, there are no panels of *scribae* attested as belonging to the senior magistrates. There exist only panels of attendants listed for quaestors, aediles, the tribunate of the plebs, and irregular boards of magistrates.

Equally perplexing, Badian observes (1989: 598) that the panel of clerks devoted to the quaestors was the *highest* grade of *scribae*, in spite of the fact that the quaestors ranked lower on the *cursus honorum* than the aediles, who had their own panel of clerks. There have been various attempts to reconstruct how this could be the case. Mommsen argued that the *apparitores*, including two *scribae* assigned to the quaestor, in fact served the quaestor's commander. Others, however, have objected that such an arrangement would leave the city with not enough clerks to go around in certain situations, especially at the *aerarium*, where they were needed most.³⁸⁸ Jones has tried to remedy this shortcoming by arguing that only one of the clerks served the quaestor, while the senior magistrates took their assistants from a different pool. Badian, in turn, has refined this a little further, observing that the quaestorian *scribae* were of the highest rank, suggested that the senior magistrates (and pro-magistrates) took their clerks from the same pool as the quaestors (Badian 1989: 598).

³⁸⁷ Purcell (1983) 127; Jones (1949) 39.

³⁸⁸ Mommsen, *Röm. Staatsr.* 1.3.346ff; Jones (1949) 38-42. Under Mommsen's model, there would be just sixteen clerks for the whole city of Rome, and more than half of these would leave the city whenever commanders departed to campaign or to govern provinces, which was most years.

The panels of *apparitores* were supplemented through a complex mechanism. Each year, the quaestors together would select three *apparitores* of each of the three main types (clerks, heralds, and messengers) who would be added to the panel in the next year, three who would be added in the year after that, and three who would be added in the third year following. Meanwhile the consuls as a college would do the same, except their contribution would be only one *apparitor* of each type (*lex de XX quaest.* 7-15). The table below illustrates a sample of how this process would work:

Table 4.2.3 – The Mechanism by which New *Apparitores* Were Added Each Year.

| Year | appointments for the next year | appointments for second year after | appointments for third year after. |
|---|--------------------------------|------------------------------------|------------------------------------|
| 79 BCE (appointments indicated by capital Latin letters) | | | |
| 78 BCE (appointments indicated by Arabic numerals) | A,B,C,D | | |
| 77 BCE (appointments indicated by Greek letters) | 1,2,3,4 | E,F,G,H | |
| 76 BCE (appointments indicated by lower case Latin letters) | α,β,γ,δ | 5,6,7,8 | I,J,K,L |
| 75 BCE | a,b,c,d | ε,ζ,η,θ, | 9,10,11,12 |
| 74 BCE | | e,f,g,h | ι,κ,λ,μ |
| 73 BCE | | | i,j,k,l |

This means that, in a given year, twelve new names were added to the panel of quaestorian messengers, twelve to the panel of clerks, and twelve to the panel of heralds.³⁸⁹ *Apparitores* could return to the panel again year after year without being nominated, so we have every reason to think the panel was quite large: dozens of people at the very least, and perhaps well over a hundred. Such an open-ended system likely meant that not every *apparitor* would be employed in a given year. There was instead a pool of *apparitores* from which Roman magistrates could

³⁸⁹ i.e. four selected in each of the previous three years.

draw. The resemblance of these panels to the album of jurors from which Roman juries were drawn only supports this interpretation: there were some on the panel who would find themselves without work each year, and would have to find employment elsewhere. The fact that Cato could choose not to employ a *scriba* whom he discovered was corrupt (Plu. *Cat. Mi.* 16.5) likewise suggests there were others he could hire instead. Conversely, however, the fact that the notoriously corrupt governor of Sicily, Verres, was able to employ the same *scriba* as praetor that had been assigned to him a decade earlier as a quaestor suggests that some of the *apparitores* had very long careers indeed.

The *apparitores* of a quaestor were assigned by lot, but more senior magistrates were allowed to choose theirs.³⁹⁰ The *apparitores* therefore had every interest in cultivating a smooth and friendly working relationship with Roman politicians, as a positive relationship established with a quaestor had the potential to guarantee the *apparitor* work when that quaestor went on to become praetor or consul.³⁹¹ The rather greater latitude that the attendant of a praetor or consul would have for kickbacks and graft in the provinces was also an attractive benefit, although it is unclear how far this was the case in the second century, when there was no system of permanent provinces.

How many of the different types of *apparitores* each magistrate had is a vexed question. On lictors, we are quite well-informed. A dictator had twenty-four, a consul twelve. Praetors had six when operating outside the city, two when in the city. No other magistrate had lictors.³⁹²

³⁹⁰ Jones (1949) 40, citing Plin. *Ep.* 4.12 and Cic. *Ver.* 3.187.

³⁹¹ The passage discussed in 4.1 (Plu. *Cat. Mi.* 16.3) provides another excellent example of the benefits a *scriba* could hope to derive from cultivating *amicitia* early on: the clerk Cato sought to prosecute was able to call on no less an ally than one of the censors to defend him in court.

³⁹² Abbott 1901 no. 169; cf. Plb. 3.87.7; Censorinus DN 24.3; Cic. *Ver.* 2.5.142. We might approach the numbers attested for the dictator with some skepticism, as the tradition on the early-middle Republican dictatorship is notoriously fraught. We can say however that twenty-four was the number of lictors employed by Sulla and Caesar during their respective dictatorships.

Beyond the lictors, matters become much more difficult to judge. Our best sources of information are the *lex coloniae Genetivae*, which enumerates the number of *apparitores* to which the different provincial magistrates were entitled, as well as the *lex de XX quaestoribus*. These sources are not without their pitfalls, however. The colonial charter's Roman authors evidently adjusted the numbers *apparitores* that were allotted to provincial magistrates, but not in a way that would appear to be systematic: they allot two lictors to a duumvir (roughly equivalent to a consul in a Roman colony) where the consuls had twelve, but allow the same number of *accensi* that a Roman magistrate had: one. Meanwhile, the law on the quaestors is unreliable insofar as we cannot say for sure how long the twelve *apparitores* introduced to the panel each year opted to remain on the panel, nor what percentage of those on the panel found work in a given year. Nevertheless, I think we can use these two documents to do some educated guesswork.

We do have some clues on which we can draw. First, the Caesarian charter provides a duumvir with two clerks (*scribae*), two messengers (*viatores*), and one herald (*praeco*). Second, it is very likely that the number of *apparitores* allotted to a Roman magistrate would be higher than those given to his provincial counterpart, since the city of Rome was far larger than any colony. Third, the ratio of contributions to the panel between the quaestors and the consuls (three to one) probably resembles, if only vaguely, the proportion of *apparitores* being assigned to each group every year. That is to say, the quaestors as a body received more of the *apparitores* than either the consuls or the praetors. Fourthly, the fact that equal numbers of *viatores* and *praecones* were admitted to their panels each year suggests that they were assigned to magistrates in equal numbers, that is, that none of the magistrates drawing from the quaestorian panels had more *viatores* than *praecones*, or vice versa. Finally, the number of people admitted to the panels

suggests that the number of *apparitores* employed each year in the quaestorian panel, at least in the age of Cicero, was somewhere around one hundred. This reconstruction presumes that the average *apparitor* had a career of several years, and that there were at least a few in a given year who were not employed by the state.

In light of these clues and suppositions, I estimate that quaestors were allotted two *scribae*, two *viatores* and two *praecones* each year, while the praetors and consuls received four of each type of *apparitor*. In Cicero's day, when there were twenty quaestors, eight praetors, and two consuls, this would mean that eighty clerks, messengers and heralds were employed each year by the quaestors, praetors and consuls.³⁹³ This is an estimate, but is probably not far wrong from the reality of the second century. Admittedly, the number would have been smaller, insofar as the number of magistrates was smaller, but the number of *apparitores* assigned to each magistrate would have been comparable: one or two of each type of *apparitor* assigned to each quaestor, four assigned to the praetors, and four to the consuls.

The numbers employed on the panels of *apparitores* from which the aediles drew is still more difficult, as we have no document like Sulla's law on the twenty quaestors from which to extrapolate. I will therefore not attempt any complex estimate such as I have tried with the quaestors. I will instead point out that the *lex coloniae Genetivae* provides a duumvir with about half the number of *apparitores* that we have reconstructed for a consul. The charter provides an aedile with four public slaves, one *scriba*, and one *praeco*. If we assume that this figure was also half of what his Roman counterpart would receive, and add an equal number of *viatores* (aedilician *viatores* are attested at Rome, even if the colonial charter omits them³⁹⁴), then we are

³⁹³ This estimate would need to be adjusted upward to account for the various pro-magistrates, most of whom took the staff from their year in office with them.

³⁹⁴ *ILS* 1923, 3593; *CIL* 10.530

left with eight public slaves, two clerks, two messengers, and two heralds, which puts the aediles more or less on equal footing with the quaestors and capable of performing their duties in their respective quarters of the city.

The position of clerk was especially coveted, as, by Cicero's day, the normal reward for this service was a gold ring, signaling elevation to equestrian status. This practice is anachronistic to our period, however, because there is reason to think that the equestrians did not exist as a formal class until 86 BCE.³⁹⁵ Their social significance, however, long predates Sulla. As early as the late fourth century, Cn. Flavius, whom we discussed in section 1.5.3, was able to rise from the position of *scriba* to the office of curule aedile.³⁹⁶ Likewise, in the first half of the first century, a colonial *scriba* working at Cumae was able to be elected to the local praetorship.³⁹⁷ Clodius' *scriba*, Sex. Cloelius, meanwhile, was evidently important enough to command favors from Marc Antony when the latter was consul, years after Clodius was dead and, conversely, to receive invective from Cicero of the kind that the orator normally reserved for his most hated peers.³⁹⁸

The *scribae* were thus the most integral and influential of the *apparitores*, and they emerge as a source of some social anxiety among the Romans.³⁹⁹ They were one of the most socially-mobile groups of people within the Roman state, comprising both freedmen and free-born citizens who acquired great means in the course of their duties. They were involved in the

³⁹⁵ Potter (2019) 112, 182; cf. Wiseman (1971) 68-70, who makes the point that *equites equo publico* and members of the *ordo equester* are not the same thing and speculates that the equestrian order may not have been officially recognized until as late as 70 BCE, when the category of *tribunus aerarii* was created.

³⁹⁶ Gel. 7.9.2; Liv. 9.46. As discussed in that section, his election proved controversial, with a number of unnamed patricians informally seeking to undermine and challenge his authority.

³⁹⁷ *AE* 2010.00305, which dates to between 80 and 61 BCE

³⁹⁸ Damon (1992) 238-9 *et passim*; Cic. *Att.* 14.14.2 = SBA 402.2; *Dom.* 25-6. For the debate on Cloelius' name, see Shackleton Bailey (1960) no. 1, pp. 41-2.

³⁹⁹ Purcell (1983) 136-8 makes a similar point. One thinks of Cicero's acid remark about clerks from the Verrines, that *...ex primo ordine explosorum in secundum ordinem civitatis se uenisse dicunt* "...they say they have come from the first class of rejects into the second class of the state" (2.3.184)

running of the Roman state in a way that was both more direct and enduring than their publicly-elected supervisors, whose tenures of office were transitory. They were at once powerful, entrenched, and of indistinct social status,⁴⁰⁰ all qualities that made Roman elites uncomfortable. At the same time, however, they were responsible for much of the inner workings of the Roman state and might know the jobs of the magistrates better than the magistrates themselves (Plu. *Cat. Mi.* 16). They were, as such, indispensable.

4.2.4 Who's Running this Operation?

The above discussion of the *apparitores* paints an altogether different portrait of magistracy than we ordinarily see, and it may be tempting to conclude that many or even most Roman politicians left the actual work of office-holding to their attendants while they jockeyed for position with their peers and competitors. I do not think we need to be that pessimistic, but it behooves us at this point, before we transition to a discussion of the quaestors properly, to ask how a Roman man learned to do the job of being a magistrate, since what secondary education the Romans had was dedicated to rhetorical, not administrative, training.

By the time a Roman man reached the first step of the *cursus honorum* he already would have had a fair degree of experience in public life. He had ten years of military service,⁴⁰¹ during which time he had likely served as one of the *tribuni militum* who were tasked with maintaining the supplies for a legion, and much of this experience would have been transferrable to the weightier responsibility of the quaestorship. He also may have served as a minor magistrate on one of the numerous boards that the senate appointed on a regular basis. By the time he became

⁴⁰⁰ See Bond (2016) 21-58, who discusses the status of *praecones*, and the ill repute in which they were held by elites.

⁴⁰¹ The mandatory number of years of military service was reduced by Sulla and reduced still further by Augustus, but both of these changes occurred after the period under discussion.

quaestor in 126 BCE, for example, Gaius Gracchus had already spent four years serving on his brother's agrarian commission, during which time he would have been working alongside and learning from, among others, his brother the tribune, the ex-consul Ap. Claudius Pulcher, the ex-praetor P. Licinius Crassus Mucianus, and his future ally M. Fulvius Flaccus.⁴⁰² Such minor magistracies mixed together people of very different ages and experience levels, and were an opportunity for novices to connect with and learn from senior statesmen.

Roman men who came from political families had even more personal resources on which to draw. They had fathers, brothers, uncles or cousins who had held these offices before, and who could offer them advice on what the job entailed. Perhaps more important than the experienced relative himself, however, was the relative's *accensus*, one of the *apparitores* who was normally a freedman of the man holding office,⁴⁰³ and who would be in a good position to tell a young man embarking on a public career not just how to do the job, but how to establish good relations with the *apparitores* who would serve with them. Between these two sources, men of political families had a wealth of information at their disposal and were better placed to find success in public life than those who lacked a political pedigree.

On a more general level, however, much of what a magistrate did in his day-to-day life would have been obvious to all who spent a good deal of time in and around the city of Rome. As we have already established, much of a magistrate's activity was publicly visible, and the less technical, more formal aspects of his duties would have been understood by anyone who spent a lot of a time in the forum, or who had frequented elections and festivals. By the time a man was in the position to run for one of the more visible senior magistracies, he also would have had a decade's experience watching previous consuls and praetors hold senate meetings. Knowing

⁴⁰² App. *BC* 1.13, 18-19; *CIL* 1.639-644; Liv. *Per.* 58-9; Plu. *TG* 21.1; *CG* 10.3.

⁴⁰³ Jones (1949) 39; cf. Cic. *Q. fr.* 1.1.13 = *SBQ* 1.13; *Ver.* 3.154.

where to stand, when to speak, what words to use and what tone to adopt was part of a discourse through which elites sought to position and distinguish themselves vis-a-vis their peers. In this light, Cicero's remarks in his letters about the political clumsiness of Pompeius are unsurprising (*Att.* 1.14, 1.16): the latter had proceeded straight to the consulship while still a young man and spent most of his career on campaign.⁴⁰⁴ Pompeius had missed many of the lessons in political decorum that had benefited his less precocious colleagues and rivals.

While the *apparitores* and, in particular, the *scribae* knew the technical details of their own jobs better than most of their publicly elected supervisors, it would be a mistake to characterize the magistrates as putty in their hands. Even a quaestor had at least a decade's experience as a military officer, and many had considerable experience working with senior statesmen on boards appointed by the senate. They also had experience from their relatives and members of their households on which they could draw.

Having concluded this overview of public life and magistracy at Rome, we can draw some conclusions. Roman magistrates were visible, busy figures. The junior ones were in the paradoxical position, however, of being some of the busiest yet at the same time least experienced, relying on the aid of their attendants and, in some cases, the instruction of the senior magistrates, to become adept in running the state. Nevertheless, they also brought a body of experience to their job that was not inconsiderable, whether it was due to previous offices held or the advice of family members. The sections that follow offer a closer look at the quaestors in particular, and examine the many roles they played, as well as how they changed in the period from the passage of the *lex Villia annalis* to the outbreak of the Social War.

⁴⁰⁴ The famous example of Augustus encouraging senators to bring their sons to senate meetings in order to familiarize them with what it entailed (Suet. *Aug.* 38.2) further emphasizes how important senatorial decorum was to success in public life.

4.3 The Duties of the Quaestor in the Second Century

The quaestors were involved in many of the most technical elements of running the state, and the job became increasingly complicated over the course of the second century. The increasing revenue of the Roman state made the management of the treasury more complex, even as the treasury itself remained a small temple in the forum; the creation of the provincial system increased the need for quaestors to serve as treasurers for the provincial governors (mostly of praetorian rank); and the grain laws of the late second century embroiled the quaestors in the duty of maintaining a steady supply of grain to Rome.

4.3.1 Managing the *Aerarium*

Out of all the duties that quaestors performed, their charge of the treasury in the temple of Saturn was the most integral to the daily functioning of the Roman state and began immediately upon their inauguration. It should perhaps not surprise us at this point, however, that the details of this task go almost unmentioned among Roman textual sources. Plutarch's life of Cato the Younger, which we discussed in the introduction, is far and away our best guide to the maintenance of the treasury under the Republic, although we should be skeptical of his portrayal of events. Plutarch's sources for the biography of Cato would have included a number of earlier biographies and political pamphlets ranging from the various (*Anti*)*Catones* of Brutus, Caesar, Cicero and Hirtius, to the work of the early imperial senator, Thrasea Paetus.⁴⁰⁵ The ultimate source for Cato's handling of the *aerarium* was no doubt Cato himself, who sought to present himself as draining the swamp. Indeed, while the younger Cato has traditionally been portrayed

⁴⁰⁵ See Rosillo-López (2017) 143 for a discussion of the late Republican and early Imperial literary tradition surrounding Cato.

as a stodgy moralist and conservative *par excellence*, the recent work of Kit Morrell has revised the traditional portrait. Under her reading, Cato operated creatively within the system to attempt a reform of the Roman state and collaborated with others such as Pompeius in doing so, right up until the civil war with Caesar put all of his efforts to nought.⁴⁰⁶

Plutarch's description of this quaestorship fits in well with Morrell's portrait of Cato the reformer, but we have to question Cato's narrative, since we can now place it in the context of a wider political campaign designed to advance its subject and his cause. Any skimming off the top that the clerks did each year must have been small enough that the quaestors, who would have already had significant clerical work from serving as military tribunes,⁴⁰⁷ did not notice, or could at least make the numbers add up when they rendered account at the end of their term of office. The treasury, moreover, was able to benefit from the expertise that these veteran *scribae* brought to their work.

It is also difficult to credit that the second century Roman state would have had more anti-corruption regulations than there were in Cato's day. This phenomenon was probably nothing new, and indeed, we do have one attestation of clerks embezzling money from the early second century in Liv. 30.39. Corruption in the *aerarium* was not a recent development. As a result of this system, the more experienced clerks were effectively paid extra under the table for their expertise. What we see in Plutarch's biography, therefore, are a system functioning as was intended and a neophyte politician looking for a way to build his brand.

⁴⁰⁶ Morrell (2017) 98-128 contains a detailed character sketch of Cato and discussion of his reform program. Her focus — in the chapter and throughout the book — is on reform of the provincial administration, and so she does not discuss Cato's quaestorship, but the picture she presents is very much in keeping with what we see in Plutarch.

⁴⁰⁷ See 4.3.3 for a lengthier description of what this entailed.

Each year, the treasury was assigned quaestors. Since the number of quaestors prior to Sulla's *lex de XX quaestoribus* was much lower — eight by our best count⁴⁰⁸ — it is probable that in the second century, the *aerarium* was manned by one quaestor per year.⁴⁰⁹ Most of the clerical work, however, was done by the *scribae*. From our estimate in 4.2.3, that would mean there were about two clerks. They seem to have been a mixed group of those who had served in the treasury repeatedly and those who were relative novices. This is unsurprising, as the numbers provided by the Sullan law would suggest that there was a high turnover rate among *apparitores*. Those who could build a network of relationships with elite Romans could find consistent, well-paid (even lucrative) work. The rest would find semi-frequent employment before moving on to something else. Regardless, some of the clerks in the *aerarium* knew the job better than the quaestors who supervised them.

With the assistance of the *scribae*, the quaestors were in charge of taking in and cataloguing plunder brought back to Rome by victorious generals, indemnities imposed on defeated enemies, silver mined in Spain,⁴¹⁰ as well as taxes, tithes collected on public land,⁴¹¹ and import duties. The latter three types of revenue were collected by *publicani* operating in the confines of Italy (taxes collected in the provinces tended to stay in the provinces), and became more onerous in the second century than they had been in previous centuries, both due to the newly public land exacted from perfidious allies after the Hannibalic War,⁴¹² and the general

⁴⁰⁸ Prag (2014) 201-8. There has been some debate as to whether there was an additional expansion of the quaestorship in the second century, but Prag has demonstrated that the Romans normally would have been able to meet their administrative needs with eight.

⁴⁰⁹ Crawford (1974) vol. 1 p. 313; vol. 2 p. 633.

⁴¹⁰ See Frank, *Econ. Survey* 1.138-9 for a discussion of the revenues from the Spanish mines and the year (he suggests 178) when they came under the control of the *publicani*.

⁴¹¹ Nicolet (1980) 150-3, 170-4; cf. Frank, *Econ. Survey* 1.138-41 for an estimate of Roman public revenues gained from the varying types of taxation.

⁴¹² Brunt (1971) 269-77; Cornell (1996) 97-113; Mouritsen (1998) 157.

economic intensification that occurred during the second century.⁴¹³ When dealing with these public contractors, the quaestors had to insure that they fulfilled the terms of the contract that had been let to them. The *Tabula Heracleensis* also informs us that the quaestor in the *aerarium* let contracts for the aediles when the latter determined that a building owner had not maintained the street in front of his property and billed the property owners for the work.⁴¹⁴ While property taxes were abolished in 167,⁴¹⁵ many other less direct forms of taxation remained through the Republic and into the Imperial period.⁴¹⁶ Part of the fines collected by the aediles also ended up in the *aerarium*.

In addition to bringing in moneys of these types, the quaestors paid out funds to magistrates who were departing the city on campaign or (in the case of the aediles) who were taking care of Rome's urban fabric. It was their task to see to it that the treasury remained solvent, and in this capacity, they reported to the senate, as we saw back in 1.1, when the quaestor Caepio was asked to report on whether the state could afford Saturninus' grain law. Beyond maintaining state finances, however, they also served as a records office,⁴¹⁷ and so were responsible for keeping copies of every decree the senate passed (and some that the senate had not passed, if Plutarch is to be believed⁴¹⁸), as well as records of inheritance cases that had been tried in the Roman courts (Plu. *Cat. Mi.* 16.3).

⁴¹³ Kay (2014) *passim*. Kay's overall thesis is that the influx of indemnities and war booty in the first half of the second century led to radical economic intensification in Italy. This in turn would have boosted state revenues to be gained from taxes on public land and import duties.

⁴¹⁴ Il. 32-45. See 5.3 for a more detailed discussion of the aediles' involvement in this task.

⁴¹⁵ Nicolet (1980) 149-56; Frank, *Econ. Survey* 1.139; Plin. *Nat.* 33.56.

⁴¹⁶ Nicolet (1980) 150-3, 156-64. The *tributum* had never been abolished, but rather allowed to fall into desuetude. Indeed, referring to it as a tax is rather misleading, as it was only levied on the rich, was levied infrequently, and often returned. The *tributum* thus falls somewhere between a loan and the types of liturgies that were common in the Greek world.

⁴¹⁷ Briscoe (2008) 240; Plu. *Cat. Mi.* 16.3.

⁴¹⁸ Plu. *Cat. Mi.* 16.3. I am skeptical. The idea of fraudulent decrees in the *aerarium* fits neatly into Cato's narrative of rampant corruption but submitting fake decrees would be of little use to anyone in the short term, for there would be numerous members of the senate who could recall how the senate had voted. It is perhaps more likely that this is an embellishment, either on the part of Cato, or subsequent authors.

The *aerarium* was thus a messy place. It was a small building in the forum, a stone's throw away from the *Curia Hostilia*, the most frequent meeting place for the senate, and as such occupied one of the most public places in the city. It is likely that the doors were open during the day, both so that the quaestor and the *scribae* would not be forced to keep the books in a space that was dimly lit, stuffy, and poorly ventilated (which would be positively dangerous during an Italian summer), and to avoid the impression that they had anything to hide. The building itself likely had not changed much since the fourth century,⁴¹⁹ when the Roman monetary economy, such as it was, consisted of exchanging heavy lumps of bronze (Crawford 1985: 20, 25). By the second century, it was being used to keep track of the revenues of Italy and the spoils of enormously successful wars in an economy that had transitioned from awkward and infrequent lumps of bronze to ubiquitous silver and bronze coinage. For all that, aside from Cato's first crusade against corruption, it ran rather well.

4.3.2 Diplomatic Chaperone

In their capacity as adjutants to the senate, the quaestors frequently escorted state guests around Rome and further afield throughout Italy. Close to where his narrative breaks off in book 45, Livy presents us with three instances of quaestors functioning as diplomatic chaperones, all of which occurred around the end of the third Macedonian war in 168-7 BCE. In 168, Masgaba, the son of King Masinissa of Numidia, arrived in Rome to make a gift of the supplies (chiefly grain), that the Romans had purchased from the Numidian kingdom, and to congratulate the senate on the recently announced defeat of the Macedonian King, Perseus. The senate assigned a quaestor, L. Manlius, to meet him at Puteoli, convey him to Rome in style, and spend one

⁴¹⁹ Claridge (1998) 80-1.

hundred pounds of silver on him during his stay (Liv. 45.13.12-45.14.7). Not much later, Masgaba's brother, Misagenes, on his way home from the war with Perseus, landed at Brundisium after a storm. The senate dispatched another quaestor, L. Stertinius to provide a house for him to recuperate in and to provide gifts to him.⁴²⁰

The next year, the senate assigned a quaestor, L. Cornelius Scipio, to meet King Prusias of Bithynia and his son Nicomedes at Capua, to rent a house for their use in Rome, and to escort them back to their fleet at Brundisium.⁴²¹ Livy connects this episode to the previous two episodes by having the senate vote Nicomedes gifts of the same value that had been given to Masgaba the previous year (45.44.15). Valerius Maximus likewise provides further episodes that illustrate quaestors operating in this function: he mentions that the senate sent a quaestor to provide a state funeral for King Perseus when he died in captivity in 166 BCE at Alba Fucens (5.1.1c), and that in around 58 BCE, the senate apologized to King Ptolemy XII for not providing him with a quaestorian chaperone, *more maiorum*, "in the custom of the ancestors," when he arrived after having been expelled from his kingdom (5.1.1f).

What is striking about these episodes is the status of the diplomats involved. In all of the episodes discussed above, the quaestors are serving as chaperones to royalty.⁴²² This may in part explain the concentration of these episodes around 167, for kings only served as their own ambassadors to Rome in the most serious circumstances, and the years after Pydna certainly qualified as serious. The third Macedonian War had not been popular in the Greek world, and Rome had appeared a belligerent superpower picking a fight with an innocuous king. As a result, many of Rome's allies had offered half-hearted support, or had even tried to position themselves

⁴²⁰ Liv. 45.14.8-9; V. Max. 5.1.1d.

⁴²¹ Liv. 45.44.7, 17; V. Max. 5.1.1e.

⁴²² Gargola (2017) 96 has noticed this phenomenon as well, although his interests lie in the degree of Roman official presence in areas under Roman control and he therefore treats the subject only in passing.

to arbitrate between Rome and Perseus. When the war ended, the senate gave these allies an icy reception, and some barely escaped a declaration of war. The years 168-6 thus became a mad scramble as Rome's allies jostled to reposition themselves in a changed world and avoid being caught in the fallout.

Not all royals received chaperones all the time, and as Elena Isayev has pointed out, in 168-7 BCE, the Roman senate was adept at using every weapon in its diplomatic arsenal to achieve policy objectives.⁴²³ When King Eumenes II of Pergamon, one of the foreign leaders who had fallen short of Rome's standards for friendship, arrived on Italian shores, the senate dispatched a quaestor to instruct him to leave.⁴²⁴ The Numidians, by contrast, had rendered extensive services to the Roman state during the third Macedonian War (indeed, Misagenes was on his way home from serving in that very war), and King Prusias of Bithynia began his speech to the senate by congratulating them on their victory and reminding them of everything he had contributed to it (Liv. 45.44.8). These were not the allies that had provided half-hearted support. They had recognized that the Romans demanded unquestioning loyalty from their friends and had behaved accordingly.⁴²⁵ In the cultural field of foreign relations, the leaders of the senate were adept at using this function of the quaestors to send messages to Rome's allies about their standing and communicate their pleasure or lack of it.

Despite the paucity of examples, Valerius Maximus suggests that providing a quaestor to see to the needs of ambassadors of royal status was normal by the Augustan era (5.1.1.f), and we

⁴²³ Isayev (2017) 249-50 who is interested in the use of space as a weapon. e.g. some kings, such as Prusias were welcomed warmly, given a full tour of Italy and invited to stay, while others, such as Eumenes II of Pergamum, were instructed to leave as soon as possible.

⁴²⁴ Plb. 30.19.1-17; Liv. *Per.* 46.

⁴²⁵ See Eckstein (1987) 102-34 for a discussion of what *amicitia* with Rome could look like in the best of circumstances. Rome had pronounced expectations of her friends, and successful allies sought to reaffirm and maintain that friendship through the diplomatic use of gifts. This need not have been altogether cynical, as personal ties and loyalty did exist, but the relationship had to be maintained. See Harris (1979) 135-6 for an altogether different view, and Badian (1967) for a somewhat dated look at the international dimensions of *clientela*.

may assume that it was standard procedure from at least the victory over Perseus through the end of the Republic. The complete absence of attestation of quaestors operating in this capacity prior to Pydna is suspicious, however, since we are not lacking in sources prior to 168-7. Nor are we lacking in instances of royal visits to Rome during this period: Hiero of Syracuse had visited Rome between the first and second Punic Wars, Demetrius, the son of Philip V of Macedonia, had been a Roman hostage after the second Macedonian war (although this was not technically an embassy⁴²⁶), and Rome had received visits from Attalus, brother of the king of Pergamum, and the king himself in 192 and 172, respectively. The latter two visits are striking because we have detailed discussions by Livy and fragments of Polybius for this period, but no mention of quaestorian chaperones. Valerius Maximus, moreover, had some interest in quaestors serving in this capacity, for he devoted the first few pages of Book 5 to them, but does not mention any prior to 168 BCE.

We should conclude therefore, that the task of shepherding around royalty was an innovation from the time of Pydna. Diplomacy in the Hellenistic World was highly ritualized,⁴²⁷ and, in the wake of Pydna, Rome had become the undisputed center of power in the Mediterranean. That entailed a new kind of self-presentation. The role of the consuls conducting diplomacy in the field and of the senate doing so at home was already comfortably a part of the cultural field of public life in Rome.⁴²⁸ Since the quaestors were the subordinates of both the consuls and the senate, it would have seemed natural for them to look after the needs of Rome's royal guests. Such a diplomatic protocol had a number of advantages. It allowed the senate to

⁴²⁶ As Elena Isayev has pointed out, however, hostages did serve as advocates for and ambassadors from their homelands in an unofficial capacity (Isayev 2017: 246-60, esp. 255-6).

⁴²⁷ See Ma (1998) 201-6 and Grainger (2017) 11-32, 55-72 for detailed discussions of the ritualized back and forth among kings, cities, and leagues in the third and second centuries BCE.

⁴²⁸ Plb. 6.12-3 discusses the relative diplomatic powers of the consuls and the senate. See Eckstein (1987) 3-24 *et passim* for a nuanced and influential discussion of how the diplomatic powers of the consuls and the senate *vis-à-vis* each other changed with proximity to Rome.

position itself, collectively, as the equivalent of a king. By assigning the task to the quaestors, moreover, they allowed Rome's junior-most magistrates great first-hand diplomatic experience that would serve them well later in their careers, and looked after the needs of their royal guests in a way that did not tie up the day-to-day business of the state by involving the less numerous senior magistrates.

The assignment of quaestors to chaperone royalty was an innovation in recognition of Rome's changed place in the world, and probably was most common in the month of February, when all of the quaestors would normally be in Rome, and the senate was in the habit of receiving embassies.⁴²⁹ The presence of a quaestorian chaperone was thus meant to signal the favored status of royal guests, along with the numerous gifts, tours, and opportunities to preside over sacrifices with which they were provided during their stay.⁴³⁰ When an important, favored member of royalty visited, the Roman people could expect to see him and his train of advisors and courtiers being escorted around the city of Rome and around the cities of Italy by a Roman magistrate and his retinue of *apparitores*.

4.3.3 Quartermaster to a Magistrate *cum Imperio*

Perhaps the most common task undertaken by a quaestor was to serve on the staff of a consul or a praetor in a *provincia*. This task would usually start in March, the formal beginning of the campaigning season on the Roman calendar.⁴³¹ In this capacity he managed the supplies of the camp, and indeed of the province as a whole, to ensure that the army remained financially solvent and did not find itself in a position where it lacked weapons, food, or supplies.⁴³² To

⁴²⁹ Isayev (2017) 249; Ferrary (2007), (2009).

⁴³⁰ Liv. 45.44.4-9, Isayev (2017) 250.

⁴³¹ The *tubilustrium*, "purification of the trumpets" on March 23rd.

⁴³² Lintott (1999) 136; Abbott (1901) no. 240.

some degree, his duties therefore resembled those of a quaestor in the *aerarium*,⁴³³ and indeed, when the province was at peace, the quaestor's duties would almost be that of a treasurer, collecting the taxes of the province so that they could be used to supply the army, ensuring that there were enough food and supplies in the camp and ensuring that the private tax collectors fulfilled the terms of their contracts. When the commander's province was in a state of war, he would take care of the financial affairs of the campaign; disposing of plunder and captives, looking after the supplies of the camp, seeing to the reception of grain from local (or distant allies) and deducting the cost of it from the soldiers' pay prior to distributing it to them (Garnsey 1985: 25).

His quarters, the *quaestorium*, were located next to those of the commander (somewhat confusingly called the *praetorium* regardless of whether the commander was a praetor or a consul), and archaeological excavations of Roman camps at Numantia, Spain suggest that it was a rather large complex, in one instance occupying a space of 354 by 240 feet.⁴³⁴ The *quaestorium* would have contained much of the supplies for the camp, including, most importantly, much of the food supply and the pay for all the soldiers for the rest of the year. Based on reconstructions of the layout of Roman military camps, in the second century, the *quaestorium* would have been flanked by barracks reserved for the *evocati* and the *delecti extraordinarii*, both elite troops.⁴³⁵ This excavated *quaestorium* featured a number of semi-permanent buildings. More typical camps would have instead had tents. These structures were arrayed around the perimeter of the space facing inward, with a number of structures around the center as well. In his excavation of the

⁴³³ Abbott (1901) no. 240 draws the same conclusion, although he perhaps overstates this similarity. A quaestor abroad was a military officer, and although his primary function was to keep the books, as was the case for an urban quaestor, keeping the books for an army involved different challenges than maintaining the treasury in the temple of Saturn.

⁴³⁴ Dobson (2008) 77-8, *pace* Polybius whose description of the *quaestorium* can leave the reader imagining a single tent rather than an administrative complex (6.31).

⁴³⁵ Dobson (2008) 103 fig. 31; cf. Plb. 6.31.

quaestorium at Numantia, Schulten discovered left over metal and pans, which he saw as the remains of a smithy, a claim that Dobson endorses, although he qualifies it by pointing out that each quarter of the camp would have had its own blacksmith for repairing gear.⁴³⁶

The quaestor did not manage the supplies, much less the province, alone. He had his own bodyguard, like the commander. He also had all of his *apparitores*, including, most importantly, his *scribae*, and likely that of the consul as well, at least part of the time, and could call upon the experience of his commanding officer, who by definition had held the quaestorship and was an experienced campaigner. The presence of a smithy suggests that there were soldiers around with specialist skills who could take care of the inventory.

It is unlikely that the quaestor directly managed the supplies in camp, if for no other reason than because such an arrangement would hamper the ability of smaller military detachments (groups of one or two legions, for example) to operate independently of the senior-most command staff. More likely, the quaestor's task regarding the supplies was to supervise the military tribunes in the management of the supplies for their individual legions, to coordinate between them, to distribute pay to the military tribunes, and to allot them supplies out of the coffers when they would be operating independently. Having already had ten years of military experience himself and having probably served as a military tribune as well, he knew what camp life was like and what was necessary in order to keep it running smoothly.

The quaestor going about his duties in the camp would thus have been a familiar sight to any Roman who served in the military (a much higher proportion of the population than is common in the United States today, although a somewhat lower proportion than is common in

⁴³⁶ Schulten (1929) 110; Dobson (2008) 184-5.

many European countries⁴³⁷). His position was integral to the smooth conduct of a war, and he had a reserve of experience in military administration that was crucial on campaign. In all likelihood he would have been the second most important person in the camp, after the commander.

4.3.4 Sicily & Ostia

By the end of the second century, there was regularly a quaestor in Sicily (two of them, in fact), and one assigned to the port at Ostia. What they were doing there remains disputed and will be the topic of this section.

There has been a good deal of work done on Sicily under the Republic recently, especially by Jonathan Prag, and the structure of Rome's first province (Cic. *Ver.* 2.2.2) deserves some discussion. The Roman administration of the island appears to have begun soon after the end of the first Punic war, for Appian tells us that in 241, the Romans sent a magistrate to start collecting taxes.⁴³⁸ It is unclear whether this was the newly minted praetor *qui inter peregrinos ius dicit*, a quaestor, or some other provincial magistrate. Prag is agnostic on this topic (2013: 61-2), and the answer depends on the extent of the task that the Romans believed they had undertaken in conquering Sicily. The title *qui inter peregrinos ius dicit* might suggest that the new praetor was the magistrate that the Romans sent, but adjudicating cases is a far cry from the role of tax collector that Appian assigns to the new magistrate (App. *Sic.* 2.6). If Prag is correct, moreover, the Roman thinking in the early administration of Sicily seems to have been that

⁴³⁷ How many this would have been is a difficult question, not least because our population figures for the Republic are tenuous at best. Brunt estimated that half the population was too poor to be recruited into the army (Brunt 1971: 64-6, 417-20). Rosenstein has rejected this position using plausible reasoning and a close reading of various passages of Livy (Rosenstein 2004: 185-8). He has further suggested that the Roman state had an easy enough time meeting its recruitment needs, most of the time, that they could afford to be quite liberal with *vacationes*, exemptions from military service (Rosenstein 2004: 187).

⁴³⁸ App. *Sic.* 2.6; cf. Liv. 23.48.7, who says that the Sicilians were paying a *vectigal* prior to 218.

Sicily could not be incorporated into the *formula togatorum* that bound their Italian allies, and so the Sicilians should pay money in lieu of men.⁴³⁹ This kind of thinking does not betray a conception of Sicily as a place that would have to be ruled in a way much different from how the Romans ruled Italy. Sicily was different only insofar as the Roman Senate did not think it could be useful for supplying soldiers. In this context, sending a military commander to govern the area makes little sense, and a quaestor is much more likely.⁴⁴⁰

In the mid-220s, two things happened that suggest a changing awareness of the Roman role in Sicily: two new praetors were created, and there were revolts in Sicily and Sardinia. Thereafter, we see a praetor assigned to govern Sicily, although Roman troops do not appear to have been sent to the island during the Republic, except in extreme circumstances. Instead, his garrison was supplied by local troops provided by the allied cities of Sicily. The new praetor brought with him a quaestor to perform the duties discussed in the previous section. This quaestor did not replace the quaestor that the Romans began sending in 241, however, and a marked oddity of republican Sicily is that there were two quaestors on the island, but one praetor.

The quaestor assigned to the praetor likely performed all the duties described in 4.3.3, and arrived in the province sometime in late March or early April after the start of the campaigning season. He is rather well-attested in Sicilian inscriptions, and in addition to serving as quartermaster to his commander, he is attested in senior military duties, such as commanding the garrison at Eryx,⁴⁴¹ organizing the fleet,⁴⁴² or serving as a representative of the praetor when

⁴³⁹ Prag (2013) 56-7. For more on the *formula togatorum* see Lo Cascio (1991) 325.

⁴⁴⁰ It should not surprise us that Rome appointed a Praetor *qui inter peregrinos ius dicit* at the end of the first Punic war. The war with Pyrrhus decades before had brought them into increased contact with the Greeks of southern Italy, and they were now entering (and indeed, taking on) the Sicilian and Sardinian spheres of the Mediterranean. This entailed greater mobility, and greater contact - both at home and abroad with people unlike the Romans who were nonetheless under Roman suzerainty.

⁴⁴¹ *CIL* 10.7258; *IG* 14.282.

⁴⁴² *Cic. Ver.* 2.5.63, 2.5.137.

the latter could not be in two places at once. The other quaestor likely handled the revenues to be gained from the Roman province. With increasing frequency, this would have meant coordinating the shipment of a yearly tithe, *decuma*,⁴⁴³ of grain abroad. Just what this development looked like is a matter of some debate.

In the last couple of decades, Paul Erdkamp has argued that there was no established policy for providing food to the urban plebs until very late in the second century, and Jonathan Prag has suggested that from the end of the first Punic War well into the second century BCE, the Sicilians were primarily taxed in money, but that they came to be taxed in grain with increasing frequency to supply Rome's armies.⁴⁴⁴ Peter Garnsey and Geoffrey Rickman, on the other hand, have both suggested that the Sicilians were primarily taxed in grain from 196 BCE and that, under normal circumstances, the tithe was sent to Rome in order to supplement the grain produced by the city's hinterland, although all or most of it might be diverted to supply armies in the field during times of war.

Garnsey's and Rickman's claims find support in textual sources. In 191 BCE, near the start of the war with Antiochus III, Livy reports that the praetors assigned to Sicily and Sardinia were each tasked with collecting two tithes of grain from their provinces. The praetor of Sardinia was instructed to send one tithe to Rome and one to the armies in Greece. The praetor of Sicily was to send both tithes to Greece (Liv. 36.2.12-14). Exactly the same instructions are given to the praetors of 190 (Liv. 37.2.12), and in 189, half of the tithes from both islands were sent to Aetolia, in central Greece, while the other half were sent to supply Rome's forces in Asia Minor (Liv. 37.50.9-10). Eighteen years later, in 171, at the start of Rome's next major war in the eastern Mediterranean, the senate ordered that a "second tithe" should be collected from both

⁴⁴³ literally a "tenth-part," for that is how much the Roman state exacted from the Sicilians.

⁴⁴⁴ Erdkamp (2000) 64-7; Prag (2013) 59-61.

Sicily and Sardinia, and that this grain should supply Rome's military forces in the coming war (Liv. 42.31.8). This last passage in particular is interesting for two reasons. No mention is made of a "first tithe," although the reference to a second of course means that there had been a first. This suggests that, by the 170s, the grain tithe had become positively normal, and neither the tithe, nor its destination, presumably the city of Rome, required any special comment. Secondly, in contrast to the examples from 191-89 BCE, the Senate evidently did not feel they could divert the tithe to the army and instead opted to collect a second tithe for military supplies. By this point already, the grain tithe had become integral to the city's food supply and could not be spared. This gives us a good idea of how early the tithe was being collected and what it was being used for.

Per the Laws of Hiero, which were extended from the hinterland of Syracuse to encompass most of the island, ten percent of each year's crop went to the tithe, which was collected by local contractors, known as *decumani* who could collect an additional 6% of the tithe (or 0.6% of the whole harvest) to cover their operating expenses. Each year, magistrates from each city on the island would interview the farmers to ascertain how much of their land was under cultivation, what crops they were growing that year, and how much seed they had planted. They would then enter these testimonies into the public record and Sicilian contractors would bid for the contract to collect the tithe. After obtaining the rights, the contractor would then go to each of the local farmers and make a contract (*pactio*) for how much grain each would provide. The *pactio* was signed in triplicate: one copy for each of the signatories, and one to be held in the city archives (Rickman 1980: 37-8). When the grain was collected, it was probably shipped

where it was needed by Roman contractors hired by the censors every five years.⁴⁴⁵ The likely role of the quaestor in all this was to work with the local contractors who collected the grain tithe from the farmer, ensure that they were delivering on what they had promised, and instruct them on where they were to deliver the grain (based on the senate's instructions handed down from the praetor). Assuming this destination was a military camp, another quaestor would then take delivery of the grain and see to its distribution to the troops, after deducting its cost from the soldiers' pay.

What took place in the years when the tithes from Sicily and Sardinia were sent to Rome is less clear, as we have no direct evidence for this stage of the process. Two possibilities emerge. One possibility is that the contractors sold the grain to the Roman people themselves and deposited a fixed portion of the profits with the quaestor of the *aerarium*. This would match well with the process that was used for the tithes of Asia after the annexation of the Kingdom of Pergamum late in the second century, although the tithes of Asia were sold throughout the Mediterranean, rather than just in the city of Rome. The other possibility is that the shippers handed the grain over to the aediles, who distributed it to the people at a low price. The latter possibility is suggested by the practice of the aediles distributing grain captured through victories abroad. Regardless of which of the two possibilities is correct, the grain in Rome was stored in privately-owned granaries that charged rent for the use of the space.

This rather neat system was subject to disruption in the second half of the second century, due to slave revolts in Campania and Sicily, two of Rome's main sources of grain, and our sources report shortfalls in 142, 138, and 129. It was against this background of repeated

⁴⁴⁵ Rickman (1980) 41; cf. Rostovtzeff *RE* s.v. *frumentum*, who suggested that the shippers were the very same Sicilian contractors who collected the harvest. Rickman does not discount this possibility but finds it more likely that Roman state-hired contractors took care of this task. cf. Frank 3.312.

shortages, that the radical tribune Gaius Gracchus, fresh from serving as a quaestor in Sardinia, passed the *lex Sempronia frumentaria* of 123 BCE, which “...established the basic right of every Roman citizen to a ration of [grain] at a cheap rate below the normal market price.” (Rickman 1980: 48-9).

Unlike previous state interventions in the grain trade, the *lex Sempronia* provided that the grain would be sold to the people by the government out of state-owned granaries (Rickman 1980: 49). From this point through at least the 70s BCE, Sicily’s primary fiscal contribution to the Roman state was in the form of grain to be sold at subsidized price to the urban populace in Rome.⁴⁴⁶ Gracchus’ chief interventions appear to have been the following: to mandate that the Sicilian tithe would go to the city of Rome, rather than to the army; to construct state-owned granaries for its storage; to mandate that it would be distributed by the aediles, assuming this had not already been the case; to fix the price at which this state-subsidized grain would be purchased by the citizens at four asses per *modius* and allow each citizen to purchase no more than five *modii*. His experience serving as a quaestorian quartermaster in Sardinia likely served as the inspiration for the framework outlined in the *lex Sempronia* (Garnsey 1985: 25).

Under the new system, the grain tithe was collected in accordance with the Laws of Hiero and shipped by the Roman contractors to Italy, all under the supervision of the quaestor of Sicily. Once the grain reached Italy, it was under the management of the quaestor of Ostia. The origins of the quaestor *Ostiensis* are hazy. It is first attested in 104 BCE, when it was assigned to L. Apuleius Saturninus,⁴⁴⁷ but it was probably not new at that point. It seems likely that the Ostian quaestor began overseeing the transport of grain after the passage of the *lex Sempronia*

⁴⁴⁶ Garnsey (1985) 25 speculates, plausibly, that the inspiration for this new system of publicly-subsidized food for the Roman population came from Gracchus’ experience as a quaestor in Sardinia, managing the supplies of the camp and ensuring that food was received from Sicily and the cost of it deducted from the soldiers’ *stipendium*.

⁴⁴⁷ Cic. *Sest.* 39; D.S. 36.12.

frumentaria, but it is hard to say whether there was a quaestor *Ostiensis* prior to his task as a grain importer. I suggested in section 2.6.3 that there may have been a quaestor in the late third century to represent the Senate to Rome's naval allies and coordinate the defense of the coast during the First Punic War, but this is pure speculation. The furthest back that we can attest the quaestor *Ostiensis* with any confidence is 123 BCE. Regardless of his origin, the quaestor at Ostia was the receiving-end counterpart to the quaestor in Sicily, and saw to the transportation of grain to Rome, where it was stored in state-owned granaries and distributed to the people by the aediles.

4.4 Conclusion

The quaestors of second century were busy, and became increasingly so as the century progressed. As the taking of spoils and indemnities increased in the second century (see the figure 3.6 in the previous chapter for Roman spoils from 200-180 BCE, a trend that continued down until 167), and taxes to be collected from the *Ager Romanus* grew, maintaining the treasury became a more complicated job than it had been in the third century. Likewise, the senate innovated a new, if infrequent, function of escorting royal ambassadors, and the growth of regular praetorian provinces during this period meant that there was an increasing demand for quaestors who could serve as quartermasters for magistrates with *imperium*. Gaius Gracchus' *lex frumentaria* only increased the workload of the quaestors, as it sought to remedy the frequent failures of the food supply (to be discussed at greater length in 5.5) by assigning quaestors in Ostia and Sicily to organize the regular transportation of grain to the city of Rome.

Throughout this process, we see little evidence of dysfunction among the quaestors, in spite of the great burden with which they were saddled. Two exceptions stand out, both

coincidentally involving the notorious tribune, Saturninus. As quaestor of Ostia in 104 BCE, Saturninus was dismissed by the senate when the grain price rose.⁴⁴⁸ Four years later, when he proposed radical changes to the grain dole as tribune, as quoted in section 1.1, one of the quaestors of the treasury testified to the senate that the state could not afford Saturninus' law, and then used violence to stop the tribune when he took the measure before the popular assembly anyway.⁴⁴⁹ In light of the fact that the senate chose the *princeps senatus*, the first man of the senate, to replace Saturninus at Ostia, however, it seems more likely that they considered the situation delicate and wanted someone with more experience to manage the grain supply that year.⁴⁵⁰ Meanwhile, as I suggested in 1.1, the quaestor who broke up Saturninus' voting assembly likely regarded doing so as part and parcel of his duty to protect the solvency of the treasury. These two counter-examples are at once rather isolated and weak.

The *cursus honorum* proved very effective at churning out competent administrators who could keep the state running on a day-to-day basis, even as the upper magistrates were at loggerheads. Indeed, this system of promotion is likely responsible in part for one of the peculiar phenomena of the late Republic, the fact that political turmoil did not lead to a collapse of Roman power. The aediles and quaestors, were of course, themselves future consuls, praetors, and tribunes, and many of these junior magistrates would later contribute to Rome's political turmoil as they sought higher office. The *cursus honorum* was thus a victim of its own success. It produced experienced magistrates who were too ambitious to content themselves with a middling career, but too competent to let the state fall apart. In the next chapter, we will turn to the aediles during the same period, who present a rather more complicated picture.

⁴⁴⁸ Cic. *Sest.* 39, D.S. 36.12.

⁴⁴⁹ *Rhet. Her.* 1.21.

⁴⁵⁰ Cicero suggests that Ostia was regarded as a particularly difficult task (*Mur.* 18), and so it need not surprise us, in a crisis, that the senate opted to give it to someone else.

Chapter 5

Running the Show: the Aedileship in the Second Century BCE

5.1 Introduction

If you visit the epigraphic collection of Rome's Capitoline Museum, in what was once the *tabularium* built in the late Roman Republic, you will find a curious inscription. It sits at the intersection of two hallways, one of which joins the Palazzo dei Conservatori to the Palazzo Nuovo, while the other hall leads out to a brilliant view of the Forum. In contrast to many of the other pieces in the gallery's epigraphic collection, the lettering is irregular and uneven, and the travertine cippus on which it is written is mottled and not perfectly smooth. The text is altogether difficult to decipher, especially in the low light of the old *tabularium*. It reads:

*[---] eis que curarent tu[erenturque]
[ar]bitratu aedilium plebeium
[quei]comque essent neve ustrinae in
eis locis recionibusve nive foci ustri
naeve caussa fierent nive stercus terra[m]-
ve intra ea loca fecisse coniecisseve veli[t]
quei haec loca ab paaco Montano...*

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“...and let them take care and make sure, in accordance with the decision of the plebeian aediles, whoever they are, not to make funeral pyres in these places or boundaries, nor let them be used as burn sites or funeral pyres, nor should he want to make or heap together manure or dirt within these places, he who these places from the hill neighborhood...”

⁴⁵¹ *CIL* 1² 591 = *CIL* 6.3823 = *CIL* 6.31577 = *ILS* 6082 = *AE* 1993, 111 (Rome).

This text, which was found in the church of Saint Eusebius on the Esquiline Hill, and which has been dated to the late second century or early first century,⁴⁵² is a striking, and early, piece of evidence for the daily work of magistrates in the Roman Republic. Like the episode of Cato's quaestorship, with which we began the previous chapter, this inscription draws our attention back to the actual work of running the Roman state. Everything about it is functional, from its lettering and materials to its content: the plebeian aediles wanted people to stop disposing of refuse outside of the Esquiline Gate.

This chapter serves as a continuation for many of the ideas and methods laid out in the previous chapter. What the aediles did each day should interest us not just as a piece of historical trivia, but because what they were seen doing shaped the perception of their office and, in turn, influenced the *habitus* of public life in Rome. For this reason, the discussion of the aediles herein will be based especially on the arguments about magistracy laid out in 4.2.1-4: the Roman magistrates were both very busy and highly visible to the general public, the aediles perhaps even more so than the quaestors, since the latter frequently served abroad or as keepers of public records, while the aediles' business confined them to the city and consistently brought them into contact with the urban populace. Like other magistrates, they depended to a great degree on their attendants, the *apparitores*. Typical staff would consist of two clerks, two messengers, two criers, and eight public slaves.⁴⁵³ While the *apparitores* frequently had more experience in the

⁴⁵² There is some debate on this point. Rodolfo Lanciani (1875: 195-6) dated it to the age of Sulla. Subsequent to his work, Mommsen dated the inscription in the *CIL* to the period between 100 and 93 BCE (*CIL* 1² 591). Plantner & Ashby (1929: 374) have dated it broadly to the second century BCE, while Reinhold (1935: 92) dated it to "some time during the first half of the last century of the Republic." Most recently, Warmington has dated it from 150-120 BCE (1940: 253). The broad consensus seems to be late second or early first century BCE, although much beyond that cannot be said with any confidence.

⁴⁵³ See 4.2.3 for a reconstruction of how many *apparitores* the different colleges of magistrates had.

day-to-day business of managing the *res publica* than the magistrates they served, we should not minimize the experience that an aedile brought to his office: ten years service in the military, and the quaestorship at a minimum, but probably a military tribunate and service on a board of minor magistrates as well.

As we saw with the quaestors in chapter four, the dysfunction and political turmoil that enveloped the Roman state in the later second century did not reach the aediles, who continued to do their jobs without acrimony. Indeed, after his quaestorship, we are told that Cicero contemplated running for tribune (a notoriously divisive office), but ultimately chose the aedileship because it was uncontroversial (Dio 36.43.5). At the same time, the expansion of the Roman state in the second century tended to bureaucratize tasks that formerly had been handled by the aediles at their own initiative, and while the aediles remained important public figures in the running of the city, their role in looking after the community and Rome's urban fabric was increasingly entangled in a larger bureaucratic apparatus.

The *lex Villia annalis* set the basic terms under which the aediles operated and sought to advance their careers between its passage in 180 BCE and the outbreak of the Social War in 91 BCE. As before, we will follow the course of magisterial duties throughout the calendar year, beginning with assignments that had to be performed more-or-less continuously. We will begin with a discussion of the aediles' duty to maintain the temples and urban infrastructure in the city of Rome, before turning to their role in policing public behavior, looking after the markets, including the grain supply, and, finally, the task which allowed them to show the most initiative in service of the people: the various public festivals for the success of which they were responsible.

The decision to divide this chapter in a similar fashion to the chapter on the quaestors masks an important difference between the two offices. Whereas each quaestor in a given year was assigned to a different task by the senate, there was no such division of labor for the aediles. Instead, they divided the city geographically into quadrants, one of which each aedile was responsible for. This means that, whereas each quaestor might expect to do only one or two of the tasks discussed in the previous chapter, each aedile was required to perform all of the duties discussed in this chapter.

5.2 Darning the Urban Fabric

One of the most obvious duties of the aediles was the maintenance of public infrastructure. While none of it required too much of their time, and they had a number of attendants to help them, this is one of the most visible capacities in which they operated. The best source for their activities in this regard is once again the Caesarian *Tabula Heracleensis*. The law instructs the aediles to divide the city into quarters, for one of which each aedile will be responsible. He is to see to it — likely through a combination of his messengers, heralds, or even just complaints by private citizens — that all public roads within a mile of the city should remain clear and in good condition (ll. 20-8).

In their duty to see to it that the streets of Rome remained clear and unobstructed for traffic, the aediles likely relied a good deal on the initiative of the city's inhabitants. The aedile might, at his discretion, have his public slaves clear away or destroy objects found to be holding up traffic. Our best source for this is the *Digest*, which concerns itself with the question of liability if the aedile destroys a recently purchased object that is blocking the street (18.6.13-15). The way that the *Codex* assigns blame is beyond our purview and may be anachronistic with

regard to the Republic.⁴⁵⁴ What is interesting, for our purposes, is that the text envisions the possibility that the aedile himself might be liable, *si id non iure fecisset*, “if he did not do it legally” (18.6.14). The text does not lay out what would constitute illegal destruction, but one might suspect that an example would be if the road was private, not public, property. The aedile’s mandate to keep the streets clear did apparently have limits.

Whereas in modern European and American civic practice, the local government employs public servants to maintain all the roads, Roman practice was more complex. If the road was bordered on one side by public property and on another side by private property, the state was responsible for maintaining half the road, while the owner of the private property was responsible for the upkeep on the other half (*Tab. Her.* 29-31). If the citizen shirked this duty, then the law instructed the aedile to serve notice that he would be letting out a public contract for the maintenance of the stretch of road. When the contract had been let, the owner of the land who had failed to maintain the road was responsible for paying the contract. If he had not paid this debt within thirty days, he would be liable for half again as much (ll. 32-45).

Portions of the roads that bordered on public property, meanwhile, were the responsibility of the state, and it was the aedile’s duty to let contracts for the maintenance of the road. He would announce it in the forum ten days prior to the auction, and the cost of repairing the road would be paid out of the *aerarium*. What would happen if the stretch of road was thoroughly private is more obscure, and we have no direct evidence. If the passage of the *Digest* discussed in the preceding paragraph is understood to mean that the aediles could not destroy objects blocking

⁴⁵⁴ The aedileship was a very different office under the principate, and it is conceivable that the influence of the jurists on Roman law created a precedent on this issue that would not have held under the Republic.

privately owned streets, then we might suspect they likewise had little power to ensure that the owners of the properties maintained roads that did not abut public property.⁴⁵⁵

We can imagine that the maintenance of public buildings, including temples, proceeded in like manner. It was at the aedile's initiative to determine the state of the temples in his quarter of the city, and to decide when these temples were in need of repair.⁴⁵⁶ In like manner, we are told that the aediles also inspected and reported on the public baths,⁴⁵⁷ and they had a general responsibility for the whole water supply. In that capacity they saw to the conservation of water, granted private access to Roman citizens, and inspected the maintenance that had been carried out by public contractors.⁴⁵⁸

The second century was a period of great expansion in the construction of temples and public monuments in Rome, as victories abroad and the men who achieved them were commemorated through the creation of new sacred spaces. The creation of new temples would not immediately create more work for the aediles in and of itself, for these temples were as yet new.⁴⁵⁹ The creation of new public buildings did mean, however, that more and more roads fell partly or wholly into the responsibility of the state, and we may suspect that the portion of the city's roads for which the aediles were responsible increased over the course of the century. Nevertheless, their staff of perhaps fourteen attendants seems to have remained sufficient over time.

⁴⁵⁵ cf. the *lex agraria* line 28, (CIL I² 585 = *AE* 1990.18) which assigns similar duties of keeping public roads clear to *duumviri*. That the law specifies public roads may be taken to suggest that private roads were exempt from public oversight.

⁴⁵⁶ For examples of aediles repairing public buildings, see D.C. 49.43.3; Plin. *Nat.* 34.11.

⁴⁵⁷ Sen. *Ep.* 86.10; Patterson (1976) 54-5.

⁴⁵⁸ Frontin. *Aq.* 76; cf. Patterson (1976) 55.

⁴⁵⁹ A century later, on the other hand, we may suspect that the work of maintaining all these temples was much more onerous.

5.2.1 The Pagus Montanus Inscription

The conclusions raised in the previous section have bearing upon the inscription discussed in the introduction to this chapter, which offers instructions on how citizens ought to interact with the urban fabric of Rome. A deeper exploration of this inscription and its context offers an unusually vivid portrait of the impact that the aediles had on the lived environment of the city.

The *cippus* on which the text was carved was discovered on the Esquiline Hill, and, on the reconstruction of John Bodel, was originally placed just a few meters outside of the Esquiline gate, on the northeast side of the city. This aedilician inscription is paired with another inscription, of which three copies were made, that were arranged in an arc between the Esquiline and Viminal Gates:

*L(ucius) Sentius C(aii) f(ilius) pr(aetor)
de Sen(atus) sent(entia) loca
terminanda coeravit.
B(onum) f(actum). Neiquis intra
terminos propius
urbem ustrinam
fecisse velit, nive
stercus, cadaver
iniecisse velit.*⁴⁶⁰

“Lucius Sentius, son of Gaius, the praetor,
on the opinion of the senate, oversaw the
delimiting of these spaces.
Well done! Let no one make
funeral pyres, nor throw
dung or bodies within
these confines very
close to the city.”

⁴⁶⁰ *CIL* 1² 838 = *CIL* 6.31614 = *ILS* 8208 = *AE* 1993, 110 (Rome).

The two (four, if we count the copies of the praetorian inscription) are both inscribed on travertine, but while the aedilician text is inscribed in small, rounded, simple, deeply-cut, rubricated letters, the letters of the praetorian inscription are shallower, larger, straighter, and angular. Before we consider the dating of either of these inscriptions, it is worth considering the context in which so many injunctions were placed against the dumping of bodies outside of the Esquiline gate.

The area in which these inscriptions were posted had, for much of the Republic, served as a cemetery for the city, although the word “cemetery” perhaps conveys the wrong image: when it was excavated in the late nineteenth century by Rodolfo Lanciani, a series of some 75 large, tufa-lined pits (roughly 10 meters deep, and 4 by 5 meters in size) were found,⁴⁶¹ that have been identified with the *puticuli*, (“pits” or “wells”) described by the Roman antiquarian, Varro.⁴⁶² These pits were the dropping off point for the bodies of any inhabitants of the city who were too poor to make arrangements for a grave plot after they died.⁴⁶³ Horace describes them, or other *puticuli* like them, as being open graves where anyone could see (and smell) piles of corpses in varying states of decomposition (Hor. *Serm.* 1.8.14-16). Further out, along the *via Tiburtina*, there were also *mausolea* and tombs for the more well-to-do families of the community.

The *puticuli* outside the Esquiline gate first saw use in the early second century at the latest and, although they had been built to accommodate many thousands of people, by the first century, they were no longer sufficient to the needs of Rome’s burgeoning population.⁴⁶⁴ As will

⁴⁶¹ Lanciani (1874) 42-53; (1875) 41-56.

⁴⁶² Var. *L.* 5.25: *extra oppida a puteis puticuli, quod ibi in puteis obruebantur homines, nisi potius, ut Aelius scribit, puticuli quod putescabant ibi cadavera proiecta, qui locus publicus ultra Esquilias.* There has been some dissent from the notion that the pits found by Lanciani are Varro’s *puticuli*. G. Pinza (BCAR 40 1912: 65, 82) has questioned this identification. I am not sure it matters for our purposes whether these pits are the precise ones that Varro mentions. If nothing else, Varro is describing a similar phenomenon.

⁴⁶³ Bodel (1994) 39.

⁴⁶⁴ Bodel (1994) 41-2.

be discussed in greater detail later in this chapter, there is some consensus that the population of the city of Rome had doubled over the course of the second century,⁴⁶⁵ and in the first century, the pits were overflowing with the dead. It is telling that, when Lanciani excavated the *puticuli*, the bodies had still not completed their decomposition, and, in addition to finding bones, he found a viscous, foul-smelling black liquid,⁴⁶⁶ suggesting that the bodies in the pits had been densely packed enough that moisture had not been able to escape as they decayed.

At some point during the first century, the *puticuli* were covered over with a mixture of dirt and debris, and the area was reclaimed for other purposes.⁴⁶⁷ The conventional understanding has been that this was done shortly before Augustus' political ally, Maecenas built a massive private garden in the area. We know for certain that some *puticuli* were covered over to make room for these gardens, because the event was the occasion for Horace to compose a poem for his patron, praising Maecenas for beautifying a dreary area, whose charnel pits were memorable (Hor. *Serm.* 1.8.14-16).

As Bodel points out, however, the inscription of the praetor Sentius was found in the same layer as the dirt and debris, and there is no evidence of bodies being dropped after it was posted.⁴⁶⁸ Bodel dates the inscriptions of Sentius to the first two decades of the first century and argues that the *puticuli* were covered over just before the dictatorship of Sulla. He resolves the problem of Horace's evidence by arguing that the poet is referring to *other charnel pits*, for which there is no evidence, just south of the Esquiline gate.⁴⁶⁹ This conjecture is plausible, but I would also like to point out that the evidence of Horace is ambiguous. He does not mention how

⁴⁶⁵ Brunt (1971) 384; Scheidel (2004) 14-5; Hin (2013) 220.

⁴⁶⁶ Lanciani (1874) 42-53; (1875) 41-56.

⁴⁶⁷ Bodel (1994) 45-7. Bodel assigns the date for this to sometime before the dictatorship of Sulla, but that depends entirely on dating Sentius' inscription to a similar period. As I argue below, it is probably late first century.

⁴⁶⁸ Bodel (1994) 47.

⁴⁶⁹ Bodel (1994) 52.

recently the site of Maecenas' gardens had been a bone yard. Indeed, in that particular satire, he is not even speaking in his own voice, but from the point of view of a wooden statue of Priapus that had been set up in the area. It is possible that Horace is compressing his chronology in order to render starker Maecenas' beautification of the area. The Esquiline charnel pits could very well have been out of use for decades by the time that Horace took up the pen.

Having explained the great gap between Sentius' inscription and Horace's reference to the area, Bodel then notes that the aedilician inscription has no reference to dumping bodies, but instead only to burning them and dumping trash. He concludes that this inscription must have been posted several decades after Sentius' inscription, when the charnel pits had been all but forgotten.⁴⁷⁰

There is a problem with the dating of these inscriptions. On the praetorian inscription, Bodel is probably correct. We have two Sentii mentioned in the early first century. One is Gaius Sentius, the urban praetor of 94 BCE.⁴⁷¹ That is not the Sentius of the praetorian inscription, for that one's praenomen is Lucius. There is a man named L. Sentius mentioned as a moneyer in 89 BCE, and Münzer identified him with the praetor in this inscription, suggesting a date for his praetorship (and for the inscription) of 83 BCE.⁴⁷² This is *suo anno* logic, and we should not be confident that Lucius was elected in the first year he was eligible. Nevertheless, if L. Sentius the moneyer is the man mentioned in this inscription, then a date at the end of the 80s BCE would be correct. The letter forms support this dating.⁴⁷³ In the absence of other evidence, this is the date I assign the praetorian inscription.

⁴⁷⁰ Bodel (1994) 50-1. Neither Steinby *LTUR* vol. 4 173-4 s.v. *puticuli* nor Richardson *NTDAR* 323 s.v. *puticuli* make any mention of newer *puticuli* south of the Esquiline gate. That of course does not mean that Bodel is wrong, but his assertion rests on no evidence.

⁴⁷¹ *SIG*³ 732; Broughton *MRR* vol. 2 (1952) 12 s.a. 94.

⁴⁷² Münzer (1923) *RE* 1511 no. 6.

⁴⁷³ Gordon (1965) 15-17.

The Pagus Montanus inscription represents a much greater problem, however. Bodel's reconstruction of the situation outside of the Esquiline gate places it several decades after the inscription of the praetor Sentius. Most other scholars that have looked at it have dated it to the late second century BCE, and *all* of them have dated it before Sentius' inscriptions.⁴⁷⁴ The letter forms of the aedilician inscription do not resemble any of those discussed in Gordon, whose first dated inscription is, coincidentally, the praetorian inscription we have just discussed. They do, however, resemble many of the inscriptions from the second century BCE.⁴⁷⁵

Linguistic evidence provides another avenue for dating this inscription. The appearance in the word *paaco* of a *c* in place of the letter *g* is a definite archaism, for this would have to be an early third century inscription for that orthography to be present otherwise.⁴⁷⁶ By contrast, the appearance of the so-called "Accian geminated a"⁴⁷⁷ in the same word means that this inscription was almost certainly written sometime after 120 BCE, when this spelling habit began to appear in Latin.⁴⁷⁸ The geminated *a* does occur sporadically down until the end of the Republic, but it is most common among areas with a large body of native Oscan speakers,⁴⁷⁹ which the city of Rome decidedly is not. The most likely time for this unusual orthography to appear in an inscription from the city of Rome is therefore shortly after the poet Accius began advocating for

⁴⁷⁴ Lanciani tentatively dated the Pagus Montanus inscription to the age of Sulla (BCAR 3 1875: 195-6), Platner & Ashby (1929: 374) dated it to the second century BC, while Reinhold (1935: 92) dated it "some time during the first half of the last century of the Republic" which I take to mean between the Gracchi and Sulla. Finally, Warmington dated it vaguely from 150-120 BCE (1940: 253).

⁴⁷⁵ e.g. *CIL* 1.626, 1.978, 1.615, 1.24.

⁴⁷⁶ Weiss (2009) 28 no. 20.

⁴⁷⁷ In the late second century, the poet Accius proposed that all long vowels should be written twice. This proposed rule was never observed all that strictly: it is more common in the case of the letter *a* than all the other vowels combined, it is almost universally observed only on the first syllable of the word, and only when that syllable is stressed. There has been a healthy body of philological scholarship on this development, and there is a general agreement that, whatever Accius' agency in this trend, Latin's use of geminate vowels was in some way influenced by Oscan and neatly parallels the patterns of its use in that language. For some of the most authoritative recent work on this topic, see Weiss (2009) 29 and Vine (1993) 267-286.

⁴⁷⁸ The appearance of a *u*, instead of the diphthong *oe*, in *curarent* likewise dates this inscription to after 150 BCE, when *oe* monophthongized to *u*.

⁴⁷⁹ Weiss (2009) 29.

it in the 130s and 120s BCE. The weight of the evidence places this inscription in the last decade or so of the second century, rendering quite unlikely Bodel's assertion that it was placed outside the Esquiline gate in the mid-first century, long after the *puticuli* had gone out of use.

I propose a different reading of the evidence. On the dating of these inscriptions, I follow the scholarly consensus: last two decades of the second century BCE for the Pagus Montanus inscription, some time between 83 and 80 BCE for the Sentius inscription. Bodel is not wrong, however, in his general characterization of the Esquiline gate during the period. At the turn of the first century, the *puticuli* outside of the Esquiline gate were beginning to fill up. Sewage, which was continuously being dumped outside of the city, and funeral pyres, which connoted a more expensive funeral, and which left behind a great deal of ash and burnt wood, were two of the most common material, other than bodies, that might be dumped into the *puticuli*. In order to preserve their use for as long as possible, the plebeian aediles instructed that the area should not be used to dump sewage, and that funeral pyres should not be held in the area. By the late 80s BCE, the *puticuli* were overflowing, and people had taken to dumping bodies in other place nearby: in the ditch at the base of the Servian wall and in convenient places ranging north toward the Viminal gate.⁴⁸⁰ The senate therefore instructed one of the praetors, of whom there was now a surplus, thanks to Sulla's reforms to magistracy,⁴⁸¹ to oversee the delimiting of the area and cover it over with dirt and debris so that it could be put to new use.

Our interest, however, is in the action of the aediles. As caretakers of Rome's urban fabric, they had recognized the problem that filling up the charnel pits would represent for the community. The poor would have no legitimate place to dispose of bodies that was within their

⁴⁸⁰ Bodel (1994) 42.

⁴⁸¹ Sulla increased the number of praetors elected each year to eight. For a brief discussion of this process see Lintott (1999) 107. For a lengthier discussion, see Brennan (2000) 388-403.

budget, and the whole community would suffer the consequences. Their ability or inclination to devote the resources to creating new *puticuli* was dubious, but they could, and did, ensure that the *puticuli* the city had would not be wasted on the disposal of sewage or the detritus left over from more upper-class funerals. They therefore posted the Pagus Montanus inscription outside of the Esquiline gate in order to preserve the space for the use of Rome's poorest.

5.3 Court of Public Opinion

Another well-attested activity of the aediles is fining people. The aediles' duty to check poor public behavior encapsulates tasks that we might regard as several different spheres of activity, but which the Romans united by a common procedure. Abbott has argued that the aediles' ability to fine people became defunct in 149 BCE, with the establishment, in a *lex Calpurnia*, of *quaestiones perpetuae*, permanent courts of law to try extortion cases, but the aediles' power to fine bad behavior was far broader and more far-reaching than the permanent courts.⁴⁸² In the published second speech of his *Verrines*, Cicero, as aedile-elect, could still wittily threaten to fine Verres next year if the permanent court did not find him guilty (2.5.151). The half-joking remark was apparently potent enough that Cicero repeated it twenty-two chapters later (2.5.173). Such a witticism would only have landed if this power of the aediles was reasonably current and well-known.

In this section we consider the various behaviors for which the aediles issued fines, before exploring the procedure through which these fines were issued. What we see, in the first

⁴⁸² Lintott (1999) 158-9; Abbott (1901) no. 236. The *lex Calpurnia* was routinely refined and expanded through subsequent laws and is chiefly known to us through the *lex Acilia de repetundis*, which preserves much of the language from earlier extortion laws. It is entirely possible that the aediles were in some ways superseded by the expansion of the courts in subsequent legislation, but Cicero's quips in the *Verrines* presupposes an audience that was still familiar with this task.

part, is that the aedilician fines were a means for the Roman people to retaliate legitimately against their fellow citizens more than they were a means of enforcing the law. They thus spoke less to the laws on the books and more directly to the mores that inhabited the cultural field of Roman public life. The aediles were not alone in prosecuting misbehavior, for the tribunes prosecuted political misbehavior,⁴⁸³ but the aediles were unusual in the breadth of behavior that they punished.

We have a number of attestations of the aediles, both curule and plebeian, fining people — indeed, this is one of the most frequent capacities in which the literary tradition mentions them. Before examining the procedure of imposing a fine, we will take some time to discuss the wide array of activities for which fines are attested. In enumerating these activities, we will not confine ourselves strictly to the second century BCE, both because of the poverty of our sources for this century, and because the range of behavior that the aediles policed seems to have remained relatively consistent throughout the Republic and into the early Empire. We may doubt whether some of the incidents, those occurring in the fifth and early fourth centuries, actually occurred, but if they are fabrications, then they are literary fabrications that colored the Romans' expectations of what an aedile should do. They are, therefore, useful to us.

Economic misdeeds show up quite commonly in the sources. In 345, 297, 191, and 189 BCE the aediles fined money lenders for exorbitant interest rates, and grain merchants for hoarding grain in order artificially to raise the price,⁴⁸⁴ while in 292, 196 and 192 BCE they charged farmers with misuse of public land, usually on the charge that the lessee possessed more

⁴⁸³ Lintott (1999) 122.

⁴⁸⁴ Liv. 7.28.9, 10.23.11, 35.41.9-10, 38.35.5-6. The great gap between books 10 and 35 can be attributed to the loss of Livy's second decade.

ager publicus than he legally could, but also for using it to graze cattle rather than for grain production.⁴⁸⁵

While economic misbehavior was a common reason for a fine, many other types of personal behavior, some of them varying quite widely, are attested. Women were frequently policed by the aediles, at least in part because it was common to treat female morality as a barometer for the well-being of society. A common charge is, of course, adultery: in 295, 213 and in 19 CE, the aediles are recorded prosecuting women explicitly for committing adultery.⁴⁸⁶ In 213 BCE, we likewise have a note by Livy that the plebeian aediles ...*aliquot matronas apud populum probri accusarunt* "...accused certain matrons among the populace of shameful behavior" (25.2.9-10). *Probrum*, the word which I have translated as "shameful behavior" most often connotes adultery, but can also include other types of lewd behavior, as well as slander and libel.

The occasional charges of adultery represent a problem for our understanding of the role of the aediles in maintaining the community, for two of these instances take place long before Augustus' *lex Iulia de adulteriis coercendis* made adultery a criminal offense.⁴⁸⁷ As Oakley notes, these passages are puzzling because the matrons in 295 and 213 were being prosecuted for

⁴⁸⁵ Liv. 10.47.4, 33.42.10, 35.10.11-12.

⁴⁸⁶ Liv. 10.31.9; Tac. *Ann.* 2.85.2. While this charge was largely leveled against women, we do have an episode from 329 BCE, in which a M. Flavius was charged with *crimine stupratae matris familiae* "...the crime of debauching a matron." Characteristically, our sources do not provide us with enough information to determine whether he is being charged with adultery or rape, and the distinction likely mattered little in the fourth century. There is likewise a rather famous episode from the life of M. Claudius Marcellus in which he, as curule aedile, prosecuted a man for attempting to seduce his (i.e. Marcellus') son (V. Max. 6.1.7; Plu. *Marc.* 2.5-8).

⁴⁸⁷ Meanwhile, the prosecution in 19 CE detailed in Tac. *Ann.* 2.85.2 presents some unusual details of its own: a married woman named Vistilia whose ancestor was a praetor declared herself as a prostitute to the aediles, claiming an ancient protection under which admitting to prostitution was punishment enough. The aediles then prosecuted her for adultery and nearly prosecuted her husband as well. What is going on in this episode is debate. Syme speculated that she might be protesting against the treatment of her aunt of the same name (Syme 1958: 373 no. 5). More likely, Goodyear is correct that Vistilia sought to avoid the very real penalties of the *lex Iulia* by choosing the more symbolic penalty of prostitution, but the aediles refused to allow her to skirt the law (Goodyear 1981: 2.439-0). Shortly thereafter, the senate closed this potential loophole by decreeing that no descendant of a *nobilis* should be allowed to work as a prostitute.

something that actually was not a crime.⁴⁸⁸ He speculates that these cases received the attention of the aediles because they involved large groups of women committing adultery, rather than individuals. This is likely true, as far as it goes, but does not explain why the aediles are to be found prosecuting behavior that is immoral but not illegal. As we shall see in the following paragraphs, this was rather common, and the legal basis for aedilician prosecutions is frequently dubious, at best.

Women are found being charged with misdeeds beyond adultery as well. The most obvious example is that of Claudia in 241 BCE, whom we have discussed previously.⁴⁸⁹ The circumstances under which this fine occurred are unclear. What is clear is that it was not a crime: the only charge that would be applicable to her case was *perduellio*, treason, a charge that by the middle Republic was prosecuted exclusively by the tribunes, not the aediles.⁴⁹⁰ It is tempting to speculate that Claudia's fine was meant to punish her family who had not only produced the ill-fated admiral in question, but were also largely responsible for Rome joining the war in the first place. While Claudia's remark was both offensive and served to remind the Roman people of the misfortunes they had suffered at her family's hands, this episode takes place more than two decades after her brother's disastrous consulship, and so the relationship of her fine to the misdeeds of her family members is dubious.

Beyond adultery and offensive speech, Livy recounts a lurid scandal in 330 BCE, in which the aedile found that large numbers of aristocratic women had used poison to murder their husbands (Liv. 8.18). Oakley rightly points out that the details of this episode are highly dubious, in particular the dramatic scene in which the accused inadvertently prove their own guilt, dying

⁴⁸⁸ Oakley (1997) v. 4 342.

⁴⁸⁹ Gel. 10.6.1-4; Liv. *Per.* 19; Suet. *Tib.* 2.3; V. Max. 8.1.

⁴⁹⁰ Lintott (1999) 122; Mommsen, *Röm. Staatsr.* 2.1.300-3, 2.1.318-325; Liv. 25.3.13ff, 26.2.7-3.12; 43.8.2-3.

through a taste of their own medicine, and the extraordinarily high number of women convicted: one hundred seventy. Nevertheless, the basic facts of the case seem solid.⁴⁹¹

Close to poisoning lies sorcery, and the aediles are seen punishing this offense as well. The Elder Pliny records an episode from 191 BC, in which a freedman with a green thumb was charged with using magic to steal his neighbors' crops. This particular episode had a happy ending, so far as the freedman was concerned, for he brought all of his farming equipment, which was kept in excellent repair, to the trial, made an impassioned speech to the effect that his only "magic" was hard work and care for the tools of his craft, and secured a unanimous acquittal (Plin. *Nat.* 18.8). This very charge is also attested in the Twelve Tables (*XII Tab.* 8.1-2), and so this episode is unlikely to have occurred only once. As with the cases of adultery and unpatriotic speech, it is not difficult to perceive the social tensions permeating this story. As a former slave, this farmer was of lower status, but more successful than his wealthier neighbors, who could not believe that the cause of his success was virtuous hard work. He was therefore forced to prove his moral rectitude before the community.

Subversive behavior is attested occasionally as falling within the purview of the aediles. In 427 and 186 BCE, the aediles were involved in suppressing foreign cults.⁴⁹² The latter of these two examples, of course, is the infamous Bacchanalian scandal, in the suppression of which nearly all Roman magistrates became involved. It seems significant, however, that the curule and plebeian aediles were given the crucial tasks of rounding up the ringleaders of the cult and ensuring that the ban on worship was followed, respectively.⁴⁹³ Two centuries later, in 25 CE,

⁴⁹¹ Oakley (1997) v. 2 594-5.

⁴⁹² Liv. 4.30.11, 39.14.9.

⁴⁹³ The Bacchanalian episode should probably not be seen to represent the normal functioning of the Roman state, however, since it was a moment of crisis where they faced what they probably believed was an existential threat. It is one of very few moments, prior to the creation of the *Senatus Consultum Ultimum* in 121 BCE, where we see the

the aediles were instructed to burn the books of the historian, A. Cremutius Cordus, who had praised Caesar's assassins (Tac. *Ann.* 4.35.5).⁴⁹⁴ Gambling and violating sumptuary laws are attested for the first century CE,⁴⁹⁵ but are not attested at all under the Republic. They do, nevertheless, fit in well with the other types of behavior that the aediles fined, and so the possibility that this too was policed under the Republic should not be ignored.

What is most striking, albeit perhaps unsurprising, about these assorted episodes is that, in most or all of them, the aedilician fine is less a tool for enforcing the law than it is a means for Roman society to work out social tensions between members of different groups. In some cases, the behavior is illegal, but law is insufficient to explain the trial. In others, such as the assorted cases of adultery, the law does not even enter into the discussion, and the fine is little more than a socially-sanctioned tool of retaliation against an object of public ire.

This understanding of aedilicians fines accords well with the excellent work that has been done on the creation of public opinion under the Republic by scholars such as Cristina Rosillo-López and Jeremy Hartnett. Rosillo-López concerns herself with informal politics, a field of political science that explores the elements of politics that are not governed by law. She provides a model, with which aedilician fines accords well, where public opinion concerns a particular issue, and involves a significant number of people in building a consensus that will exert a direct

various magistrates taking orders from the consuls. Nevertheless, it is interesting that, in addition to the aediles, the other magistrates that Livy notes as being involved are the *tresviri capitales* and the *quinqueviri uls cis Tiberim*. While subordination of the magistrates to the consuls was not the norm, the magistrates to whom duties were assigned and the relative importance of those duties may say something about Roman practice: we might suspect that it was not uncommon for the aediles to interface with the *tresviri capitales* and the *quinqueviri uls cis Tiberim*, and that the duties assigned (ensuring that the ban on worship was enforced and keeping the priests under guard for the aediles vs. making sure no night meetings were held and guarding against fires for the two boards) reflected the resources that were available to each college.

⁴⁹⁴ Tac. *Ann.* 4.35.5. Suetonius' biography of Augustus also contains an instance of book burning but gives no indication of who organized the conflagration (Suet. *Aug.* 31.1).

⁴⁹⁵ Mart. 14.1; Tac. *Ann.* 3.52.3.

or indirect influence on political discourse.⁴⁹⁶ She discusses in some detail the networks of gossip and rumor-mongering that underlay these trials and that created the need for them as a social safety valve.⁴⁹⁷ This last topic is treated at greater length by Jeremy Hartnett, in his exploration of the *circuli* of idle men who would gather in the streets to discuss the news and gossip of the day.⁴⁹⁸ An understanding of the aedilician fines as a safety valve for citizens to work out their own private disagreements explains our evidence better than the notion, often been rejected but never replaced, that the aediles were a standing police force.⁴⁹⁹

The procedure for fining is nowhere attested. We know the trial was held before the Roman people from numerous references and attestations of their rulings,⁵⁰⁰ and that the trial could be held in the *comitia centuriata*, or the *concilium plebis*. Gaughan suggests the latter was more common for charges that would result in a fine,⁵⁰¹ but it is more likely that the assembly was chosen based on which college of aediles was issuing the fine: curule aediles could not convene the *concilium plebis* any more than plebeian aediles could the centuriate assembly. Beyond that, we must look for comparative evidence. What emerges is that, in the context of a trial, the aedile served as both public prosecutor and president of the court.⁵⁰² Our best evidence comes from the late second century *lex Acilia de repetundis*, a statute detailing the process for trying a citizen, typically a former magistrate or promagistrate, for extortion. Much of it is likely

⁴⁹⁶ Rosillo-López (2017) 18-9.

⁴⁹⁷ Rosillo-López (2017) 196-218.

⁴⁹⁸ Hartnett (2017) 45-111.

⁴⁹⁹ Mommsen denied that the aediles were responsible for policing the city (*Röm. Staatsr.* 2.1.512), but nevertheless saw them as responsible for prosecuting criminal offenses (*Röm. Staatsr.* 2.1.495-6). Nearly a century later, Nippel accepted the term “policing,” but qualified it to the point where it would be unrecognizable as such to a modern audience (1984: 20). Lintott (1999: 130) cautiously follows Mommsen on this issue.

⁵⁰⁰ Cic. *Ver.* 2.5.151, 2.5.173; Gel. 4.14.2-6; Liv. 7.28.9, 8.22.2-3.

⁵⁰¹ Gaughan (2010) 98-101 whether this is indicative of preference on the part of the aediles, or indicative of which college of aediles was doing most of the fining is impossible to say.

⁵⁰² I say “president of the court” rather than “judge” because, prior to the creation of *quaestiones perpetuae*, Roman trials had no analogue for a modern judge, a legal expert competent to evaluate legal precedent and declare arguments valid or inadmissible. The aedile would declare the penalty (in advance) and see to the transition between the various stages of the trial, but arguments were evaluated by the jury.

not relevant to the people's decisions on fines, since the *lex Acilia* provides for a jury of wealthy equestrians,⁵⁰³ but much of the process was likely the same for trials before the people, and we are able to use as comparison the Twelve Tables, several of which address trial procedure.

The basic process seems to have been as follows. When the aedile found evidence that an inhabitant of the city, not necessarily a citizen, had committed an act worthy of censure, his first duty was to notify that person that he assigned a fine of a set amount and to announce the day on the trial would be held.⁵⁰⁴ He was also to collect the names of guarantors from the accused's own peer group to ensure that he would appear on the day of trial (*XII Tab.* 1.4). The aedile would then send his heralds across the city to make sure the case was widely known.

All this would happen many days before the trial (likely not fewer than ten days, nor more than a month). The aedile would notify any witnesses of the date of the trial and order them to attend (*lex Acilia* ll. 31-3). This last part could be the easiest, as the witnesses were often both the people who had alerted him to the misdeed in the first place and the victims of said misdeed,⁵⁰⁵ so they were close at hand and had a vested interest in the accused being convicted. Prior to the trial, the aedile could, if he deemed it necessary, investigate the matter further in order to verify the statements of the witnesses, although in some cases (e.g. merchants using false weights) this would be unnecessary. Regardless of whether the trial was held in the *comitia centuriata* or the *concilium plebis*, the accusing aedile would preside over the proceedings (Liv. 38.51.12).

⁵⁰³ *Lex Acilia* ll. 12-18; cf. Lintott (1999) 159. The composition of the jury was to become a political football for the next several decades.

⁵⁰⁴ *Lex Acilia* ll. 29-31; *XII Tab.* 1.1; cf. Plaut. *Capt.* 492ff, in which a parasite jokes about fining people who refuse to feed him (“irrogabo multam, ut mihi cenas decem meo arbitratu dent”).

⁵⁰⁵ See the above-discussed passage of Pliny (*Nat.* 18.8), in which the accused's neighbors appear both as his accusers and as witnesses.

On the appointed day, the aedile and the defendant would make their speeches. Once they had finished, the Roman people voted tribe-by-tribe on the guilt of the accused (V. Max. 8.17). Down into the late second century, the voters would each publicly declare their verdict to the scribe. After the *lex Cassia tabellaria* introduced the secret ballot in 122,⁵⁰⁶ however, one of the aedile's attendants would place a large voting urn on the platform in the court, and would hand each juror a ballot marked with an A (for *absolvo*, "I acquit") on one side and a C (for *condemno*, "I find guilty") on the other. He would instruct the jurors to cancel (i.e. deface) whichever of the two he wished. The jurors would then submit the ballot with his arm uncovered, so as to prevent any possibility of stuffing the ballot box (*lex Acilia* ll. 49-52). Once all the jurors had voted, either a random juror or the aedile himself would be placed in charge of counting the votes. With his arm again uncovered, he was to take the ballots out of the urn one by one and show them plainly to the assembly. Once the ballots were counted, the defendant would be proclaimed innocent or guilty (*lex Acilia* ll. 52-4).

If the accused was found guilty, he then had to name guarantors for his property to one of the quaestors, who must also have been in attendance, and then see to paying the fine (Liv. 38.60.1-2). If he was not able to name guarantors, it was the presiding magistrate's duty to seize his property and hand it over, detailed in writing, to the quaestor. If the convicted party did provide guarantors, he had thirty days to pay his debt to the state.⁵⁰⁷ The size of the fines could be quite large, for the only one attested, the 25,000 *asses*, would have been enough to qualify two Roman men for the first census class,⁵⁰⁸ and throughout the fourth and third centuries,

⁵⁰⁶ Lintott (1999) 47, citing Cic. *Leg.* 3.34-9; cf. Taylor (1966) 125 n. 2.

⁵⁰⁷ *XII Tab.* 3.1. See Liv. 38.60.8 for an interesting situation in which guarantors volunteered themselves, but the accused protested that he simply did not have the money to pay. In this instance the accused was led off to prison

⁵⁰⁸ Piacentini (2018) 123. At least at the time. According to Rathbone, the qualification for membership in the first census class was 10,000 libral *asses* (Rathbone 1993: 121-152). The aediles in question used the money for the construction of a temple to Jupiter *Libertas* on the Aventine.

aediles were able to use the money collected from fines to engage in rather impressive building projects and to make lavish dedications at the temples of Jupiter Optimus Maximus and Ceres on the Aventine, which we discussed in 3.7. As I argued in that section, aedilician dedications appear to have declined after 189 BCE as the censorship became more competitive, so it is possible either that aediles became less active in fining people after that point, or that they used the money for other purposes, such as supplementing the stipend given to them by the senate for holding games.

5.3.1 The Edict

The discussion of the aediles' control of public behavior has focused to a large degree on punishing personal conduct, and often conduct that was either not criminal, or where we may suspect that its criminal nature was almost beside the point. This next section will concentrate on the aediles' regulation of economic behavior and their control of the markets. The most important tool in so doing was the edict of the curule aediles, which was a public declaration of how the aediles intended to enforce the law, in much the same way as its better-known counterpart, the praetor's edict.

The aedile's edict was a conservative document and it was established custom that, each year, the curule aediles would publish an edict that was little amended from that of their predecessors.⁵⁰⁹ It was the possession of the curule aediles, and they alone had the right to make changes to it. Whether that means that they were the only aediles that enforced it and made use of it is another matter. The plebeian aediles are attested fining people for economic infractions,⁵¹⁰

⁵⁰⁹ See Cic. *Ver.* 2.1.109-112 for a comparable passage discussing the praetor's edict, in which Cicero upbraids Verres for using it to prosecute people whose alleged crimes predated his term of office, and for having radically departed from the edict of his predecessors.

⁵¹⁰ Liv. 10.23.11, 33.42.10

and the process of dividing up the city into quarters virtually ensures that the plebeian aediles would have markets in their jurisdiction much of the time, so the better understanding is that the edict was amended and maintained by the curule aediles, and enforced by all of the aediles.

We are fortunate to have a pair of large fragments of the edict preserved in the *Digest*.

The first passage concerns the sale of slaves:

Qui mancipia uendunt certiores faciant emptores, quid morbi uitiiue cuique sit, quis fugitiuus errore sit noxae solutus non sit: eademque omnia, cum ea mancipia uenibunt, palam recte pronuntianto. Quodsi mancipium aduersus ea uenisset, siue aduersus quod dictum promissumue fuerit cum ueniret, fuisset, quod eius praestari oportere dicitur: emptori omnibusque ad quos ea res pertinet iudicium dabimus, ut id mancipium redhibeatur. Si quid autem post uenditionem traditionemque deterius emptoris opera familiae procuratorisue eius factum erit, siue quid ex eo post uenditionem natum acquisitum fuerit, et si quid aliud in uenditione ei accesserit, siue quid ex ea re fructus peruenerit ad emptorem, ut ea omnia restituat. Item si quas accessiones ipse praestiterit, ut recipiat. Item si quod mancipium capitale fraudem admiserit, mortis consciscendae sibi causa quid fecerit, inue harenam depugnandi causa ad bestias intromissus fuerit, ea omnia in uenditione pronuntianto: ex his enim causis iudicium dabimus. Hoc amplius si quis aduersus ea sciens dolo malo uendidisse dicitur, iudicium dabimus. (dig. 21.1.1)

Those who sell slaves are to apprise purchasers of any disease or defect in their wares and whether a given slave is a runaway, a loiterer on errands, or still subject to noxal liability; all these matters they must proclaim in due manner when the slaves are sold. If a slave be sold without compliance with this regulation or contrary to what has been said of or promised in respect of him at the time of his sale, it is for us to declare what is due in respect of him; we will grant to the purchaser and to all other interested parties an action for rescission in respect of the slave. The purchaser, however, will have to make good in such cases all of the following: any deterioration in the slave after the sale and purchase which is attributable to the purchaser himself, his household, or procurator; anything born of or acquired through the slave since the sale; and anything else that accedes to the slave consequent upon the sale or any profits which the purchaser himself acquires through him. Equally, there will be due to the vendor any accessories which he himself may have provided. Again, vendors must declare at the time of sale all that follows: any capital offense committed by the slave; any attempt which he has made upon his own life; and whether he has been sent into the arena to fight wild animals. On these grounds, also we will give action. In addition, we

will grant the action if it be alleged that a slave has been sold, with deliberate wrongful intent, in contravention of our provisions.⁵¹¹

This passage informs the seller of what defects they must disclose to the buyer, and the penalties for not doing so. It likewise outlines the defects for which the buyer can be held responsible, all of which are defects that can be demonstrated to have arisen after the purchase and without the fault of the seller.

Meanwhile, thirty-eight sections later, we have another fragment of the edict concerning the sale of animals:

Qui iumenta uendunt, palam recte dicunto, quid in quoque eorum morbi uitiiue sit, utique optime ornata uendendi causa fuerint, ita emptoribus tradentur. Si quid ita factum non erit, de ornamentis restituendis iumentisue ornamentorum nomine redhibendis in diebus sexaginta, morbi autem uitiiue causa inemptis faciendis in sex mensibus, uel quo minoris cum uenirent fuerint, in anno iudicium dabimus. Si iumenta paria simul uenirint et alterum in ea causa fuerit, ut redhiberi debeat, iudicium dabimus, quo utrumque redhibeatur. (dig. 21.1.38)

Those who sell beasts of burden must declare with all due publicity any disease or defect which the beasts have and must deliver them to purchasers in the best trappings in which they were displayed for sale. Should this not be complied with, we will grant an action for the trappings or the return of the animals because of the trappings within sixty days; but if the sale is to be rescinded because of a defect in or disease of the beast, the action will lie for six months, or if a diminution of the price be sought, for a year. Should beasts be sold together as a pair and there be a ground for rescission in respect of one of them, we will grant an action for rescission in respect of both.⁵¹²

The unit of payment, *solidi*, dates it to the reign of Diocletian, but the source cited for this passage is Ulpian, meaning that this passage dates to the early third century CE. It is thus much later than our Republican sources, although it would have been very easy for the jurists just to

⁵¹¹ trans. J.A.C. Thomas in: Mommsen, Krueger & Watson (1985) 603. I have opted to follow Thomas because of his greater mastery of the technical vocabulary and semantics of Roman law.

⁵¹² trans. J.A.C. Thomas in: Mommsen, Krueger & Watson (1985) 614.

update the currency.⁵¹³ It is not unreasonable to suppose that it and the previous quotation from the Digest are representative of the concerns that the edict of the curule aediles typically addressed, and may even preserve some of the language of the Republican edict.⁵¹⁴

In the intervening sections and scattered throughout book twenty-one is learned commentary on these fragments of the edict by Roman jurists, who seek to unpack these quotations: what does it mean for a slave or an animal to have a “defect?” What defects are grounds for annulment of sale? At what point and under what circumstances does responsibility transfer from the buyer to the seller? Other increasingly convoluted, hypothetical situations abound, but the focus throughout is primarily on the sale of slaves, with sale of animals coming in a distant second place.

This focus on slaves and animals might lead one to suspect that the edict primarily concerned these topics, but it is more likely that the sale of slaves and animals were simply of greater interest to the jurists, since living beings had a greater capacity to have unknown qualities that might enhance or diminish their value in the eye of a buyer. Their sale created more legal gray areas and were therefore of more interest to legal scholars. Indeed, we are told in *dig.* 21.1.63 that *Sciendum est ad venditiones solas hoc edictum pertinere non tantum mancipiorum, verum ceterarum quoque rerum* “It should be known that this edict does not pertain only to the sale of slaves, but also to the sale of every other kind of property.”

⁵¹³ See Jolowicz (1954) 490-1 for a discussion of how the *Digest* was compiled and the degree of latitude its compilers had to edit the materials.

⁵¹⁴ The edict of the curule aediles has been the subject of a fair body of scholarship, especially in Italophone legal circles, most of which has been devoted either to arguing about the degree to which the portions of the edict preserved in the Digest date back to the Republic (e.g. Impallomeni 1955), or trying to reconstruct the missing fragments of the edict (e.g. Lenel 1883). I am rather skeptical on both of these questions: I suspect that the language contains a great many imperial-era interpolations, if not wholesale rewriting, and the fragments of the edict that we have likely constitute a small portion of the whole. None of this negates, however, the likely fact that these passages are representative of the types of concerns we would expect to see in the edict of the aediles under the Republic.

At its most basic, the edict of the curule aediles was thus a massive law of sale that communicated to members of the community what their liabilities were when they bought and sold goods, and how the aediles would handle different situations. An interesting question that this raises, however, is whether it was actually meant to be read, and how visible it would have been to a public audience. Surviving fragments of the praetor's edict that have been pieced together suggest that there was no organizational principle to help a reader find the portion of the edict that pertained to him; it was all a mass of text.⁵¹⁵ There is also an ambiguous passage from Suetonius' biography of Caligula, in which the emperor was asked to publish his tax law and chose to do so in an inscription with tiny letters that was very high above the street level (Suet. *Cal.* 41.1). On the one hand, Caligula can be read as mocking the idea that anyone actually read the laws and suggesting that any attempt to publish the laws was purely formal anyway. On the other hand, Suetonius tells us that people eagerly wanted the laws to be published and suggests that they actually were in the habit of copying down the laws for their personal use. Ulpian states that legal texts should be visible and printed in clear letters.⁵¹⁶ We should probably conclude that, while the details of the aedile's edict might not have been of much interest to most of Rome's population, for men of business it was quite important, and they would make a point, when the new edict was posted, to familiarize themselves with any changes that the new aediles had made.

⁵¹⁵ See Jolowicz (1954) 95-6 for a sense of how these documents were composed.

⁵¹⁶ Ulp. *dig.* 14.3.11.3-4. Such requirements were regularly added to Roman laws and *Senatus Consulta*, and can be found among other places, in the *SC de Bacchanalibus* ll 26-7, the *Lex de Provinciis Praetoriis* ll. 20-7, and the *Lex Repetundarum*, which contains notice that the praetor in charge of the courts should make announcements of a distribution in this way. cf. Rosillo-López (2017) 48.

5.4 *Panem...*

In this section we consider the role of the aediles in looking after the grain supply in the city of Rome. It in many ways serves as a companion to the discussion of the quaestorian *provinciae* of Sicily and Ostia in 4.3.4, whose conclusions are worth recapping at this juncture: from the end of the first Punic war in 241 BCE, there was a quaestor regularly stationed in Sicily and, by the start of the second century, his function seems chiefly to have been shipping the grain tithe of Sicily where it was needed. While it was not infrequently sent to armies in the field, in most years, the destination seems to have been the city of Rome. There it was housed in privately owned granaries that charged rent, before being sold to the people, whether by the contractors who had shipped it to Rome, or by the aediles, who were in charge of the markets.

Estimates of Roman food consumption in the second century, however, make it clear that the Sicilian grain tithe never provided for more than a fraction of the city's grain needs,⁵¹⁷ and the means by which the Roman state acquired supplementary grain prior to the tribunate of C. Gracchus, and the role of the aediles in doing so, are rather nebulous. The information that has been brought forward as evidence of how the aediles regulated the grain supply is scant and, as Catherine Viriouvét has demonstrated, frequently dubious:⁵¹⁸ as aedile in 213, Livy (25.2.8) tells us that Scipio offered oil to the plebs, neighborhood by neighborhood, and this has been taken as evidence that this was the normal method of grain distribution.⁵¹⁹ Meanwhile, a fragment of Varro, preserved by the late antique author, Nonius Marcellus, which describes the temple of

⁵¹⁷ Garnsey (1988) 215; Brunt (1971) 382-3, who make the point that Gracchus' grain dole was not nearly enough to feed a family, and only 40,000 people received grain under this program. In the late 70s, the Sicilian grain tithe was three million *modii* of wheat. Assuming that a normal tithe in the second century was not radically different and, given that the average adult male would require 3 to 4.5 *modii* a month, the Sicilian grain tithe would only have been enough to feed 50,000-80,000 people per year.

⁵¹⁸ Viriouvét (1995) 42-51.

⁵¹⁹ Hirschfeld (1870) 15 suggests a distribution *vicatim* based on this passage.

Ceres on the Aventine giving out bread to those who sought sanctuary, has been taken to mean that the temple of Ceres was Rome's first public granary.⁵²⁰

The tortured logic of both arguments speaks to the general lack of concrete information here: a gift to the people of olive oil does not necessarily speak to the normal means of distributing grain (if indeed there were any), and distributions of *bread* to those benefitting from the sanctuary of the temple is not evidence of large scale distributions of *grain*.⁵²¹ Such arguments are also strikingly not in keeping with the general patterns that public works have heretofore followed, and the Romans mostly seem to have relied on the private sector in order to accomplish the heavy lifting of government.⁵²² We may therefore expect the maintenance of the food supply to follow this pattern.

Xenophon's *Oeconomicus* notes that the Mediterranean was teeming with grain merchants who made a business out of taking grain from places of plenty (and, therefore, low prices) to places of scarcity (high prices).⁵²³ Rome had no publicly owned granaries at this point, and all of the granaries in the city were owned by the elite, such as the *horrea Galbae*, on the Aventine Hill, which was owned by the Sulpicii Galbae. Much of the time, therefore, the role of the aediles in Rome's grain supply was part and parcel of their role regulating the markets.⁵²⁴ They kept an eye on the sellers, likely through their *apparitores* and the complaints of consumers, ensured that the grain merchants did not engage in exploitative practices, such as

⁵²⁰ Humbert (1991) 275ff; Le Bonniec (1958) 274; van Berchem (1935) 91-5.

⁵²¹ Virlouvet (1995) 42-4, 46-50.

⁵²² See 1.6 and Rainer (2013) *passim* for a discussion of Roman public contracting in general, and 4.4.1 for the means by which the aediles maintained the urban infrastructure. Rome had very few public services under the Republic, and even fewer in the early and middle Republic. The normal means by which public services were fulfilled was for a magistrate to let a contract to pay private individuals to provide the service.

⁵²³ Xen. *Oec.* 20.27-8, Rickman (1980) 26-7.

⁵²⁴ Nicolet (1980) 186-92; cf. Patterson (1976) 65.

price gouging, and checked weights and measures to maintain fair business practices.⁵²⁵ When such nefarious practices did occur, the guilty parties were fined, as detailed in 5.3.

The aediles also negotiated with other elites to make sure that the rent they were charging for use of their granaries was not exorbitant. Some of the aediles no doubt came from the very families that owned these granaries, and when this was the case, they were in an especially convenient position to ensure that the people had access to cheap food; they could simply lower or eliminate the rent on their granaries during their year as aediles in order to drive down prices. By contrast, the senatorial elite who owned the granaries were in a position to raise the rents on their granaries if a political opponent, or his son, was aedile, thereby manufacturing a crisis. The threat of a fine would have curtailed such abuses.⁵²⁶ Nevertheless, maintaining the grain supply during the middle Republic certainly entailed a good deal of playing politics with other members of the senate.

The aediles' responsibility for the markets was therefore the origin of their association with the grain trade. This association appears to have spun off into a number of other activities that have little direct relationship with the basic task of regulating markets; when the spoils of war abroad included grain, the commander regularly turned the grain over to the aediles, to be sold or given away to the people.⁵²⁷ More proactive measures for the acquisition of grain from abroad were taken during severer shortages, such as sending ambassadors abroad to ask foreign states to sell⁵²⁸ or give grain to them. Rickman argues that such embassies were mostly the preserve of more senior magistrates, but suspects aediles might have been involved in some way

⁵²⁵ Rickman (1980) 34-6; cf. Liv. 38.35.5.

⁵²⁶ There is no direct evidence of such manipulation occurring, although they are attested fining grain hoarders in 189 BCE (Liv. 38.35.5-6).

⁵²⁷ Rickman (1980) 34-6; Liv. 23.41.7, 31.4.5-7.

⁵²⁸ For which the senate would have paid out of the *aerarium*. See Nicolet (1980) 192-4.

(1980: 37). They certainly would have been responsible for seeing to it that the grain was sold at a fair price when it arrived in Rome.

In at least in one instance, however, we know that the ambassador to purchase grain during a shortage was himself an aedile. An honorific inscription uncovered in 1976 in Thessaly, Greece, records one such embassy to the Thessalians, which has been dated to 130-129 BCE.⁵²⁹ I have reproduced the first part of it below:

ἐπειδὴ
Κοῖντος Καικίλιος Κοῖντου Μέτελλος ἀγορανόμος Ῥωμαίων ἀ-
νήρ καλὸς καὶ ἀγαθὸς κ[αί] φίλος καὶ εὖνους ὑπάρχων τῷ ἔ-
θνει ἡμῶν ἐπελθὼν ἐπὶ [τὸ σ]υνέδριον ἀνενεώσατο τὰς γεγενη-
μένας εὐεργεσία[ς τὰ]ς ὑπ[ὸ τ]ῶν προγόνων αὐτοῦ καὶ διελέγετο
παρακαλῶν, ἐπεὶπερ ἦν [ἡ]ρημένος ἐπὶ τὴν τῆς ἀγορανομίας
ἀρχήν, τὰ δὲ κατὰ τὴν χ[ώρα]ν αὐτῶν κατὰ τὸν παρόντα καιρὸν ἐν
ἀφορία καθειστήκει, ὅπως δοθῆ ἴστος ὑπὸ τοῦ ἔθνους τῆ συνκλήτω
καὶ τῷ δήμῳ, ὅσος ἂν ἦν ἐν π[ρ]ατῶι, ἐκρίθη τοῖς συνέδροις, μνημονεύου-
[τ]ας τῶν γεγενημένων ε[ὐε]ργετημάτων εἰς τὸ ἔθνος ὑπὸ Κοῖν-
του καὶ τῶν προγόνων αὐτ[ο]ῦ καὶ τῆς συνκλήτου καὶ τοῦ δήμου τ[οῦ]
Ῥωμαίων, ἐξαποστεῖλαι ε[ἰ]ς Ῥώμην ὥστε τῆ συνκλήτω καὶ τῷ δήμῳ[ι],
καθὼς Κόιντος διελέγη, π[ρ]ῶν κοφίνων μυριάδας τεσσαράκοντα
τρεῖς καὶ τοῦ προγεγραμμέ[ν]ου πλήθους σίτου ποιήσασθαι διάταξιν ἐ-
πὶ τὰς πόλεις Πετραῖον τὸν [σ]τρατηγὸν μετὰ τῆς συναρχίας καὶ τ[ῶν]
συνέδρων (SEG 34.558).

Since Quintus Caecilius Metellus, son of Quintus, aedile of Rome, being a good and noble man, friend and favorably disposed towards our nation, has approached the *synedrion* and recalled the past merits of his ancestors and has spoken requesting, as he has been elected to hold the position of aedile and his region is plagued by infertility, that it be given by our nation as much grain as is salable to the senate and the people, the councillors, remembering the previous merits to the nation of Quintus and of his ancestors and of the senate and of the people of Rome, decided to send to Rome for the senate and the people 430,000 *kophinoi* of wheat, according to the speech of Quintus, and that the allocation among the cities of the prescribed quantity be made by the *strategos* Petraios with the other magistrates and the councillors.⁵³⁰

⁵²⁹ Garnsey (1985) 22. In an article of the previous year, Garnsey had dated the inscription to the late 150s, but here concludes that the likely date was 129 or 130, and that the Quintus in the inscription is Q. Caecilius Metellus Balearicus (Pr. 126 Cos. 123).

⁵³⁰ trans. Garnsey, Gallant, & Rathbone (1984) 36-7.

The aedile Metellus approached the local government at Larissa and used his ancestral ties of patronage to the region to persuade them to make a large gift of grain to the Roman state, for the transportation of which he was responsible. Garnsey has suggested that Metellus was sent not because he was an aedile, but because he had a standing relationship with the elites of Thessaly,⁵³¹ and Rome was in need of a temporary source of wheat in the wake of the slave revolts in Sicily. Garnsey's hypothesis that being aedile was irrelevant to Metellus' mission is undermined by other information that he supplies, however: Thessaly was not a regular supplier of grain to Rome, even in times of surplus,⁵³² the text explicitly attributes Metellus' embassy to the fact that he was aedile that year (ll. 6-7), and there is no mention of the senate's direct involvement in the request for grain. It seems more likely, therefore, that Metellus was there in large part because he was aedile and responsible for the city's grain supply. He had asked the senate for permission, in that capacity, to go to Thessaly, a place to which he had ancestral ties, and where he had heard there was a surplus — the merchants in the Roman markets could likely clue him in on where such surpluses existed — invoke his ancestral connection to the Thessalians, and let a contract to have the grain they gave him shipped to Rome. He then either gave the grain to Roman merchants or sold it to them at a knock-down price, with the understanding that they would pass the savings along to the consumers. This had the added benefit of rewarding the very people who had likely informed Metellus of the surplus in Thessaly to begin with.

None of this is to suggest that extreme grain shortages were exclusively handled by the aediles. Depending on circumstances, such as where grain was plentiful and who took the

⁵³¹ Garnsey (1984) 37-8, who goes into a detailed discussion of the past benefactions of Metellus and his family to the Thessalians.

⁵³² Garnsey (1984) 36, cf. Westlake (1935) 6 no. 1 for a list of examples of the Thessalians providing grain to Roman armies, in pointed contrast to giving grain to the city of Rome.

initiative, the task might fall to one of the aediles, a more senior magistrate, or a board of men delegated the task by the senate.⁵³³ The survival of the Thessalian decree, however, suggests that the aediles did on occasion take care of the situation as part of their regular duties, and Metellus evidently felt the need to invoke nothing more than his status as an aedile and his family's history with the Thessalians to justify approaching them for grain.

The task of looking after the city's grain supply had become increasingly difficult over the course of the second century. The Roman state regularly had to intervene in the provision of food: in 196, 191 and 190, 188, 181, and 171.⁵³⁴ Our best source for this, Livy, drops off in 166 BCE. Nevertheless, grain shortages are attested in 142, 138 and 129. The problem partly appears to have been sparked by slave revolts in the areas that produced the most grain for Rome in the late second century, but also population growth. This takes us into precarious territory, for the question of the size of the urban population of Rome is an especially fraught one, with estimates for the late first century BCE (when we at least have the number of people on the grain dole to go on) ranging from 435,000 people to about one million.⁵³⁵ Where all of these models agree, however, is that the population of the city grew dramatically in the second century BCE, and there is some consensus that it doubled from the third century to the end of the second century.⁵³⁶

⁵³³ Rickman (1980) 34-6 notes that we have very little evidence for who took the initiative in these instances, and speculates that much of the time, a senior magistrate took charge, but nevertheless believes that the aediles were somehow involved.

⁵³⁴ Rickman (1980) 44, citing Liv. 33.42.8, 36.4.5, 37.2.12.

⁵³⁵ See Storey (1997) 119, *et passim* for the lower number, and Hopkins (1978) 96-8 for the higher number. The number cited for Storey is actually his low number. His actual estimate is between 435,245 and 609,341 people, with cyclical fluctuation. His best argument in favor of this range is that, in order to achieve the higher of those two numbers, Rome would have to have had a population density of 43,964 people per square kilometer, whereas among a sample of 530 better known pre-modern cities, 98% have a population density *below* 45,000 people per square kilometer. In other words, in order to achieve Hopkins' estimate, Rome's population density would have had to be freakishly high (about 70,000 per square kilometer, by my count). Meanwhile, Scheidel (2004) 14-5 and Hin (2013) 220 estimate a population around 600,000 people in 50 BCE, while Brunt (1971) 384 posits three quarters of a million in 30 BCE.

⁵³⁶ Brunt (1971) 384; Scheidel (2004) 14-5; Hin (2013) 220.

It is in this context that we should understand Gaius Gracchus' grain law of 123 BCE, which established subsidized grain for the entire citizen body living within the city.

The grain dole was never intended to provide the populace with all of the carbohydrates they would need, however. As was mentioned in passing in 4.3.4, the Gracchan law made each adult male citizen eligible to buy five *modii* per month at a price of about 4 *asses* per *modius* (Garnsey 1985: 25). Since, as Brunt has pointed out, an adult male requires anywhere from three to four and a half *modii* of wheat per month, depending on activity levels, the grain dole was not intended to feed an entire family.⁵³⁷ It would allow either a man of very little means to survive on his own, or it would ease the financial burden on larger families seeking to feed themselves.

The price at which people could purchase grain from the tithe fluctuated through the remainder of the Republic, as the elites fought over which people should be eligible for this social program and how cheaply they should be able to enjoy it. The pendulum could swing dramatically. In 80 BCE the grain dole was abolished by the dictator Sulla, only to be brought back (we must imagine by popular demand) seven years later.⁵³⁸ By contrast, the *lex Clodia frumentaria* of 58 BCE eliminated payment altogether, treating the Roman people to free carbohydrates.

The mechanism by which the grain dole was run is obscure. Plutarch tells us that the senate put Gaius Gracchus himself in charge of the program (Plu. *CG* 6.3), but this comment should probably be discounted, as it would be unheard of for a Roman magistrate to operate all alone, and we hear of no boards running the grain dole, in Gracchus' own day, or down to the end of the Republic. In the first century, Pompeius would take over the *cura annonae*, "care of

⁵³⁷ Brunt (1971) 382-3.

⁵³⁸ Rickman (1980) 165-7. The evidence that Sulla abolished the grain dole is not absolutely solid, but reasonably certain, based on Sal. *Hist.* 1.55.11.

the grain supply,” as would Augustus during his reign. In between the two, Caesar invented two new aediles tasked specifically with managing the grain supply, the aediles *ceriales*.⁵³⁹ Prior to Pompeius’s command of the grain supply, we should probably assume that the dole was managed by the aediles, who worked with the quaestors at Ostia and Syracuse in order to assure a steady flow of grain into the city. It was distributed under their supervision by public slaves at the *Porticus Minucia*, close to the river bank on the *Campus Martius*.⁵⁴⁰ The state had since built many of its own granaries for the purposes of the grain dole, although most of the larger *horrea* were still in private hands.⁵⁴¹ The creation of state-owned granaries that would not charge rent alone probably helped lower the price and make the Gracchan system more fiscally solvent.

While previous sections have illustrated the workmanlike way in which the aediles continued to do their jobs even as Roman politics became increasingly dysfunctional, another theme has emerged in this section. While aediles like Quintus Metellus continued to look after the grain supply very much as their predecessors had, the informal methods of seeing that the people were fed — asking friends who owned granaries to lower their rents, inviting shippers to come sell at Rome and, occasionally, going on embassies to ask friendly states for grain — were becoming insufficient for the needs of a burgeoning urban population. The *lex Sempronia frumentaria* of 123 emerged as a bureaucratic response to the situation. This law did not completely take over responsibility for the grain supply from the aediles. On the contrary, it incorporated them into the state apparatus of grain acquisition. Nevertheless, by formalizing the system through which Rome acquired much of its grain, the *lex Sempronia* diminished the

⁵³⁹ For a discussion of *curae annonae* of Pompeius and Augustus, see Rickman (1980) 55-8 and 60-66. The *ceriales* were abolished when Augustus assumed the *cura annonae*, and throughout the Imperial period, it was the preserve of the Emperor.

⁵⁴⁰ For a very important discussion of the *porticus minucia* and the distribution of grain to the plebs, see Virlouvet (1995) 135-60.

⁵⁴¹ Rickman (1980) 138-9. Most of the remaining privately-owned *horrea* gradually became the property of the Emperor over the course of the first century C.E.

opportunities that aediles had to distinguish themselves before the community. It is only during the 70s BCE, when the grain doll had briefly been abolished, that we again see aediles being thanked for their skillful handling of the grain markets.⁵⁴²

5.5 ...et Circenses

The yearly calendar of the aediles was dominated by five major festivals. The curule aediles were responsible for the *Megalensia* starting on April 4th, in honor of the Great Mother Cybele, and the Roman Games beginning on September 5th, which honored Jupiter and the Capitoline triad more generally.⁵⁴³ The plebeian aediles handled the *Cerealia* starting on April 19th, in honor of the goddess of the harvest, the *Floralia* starting on April 27th, dedicated to a fertility goddess, and the Plebeian Games beginning on the fourth of November, which, like the *ludi Romani*, also honored Jupiter and the Capitoline triad.⁵⁴⁴

Table 5.5 — Major State Religious Festivals at Rome⁵⁴⁵

| Festival | Dates (end dates only approximate) | Officials Responsible | Deity Honored | Year Instituted (BCE) |
|-------------------------|------------------------------------|-----------------------|-----------------------|---|
| <i>Ludi Megalenses</i> | April 4-10 | curule aediles | Cybele (Magna Mater) | First celebrated in 204 and became annual in 191. |
| <i>Ludi Ceriales</i> | April 12-19 | plebeian aediles | Ceres | First attested in 202, but most likely before the mid-third century. |
| <i>Ludi Florae</i> | April 27 – May 2 | plebeian aediles | Flora | First celebrated sometime between 241 and 238 and became annual in 173. |
| <i>Ludi Apollinares</i> | Quinctilis 13-20 | urban praetor | Apollo | First celebrated in 212 and became annual in 208. |

⁵⁴² Q. Hortensius in 75 (Cic. *Ver.* 2.3.215) and M. Seius in 74 (Plin. *Nat.* 18.16). In particular, the latter's work was so appreciated that the people erected a statue of him.

⁵⁴³ The Capitoline triad comprised Jupiter, Juno, and Minerva, who had been worshiped at the Temple of Jupiter Optimus Maximus on the Capitoline Hill since the dawn of the Republic, if we trust the annalistic tradition.

⁵⁴⁴ Patterson (1976) 71. See also Scullard (1981) 110 for the *Floralia*. The temple of Flora had been built shortly after the first Punic war, but regular games did not follow until 173 BCE. See the *Fasti Antiatates Maiores* for a fuller list of Roman public religious events.

⁵⁴⁵ For basic information about the *ludi Megalenses*, see Fowler (1899) 69-71 and Scullard (1981) 97-100; for the *ludi Ceriales*, see Fowler Scullard (1981) 101-3 and Wiseman (2008) 172-4; for the *ludi Florae*, see Fowler (1899) 91-5 and Scullard (1981) 110-111; for the *ludi Apollinares*, see Fowler (1899) 179-82, Scullard (1981) 164 and Wiseman (2008) 168; for the *ludi Romani*, see Fowler (1899) 215-35 and Scullard (1981) 183-6; for the *ludi plebeii*, see Fowler (1899) 252, Scullard (1981) 196-7 and Wiseman (2008) 169-71.

| Festival | Dates (end dates only approximate) | Officials Responsible | Deity Honored | Year Instituted (BCE) |
|---------------------|------------------------------------|-----------------------|-------------------------|---|
| <i>Ludi Romani</i> | September 5-19 | curule aediles | Jupiter Optimus Maximus | Fourth or fifth century; supposedly became responsibility of the curule aediles in 367. |
| <i>Ludi Plebeii</i> | November 4-17 | plebeian aediles | Jupiter Optimus Maximus | First attested in 216, but almost definitely fourth century or earlier. |

As noted in 1.5.3, several of these festivals were innovations of the late third and early second centuries BCE,⁵⁴⁶ and considerably increased the amount of the time that the aediles spent preparing games. The advent of these festivals may thus be a contributing factor to the reorientation of the aediles toward games, as discussed in chapter three.

The length of each festival was variable, and each of them was unique in how the Romans chose to celebrate it. In order to explore these differences, we will discuss each of the *ludi*, in the order in which they were created, before turning to a discussion of how the task of organizing the games developed over the course of the second century. What will emerge is that, in the second century, an escalation in both the number and the cost of the games meant that, not only were the *ludi* the most effective way for the aediles to advance their careers, the games also began to monopolize their time in office.

The *ludi Romani* and the *ludi plebeii* were the oldest of the games put on by the aediles, with the former being put on by the curule aediles and the latter by the plebeian aediles. While it is probable that the Roman games were the older of the two, the close parallels between them suggest that they may have been created around the same time in the fourth or fifth century BCE. They were certainly very similar. The centerpiece of each festival was a feast for Jupiter (*epulum Iovi*) on the Ides (13th) of the month in which each of them took place (September for the

⁵⁴⁶ The *Megalensia* (curule aediles), the *Floralia* (plebeian aediles), and the *ludi Apollinares* (which were under the purview of the urban praetor). See Wiseman (2015) 42, 49 and Wiseman (1995) 134 for a discussion of the innovation of these games.

Romani, November for the *plebeii*), which the whole senate and all of the magistrates would attend. Images of the gods presided at the banquet, with Jupiter seated on a couch, his face reddened with cinnabar, while Juno and Minerva were seated on low benches. Food was laid out and music was played.⁵⁴⁷ In the days before the *epulum*, were the *ludi scaenici*, theatrical productions. In the days after the feast, there were athletic events.⁵⁴⁸ How long the games before and after the feast lasted was at the discretion of the person holding the games, although he would not wish to be seen giving a festival that was much shorter than that of his predecessors, and the senate could “advise” him to add to the length of the games if there was a religious fault, or some indication that the gods were not pleased.⁵⁴⁹ All of this meant that the length of the *ludi Romani* and *Plebeii* ballooned over the course of the Republic. At the end of the third century, they normally lasted about three days. By Cicero’s day, two weeks was the norm.⁵⁵⁰

For the schedule of events we are fortunate to have a detailed description of the *ludi Romani* provided by Fabius Pictor in the late third century, preserved by Dionysius of Halicarnassus.⁵⁵¹ The full passage is too lengthy to include here, even abridged, but has been added as an appendix. Prior to the start of the games, οἱ τὴν μεγίστην ἔχοντες ἐξουσίαν (7.72.1) “those holding the highest office” (sc. the Consuls) would lead a procession of the gods from the Capitoline hill through the forum to the Circus Maximus⁵⁵² with youths in full military gear,

⁵⁴⁷ Scullard (1981) 187; V. Max 2.2.2; Cic. *Tusc.* 4.4.

⁵⁴⁸ Ville (1981) 98.

⁵⁴⁹ Patterson (1976) 74-8. Patterson is perhaps wrong to interpret spread of the games over weeks as evidence of “repetition,” as the sources suggest that it was absolutely expected that the games would last for several days (Liv. 27.21 in fact expresses surprise when the *Ludi Romani* lasted only one day), but he is correct that the games could be repeated for a number of reasons.

⁵⁵⁰ Liv. 23.30.16-7, 25.2.6-9. The common phrase *pro temporis illius copiis magnifice facti* “done magnificently for the resources of that time” (emphasis mine) suggests that the Romans of Livy’s day were aware that of the extent to which the *ludi* had ballooned.

⁵⁵¹ Since the passage is so long, I have opted not to quote it in full, but will summarize its contents. I have included the passage in full in the Appendix.

⁵⁵² This has led to some confusion, as the curule aediles were the ones who planned and organized the games, but Dionysius describes the Consuls as presiding. As Becker has rightly pointed out, however, there is no contradiction

some of them on horseback. Following them were, in the following order, athletes, musicians and dancers, actors in satyr plays, men carrying censers, and men carrying the images of the gods. After the procession had been completed there was a sacrifice of oxen. In the days following, these would be followed by theatrical productions in a number of genres that could range from traditional comedies and tragedies to tragicomic pieces where the poet and actors staged deliberately overwrought tragedy for laughs.⁵⁵³ As part of the theatrical productions, termed *ludi scaenici*, there might also be what we would call circus acts: jugglers, acrobats, etc. Sometimes these events would be going on side by side, and the Roman comedic playwright, Terence, in one of the introductions to his pieces, notes that audiences might be distracted or drawn away from his performance by other types of entertainment (Ter. *Hec.* 33-41). These theatrical events took place at venues set up in the Forum, or occasionally a bit further afield in the Circus Maximus. Men, women, children, and slaves seem to have attended these performances. Apart from a section at the front reserved for senators starting in 196 BCE (V. Max. 2.4.3), the seating was distinctly mixed. In the days following the *epulum Iovi* on the thirteenth, there would be athletic events, including four-horse and two-horse chariot races, and races where the riders rode on horseback, as well as matches between boxers, wrestlers, and runners.

The Cerealia, for which the plebeian aediles were responsible, took place in April and was dedicated to the gods Ceres, Liber, and Libera. It was also likely quite old. As the centerpiece of the fall *ludi* were feasts to Jupiter, the games to Ceres centered on the *fordicidia*, a sacrifice on the 15th of April of a pregnant cow on the Capitoline Hill, which would be repeated

here, and the consul's role was a purely ceremonial one (Becker 2017: 193-4); see also Liv. 45.1.6, where a consul is described as presiding at the games when the victory at Pdyna was announced.

⁵⁵³ Wiseman (2015) 41.

in each of the thirty curiae. Ovid suggests that the *fordicidia* was a sacrifice to Tellus (*Fast.* 4.692ff.), the earth, a god with whom Ceres was regularly associated.⁵⁵⁴ The days surrounding the *fordicidia* were commemorated by games of the type described for the *ludi Romani* and *Plebeii*, although the presiding official at the opening ceremony may have been the *flamen Cerialis*.⁵⁵⁵ Ovid tells us that those participating wore white (*Fast.* 4.619-20), which likely refers principally to important people in attendance, although it likely would not have been too difficult for others to have their normal clothes whitened with chalk, as candidates for high office did. The most distinctive rituals of the games to Ceres, however, was the practice of taking captured foxes, tying burning brands to their tails, and letting them loose in the Circus Maximus (*Ov. Fast.* 681ff.), a ritual whose significance even Scullard is forced to admit is unknowable (1981: 103). By Cicero's day, the *ludi Cereri* lasted a full week, from the 12th to the 19th of April. Livy only reports on the length of the *ludi Romani* and *Plebeii*, so we have no way of knowing how long the games of Ceres lasted in the third or second century, but, if they grew like the games that Livy does report, then they were likely only one or two days in the third century.

With the remaining two *ludi* we are on much firmer ground as to their origin than we are for any of the previous three that we have discussed. The worship of Flora, a goddess of agricultural fertility (at least primarily), in Rome appears to have been genuinely ancient, but it was only in the few years following the end of the first Punic war, in 241, that a temple was built to her. The location was on the Aventine facing the Circus Maximus. The consecration of the temple was marked with games put on by the plebeian aediles, which were repeated irregularly until crop failures led to them being made annual in 173 BCE. By Cicero's day, the festival ran

⁵⁵⁴ Var. *R.* 3.1.5 gives us this association.

⁵⁵⁵ This is informed conjecture on my part. We have no attestations of a magistrate presiding, but it is fair to assume there was some sort of opening ceremony. There was a *flamen Cerialis*, however, a priest dedicated to the veneration of Ceres, so he would be the logical choice to preside.

from 27 April to 2 May and, in addition to the regular events, the games of Flora were celebrated by releasing rabbits and goats (Ov. *Fast.* 5.373), probably into the Circus Maximus. Beans and lupins were also scattered among the crowd (Pers. 5.177), and women who could afford to do so wore bright colors (Ov. *Fast.* 5.355ff).

As a festival dedicated to a goddess of fertility, it is unsurprising that celebration of the *ludi Florae* had a bent that was both ribald and satirical. Prostitutes claimed Flora as their patron goddess, and the holiday as their feast. Juvenal tells us that they performed naked on stage at the Floralia, and even fought each other in mock-gladiatorial bouts. Cato, whom we last saw creating a disturbance in the *aerarium* in 4.3.1, is attested walking out of a performance at the Floralia because his famed severity was deterring the crowd from demanding that an actress be stripped naked.⁵⁵⁶ The more satirical elements of the Floralia seem to have made the event less appealing to many of the more aristocratic-leaning elements of the senate: Cicero refers to the goddess reverently as “mother Flora” in the *Verrines* (2.5.36), but he always seems to be out of town when they are occurring, and Wiseman suggests that Cicero avoided the Floralia.⁵⁵⁷ Perhaps he was not keen to hear what his countrymen thought of him after he executed several citizens without trial as consul.⁵⁵⁸

The last of the games created, for which the aediles were responsible, was the Megalensia. This festival finds its roots in the arrival of the goddess Magna Mater from Asia Minor to Rome in 204 BCE, toward the end of the second Punic war, when the Romans felt they

⁵⁵⁶ Mart. 1 *epist.*; Sen. *Ep.* 97.8; V. Max. 2.10.8; Wiseman (2015) 85 makes it clear that there is no evidence of this event from Cato’s lifetime. Instead, this anecdote emerges in the context of the general hagiography of Cato that took place after his death. Even if this episode is fictional, however, it still provides insight into how Romans understood both Cato’s character and the character of the *Floralia*.

⁵⁵⁷ Wiseman (2015) 82-5. His argument is based on Cicero’s location when he writes his letters. At the end of April and beginning of May, Cicero always seems to be out of town, which seems significant for a career in politics that lasted several decades.

⁵⁵⁸ Sal. *Cat.* 55.

needed more divine help to defeat Hannibal. The physical form of the goddess, a black stone, was given temporary housing for over a decade until, in 191, a temple was built on the Palatine, in sight of the Circus Maximus. At this point, annual games were established, to be organized by the curule aediles. Since the start date and end date of these *ludi* in the late Republic and early Empire, 4 April through 10 April, are the anniversaries of Magna Mater's arrival in Italy and of the consecration of her temple, respectively, there is reason to think that her *ludi* were a week-long event from the beginning.

Magna Mater's *ludi* were unusual, in that Roman citizens were not allowed to walk in the opening procession. Instead, a statue of her in a chariot pulled by lions was carried through the streets by her eunuch-priests, the Galli, who were covered in (symbolically or actually) their own blood and would dance through the streets, singing hymns in Greek and seeking alms from passers-by.⁵⁵⁹ The seven days of her *ludi* were celebrated with theatrical productions and spectacles. Of the few Roman comedies whose performance dates we know, four were originally performed at the Megalensia.⁵⁶⁰ This may have less to do with any religious associations of Magna Mater with the theater than the fact that her games were first ones that the aediles put on each year. Repeat performances were common, and so there was less reason to hold back for later games a play that was already written. By night, patricians would play host to each other for feasts that became so elaborate that the senate had to issue a decree limiting expenditures in 161 (Gel. 2.24).

⁵⁵⁹ Lucr 2.600ff contains a memorable literary description of this procession.

⁵⁶⁰ Plautus' *Pseudolus* and Terrence's *Andria*, *Hecyra* and *Eunuchus*. Cf. Richlin (2017) 491; Scullard (1981) 98.

5.5.1 Going into Debt to Get Ahead

Until the construction of Rome's first permanent theater near the end of the Republic, the theatrical performances took place on temporary stages that the aediles had had constructed for the games each year. Through most of the second century, these were referred to as *caueae*, "enclosures," "coops," and might be built up against the steps of a temple, both so that the god being honored could "watch" the spectacle, and so that the people could take advantage of the steps as impromptu seating. As Wiseman has convincingly argued, however, by the end of the second century, the aediles had transitioned to more elaborate (and expensive) full theaters, with banks of stadium seating made out of wood.⁵⁶¹ Cicero tells us that it was then common for the aediles to pull strings with foreign clients to borrow masterpieces of art that could be used to decorate the theaters or the forum more generally (Cic. *Ver.* 2.4.6). By Cicero's own day, the aediles were regularly building theaters on a scale befitting a permanent building, lavishly decorated in gold, marble, ivory, and silk,⁵⁶² only to tear them down again in the months after the games had been completed.

Added to the basic schedule of events that had existed since the early Republic were wild beast shows, featuring creatures from far-flung lands, such as elephants, panthers, leopards, lions, hippopotami, bears, and crocodiles. By the middle of the second century BCE, these were one of the main attraction of the games, and aediles went to great lengths to acquire exotic

⁵⁶¹ Wiseman (2015) 52-62. The transition from *caueae* to *theatra* entailed a great deal more money spent, and no doubt entailed a great deal spent on money, especially since, prior to the completion of Pompeius's theater, there were no permanent theaters in Rome. For a striking commentary on the extent to which the cost of these theaters, see Plin. *Nat.* 36.113-118, in which an aedile of 58 BCE, Scaurus, constructed a three story theater that seated 80,000 people, in which the first story of the stage was constructed of marble, the second of glass, and the third of gilded wood. Not to be outdone, C. Scribonius Curio, who was holding gladiatorial games in honor of his father's funeral around the same time, constructed two wooden theaters on a pivot that could transform into an amphitheater.

⁵⁶² See V. Max. 2.4.6 for a list of these luxuries, and the aediles who introduced them.

animals for the entertainment of the Roman people.⁵⁶³ The likely venue for these was in the Circus Maximus, after the races and athletic competitions had been completed, although we do not have direct attestation.

All of the work of setting this up was completed through the well-developed public contracting system that the Romans used for all public building, and it was expensive. A substantial amount of money was allotted by the senate each year for the games — 500 *minae* of silver in the middle of the third century, although this had escalated to a third of a million bronze *asses* by the Hannibalic war.⁵⁶⁴ Nevertheless, by the early second century, the aediles had begun routinely to spend sums well in excess of what the senate had allotted them, paying the rest out of their own pockets.⁵⁶⁵ If they were phenomenally well off, they could swallow the loss and write it off as the cost of political advancement. I noted in 3.7 that it is possible the aediles started putting the money collected from fines toward games as well.⁵⁶⁶ This added source of revenue was evidently not enough, however, for with increasing regularity, being aedile entailed going into debt in the hopes of making it to the next step in the *cursus honorum*, where a military command offered opportunities to pay one's debts.

The cost of the *ludi* might be even greater if, and this was common, a person in a position of authority detected a ritual fault that had been committed in the process of the games and advised the senate to demand an *instauratio*, a repetition. At this point, the games would have to be prolonged to appease the gods, entailing a repeat showing of whatever productions had been put on at the *ludi scaenici*, along with more athletic events, especially the chariot races. An

⁵⁶³ Patterson (1976) 78-9, citing Plin. *Nat.* 36.115; Liv 44.18.8; Cic. *Fam.* 2.11.2, 8.2.2, 8.4.5, 8.8.10, 8.9.3 = SBF 90.2, 78.2, 81.5, 84.10, 82.3.

⁵⁶⁴ D.H. 7.71.2; Liv. 22.10.7.

⁵⁶⁵ Patterson (1976) 74. The phenomenon of spending more than what had been allotted by the senate seems to have started, at the latest, with the aedileship of the elder Ti. Gracchus in 182 BCE (Liv. 40.44.11-2).

⁵⁶⁶ As noted in the previous footnote, the escalation in cost of the games had definitely begun by 182 BCE (Liv. 40.44.11-2). Meanwhile, the last religious donative recorded by Livy occurred in 189 BCE (38.35.5-6).

instauratio would not prove too expensive to undertake in the grand scheme of things, as the theater was already built, but the actors, performers and athletes would all have to be paid extra. The cost was not negligible, especially if the aedile was particularly astute and had acquired extra animals in preparation for a likely *instauratio*, so that he could repeat the beast hunts as well.⁵⁶⁷

The enormous amount of work and money that went into these games meant that the task of putting them on overshadowed the aediles' other duties. Cicero's younger friend Caelius, for example, had started planning his games months before his inauguration as aedile and, in their letters back and forth, Caelius famously frets over whether Cicero will be able to acquire him some panthers for the *ludi*.⁵⁶⁸ This was likely common. The result was that the aediles were increasingly busy over the course of the second and early first centuries planning games. After their games in the spring had been completed, they immediately had to launch into planning the next round in the fall, and it is difficult not to suspect that the task of planning these events often monopolized their attention, especially since they were routinely spending borrowed money to do so.

5.6 Conclusion

The aedileship had always entailed a high workload, but this intensified in the second century, due to a confluence of different factors. The accretion of *ludi* that needed to be managed in the late third century was compounded by the reorientation of the aedileship as a stepping stone to higher office (as discussed in chapter three), which meant not only that the aediles had

⁵⁶⁷ Patterson (1976) 74-8.

⁵⁶⁸ Cic. *Fam.* 2.11.2, 8.2.2, 8.4.5, 8.8.10, 8.9.3 = SBF 90.2, 78.2, 81.5, 84.10, 82.3; cf. Patterson (1976) 85. On panthers, see Cic. *Fam.* 8.2.2, 8.4.5, 8.9.3, 8.8.9 = SBF 78.2, 81.5, 82.3, 84.9. All of these requests come pointedly toward the end of the letter, where it will be more difficult for Cicero to forget them.

more festivals to manage, but that there was greater pressure to out-perform one's peers and predecessors.

Meanwhile, the city was becoming more crowded, meaning that food shortages occurred with greater frequency. The solution, discovered by Gaius Gracchus, left the aediles in charge of distribution, but created public mechanisms to manage the food supply. In many respects, this eased the burden on the aediles, but it also meant that the food supply could no longer be involved in the elite economy of honors and favors; Metellus' embassy in 129 to ask the Thessalians for grain would not have happened a decade later. The need for an aedile to call in favors with his peers who owned the granaries, or reduce the rents on his own granaries, in order to get a good deal for the Roman people was similarly eliminated. The aedileship was thus rendered more meritocratic, a change that benefitted some, but certainly not the people to whom such displays offered a competitive advantage in the *cursus honorum*.

For all that the workload increased, and the aediles' agency in some of their duties was diminished, as those duties took on a more bureaucratic character, the aediles nevertheless continued to perform tasks important for the maintenance of the community. Streets still needed to be kept clear and in good repair. Down into the late Republic, fines were still a safety valve through which members of the community could air grievances against each other, and the edict of the curule aediles was a standing body of law on commercial transactions that continued to evolve even into the high empire.

Conclusion

6.1 The Middle Management in the Roman Revolution

In the consulship of Publicola and Nerva (36 BCE), and, more importantly, in the eighth consecutive year when M. Antonius, M. Aemilius Lepidus, and “Commander Caesar, son of the divinity”⁵⁶⁹ occupied the board of three men for “setting the state in order,”⁵⁷⁰ there were no aediles. No one wanted the job, and their duties were divided between the praetors and the tribunes.⁵⁷¹ The year of no aediles was a result of the processes we have discussed in chapters three and five. The progressive narrowing of the aediles’ responsibilities, the escalation of the costs of games, and the creation of the *cursus honorum* all meant that the aedileship was desirable less for its own sake and more for the opportunities it offered the aristocracy to campaign for higher office. When the higher offices ceased to be competitive under the board of three men, because the consuls were all their allies,⁵⁷² desire for the aedileship dropped precipitously.

⁵⁶⁹ The future emperor Augustus. His chosen name, from 38 BCE until receiving the cognomen Augustus in 27, was *Imperator Caesar Divi filius*. n.b. *Imperator*, “commander” was a part of his name, not merely a title (Syme 1939: 113). Most modern scholars have opted to refer to him during this period as Octavian, perhaps from a recognition that the self-chosen name of this historical figure was absurd. Syme only begrudgingly called him Octavianus (1939: 113). In light of his afterlife as a role model for monarchs and authoritarians, however, I think it important not to normalize or seek to cloak him in respectability. Throughout this brief epilogue, he will be called what he called himself: “Commander Caesar” prior to 27 BCE, and “Revered Commander Caesar” (*Imperator Caesar Augustus*) or simply “the Revered Caesar” (*Caesar Augustus*) thereafter. *Princeps*, meanwhile, has been rendered “first citizen.” See Ando (2013) 931 for a similar treatment of Caesar’s heir (“General Caesar”).

⁵⁷⁰ *Tresviri Rei Publicae Constituendae*.

⁵⁷¹ D.C. 49.16.2; Broughton *MRR* vol. 2 (1952) 401 s.a. 36.

⁵⁷² See the Appendix for a list of consuls from these years, and their relationships to the Triumvirate.

The optics of this were all bad. The aedileship was an important institution of traditional Roman government. Its abeyance disconcerted the *populus* and made the people in charge look bad. This also was not the first year that the aedileship had been an embarrassment to the board of three. The previous year, one of the men elected had been M. Oppius. He had not put himself forward as a candidate. He was elected by popular acclaim because he had saved his aged father from being murdered by the board of three, and when he protested that he did not have the money to hold that office, the Roman people funded his aedileship through private contributions.⁵⁷³ The political statement could scarcely have been more pointed.

It is perhaps in the context of these repeated incidents that the events of the year 33 BCE should be read. Commander Caesar was consul (the second of thirteen he would eventually hold) while still holding office on the board of three. One of the curule aediles that year was his general, M. Vipsanius Agrippa, who, it should be noted, had already been consul four years before. As aedile, Agrippa built a new aqueduct, called *not* the Aqua Vipsania as would be expected, but the Aqua Iulia. It was his aedileship, but the enduring credit would go to his patron. Agrippa also repaired the Aqua Marcia, payed to clean out Rome's sewer system, and improved the infrastructure for the *ludi*, festivals, and baths. He also distributed olive oil and salt to the people and drove astrologers and charlatans from the city.⁵⁷⁴

With Agrippa, we come full circle. As aedile, he behaved simultaneously in ways that were typical of the office in the late Republic, but also in the middle Republic. He lavished expensive games on the people like Scaurus had in 58 BCE. He made gifts of olive oil to the people like Scipio had in 213. He improved infrastructure like the Ogulnii had in 296 BCE. He

⁵⁷³ App. *BC* 4.41; D.C. 48.53-4; Broughton *MRR*. vol. 2 (1952) 397 s.a. 37.

⁵⁷⁴ D.C. 49.43; Fron. *Aq.* 1.9-10, 98-9; Plin. *Nat.* 36.104, 36.121; Str. 5.3.8; Suet. *Aug.* 42.1.

held the office after the consulship like Fabius Rullianus had in 299.⁵⁷⁵ To judge from the number of sources that discuss Agrippa's aedileship,⁵⁷⁶ his tenure was also publicized like that of Fabius. Commander Caesar had read the same anecdotes and episodes that went into this dissertation.

The aedileship of Agrippa was thus an early experiment in the strange combination of antiquarianism, propaganda, and civic administration that would come to characterize the “restored” state of Revered Commander Caesar. It was not an altogether successful experiment. Agrippa's aedileship went well and received some publicity, but it was not a model that was easy to follow. Much of what Agrippa was able to do while holding that office was only acceptable because of who he was: an indispensable general, the close friend and future son-in-law of Commander Caesar, and a *novus homo* who owed his smooth climb to the top to the patronage of a man with a more illustrious pedigree.⁵⁷⁷ A little over a decade later, when M. Egnatius Rufus likewise sought to celebrate his aedileship, the results were rather different.

As aedile in 20 BCE, Rufus made use of his own slaves as a makeshift fire brigade. He was initially celebrated and allowed to hold the praetorship the very next year, in contravention of the *Lex Annalis*. As Cassius Dio tells it, however, ..ἐπήροθη τε ὑπ' αὐτῶν τούτων καὶ τὸν Αὔγουστον ὑπερεφρόνησεν, ὥστε καὶ προγράψαι ὅτι ἄθραυστον καὶ ὀλόκληρον τῷ διαδόχῳ τὴν πόλιν παρέδωκεν (Cass. Dio 43.24.5). “...he was elated by all these honors and became scornful of the Revered Caesar, with the result that he issued a statement that he had handed over the city whole and unharmed to his successor.” Such a statement sounds very

⁵⁷⁵ V. Max. 2.4.6-7; Liv. 25.2.8, 10.23.11, 10.9.8-12.

⁵⁷⁶ five different literary sources: see. no. 541 above for a list of them.

⁵⁷⁷ That he would eventually become Revered Commander Caesar's colleague in *imperium proconsulare* and thus virtually co-emperor is a testament to his singular talent.

similar to Cicero's twist on the oath magistrates took upon leaving office,⁵⁷⁸ and Rufus was probably seeking to use the oath as a form of self-promotion in order to position himself as a candidate for the consulship. Instead, his statement was read as an insult to the first citizen. When he sought to run for the consulship of 18 BCE, again without waiting a year between offices, the consul presiding over the election refused to accept him as a candidate. Rufus is next found implicated in a plot to assassinate Revered Commander Caesar, after which he was imprisoned and soon executed.

Part of the trouble was that there was not very much for an aedile to do under the Caesars. Many of their most significant functions, as discussed in chapter five, were now either lost to them or politically dangerous. The care of the grain supply was too important to be left in the hands of elected officials and was the charge of the first citizen. The dictator Caesar had added two new aediles, the *ceriales*, to take care of the grain supply, probably as a remedy for the situation of the late 50s, when Pompeius made sure that the city was provisioned with food. If so, it was a strikingly anti-authoritarian act, and one that his heir undid in 22 BCE (Aug. *RG* 5). The two new aediles remained,⁵⁷⁹ but the care of the grain supply was under the control of the first citizen.

The building projects that the aediles had often undertaken in the third century, and more sporadically in the second century, were now unthinkable: such projects would either seem quaint compared to the monuments of the Caesars, or, worse, would appear to be competing with them. So also the *ludi*. The edict of the curule aediles, by contrast, continued to develop, and the

⁵⁷⁸ Cicero twisted the oath that he had preserved the laws into an *apologia* for his execution of the Catilinarians (Plu. *Cic.* 32.1-3, *Cic. Fam.* 5.2.7 = SBF 2.7).

⁵⁷⁹ Talbert (1984) 19. Talbert provides no insight into what the erstwhile *ceriales* were doing, but merely mentions there being six aediles under the principate.

aediles still managed the markets. In this respect they were certainly important, but their most public-facing and ostentatious duties had either been curtailed or transferred to the first citizen.⁵⁸⁰

The quaestors fared a little better under the principate. Sulla had made the office the formal qualification for entry to the senate, and as such we find the office expanding in lock-step with the senate: Sulla had expanded the number to twenty in order to man a senate of six hundred. Caesar expanded the office to forty, and the senate to nine hundred. Since Revered Commander Caesar reduced the senate back to Sulla's numbers, he reduced the number of quaestors as well, but we nevertheless find, starting in the triumvirate, a surplus of quaestors. Starting in 38 BCE, the consuls each had two. In the years after Actium, the first citizen likewise had two quaestors each year, an innovation that proclaimed his position within the state (formally equal to the consuls, but his position permanent), and was probably justified by his proconsular *imperium*.⁵⁸¹ It is perhaps due to this surplus of quaestors that we also find he began assigning quaestors to the various towns of Italy. Talbert implies that this was an innovation, but in light of the findings of chapter two, and the Revered Caesar's penchant for governing with an antiquarian flair, it seems more likely that this development was billed as a return to ancestral custom.

The quaestors were no longer in charge of the *aerarium*, however. In 29 BCE, Commander Caesar put it in the charge of two *praefecti* who had reached the praetorship. Six years later, control was shifted to two praetors chosen by lot.⁵⁸² Quaestors still worked in the treasury but were no longer its superintendents. The reason was a shortage of quaestors who were competent to run the *aerarium*. Roman aristocrats simply did not have as much experience

⁵⁸⁰ See Talbert (1984) 19, who comes to a similar conclusion.

⁵⁸¹ See Talbert (1984) 17 for the twenty quaestors and for the *quaestores Caesaris*. For the *imperium proconsulare* see Syme (1939) 313-4.

⁵⁸² Tac. *Ann.* 13.29; Suet. *Aug.* 36; D.C. 53.2.1; Talbert (1984) 375.

on entering the quaestorship as they once had. While the Roman state under the first citizen did require some military service from candidates for the quaestorship, the ten years of service that had been required under the Republic was gone, and the minimum age for the quaestorship had been lowered to twenty-five.⁵⁸³ Quaestors under the Caesars were thus younger and less experienced than they had been under the Republic. Claudius Caesar experimented with returning the *aerarium* to the quaestors but made it a three-year assignment.⁵⁸⁴ This is further evidence that the new, younger quaestors were not entering office with the kind of administrative experience they had had in the past.

6.2 Concluding Remarks

This dissertation has traced Rome's junior offices through the third and second centuries BCE. Our premise has been that, since the Romans lacked any sort of written constitution, their political offices were more mutable in scope and meaning to the people that held them than is typical in modern democracies. From this proposition, we have constructed a picture under which the aedileship and the quaestorship changed dramatically from the middle Republic to the dictatorship of Sulla, the former perhaps more than the latter.

In the late fourth and early third centuries, the aedileship had been the locus of civic administration in the city of Rome. While they were responsible for the *ludi* during this period, both the number and scope of the games were more limited, and the aediles' greater responsibility for the city of Rome meant that the success of an aristocrat's tenure of the office was judged more on such tasks as managing the markets, looking after the food supply, and improving upon and repairing such infrastructure as Rome had than on spectacle.

⁵⁸³ Jones *CAH* 10 161-3; Suet. *Aug.* 38.

⁵⁸⁴ Tac. *Ann.* 13.29; Talbert (1984) 17.

As other offices expanded, however, and the Romans achieved phenomenal success abroad, the aedileship was progressively out-competed in many of these duties by other offices and even by extraordinarily influential individuals. The results of these transformations in Rome's fortunes was a need to check elite ambitions. The *cursus honorum* was duly formalized as law, and the aedileship was reconfigured as a stepping stone to higher climes. Their duties remained and were still crucial, but the weight of importance had shifted to the tasks that allowed them to campaign for the next election.

Changes in the conception of the quaestorship were more subtle, beyond the obvious fact of its expansion. At the start of the period under discussion, the quaestors appear as representatives of the senate whose task is to look after state property, whether it be at home in the *aerarium* or afield in the military camp. In many ways this core duty endured through the end of the Republic, but the Romans were not averse to experimenting, and, as with the aediles, the impetus was often military developments abroad.

As the Romans cemented their control of the Italian peninsula and looked toward further expansion, they briefly experimented with the use of quaestors to manage their network of alliances. In some ways, this innovation proved useful, and quaestorian assignments in Italy's hill country and in Sicily recurred with varying frequency into the principate, when it was expanded. Likewise, in the second century, the Romans appear to have begun assigning quaestors as diplomatic chaperones to royal guests, and Valerius Maximus suggests that this practice remained common in the middle of the first century.

Many of the transformations in these offices find their root not in formal decisions or decrees of the senate, but in broader, more gradual change in attitude to elected office, and in the exigencies of the moment. We thus find the formal politics of the Roman state to be rooted in

and responsive to informal politics. If nothing else, it is the author's hope that this dissertation will be useful as an exercise in how we can go about exploring the relationship of formal and informal politics.

Appendix

πρὶν ἄρξασθαι τῶν ἀγώνων, πομπὴν ἔστελλον τοῖς θεοῖς οἱ τὴν μεγίστην ἔχοντες ἐξουσίαν, ἀπὸ τοῦ Καπιτωλίου τε καὶ δι' ἀγορᾶς ἄγοντες ἐπὶ τὸν μέγαν ἵππόδρομον. ἠγοῦντο δὲ τῆς πομπῆς πρῶτον μὲν οἱ παῖδες αὐτῶν οἱ πρόσηβοί τε καὶ τοῦ πομπεύειν ἔχοντες ἡλικίαν, ἵππεῖς μὲν, ὧν οἱ πατέρες τιμήματα ἵπέων εἶχον, πεζοὶ δ' οἱ μέλλοντες ἐν τοῖς πεζοῖς στρατεύεσθαι: οἱ μὲν κατ' ἴλας τε καὶ κατὰ λόχους, οἱ δὲ κατὰ συμμορίας τε καὶ τάξεις ὡς εἰς διδασκαλεῖον πορευόμενοι: ἵνα φανερὰ γίνοιτο τοῖς ξένοις ἢ μέλλουσα ἀνδροῦσθαι τῆς πόλεως ἀκμὴ πληθὸς τε καὶ κάλλος οἷα τις ἦν. τούτοις ἠκολούθουν ἠνίοχοι τὰ τέθριππά τε καὶ τὰς συνωρίδας καὶ τοὺς ἀζεύκτους ἵππους ἐλαύνοντες: μεθ' οὓς οἱ τῶν ἀθλημάτων ἀγωνιστῶν τῶν τε κούφων καὶ τῶν βαρέων τὸ μὲν ἄλλο σῶμα γυμνοί, τὸ δὲ περὶ τὴν αἰδῶ καλυπτόμενοι. τοῦτο καὶ εἰς ἐμὲ τὸ ἔθος ἐν Ῥώμῃ διέμενεν, ὡς ἐξ ἀρχῆς ἐγένετο παρ' Ἑλλησιν: ἐν δὲ τῇ Ἑλλάδι καταλέλυται Λακεδαιμονίων αὐτὸ καταλυσάντων... ἠκολούθουν δὲ τοῖς ἀγωνισταῖς ὀρχηστῶν χοροὶ πολλοὶ τριχῆ νενεμημένοι, πρῶτοι μὲν ἀνδρῶν, δεύτεροι δ' ἀγενείων, τελευταῖοι δὲ παίδων, οἷς παρηκολούθουν ἀύληταί τ' ἀρχαῖκοις ἐμφυσῶντες ἀυλίσκοις βραχέσιν, ὡς καὶ εἰς τόδε χρόνον γίνεται, καὶ κιθαριστῶν λύρας ἑπταχόρδους ἐλεφαντίνας καὶ τὰ καλούμενα βάρβιτα κρέκοντες. ὧν παρὰ μὲν Ἑλλησιν ἐκλέλοιπεν ἢ χρῆσις ἐπ' ἐμοῦ πάτριος οὔσα: παρὰ δὲ Ῥωμαίοις ἐν ἀπάσαις φυλάττεται ταῖς ἀρχαίαις θυηπολίας. σκευαὶ δὲ τῶν ὀρχηστῶν ἦσαν χιτῶνες φοινίκεοι ζωστήηροι χαλκείοις ἐσφιγμένοι, καὶ ξίφη παρηρητημένα, καὶ λόγχοι βραχύτεραι τῶν μετρίων: τοῖς δ' ἀνδράσι καὶ κράνη χάλκεα λόφοις ἐπισήμοις κεκοσμημένα καὶ πτεροῖς. ἠγεῖτο δὲ καθ' ἕναστον χορὸν εἷς ἀνὴρ, ὃς ἐνεδίδου τοῖς ἄλλοις τὰ τῆς ὀρχήσεως σχήματα, πρῶτος εἰδοφορῶν τὰς πολεμικὰς καὶ συντόνους κινήσεις ἐν τοῖς προκελευσματικοῖς ὡς τὰ πολλὰ ῥυθμοῖς... μετὰ γὰρ τοὺς ἐνοπλίους χοροὺς οἱ τῶν σατυριστῶν ἐπόμενον χοροὶ τὴν Ἑλληνικὴν εἰδοφοροῦντες σίκιννιν. σκευαὶ δ' αὐτοῖς ἦσαν τοῖς μὲν εἰς Σιληνοὺς εἰκασθεῖσι μαλλωτοὶ χιτῶνες, οὓς ἔνιοι χορταίους καλοῦσι, καὶ περιβόλαια ἐκ παντὸς ἄνθους: τοῖς δ' εἰς Σατύρους περιζώματα καὶ δοραὶ τράγων καὶ ὀρθότριχες ἐπὶ ταῖς κεφαλαῖς φόβαι καὶ ὅσα τούτοις ὅμοια. οὗτοι κατέσκωπτόν τε καὶ κατεμιμοῦντο τὰς σπουδαίας κινήσεις ἐπὶ τὰ γελοιότερα μεταφέροντες... μετὰ δὲ τοὺς χοροὺς τούτους κιθαριστῶν τ' ἀθροῖοι καὶ ἀύληταὶ πολλοὶ παρεξήσαν: καὶ μετ' αὐτοὺς οἱ τε τὰ θυμιατήρια κομίζοντες, ἐφ' ὧν ἀρώματα καὶ λιβανωτὸς παρ' ὄλην ὁδὸν ἐθυμιάτο, καὶ οἱ τὰ πομπεῖα παραφέροντες ἀργυρίου καὶ χρυσοῦ πεποιημένα τὰ τε ἱερὰ καὶ τὰ δημόσια. τελευταῖα δὲ πάντων αἱ τῶν θεῶν εἰκόνες ἐπόμενον ὅμοις ὑπ' ἀνδρῶν φερόμεναι, μορφάς θ' ὁμοίας παρέχουσαι ταῖς παρ' Ἑλλησι πλαττομέναις καὶ σκευὰς καὶ σύμβολα καὶ δωρεάς, ὧν εὔρεται καὶ δοτῆρες ἀνθρώποις ἕκαστοι παραδίδονται, οὐ μόνον Διὸς καὶ Ἥρας καὶ Ἀθηνᾶς καὶ Ποσειδῶνος καὶ τῶν ἄλλων, οὓς Ἑλληνες ἐν τοῖς δώδεκα θεοῖς

καταριθμοῦσιν, ἀλλὰ καὶ τῶν προγενεστέρων, ἐξ ὧν οἱ δώδεκα θεοὶ μυθολογοῦνται γενέσθαι, Κρόνου καὶ Ῥέας καὶ Θέμιδος καὶ Λητοῦς καὶ Μοιρῶν καὶ Μνημοσύνης καὶ τῶν ἄλλων ἀπάντων, ὅσων ἐστὶν ἱερὰ καὶ τεμένη παρ' Ἑλλησι: καὶ τῶν ὕστερον, ἀφ' οὗ τὴν ἀρχὴν Ζεὺς παρέλαβε, μυθολογουμένων γενέσθαι, Περσεφόνης Εἰλειθυίας Νυμφῶν Μουσῶν Ὠρῶν Χαρίτων Διονύσου, καὶ ὅσων ἡμιθέων γενομένων αἱ ψυχαὶ τὰ θνητὰ ἀπολιποῦσαι σώματα εἰς οὐρανὸν ἀνελεθεῖν λέγονται, καὶ τιμὰς λαχεῖν ὁμοίας θεοῖς, Ἡρακλέους Ἀσκληπιοῦ Διοσκούρων Σελήνης Πανὸς ἄλλων μυρίων....συντελεσθείσης δὲ τῆς πομπῆς ἐβουθύτουν εὐθὺς οἱ θ' ὑπατοὶ καὶ τῶν ἱερέων οἷς ὅσιον, καὶ ὁ τῶν θυηπολιῶν τρόπος ὁ αὐτὸς ἦν τῶ παρ' ἡμῖν. χερνισάμενοί τε γὰρ αὐτοὶ καὶ τὰ ἱερὰ καθαρῶ περιαγνίσαντες ὕδατι καὶ Δημητρίους καρποὺς ἐπιρράναντες αὐτῶν ταῖς κεφαλαῖς, ἔπειτα κατευξάμενοι, θύειν τότε τοῖς ὑπηρέταις αὐτὰ ἐκέλευον. τῶν δ' οἱ μὲν ἐστῶτος ἔτι τοῦ θύματος σκυτάλη τοὺς κροτάφους ἔπαιον, οἱ δὲ πίπτοντος ὑπετίθεσαν τὰς σφαγίδας, καὶ μετὰ τοῦτο δείραντές τε καὶ μελίσαντες ἀπαρχὰς ἐλάμβανον ἐξ ἐκάστου σπλάγχνου καὶ παντὸς ἄλλου μέλους, ἃς ἀλφίτοις ζέας ἀναδεύσαντες προσέφερον τοῖς θύουσιν ἐπὶ κανῶν: οἱ δ' ἐπὶ τοὺς βωμοὺς ἐπιθέντες ὑψήπτον καὶ προσέσπενδον οἶνον κατὰ τῶν ἀγνιζομένων....λοιπὸν δ' ἔτι μοι καὶ περὶ τῶν ἀγῶνων, οὓς μετὰ τὴν πομπὴν ἐπετέλουν, ὀλίγα διελθεῖν. πρῶτος ὁ τῶν τεθρίπων τε καὶ συνωρίδων καὶ τῶν ἀζεύκτων ἵπων ἐγένετο δρόμος, ὡς παρ' Ἑλλησι τὸ ἀρχαῖον Ὀλυμπιάσι τε καὶ μέχρι τοῦ παρόντος....τελεσθέντων δὲ τῶν ἵππικῶν δρόμων οἱ τοῖς ἑαυτῶν σώμασιν ἀγωνιζόμενοι τότε εἰσήεσαν δρομεῖς τε καὶ πύκται καὶ παλαισταί. τρία γὰρ ἀθλήματα παρὰ τοῖς ἀρχαίοις Ἑλλησι ταῦτ' ἦν, ὡς Ὅμηρος ἐπὶ τῇ Πατρόκλου δηλοῖ ταφῇ. ἐν δὲ τοῖς διὰ μέσου τῶν ἀθλημάτων χρόνοις Ἑλληνικώτατον καὶ κράτιστον ἀπάντων ἐθῶν ἀπεδείκνυντο, στεφανώσεις καὶ ἀναρρήσεις ποιοῦμενοι τιμῶν, αἷς ἐτίμων τοὺς ἑαυτῶν εὐεργέτας, ὡς Ἀθήνησιν ἐν ταῖς Διονυσιακαῖς ἐγένετο θυσίαις, καὶ σκύλων, ὅσων ἐκ πολέμων λάβοιεν, ἐπιδείξεις τοῖς εἰς θέαν συνεληλυθόσιν. (D.H. 7.72.1-2, 5-6, 10, 13, 15, 7.73.1-4)

“Before the beginning of the games, those who held the most powerful office conducted a procession for the gods, leading it from the *Capitolium* through the forum to the *Circus Maximus*. At the very head of the procession were the sons of the Romans who were near manhood and were of an age to lead the procession, mounted if their fathers possessed sufficient property to be in the cavalry, and on foot those who were going to serve in the infantry. The former made their way in squadrons and troops, the latter marched in divisions and contingents, as if going to their place of training. This was done so that it might be clear to foreigners what was the nature of the flower of the city about to reach manhood, in terms of its numbers and its fine physique. These were followed by charioteers, driving four-horse chariots or pairs, or riding unyoked horses. After them came the competitors in the light and heavy contests, naked except for covering their private parts. This custom continued to be observed in Rome, even down to my time, as it was originally among the Greeks; but in Greece it has been brought to an end, since the Spartans abolished it....The competitors were followed by many troops of dancers, who were distributed into three groups, the first being of men, the second of youths, the last of boys; they were closely followed by flute-players,

who played short reed pipes of an ancient type, as happens even at this time, and cithara-players, who plucked seven-stringed lyres of ivory, and the ones called *barbita*. The use of these, despite being ancestral, has died out among the Greeks in my time; but among the Romans it is preserved in all the ancient sacrifices. The apparel of the dancers was: crimson tunics fastened tight with bronze belts, and swords hung at their sides, and spears shorter than average. The men also wore bronze helmets adorned with conspicuous crests and feathers. Each dance-troop would be led by one man, who would give the figures of the dance for the others, expressing first of all the warlike and eager movements, for the most part in prokeleusmatic rhythms....For after the armed bands, those of the satyr players marched in the procession, performing the Greek *sikinnis* dance. The apparel of those who resembled the Silenoi was woolly tunics, which some call *chortaioi* ('farmyard tunics'), and capes made from every kind of flower; those who resembled satyrs wore loincloths and the skins of he-goats, and locks of hair on their heads, which stood upright, and other features similar to these. They mocked and burlesqued the serious movements [*sc.* of the others], transforming them into something more amusing....After these troops, all the cithara-players together and many flute-players would pass by. And after them came those carrying censers, upon which aromatic herbs and frankincense were burnt along the whole route; then came those exhibiting the processional vessels made from gold and silver, both those sacred and public. Last of all, the images of all the gods were paraded, carried on men's shoulders, exhibiting forms similar to those made amongst the Greeks, as to their attire, their insignia, and their gifts (gifts which each of them is recorded as inventing and giving to mankind). There were not only the images of Zeus and Hera and Athene and Poseidon, and of the others whom the Greeks reckon among the twelve gods, but also images of the older gods, from whom the twelve gods are said in myth to have been born: Kronos and Rhea and Themis and Lato and the Moirai and Mnemosyne and all the others, who have sacred rites and precincts among the Greeks. And of those whom the myths say came later, after the time when Zeus succeeded to power, of these too there were images, of Persephone and Eileithuia and the Nymphs, the Muses, the Horai, the Charites, and Dionysus; and also of those of the demigods, of whom it is said that their souls left behind their mortals bodies and went up to heaven, and that they received honours similar to those of the gods: Herakles, Asklepios, the Dioskouroi, Selene, Pan, and countless others....Once the procession has been completed, the consuls, and those of the priests to whom it was not forbidden by sacred law, at once sacrificed oxen, and the manner of the sacrifices was the same as it is for us. For after washing their hands they purified the victims all around with pure water and sprinkled the fruits of Demeter on their heads. Then they prayed, and finally ordered their attendants to sacrifice the victims. Some of the attendants, while the victim was still standing, struck it on the temples with a club, others cut its throat with sacrificial knives as it fell, and after this flayed it; having dismembered it, they took first-offerings from each internal organ and from all the other limbs, covered them with grains of wheat, and brought them forward in baskets to those conducting the sacrifice. They in turn placed them on the altar, lit fires beneath them, and poured wine over them while they burnt....It

still remains for me to recount briefly the nature of the contests which they completed after the procession. The first were the races of four-horse chariots, of two-horse chariots, and of unyoked horses, as occurred amongst the Greeks both in ancient times at the Olympics, and up to the present day....And when the horse-races are over, those who contend with their own bodies for a prize then, in their turn, entered the fray; the runners, the boxers, and the wrestlers. For these were the three athletic contests among the ancient Greeks as Homer makes clear at the funeral of Patroclus. And in the periods between the contests they exhibited a habit most Greek and most excellent of all, in that they held crownings and public proclamations of the honours with which they were honouring their benefactors, as happened at Athens at the festival of the Dionysia, and also displays of spoils, which they had taken in war, for the benefit of those who had assembled for the spectacle.”⁵⁸⁵

⁵⁸⁵ trans. Edward Bispam & T.J. Cornell. In: Cornell (2013) 87-91.

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