

# THE TRIBUNE C. CORNELIUS

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That Roman politicians function neither in splendid isolation nor in durable groups with common policies is a lesson we have grasped in large part through the imagination of the scholar who is honoured in this volume. Therefore a study aiming to put a tribune of 67 B.C. in his immediate context may be thought an appropriate offering, especially if the author does not fail 'to keep the absent Pompeius in mind' (Syme, *Sallust* 102).

If Sallust in his *Histories* reached the tribunate of C. Cornelius, he probably treated him as one of a number of sincere tribunes crusading against Optimate corruption;<sup>1</sup> similarly, W. McDonald, writing in 1929 the first separate treatment of Cornelius' tribunate, saw him more as a representative of the Popular Party than as an agent of the ambiguous Pompey, whose quaestor he had been and who, McDonald thought, had put him forward to defend his own interests.<sup>2</sup> But recently it has been suggested that the concerns and fortunes of Cornelius, and of others, are to be illuminated by the hostilities generated by Pompey's first consulship in 70.<sup>3</sup> Of course, no one ever knew exactly what Pompey was aiming at until, and often even after, he was ostensibly pushed into it,<sup>4</sup> but it is reasonable to think that reactions to what was done in 70, and speculations as to what Pompey intended in future, were important themes in the politics of the next few years at least. There may therefore be profit in exploring further, from this point of view, the significance of Cornelius' tribunate in 67 and of his trial for *maiestas* in 65.

## I. CHRONOLOGY

The first step is to re-examine the order of events of Cornelius' tribunate, for the reconstruction by McDonald, although ingenious and widely accepted, has difficulties which may turn out to be insurmountable.

We have two main sources of information about Cornelius' activities in 67. The first is Asconius' commentary on the two speeches *Pro Cornelio*, themselves now lost, which were the published form of the defence Cicero conducted over four days at the trial in 65. The second is the account of Cassius Dio, which at this point is preserved in full.<sup>5</sup> These two authors must provide us with the basic framework, although we can fill it out somewhat by using the fragments of the two Ciceronian speeches themselves (of which both an excellent new edition and a convincing reconstruction are now available)<sup>6</sup> and Cicero's remarks in the *In Vatinius* 5-6. Livy's Epitomator has preserved no mention of Cornelius and, as for Sallust, Maurenbrecher was only able to produce one fragment of the *Histories* (carrying no book attribution) that he thought might allude to these events.<sup>7</sup> All the other references to Cornelius that we have<sup>8</sup> are concerned with the trial in 65 at which Cicero defended his client in a particularly dazzling fashion.<sup>9</sup>

<sup>1</sup> R. Syme, *Sallust* 209.

<sup>2</sup> W. McDonald, *CQ* xxiii (1929), 196 ff. A similar view is adopted by C. Meier, *Res Publica Amissa* 141, n. 83.

<sup>3</sup> R. Seager, *Hommages à Marcel Renard* ii (1969), 680 ff. But, many years ago, L. R. Taylor, *Cl. Phil.* xxxvi (1941), 128-30, briefly noted the connection between Pompey's ideas and Cornelius' measures and made her protest, sadly unheeded, against McDonald's view of his dispensation measure.

<sup>4</sup> For this technique, M. Gelzer, *Pompeius* 78, citing Cicero, *Fam.* viii, 1, 3. Cf. also Cicero, *Q. Fr.* iii, 6, 4; *Att.* iv, 9, 1 and the phrase 'invito et praedicente me' attributed to Pompey in Sallust's version of his letter of 74 (*Hist.* ii, 98, 10 M).

<sup>5</sup> Asconius 57-81 C; Dio xxxvi, 38-40.

<sup>6</sup> J. Puccioni, *M. Tulli Ciceronis Orationum deperditarum fragmenta* (1963), 33-65 improves the order of the fragments from that of Schoell; K. Kumaniecki, 'Les discours égarés de Cicéron *Pro Cornelio*,' *Med. Kon. Vlaam. Acad. Belg.* xxxii (1970), in reconstructing the speeches of the accuser Cominius and of Cicero, proposes some modifications of Puccioni's arrangements.

<sup>7</sup> *Hist.* v, 27 M: 'manum in os intendens' which Maurenbrecher compared with Asconius' account of Piso's tribulations: 'qui sibi intentabant manus' (58 C).

<sup>8</sup> See the *testimonia* in Puccioni, o.c. (n. 6), 33-41.

<sup>9</sup> Quintilian viii, 3, 2-3: Cicero's defence employing 'nec fortibus modo sed etiam fulgentibus armis' elicited a spontaneous burst of applause from the spectators.

There is considerable agreement between Asconius' account of the tribunate in the introduction to his commentary on the speeches and Dio's in his narrative of the year 67.<sup>10</sup> Both mention, taking the same view of their purpose, two measures that Cornelius succeeded in having passed: (1) a *lex ne quis in senatu legibus solveretur nisi CC adfuissent neve quis cum quis ita solutus esset intercederet, cum de ea re ad populum ferretur*—representing a modification of his original proposal that would have made the granting of dispensations from the laws an exclusive right of the people, thereby putting an end to the senate's habit of granting them;<sup>11</sup> (2) a *lex providing ut praetores ex edictis suis perpetuis ius dicerent*.<sup>12</sup> Both mention, with some similarity of detail (the breaking of the consul's *fasces*), a riot at the meeting called on the day for voting on Cornelius' original version of the first measure; in this riot the consul C. Calpurnius Piso was hurt, after which the tribune disbanded the meeting. Both explain this proposal as a retaliatory move by Cornelius against the senate which had thwarted an earlier project. Here the similarity between Asconius and Dio ends.

Asconius alone mentions a proposal by Cornelius (his first) made to the senate concerning loans to foreign envoys and explicitly repudiated by that body in a decree, and notes that, after the law about praetorian edicts, Cornelius went on to promulgate several other laws, most of which were vetoed by his fellow-tribunes. We also owe to Asconius only the story of P. Servilius Globulus' veto of the first *solutio* measure at the *contio*, an incident so important in Cornelius' later indictment. Dio is alone in mentioning Cornelius' abortive proposal *de ambitu* explicitly.<sup>13</sup> The principal discrepancy between their accounts concerns the slight that provoked Cornelius' original *solutio* proposal: for Asconius it was the senate's rejection of Cornelius' *relatio ne quis legatis exterarum nationum pecuniam expensam ferret*, and their declaration that the matter was sufficiently covered by a S.C. of 94, which had indeed been enforced in the case of some Cretan envoys by a decree passed a few years ago (in 70, in fact);<sup>14</sup> for Dio it was the senate's circumvention of Cornelius' proposed bribery law, by having the consuls draft and pass a *lex de ambitu* in which the penalties prescribed were milder than in Cornelius'.<sup>15</sup>

McDonald, like Münzer before him,<sup>16</sup> preferred Dio's order because it provided a 'logical nexus' between Cornelius' proposal about dispensations and the manoeuvre employed by the senate just before to defeat him, namely, the granting of a dispensation to the consuls from the *Leges Aelia et Fufia* so that they could carry a law during the period between the proclamation of the elections (which had already been made) and the day on which they were held.<sup>17</sup> Starting from this link, McDonald then proceeded to reconstruct, from Asconius, Dio, and the allusion by Cicero at the opening of his speech in favour of the Manilian Law to two postponements of the elections, the events of Cornelius' tribunate as follows:<sup>18</sup> after his *ambitus* proposal and the senate's manoeuvre, Cornelius immediately promulgated his first dispensation-measure, which was vetoed, at the instigation of the senate, by the tribune P. Servilius Globulus at the *contio* immediately preceding the expected vote by the *concilium*

<sup>10</sup>Thus some scholars have surmised a common source, see below, p. 203.

<sup>11</sup>Dio xxxvi, 39; Asconius 58-9 C, whose description of the measure is far more precise and doubtless more accurate. The text of Asconius is cited above with Mommsen's supplement ('quis ita solutus' for 'solutus'), rightly accepted by Münzer, *R-E* iv (1901), 1253 as necessary for the sense.

<sup>12</sup>Dio xxxvi, 40, 1-2; Asconius 59 C.

<sup>13</sup>Asconius probably included it in the 'alias quoque complures leges' he mentions in 59 C, see below, p. 199.

<sup>14</sup>Asconius 57-8 C; Dio frag. III. Boissvain's date for the Dio fragment is preferable to Mommsen's date of 69 (*Staatsrecht*<sup>3</sup> iii, 1154, n. 2) as Cicero in II *Verr.* 2, 76 expects war to be declared against the Cretans in the next year (69), presumably for non-compliance with the ultimatum Dio describes. The decree concerning the Cretan envoys seems to be part of a hardening of the senate's attitude towards the

Cretans forced on them by a Lentulus Spinther, according to Diodorus xl, 1, 2 (not necessarily as a tribune, see Münzer, *R-E* iv (1901), 1394).

<sup>15</sup>We learn from Cicero, *Corn.* I frags. 40 and 41 Puccioni (henceforth P) that the significant difference was the *Lex Calpurnia's* omission of Cornelius' provision making *divisores* liable for prosecution.

<sup>16</sup>In *R-E* iv (1901), 1252 ff., unknown to McDonald. The same view is now repeated by Kumaniecki, o.c. (n. 6), 3-4.

<sup>17</sup>This provision cited by *Schol. Bob.* 148 St. '(de) legibus dicit Aelia et Fufia, quae non sinebant prius aliqua de re ad populum ferri quam comitia haberentur ad designandos magistratus', is attributed exclusively to the *Lex Fufia* by G. V. Sumner, *AJP* lxxxiv (1963), 337 ff., against which see A. E. Astin, *Latomus* xxiii (1964), 221 ff.

<sup>18</sup>I have summarized the outline given by McDonald, o.c. (n. 2), 203.

*plebis*. The ensuing riot, which occurred just before the elections, caused the first postponement of them. Piso then attempted to carry his *Lex Calpurnia de ambitu*, but *divisores* broke up the assembly and the elections were again postponed. Afterwards, Piso, protected by a bodyguard, carried his law, the *comitia* were finally held, and Cornelius passed his modified law about dispensations.

This reconstruction presents at least three difficulties:

(1) It places great weight on the logic of Dio's order when, in fact, the logical nexus is not very tight in Dio, who gives as the primary target of Cornelius' law dispensations from the laws governing candidature for office (xxxvi, 39, 2).

(2) It misconstrues Cicero's remark in the Manilian law speech; in saying that, as a result of the postponement of the elections, 'ter praetor primus centuriis cunctis renuntiatus sum', Cicero shows that the two postponements he means were the consequence of disturbances at the praetorian elections themselves which twice led to their interruption<sup>19</sup>—small wonder, when we consider that among the praetors elected with Cicero were C. Antonius Hibrida, who had been ejected from the senate by the censors of 70, and L. Cassius Longinus, who as president of the *maiestas* court was to be suspected of cooperating in the intimidation of the accusers of Cornelius, and in 63 to be condemned as a member of Catiline's conspiracy.<sup>20</sup> There was probably, in addition, one general postponement of the elections earlier, of the type McDonald envisages, for, in order to promulgate and pass his law within the period between the announcement and the holding of the elections, Piso will probably have needed a supplement to his dispensation from the *Leges Aelia et Fufia*: either exemption from the *Lex Caecilia Didia* of 98, which required a *trinundinum* between promulgation of a law and the vote on it, or a postponement of the elections by the number of days needed to secure him that interval.<sup>21</sup> That the latter was the method chosen is strongly suggested by a letter of Cicero to Atticus in 67, written when Atticus had already expected the elections to be over, and noting new anxieties imposed on the candidates and uncertainty as to when the elections would be held.<sup>22</sup>

(3) It makes Cornelius put his first dispensation bill to the vote during the period preceding the elections, when the *Leges Aelia et Fufia* made this illegal. The senate had just had to grant a dispensation in order to allow the passage of its own bill before the elections, and tribunes, as we know from the case of Aufidius Lurco in 61, were not exempt from the provisions of these laws.<sup>23</sup> Now we know that Cornelius did not simply ignore this legal obstacle, for Cicero years later, in contrasting the conduct of Cornelius and the tribune Vatinius, says that Cornelius, unlike his notorious successor, did not violate the *Leges Aelia et Fufia*.<sup>24</sup> In order to save McDonald's reconstruction, we should have to make the absurd assumption that Cornelius was dispensed from these laws by a vote of the senate in order to pass legislation challenging their right to do so, for he could not ask such dispensation from the people without violating the very provision from which he was requesting exemption.

This third difficulty, I believe, makes McDonald's reconstruction untenable, but it does not of itself decide the contest between Asconius and Dio in favour of

<sup>19</sup> See the discussion by L. R. Taylor, *Roman Voting Assemblies* 98.

<sup>20</sup> The identification of the later Catilinarian with the praetor of 66 requires a correction of the praenomen P. given to the *praetor de maiestate* in Asconius 59 C (a correction doubted by Stangl, p. 48, and accepted by Broughton, *MRR* ii, 152).

<sup>21</sup> This was the method used to enable the tribune Aufidius Lurco in 61 to put a bribery law to the people (Cicero, *Att.* i, 16, 13). From the fact that bribes were already being distributed, it is clear that the move to curb *ambitus* was, on this occasion, taken late in the day, not just after the announcement of the elections, as happened also in 64 (Asconius 83 C). But such additional dispensation or a postponement will always have been necessary if the period between the announcement of the elections and the elections themselves was regularly a *trinundinum*, as is usually assumed (Mommsen, *Staatsrecht*<sup>3</sup> i, 502, n. 3).

<sup>22</sup> *Att.* i, 11, 2 where 'iniquitatibus' perhaps suggests the proposed penalties of the *Lex Calpurnia*. Cicero's uncertainty about the date could mean that the difficulties attending Piso's first attempt to pass the bill suggested that there might be a further postponement: it does not, of course, show there was one.

<sup>23</sup> *Att.* i, 16, 13. The reading accepted by Shackleton-Bailey, *Cicero's Letters to Atticus* (1965) i, 323-4, yields a pre-Clodian allusion to the tradition that the *Leges Aelia et Fufia* were designed to combat *tribunicii furores*.

<sup>24</sup> *In Vat.* 5. *Corn.* I frag. 28 P: 'ex promulgatione trinum nundinum dies ad ferendum potestasque venisset', if correctly placed among the fragments relating to the *solutio* law (cf. Asconius 58 C: 'ubi legis ferundae dies venit'), would show that he also observed the *Lex Caecilia Didia*.

Asconius. Dio's order of events may still be acceptable if we assume that Cornelius deferred his retaliation against the senate until after the election altogether. But we must now assess the relative plausibility of the accounts of Asconius and Dio, and their credentials as historical sources for this incident.

Dio's account presents certain obstacles to belief. First, it makes Cornelius start his tribunician activity late in the year, around the time of the elections, or slightly earlier if we assume that Dio simply omitted through compression the opening proposal about loans to foreign envoys. Yet tribunes usually tried to start their activity before the new consuls took office: Gabinius in this year, Manilius in the next, and Rullus in 63 come to mind. Secondly, the fragments of Cicero's speeches suggest that he conceded the accuser's contention that Cornelius' original *solutio* proposal was bad, and concentrated on Cornelius' willingness to alter a bad proposal into a law that respected the senate's authority yet prevented its abuse, for example, by making impossible interference with a projected trial of Faustus Sulla for peculation in 66,<sup>25</sup> Cornelius' bribery proposal, however, he defended as superior to the Lex Calpurnia which had proved an inadequate deterrent to the scandalous electoral bribery practised in 66.<sup>26</sup> But if Dio is right, why did not Cicero defend Cornelius' original *solutio* proposal as a reaction to unfair senatorial obstruction of his excellent *ambitus* proposal?<sup>27</sup> That Cicero did not do so is clear from Asconius, who had Cicero's two published speeches before him and whose account of the circumstances of the *solutio* proposal contains no reference to the *ambitus* measure. Finally, why did Cornelius not veto the senatorial decree authorizing the drafting and passage of the Lex Calpurnia, or the bill itself when it came to the *comitia*? The obvious explanation is that, contrary to Dio's version, he had already shown his own willingness to circumvent the tribunician veto in the case of Servilius Globulus. The first two objections here listed may not seem insurmountable and the third may well seem trivial: Cornelius could have hesitated in any case to oppose a bribery measure that was a considerable improvement on previous ones,<sup>28</sup> especially as it had the support not only of the *pauci* (who opposed his proposals concerning dispensation and the praetorian edict) but of a large part of the senate.<sup>29</sup>

Dio's account thus has difficulties but is not wholly incredible. What of Asconius' version of these events? Here we have a more satisfactory spurt of activity early in the year; Asconius puts the *relatio* about loans to foreign envoys, the two versions of the dispensation measure and the bill about praetorian edicts, before the bribery proposal, which we may take it from Dio is also before the elections—for, that is presumably among the 'alias quoque complures leges Cornelius promulgavit, quibus plerisque collegae intercesserunt.' It is true that the bribery proposal does not seem to be among the 'several' laws that were vetoed, but it is more than likely that Asconius did intend *complures leges* to include it, since his preservation of our most important fragment of Cicero's speech dealing with the measure<sup>30</sup> shows that he certainly knew about it.<sup>31</sup> The principal difficulties in Asconius' account are that by putting the *solutio* bills before the bribery bill, he not only has the tribune apparently anticipating the method of obstruction the senate was later to use against him, but he makes it necessary to

<sup>25</sup> *Corn.* I frags. 5; 20-27 P, which discuss examples of bad laws proposed by good men that were altered, usually with their cooperation; 33-4 P. The attempt to try Faustus Sulla was made by a tribune of 66 (*Chu.* 94, *Leg. Ag.* i, 12). Cf. II *Verr.* 2, 95 for an abortive senatorial attempt to protect the Sicilian Sthenius.

<sup>26</sup> *Corn.* I frag. 41 P, (= Asconius 74-5 C); Kumaniecki, o.c. (n. 6), 25.

<sup>27</sup> The unfairness of the obstruction may be even greater than at first appears. McDonald assumed that Cornelius made his bribery proposal to the senate which rejected it, but *Corn.* I frag. 41 P (= Asconius 74-5 C) shows that it was drafted as a *lex*. Piso could have announced the elections just after Cornelius promulgated his law in order to prevent him from getting it through before the elections at which Piso

was promising to oppose the candidature of the ex-tribune Lollius Palicanus who had tribunician support (*Val. Max.* iii, 8, 3).

<sup>28</sup> Asconius 75 C: 'cum legem de ambitu ex s.c. graviolem quam fuerat antea ferret'; cf. Cicero, *Mur.* 46.

<sup>29</sup> Asconius 59 C; Dio xxxvi, 38. Dio's view that Piso's hand was forced by the majority is plausible in the light of Piso's own indictment on the charge the year before (Dio 38, 3; Sallust *Hist.* iv, 81 M). On *ambitus* as a weapon primarily of the *potentissimi quique ex senatu* in this period, McDonald, o.c. (n. 2) 197 and Seager, o.c. (n. 3), 685.

<sup>30</sup> Above, n. 26.

<sup>31</sup> The view of Niccolini, *FTP*, 259-260 among others.

believe that the senate granted Piso his dispensation under the terms of Cornelius' law, i.e. by a *senatus consultum*, passed with a quorum of 200 and ratified by the people. Yet both of these difficulties can be met. The 'anticipation' exists only if Cornelius' measure was directed at such dispensations as Piso was given, but this we need not assume. Dio's view, that Cornelius was particularly concerned with dispensations from the laws governing candidacy for office, is plausible in a period when Sulla's legislation had increased electoral competition by tightening up the requirements for office<sup>32</sup> and greatly increasing the ratio of quaestors to higher magistrates,<sup>33</sup> when the Lex Aurelia of 75 had increased the pressure by making ex-tribunes again eligible for higher office, and when the censors of 70 had expelled 64 men from the senate,<sup>34</sup> many of whom recovered, and more of whom tried to recover, their senatorial rank quickly by holding office again in the next few years.<sup>35</sup> For some of them, this will have necessitated repeating the quaestorship or praetorship before the required ten-year interval for reiteration of magistracies had elapsed;<sup>36</sup> alternatively, perhaps, they were excused from the praetorship if, having been below praetorian rank when expelled, they only regained senatorial status through one of the lower offices and wished to go on to the consulship without losing time.<sup>37</sup> Nor is there any real problem about believing that Piso was freed from the *Leges Aelia et Fufia* when Cornelius' final proposal regarding dispensations was in force. Even if Dio is right in stating that the law made popular ratification of the senate's decisions compulsory, the prohibition on *intercessio* when such ratification was sought rendered it a formality, which could doubtless have been carried out after the prohibited interval before the elections and the passage of the Lex Calpurnia.<sup>38</sup> Nor would the quorum of 200 have been difficult to obtain for a measure that we have already seen had more support in the body of the senate than with the *nobiles* at whom it was aimed.<sup>39</sup>

From the standpoint of intrinsic plausibility then, Asconius seems to present less difficulty than Dio, even if he completely lacks the 'logical nexus' that McDonald perceived (and exaggerated) in Dio. What of their credentials as historical authorities? First; there is the question of sources. For Dio it is probably insoluble: the balanced approach to Cornelius and the senate might support the many scholars who have thought that Dio used Sallust's *Histories* here, but, as Syme has argued,<sup>40</sup> there is no fragment expressly attributed to Book V that can be attached to events after the passage of the Lex Gabinia, while the pious belief in a pervasive desire among Romans of the period to remedy corruption may smack more of Livy than of Sallust. But,

<sup>32</sup> Mommsen (*Staatsrecht*<sup>3</sup> iii, 1232-3) noted that Pompey was the first, or at least one of the first, to be dispensed by the senate from the qualifications for holding office. A. N. Sherwin-White (*JRS* xlvii (1957), 6-7) rightly inferred from Cornelius' proposal that the senate had been granting such privileges before 67, but he might be wrong to think they were already granting them freely before 70 and that their competence to do so was widely accepted: Lucullus was allowed to become praetor in 78, the year following his aedileship, not by the senate, but 'praemio legis' (Cicero, *Acad.* ii, 1).

<sup>33</sup> For the effect of Sulla's arrangements, T. P. Wiseman, *New Men in the Roman Senate* (1971), 164-5. Note what Cornelius Nepos says of Atticus in his biography (6, 2): 'Honores non petiit... quod neque peti more maiorum neque capi possent conservatis legibus in tam effusi ambitus largitionibus'.

<sup>34</sup> For those known, see O'Brien Moore in *R-E*, Suppl. vi (1935), 747.

<sup>35</sup> Dio xxxvi, 38, 2 mentions these expulsions as a factor in increasing electoral corruption. Cicero says that those expelled for taking bribes as *iudices* in 74 had recovered their seats through re-election by 66 (*Clu.* 120-1). We also know of C. Antonius Hibrada and P. Cornelius Lentulus Sura who recovered their rank in this way.

<sup>36</sup> For the rule, Mommsen, *Staatsrecht*<sup>3</sup> i, 521, who noted that P. Lentulus Sura, *cos.* 71, who only repeated the praetorship in 63, probably illustrates

the normal working of the law. If Broughton's suspicions about P. Varinius are correct (*MRR* ii, 142, n. 9; Suppl. 73), he is an example of a man allowed to repeat the praetorship in less than ten years.

<sup>37</sup> Is this a possible solution to the strange tribunate of L. Volcatius Tullus in 68, two years before his consulship—the main obstacle to the otherwise plausible dating of the *Lex Antonia de Termessibus* (Syme, *JRS* liii (1963), 59-60)? But he might have held the praetorship before expulsion or in 69, and simply have wanted to regain his senatorial seat or win some popularity by holding the now fashionable tribunate: he had failed to be elected aedile (Cicero, *Planc.* 51).

<sup>38</sup> Mommsen, *Staatsrecht*<sup>3</sup> iii, 338, n. 2. Cicero makes no mention of popular ratification in reporting senatorial grants of exemption from the *Leges Aelia et Fufia* in 61 (*Att.* i, 16, 13) and the Lex Gabinia concerning loans in 56 (*Att.* v, 21, 12).

<sup>39</sup> See n. 29. As Asconius says, 'nemo enim negare poterat pro senatus auctoritate esse eam legem' (59 C), and *Corn.* I frag. 33 P 'nihil senatui detraxisse Cornelium' is plausibly connected with this law.

<sup>40</sup> B. Maurenbrecher, *C. Sallustii Crispi Historiarum Reliquiae* i, 81; ii, 195-7. For C. Lichtenfeldt, *De Q. Asconii Pediani fontibus ac fide* (1888), 48 ff. it was a *datum* which allowed Asconius' use of Sallust to be demonstrated from similarities between his and Dio's account of Cornelius' tribunate. E. Schwartz, *R-E* iii (1899), 1697 was very sceptical about Dio's use of Sallust. Syme, *Sallust* 190, n. 47.

although it is generally agreed that Dio relied on Livy a great deal, we cannot assume that Livy was Dio's source for this episode, as neither the Epitome nor the sources usually thought to draw heavily on Livy report the events of Cornelius' tribunate.<sup>41</sup> As we cannot identify Dio's source, all we can do in assessing Dio's use of his source material is to note certain indications of carelessness in his account. Dio, for example, credits both consuls with the passage of the senatorial bribery law, which is clearly a mistake, as it is everywhere known as the Lex Calpurnia,<sup>42</sup> and a fragment of Cicero's first speech in Cornelius' defence shows that it was the one consul who was involved in its passage.<sup>43</sup> That this may be Dio's own negligence, rather than that of his source, is suggested by the fact that in his own account, it is Piso alone who resists Gabinius before the bribery law, and resists Cornelius' *solutio* proposal after the project of the bribery law is underway.<sup>44</sup> Then again, Dio's summing up of his account of Cornelius' tribunate (τό τε σύμπαν οὕτως ἐπιμελὲς τοῖς Ῥωμαίοις κατὰ τὸν χρόνον ἐκείνον τὸ μηδὲν δωροδοκεῖσθαι ἐγένετο) suggests that here his interpretative side has triumphed over his annalistic side. This propensity elsewhere leads him into errors of chronology, the best example being his attempt to explain Caesar's election as Pontifex Maximus by the popularity he gained in speaking against the death penalty in the debate on the fate of the Catilinarian conspirators (which, of course, occurred much later).<sup>45</sup> It is not inconceivable that Dio, interested in the theme of bribery and corruption, simply put one measure (the bribery proposal of Cornelius) first in his account rather than another (the proposal about loans to foreign envoys).

Asconius' sources are better known: he names a number himself incidentally in the *commentarii*<sup>46</sup> though the loss of most of his work has doubtless deprived us of many more names. In the course of elucidating the two speeches *Pro Cornelio*, he mentions four historians he has consulted to illuminate Cicero's references to past events, of whom three, Sallust, Livy, and Fenestella might have been able to supply information about Cornelius' tribunate.<sup>47</sup> But Asconius accorded more weight to primary documents—the *acta diurna* (for events after 59), Cicero's speeches and letters, and the *commentarii* of his speeches that Tiro had published—than to the historian Fenestella.<sup>48</sup> He was, of course, very critical of Fenestella, but even if we allow for the higher opinion he had of Sallust and Livy,<sup>49</sup> it is reasonable to assume that he normally preferred such primary evidence (including speeches of others involved in the various trials) to the testimony of later historians. It seems clear, at least, that he consulted it first.<sup>50</sup>

In the light of Asconius' use of several sources, his excellent priorities in this matter and his general critical acumen, anyone given a choice between Asconius' evidence and Dio's much later account would naturally prefer Asconius, as indeed McDonald admitted.<sup>51</sup> But Asconius' strength could on occasion be a weakness. We must make sure that the learned commentator was not here betrayed again by his very preference for primary sources into the kind of error he made concerning the order of procedure in Cornelius' *maiestas* trial. For Humbert was able to show that, because Asconius mistook the nature of the *Pro Cornelio* II, thinking it a part of the speech for

<sup>41</sup> See the list of parallels between Dio and other Livian sources amassed by Schwartz, o.c. (n. 40), 1698.

<sup>42</sup> *Corn.* I frag. 25 P with Asconius' comment (69 C). Other passages are noted by Seager, o.c. (n. 3), 684, n. 2.

<sup>43</sup> *Corn.* I frag. 46 P in Asconius 75 C.

<sup>44</sup> Dio xxxvi, 24, 3; 39, 3.

<sup>45</sup> Schwartz, o.c. (n. 40), 1687-1691; F. Millar, *A Study of Cassius Dio* 40; Dio xxxvii, 37.

<sup>46</sup> His references to sources are conveniently listed in Clark's preface, ix-x.

<sup>47</sup> Asconius claims to have consulted all three in vain for information about the laws that C. Aurelius Cotta passed and then repudiated (66 C); Livy was also consulted, along with Tuditanus and Atticus, for the early history of the tribunate (77 C).

<sup>48</sup> Asconius 31, 14; 85, 13; 86, 16; 87, 11 C. Cf. Gellius, *NA* xv, 28.

<sup>49</sup> 'Livius noster' (77 C). Asconius wrote a life of Sallust (Clark, preface, viii).

<sup>50</sup> Commenting on Cicero's charge that Catiline committed adultery with a woman whose daughter he later married, Asconius says: 'Hoc Lucceius quoque Catilinae obicit in orationibus quas in eum scripsit. Nomina harum mulierum nondum inveni' (92 C). It is usually said (J. Humbert, *Contribution à l'étude des sources d'Asconius dans les débats judiciaires* 63; Syme, *Sallust* 85, n. 8) that Asconius missed the information about Aurelia Orestilla in Sallust, *Cat.* 15. Yet Asconius' 'nondum inveni' suggests that he had done some research beyond the speeches which he consulted first: perhaps he was not certain that Sallust was talking about the same wife (Catiline had two, perhaps three) as the historian made no mention of an affair with the mother.

<sup>51</sup> o.c. (n. 2), 201.

the defence, whereas it was in fact a literary adaptation of the interrogation of witnesses following the speeches of accusation and defence, his total reliance for this information on the speeches from the trial misled him into believing that most of the witnesses were questioned before Cicero spoke.<sup>52</sup> Now it must be admitted that Asconius, in his summary of Cornelius' tribunate, lists the three proposals that are also mentioned in the fragments of Cicero's speeches in the same order as Cicero:<sup>53</sup> the *solutio* proposal, the rule about praetorian edicts, then the bribery proposal (assuming that to be contained in 'alias complures leges'). We know that Cicero, after beginning unconventionally with a prayer to the gods, and then noting the nature of the *maiestas* charges brought against Cornelius, proceeded to exonerate Cornelius' behaviour subsequent to his tribunate—the intimidation of his accusers at his abortive prosecution in 66, his alleged support of Manilius—before dealing with his behaviour during his tribunate.<sup>54</sup> The basis of the *maiestas* charge was Cornelius' proposal of a *mala lex* (the *solutio* proposal), his reading of it to the *contio* himself when Globulus vetoed its reading by the herald, and his thereby causing a *seeditio*.<sup>55</sup> Therefore, Cicero dealt with this proposal first<sup>56</sup> before going on to justify Cornelius' other measures.<sup>57</sup> Could Asconius have simply assumed that the order in which Cicero placed Cornelius' measures (dictated by the charge and his plan of defence), was the actual order of events in 67? Against this idea, we can note that Asconius, having before him both Cominius' speech for the prosecution and Cicero's speeches,<sup>58</sup> would surely have seen the reason for Cicero's order, and would not, despite his priorities, have taken the arrangement for a chronological one, in the face of a different order in an historical account. But can we assume that he went to any historical account for the events of Cornelius' tribunate?

For his account of Cornelius' trial in 65 and of the attempted prosecution in 66 (59-62 C), Asconius probably had no need to go beyond Cicero's speeches for the defence and Cominius' for the prosecution.<sup>59</sup> In fact, even Cominius' speech, helpful as it would be concerning charges and personalities,<sup>60</sup> could not help him in determining the order of procedure, because it preceded Cicero's speeches and the interrogation of witnesses, whose relative order it therefore would not reveal. But the situation was different with the events of 67. Asconius' annotation of Cicero's allusions to these events show clearly that his knowledge of that year was not limited to the content of Cicero's speeches. The speech of Cominius will have given him some information,<sup>61</sup> but there are also items that are very unlikely to have come from there: the penalty of the Lex Calpurnia *de ambitu* (69; 75 C); the circumstances of the passage of the Lex Gabinia, including the name of the opposing tribune (72 C); the content of the Lex Roscia (78-9 C). Though Asconius will have used Cicero's other speeches and lost letters,<sup>62</sup> it is unlikely that he dispensed entirely with the services of the historians

<sup>52</sup> Humbert, o.c. (n. 50), 70 ff.

<sup>53</sup> Asconius' citations from Cicero's speeches preserve their original order (Kumaniecki, o.c. (n. 6), 10) and include mention of all three proposals.

<sup>54</sup> See Kumaniecki, o.c. (n. 6) for this reconstruction. On p. 10 he suggests that this inverted order followed the arrangement of the accuser's speech. His suggested rearrangement of the fragments (pp. 14-5), placing 13-17 P before 10 P, seems correct; but it is perverse of him (p. 12) to take the *lex* in 3 P 'unde igitur ordiar? an ab ipsa lege?' to be Cornelius' proposal: if 4 and 5 P are correctly placed, it should refer to the *maiestas* law.

<sup>55</sup> *Corn.* I frag. 5 P. There were clearly several related charges, but the *gravamen* of the case was his reading of the *codex* himself because that prevented his fellow-tribune's use of the veto. Asconius' interpretation on 61 C seems to me confirmed by Cicero *Vat.* 5 and I frag. 5 P, despite R. A. Baumann, *The Crimen Maiestatis in the Roman Republic and Augustan Principate* 68 ff., who does not mention the fragment. For the constitutional point exploited by Cornelius, namely that it was illegal to interrupt a tribune addressing the people, see Mommsen,

*Staatsrecht*<sup>3</sup> ii, 289 and nn. 1 and 2.

<sup>56</sup> *Corn.* I frags. 20-36 P. See below, n. 153.

<sup>57</sup> *Corn.* I frags. 37-46 P.

<sup>58</sup> Asconius 61-2 C. The commentator assures his readers that Cominius' speech was well worth reading on its own merits.

<sup>59</sup> Humbert, o.c. (n. 50), 72-4. But he must have looked elsewhere for the verdict (81 C). Perhaps Humbert is wrong to rule out the use of Nepos' biography from which Jerome cited the remark that attests Nepos' presence at the trial (frag. ii p. 34 Peter). But another possibility is Cicero's *Hortensius*, where Catulus mentioned the speech (Lact., *Inst.* vi, 2, 15).

<sup>60</sup> On the kind of information Asconius would have derived from Cominius, see Lichtenfeldt, o.c. (n. 40), 80-2.

<sup>61</sup> Cominius obviously dealt with the *solutio* proposal, and *Corn.* I frags. 44-6 P (frags. 45-6 P = Asconius 75 C) show that he made remarks about Cornelius' behaviour during the passage of the Lex Calpurnia, so he probably mentioned Cornelius' *ambitus* proposal.

<sup>62</sup> On Asconius' frequent and critical use of Cicero's works, see Lichtenfeldt, o.c. (n. 40), 16-27.

who recounted the events of Cornelius' tribunate, even if we cannot identify which one he particularly followed. For one thing, Asconius shows in his commentary on the *Pro Milone* that he welcomed confirmation from historians of facts gleaned from the speech in hand.<sup>63</sup> Then, the technical terms in which he reports *senatus consulta* and *rogationes* in his summary of Cornelius' activities (57-9 C) suggests the use of a Roman historian, given that the *acta* were not available. Finally, if many scholars have been right to think the similarities between Asconius and Dio concerning the tribunate of Cornelius are sufficient to show a common source here,<sup>64</sup> that source can only be a historian.

Given that Asconius used an historical source or sources here, how does his skill in handling such material compare with Dio's? We have already shown the likelihood of Dio's carelessness, and, if he had access to the same material as Asconius used, the roughness of his description of Cornelius' *solutio* bills as compared to Asconius' precision reinforces that impression. In any case, Asconius' general scrupulousness is admitted on all sides, and his handling of Fenestella's testimony shows how critically he could use an historical source and how careful he was to compare it with his primary evidence.<sup>65</sup>

Our conclusion must be then that Asconius' account of Cornelius' tribunate is much more likely to be reliable in its chronology than that of Cassius Dio.

## II. THE POLITICAL SIGNIFICANCE OF CORNELIUS' MEASURES

In passing his tribunician legislation, Cornelius' main political opponent was C. Calpurnius Piso. As consul in that year Piso also opposed the Lex Gabinia giving Pompey his command against the pirates, and tried to obstruct Pompey's levies for the command;<sup>66</sup> he then successfully defied concerted tribunician action in rejecting as a consular candidate M. Lollius Palicanus, the tribune of 71, who, as one of Pompey's followers from Picenum, had been intimately associated with his legislative programme and hostility to Verres.<sup>67</sup> Cornelius himself had been Pompey's quaestor. We do not know when, but he presumably held the office in Spain before 70 rather than in Rome in 70 where he could hardly have avoided the embroilment in politics of which Asconius implies he was innocent until 67.<sup>68</sup> But his programme as tribune has much in common with Pompey's programme in 70, which we must now examine.

It is hard to assess the view, found in Sallust and Plutarch, that Pompey was generally expected before his return to Rome in 71 to restore the tribunate as part of a programme of reform.<sup>69</sup> Sallust may well be exaggerating, or reporting an exaggerated claim, when he makes Licinius Macer, tribune in 73, predict that Pompey on his return will become a popular leader and restore the tribunician powers: at any rate, he indicates that the expectation in 73 was not universal, as he has Macer say that the *optimates* used as their excuse for postponing concessions, an excuse expected to be plausible, the need to wait for the return of Pompey who, they implied, might not approve.<sup>70</sup> Nonetheless, Cicero's first speech against Verres shows that, at least by the time of the *contio* Pompey held as consul designate at the invitation of Palicanus, his plan to restore the powers of the tribunate was an open secret.<sup>71</sup> The powers in ques-

<sup>63</sup> Asconius 30 C: 'non tantum ex oratione et annalibus'.

<sup>64</sup> The parallels are well set out by Lichtenfeldt, o.c., 48 ff. The idea of a common source is accepted by Maurenbrecher, o.c. (n. 40) i, 81, n. 8. See above, n. 40.

<sup>65</sup> See above, n. 48, and Lichtenfeldt, o.c., 55-7.

<sup>66</sup> Dio xxxvi, 24, 3; 37, 2; Plut., *Pomp.* 27.

<sup>67</sup> Val. Max. iii, 8, 3. The connection is emphasized by Seager, o.c. (n. 3), 684-5.

<sup>68</sup> Asconius 61 C: 'adiumentum autem habuit (Cicero) quod... Cornelius praeter dstrictum propositum animi adversus principum voluntatem cetera vita nihil fecerat quod magnopere improbaretur'.

<sup>69</sup> Sallust, *Hist.* iv, 42 M.; Plut., *Pomp.* 21.

<sup>70</sup> For Gelzer, 'Das erste Consulat des Pompeius' *APAW* (1943), i = *Kleine Schriften* ii (1963), 152, as for others before him, the prediction is a *vaticinium ex eventu* in *Hist.* iii, 48, 23. The interpretation of the *dolus* ascribed to the *optimates* by Macer given here follows that of E. Badian, *FC* (1958), 280. I do not see that Macer's speech in Sallust is incoherent, as argued by R. Rossi, *PP* xx (1965), 137-40, who thinks that he must actually have predicted that Pompey would take the side of the conservatives.

<sup>71</sup> I *Verr.* 45: 'Ipse denique Cn. Pompeius cum primam contionem ad urbem consul designatus habuit, ubi, id quod maxime exspectari videbatur, ostendit se tribuniciam potestatem restitutum'; Ps.-Asc. 220 St.

tion were those of legislation and jurisdiction, both removed by Sulla:<sup>72</sup> the veto Sulla had probably left intact or, at most, curtailed in certain specific situations.<sup>73</sup> In that famous speech—whose elaboration by Sallust we have unfortunately lost—Pompey promised, in addition to a restoration of the tribunate, measures to curb corruption in provincial administration and the senatorial courts. The appointment of censors may also have been promised, for that demand is included with these others in Cicero's list of current popular ideas in the *Divinatio in Caecilius* delivered early in 70.<sup>74</sup> It serves Cicero's purpose in the Verrines, of course, to say that the other demands are subordinate to that provoked by the disgrace of the courts, and he can excerpt from a senatorial speech of Sulla's political heir, Q. Lutatius Catulus, remarks that support his claim: 'patres conscriptos iudicia male et flagitiose tueri; quodsi in rebus iudicandis populi Romani existimationi satis facere voluissent, non tanto opere homines fuisse tribuniciam potestatem desideraturos' (I *Verr.* 44). The connections between tribunate and courts here made is that the tribunes were the officials most likely to sponsor a law changing the *iudices* in the *quaestiones*<sup>75</sup> and that, with their judicial powers restored, tribunes could provide the check on corrupt magistrates that the corrupt *quaestiones* failed to provide.<sup>76</sup> But the restoration of the tribunician powers had been a tribunician demand since 78, expounded publicly since 76,<sup>77</sup> while the denunciations of the courts had probably only started in 74.<sup>78</sup> In all our sources, it is this long-standing *popularis causa* that Pompey was expected to champion, and it was, after all, this question which Pompey had laid before the senate when Catulus began his *sententia* with the words cited above.

As for the other points of the programme, Pompey's concern with provincial government was probably prior to and responsible for his interest in the courts; with their reform Cicero also links the election of censors who were to humiliate and expel from the senate the corrupt *iudices* of the scandalous *iudicium Iunianum* of 74 and perhaps also those involved in the notorious acquittal of A. Terentius Varro in the same year.<sup>79</sup> Now the trial presided over by C. Iunius that led the tribune L. Quinctius to inflame the people against senatorial juries was a murder trial, in which Quinctius defended the accused. The senate had gone so far on this occasion as to pass a decree approving the setting up of a court by law to try those suspected of judicial corruption,

<sup>72</sup> Sulla's total abolition of the tribunes' legislative function is attested by Livy *Epit.* 89 and consistent with Cicero, *Leg.* iii, 22. To prove that Sulla did not cancel their legislative powers but only required them to obtain senatorial sanction, a tribunician law definitely passed in the 70's must be produced. The latest attempt to find one is that of D. H. Kelly in *Auckland Critical Essays* (1970), 133 ff., who takes 'legem tribuniciam' in I *Verr.* 46 to refer to a law passed by the tribune Quinctius in 74 under which C. Iunius and Fidiculanus Falcus were tried. But in the context the phrase clearly means the law restoring the tribunician powers ('nunc adhuc' points to a time after Pompey's *contio* in 71, described at i, 45). These two culprits were clearly tried by civil process and fined (*Chu.* 103) probably before the *praetor urbanus*, who, for Iunius, would have been Verres himself. On jurisdiction, see n. 76.

<sup>73</sup> Caesar, *BC* i, 7, 3; cf. Cicero, *Leg.* iii, 22. The only evidence for a restriction on the veto is II *Verr.* 1, 155-7, but Opimius' offence of using *intercessio* 'contra legem Corneliam' could have been the use of the veto to interfere with the implementation of a Lex Cornelia, in violation of a self-protecting clause in that law such as is to be found in the Tabula Bantina, the Tarentum fragment, and the Piracy Law. Ps.-Asc. 255 St. says that Opimius used his veto to support Cotta's law restoring the right of tribunes to stand for higher office: the Lex Cornelia concerned then could have been that cancelling this privilege.

<sup>74</sup> Maurenbrecher plausibly assigned iv, 45 and 46 to the speech; *Div. in Caec.* 8; Gelzer, o.c. (n. 70), 163-4.

<sup>75</sup> The *contiones* noted in I *Verr.* 2 could be tribu-

nian. Palicanus may have opted for some change in the courts in 71 (*Schol. Gronov.* 328 St.—but not to be taken literally).

<sup>76</sup> Cf. I *Verr.* 38: 'sublatique populi Romani in unum quemque vestrum potestate' which could allude to the tribunes' loss of judicial powers, like Sallust, *Hist.* i, 55, 23 M: 'iura et iudicia sibimet extorquerent'. Note also Cicero's threats to try Verres, if he is acquitted, before the *comitia* as aedile (I, 37; II, 1, 13; II, 5, 173, 178, 179, 183).

<sup>77</sup> Licinianus 33 F shows the tribunes of 78 putting pressure on the consuls; Ps.-Asc. 189 St. and Sallust, *Hist.* iii, 48, 8 M (*Or. Macri*) name Sicinius, tribune in 76, as the initiator of the public campaign. According to L. Hayne, *Hist.* xxi (1972), 661 ff. Lepidus, after initially resisting the demand, agreed to the policy, as attested in his own speech and that of Marcus Philippus in Sallust, *Hist.* i, 55, 22; i, 77, 14 M. But the first is an anachronistic speech used by Sallust to present, in the first year of his narrative, the coming struggles of the decade; in the second speech, Philippus is giving his view of the demands Lepidus will make if he obtains a second consulship.

<sup>78</sup> Lepidus in Sallust, *Hist.* i, 55, 23, 24 is probably thinking of tribunician powers; see above, n. 76.

<sup>79</sup> *Div. in Caec.* 8: 'iudicum culpa atque dedecore etiam censorium nomen, quod asperius antea populo videri solebat, id nunc poscitur'; see below, n. 86. One might surmise that the harshness of these censors was one of the sources of conflict in this year (Sallust, *Hist.* iv, 51 M) between Pompey and Crassus who was later known for his *patrocinium malorum* (Sallust, *Cat.* 48, 8). On the *invidia* connected with expulsions, below, n. 110.

but the matter had been allowed to lapse by the consuls of 74 and 73, notably L. Licinius Lucullus and his brother in the next year.<sup>80</sup> Yet, in Pompey's speech as consul designate, if Cicero can be trusted, it was the extortion court that he had in mind, so much so that he treated the issue of corruption in provincial government and in the courts as one: 'idem in eadem contione cum dixisset populatas vexatasque esse provincias, iudicia autem turpia ac flagitiosa fieri; *ei rei* se providere ac consulere velle' (I *Verr.* 45). For all his ruthlessness against leading opponents in civil strife, Pompey had, from the first, high standards in his treatment of Rome's subjects: Cicero was to insist on this in his speech supporting the Manilian Law, and it is confirmed by the fanatical loyalty of many Spanish towns to Pompey himself and his sons in the later Civil War.<sup>81</sup> His own record in Sicily had been blameless in this respect,<sup>82</sup> hence it was natural that the Sicilians should approach him as consul designate for redress against Verres, and another deputation was allowed to address him before a large audience on this subject during his consulship.<sup>83</sup> The censors of 70, L. Gellius Publicola and Cn. Cornelius Lentulus Clodianus, had already, as consuls in 72, demonstrated their close connection with Pompey, not only by their law validating his grants of citizenship in Spain,<sup>84</sup> but also by taking up the cause of Verres' victim and Pompey's client Sthenius in company with the tribune Palicanus, when he took up office at the end of their term.<sup>85</sup> As censors, these men naturally took account of the disgraceful murder court of 74,<sup>86</sup> but they also expelled from the senate the *praetor de repetundis* of that year, P. Lentulus Sura, who countenanced the fraudulent practices leading to the acquittal of A. Terentius Varro, and C. Antonius Hibrida, who had despoiled the Greeks but evaded the legal consequences for it six years before.<sup>87</sup> Another possible expulsion is P. Oppius,<sup>88</sup> who had been dismissed from his post as *pro quaestore* by M. Aurelius Cotta, governor of Bithynia and Pontus, for offences committed in 73, and was later tried for extortion.<sup>89</sup>

Thus Cicero is probably stating the significance of the Verres case as Pompey himself saw it when he says that the *iudices* need to establish that courts manned by senators can convict corrupt senatorial governors.<sup>90</sup> To obtain such convictions remained a focus of Pompey's energies later on when juries were mixed,<sup>91</sup> while nothing suggests that Pompey actively favoured a change in the composition of the juries in 70. As Plutarch says, Pompey gave the people back the tribunate, but allowed the courts to be transferred.<sup>92</sup> The first of these reforms occurred in January, but it was only in October at the earliest that the Lex Aurelia was passed. Cicero, in fact,

<sup>80</sup> Cicero, *Clu.* 136-7.

<sup>81</sup> Gelzer, o.c. (n. 70), 149-150.

<sup>82</sup> Plut., *Pomp.* 10; Diod. xxxviii, 20; Cicero, II *Verr.* 3, 42.

<sup>83</sup> II *Verr.* 3, 45; 204.

<sup>84</sup> Cicero, *Balb.* 19; 32-3; for their connection with Pompey, see Gelzer, o.c. (n. 70), 173.

<sup>85</sup> II *Verr.* 2, 95-100. In helping Sthenius they were supporting a long-standing client of Pompey (Badian, *FC* 282). One of the censors, Gellius, had defended a man against Verres' injustices as urban praetor in 74 (II *Verr.* 1, 125; Ps.-Asc. 241 St.).

<sup>86</sup> Cicero, *Clu.* 117 ff. Cicero mentions two *iudices* expelled for taking bribes (*Clu.* 127), and the expulsion of another was justified in that way by one censor (*Clu.* 132). The knight Cluentius was censured for distributing the bribes (*Clu.* 133).

<sup>87</sup> Sura: Ps.-Asc. 193, 218 St. commenting on *Div. in Caec.* 24 and I *Verr.* 35. According to Plut., *Cic.* 17, the censors objected to his ἀσέλγεια, but the case of Varro (which involved his relative Hortensius as defence lawyer) is so prominent in Cicero's Verrine speeches that it is more like to be the reason, as *Clu.* 130 suggests. Antonius: Asconius 84 C. Even if Maurenbrecher is right to attach *Hist.* iv, 52 'Fenoribus copertus est' to Antonius, debt need only have been one of the censors' reasons.

<sup>88</sup> On P. Oppius see *MRR* ii, 111-12. The suggestion here is based on *Pro Oppio* frag. 4 c P (= Quint. v, 13, 21): 'pro Oppio monet pluribus, ne illud actionis

genus in equestrem ordinem admittant'. Gelzer, *R-E* viiA (1948), 853, following Heinze, thinks Quintilian guilty here of a confusion with *Pro Cluentio*, because Oppius was a senator when he served as quaestor. But Quintilian cites other passages from the *Pro Oppio* in the neighbourhood, and another fragment (10 P) shows that Cicero was concerned to combat the *aucltoritas* of M. Cotta with the *iudices*, perhaps because of his younger brother's judiciary law. This appeal to the equestrian *iudices* against allowing the liability of the *ordo* to be extended was used by Cicero not only in *Pro Cluentio* but in *Pro Rab. Post.* Perhaps in Oppius' case he could capitalize on a real ambiguity, if Oppius was a senator when the alleged crimes were committed, but had since been expelled from the senate.

<sup>89</sup> The charge was probably extortion, as Dio xxxvi, 40, 3 compares it with Cotta's own later indictment on which see now I. Shatzman, *Hist.* xxi (1972), 196-8. Frag. 4 c P, if genuine, would confirm the charge, as one where equestrian immunity normally applied. The views of A. M. Ward, *Latomus* xxvii (1968), 802 ff. on Oppius' connection with Pompey seem to be pure speculation.

<sup>90</sup> II *Verr.* 3, 223; cf. II, 1, 4.

<sup>91</sup> He disapproved of Antonius Hibrida's administration in Macedonia (*Cicero, Att.* i, 12, 1) and he was unsympathetic to the notorious Valerius Flaccus (*Cicero, Flacc.* 14).

<sup>92</sup> Plut., *Pomp.* 23, 4. The point is made forcibly by Gelzer, o.c. (n. 70), 168 ff.

states that, in complaining about the courts, some thought better *accusatores* was the remedy rather than different *iudices*: he promises to show that if mature and experienced men like himself are prepared to conduct accusations, and exercise the accuser's right of selecting *iudices* well, criminal senators can be condemned by their peers.<sup>93</sup> The defenders of Verres clearly did not expect a change of *iudices*, as their efforts to have the case postponed until the following year show. And Catulus and others, who admitted the bad record of the senatorial courts, clearly hoped by the condemnation of Verres to avoid that change of *iudices* that was being demanded,<sup>94</sup> as is shown by the composition of the *consilium* judging the case. For when Cicero said, 'constat inter omnis post haec constituta iudicia, quibus nunc utimur, nullum hoc splendore atque hac dignitate consilium fuisse' (I *Verr.* 49), he was not exaggerating: given the general reluctance of important men to serve as *iudices*,<sup>95</sup> it cannot have been often that such an array of notables served together as the consulars Q. Lutatius Catulus and P. Servilius Isauricus, the praetorian C. Claudius Marcellus (whose family were traditional patrons of Sicily), M. Caecilius Metellus standing successfully for the praetorship in that year and six men standing for lower offices in that year.<sup>96</sup> Add to this company the blood-brother of a hostile witness,<sup>97</sup> and it is hard to avoid the suspicion that, however Cicero proclaims his diligence in selecting from a panel that good fortune had provided through the lot,<sup>98</sup> some human skill had been added to that good fortune. The presiding praetor, M'. Acilius Glabrio, also was cooperative in letting Cicero use unorthodox procedure. His Gracchan background and later appointment, through a Lex Gabinia, to Lucullus' province of Bithynia in 67, might suggest cooperation with Pompey,<sup>99</sup> Cicero says Verres feared him, 'nimium servientem populi existimationi' (I *Verr.* 29). Pompey may only have wanted the conviction of Verres and a new policy of firmness in the extortion court. Verres' flight before the second *actio*, which had been scheduled for mid-September, showed that he despaired of acquittal. Popular agitation was thereby reduced but not silenced. As a result, the praetor L. Aurelius Cotta now devised and promulgated his Lex Aurelia, following in the family tradition of compromise.<sup>100</sup>

Does Pompey's programme in 70 suggest that he was acting as a *popularis* and deliberately opposing the prominent members of Sulla's senate? Scholars have recently emphasized, first, the extent to which the Sullan constitution survived the supposed overthrow of 70,<sup>101</sup> and secondly, the lack of active opposition to the changes of 70 by some of the Sullan nobility.<sup>102</sup> Certainly the *principes civitatis* of the 70's were not a united political group. They differed over how to meet the popular demand for reform, which increased as the pressure of many foreign wars and the ruined state of

<sup>93</sup> *Div. in Caec.* 8; 24; 68; II *Verr.* 1, 4.

<sup>94</sup> The popular demand was for all-equestrian *iudices*. Cicero carried this threat over into his account of Cotta's proposed law in the speeches he published as the second *actio* in order to suggest that Verres' conviction had saved the senate from a harsher measure (Gelzer, o.c. (n. 70), 171-2). cf. D. Stockton, *Cicero* 46, who thinks there was an earlier version of Cotta's law that excluded senatorial *iudices* altogether.

<sup>95</sup> Noted by Cicero, II *Verr.* 1, 22. The same situation existed under the Lex Aurelia: *Pis.* 94 and *Asconius* 17 C; cf. *Mur.* 42.

<sup>96</sup> II *Verr.* 3, 210; 4, 69; 4, 82; 1, 56; I, 32; II, 3, 212.

<sup>97</sup> The *iudex* Q. Titinius was a brother of Cn. Fannius (II *Verr.* 1, 128).

<sup>98</sup> I *Verr.* 16. For the procedure involved, J. L. Strachan-Davidson, *Problems of the Roman Criminal Law* ii, 99-101.

<sup>99</sup> Glabrio's connections are recalled at I *Verr.* 52. His wife Aemilia, however, had been handed over to Pompey, at Sulla's command, and she died in Pompey's house giving birth to Glabrio's son (Münzer, *Römische Adelsparteien* 275 ff.) What attitudes this would produce is hard to say: Scaurus later mistakenly

thought marriage to the same woman would create a bond (*Asconius* 17-18 C). If *Ps.-Asc.* 221 St. is right in identifying the *tenuissimus senator* condemned earlier in 70 (I *Verr.* 46) as 'Dolabella', Glabrio may have presided over the successful prosecution of Cn. Cornelius Dolabella, governor of Cilicia 80-79, by his brother-in-law M. Aemilius Scaurus. There were other long-delayed prosecutions in the 70's (Badian, *Studies in Greek and Roman History* 99, n. 69 on the trial of A. Terentius Varro; C. Antonius is another one): this would be an attempt before the trial of Verres to demonstrate the viability of senatorial juries.

<sup>100</sup> The sequence of events followed here is that of Gelzer, o.c. (n. 70), 168-172. It rests principally on I *Verr.* 30-1; 33-4; II *Verr.* 1, 20; 4, 33; 5, 177-8; but the interpretation of these passages is bedevilled by Cicero's fiction that speeches of the second *actio* were actually delivered and in the presence of Verres (cf. *Ps.-Asc.* 223-4 St.). On Cotta's law, see n. 94 above.

<sup>101</sup> U. Laffi, *Athenaeum* xlv (1967), 177 ff.; 255 ff.

<sup>102</sup> Sherwin-White, o.c. (n. 32), 5 ff.; Rossi, o.c. (n. 70), 133 ff.

Italy after the Social and Civil Wars brought failures abroad and inability to provide relief at home: C. Scribonius Curio and the two Luculli stubbornly resisted ranting tribunes; the Aurelii Cottae believed in conceding some things to save the rest. C. Aurelius Cotta's law of 75 restoring the right to stand for higher office to tribunes was passed, according to Cicero, 'invita nobilitate magno populi studio'.<sup>103</sup> To a Sallustian tribune<sup>104</sup> he was just a frightened oligarch, and not alone in that: the younger Lucullus had agreed to renewed corn subsidies, and even Catulus was to see the need for a demonstration of judicial honesty. They were not united either in their attitude to Pompey: though Sallust and Plutarch have the *nobiles* responding to Pompey's demand for supplies in 74 through fear, Pompey's letter, as rendered by Sallust, shows that it was not only he, but Metellus Pius as well, who had been left short of provisions;<sup>105</sup> and in 66 some *nobiles*, out of hatred of Lucullus or appreciation of the military situation, were prepared to give Pompey the command against Mithridates.<sup>106</sup> Pompey himself was not inflexible: he tried to conciliate Metellus Pius through the Lex Plotia, passed while he was consul, to provide land for Metellus' Spanish veterans as well as his own;<sup>107</sup> even the Lex Gellia Cornelia of 72 seems to have ratified Metellus' grants of citizenship too.<sup>108</sup> And in 70 he first put his proposal about the tribunician powers to the senate, which is probably what lies behind Cicero's statement in *De Legibus* iii, 26 that Pompey was right to make the restoration himself rather than leave it to a 'popularis civis'.

Nonetheless, it is unlikely that the leaders of the Sullan senate positively welcomed the changes of 70, nor failed to see who would benefit most from the *gratia* they would confer.<sup>109</sup> The debate between Cicero and his brother in *De Legibus* iii, 19-26 doubtless reflects the division of feeling between those who favoured Sulla's tribunate with its purely negative powers of protection, and those who thought popular feeling made a restoration of the pre-Sullan powers necessary. There is no reason to postulate a real enthusiasm for further invigorating an institution which, since Cotta's restoration of the right to stand for higher office, had produced *seditiones* like Quinctius and Palicanus. Nor would the enrolment of the Italians enfranchised after the Social War by the Pompeian censors of 70 have been welcome to those with a command of the traditional means of controlling the *comitia*.<sup>110</sup> They had adjusted to the new methods of patronage required in Sulla's increased senate,<sup>111</sup> but, in the matter of the Italians, Pompey had a great advantage, both in having conferred the *beneficium* through his supporters and, more specifically, in that the tribes of the Transpadane Latin colonies founded by his father and therefore especially attached to him were

<sup>103</sup> *Corn.* I frag. 52 P (in Asconius 78 C). Rossi, o.c. (n. 70), 142 goes too far in suggesting that the value of the tribunate to young *optimates* seeking a little popularity on the way up the *cursus honorum* was the real motive for Cotta's measure, which was probably not strongly opposed. But on his own showing, it was the veto which Sulla had left intact that was most valuable to the *optimates*. That Cotta's measure was highly controversial is suggested by the debate over Verres' imposition of a heavy fine on the tribune Q. Opimius, who had offended Catulus and other *nobiles* when he used his veto to support Cotta (see above n. 73).

<sup>104</sup> Sallust, *Hist.* iii, 48, 8 M. For Sallust himself (ii, 42 M) he was a man avid for *gratia*.

<sup>105</sup> For the withholding of supplies as a deliberate plan to undermine Pompey, Badian, *FC* 279 relying on accounts of Sallust and Plutarch of the reasons for which they were finally sent. But cf. Sallust's version of Pompey's letter in *Hist.* ii, 98, 9.

<sup>106</sup> P. Servilius Isauricus, a hereditary enemy of the Luculli (Cicero, *Prov. Cons.* 22); C. Scribonius Curio, a successful governor of Macedonia; C. Cassius Longinus, who was a witness against Verres and perhaps the son of the praetor of 111 who collaborated with the tribune Memmius (Münzer, *R-E* iii (1897),

n. 58, 1727. They are mentioned in Cicero, *Manil.* 68.

<sup>107</sup> Dio xxxviii, 5, 1.

<sup>108</sup> Cicero, *Arch.* 26. So interpreted by Gelzer, o.c. (n. 70), 173, n. 139.

<sup>109</sup> Badian, *Lucius Sulla, The Deadly Reformer* (Todd Lecture 1969) 27-28, presents now a more balanced view. See also the reply to Sherwin-White (n. 32) by Stockton in *Hist.* xxii (1973), 205 ff.

<sup>110</sup> Rossi, o.c. (n. 70), 148 thinks the senatorial expulsions carried out by these censors would have been welcomed by the *nobiles* who would be glad to lose Sulla's humble adlectees. But at least two of the 64 they expelled were *nobiles*, and Cicero (*Clu.* 130) shows the expulsions were a response to popular pressure. Though Sulla's provisions for twenty quaestors with the *ius sententiae dicendae* meant that the senate could only be kept to 600 by censorial expulsions (P. Willems, *Le sénat* i, 234, 243), the censors of 64 and 61 shunned the *invidia* involved (Dio xxxvii, 9, 4; 46, 4).

<sup>111</sup> On the intrigues of Cethegus, see Badian, *FC* 280-1; Taylor, *VDRR*, 121 ff., who, however, seems to think Lucullus received his command by a law, whereas Cicero, *Acad.* ii, 1, 1 and Memnon 27 both indicate an S.C. as for M. Aurelius Cotta (and M. Antonius, Vell. Pat. ii, 31).

very advantageously arranged.<sup>112</sup> Pompey's ambition could not be doubted. He had, after all, extorted his Spanish command as he had extorted his triumph from Sulla, and his regular use of the cognomen Magnus that started in Spain<sup>113</sup> will not have reassured Metellus Pius or those in Rome. The Spartacus crisis was a stroke of luck, giving him a pretext to march into Italy with his army—but the parallel with 77 was nonetheless felt and remembered in 62.<sup>114</sup> Finally, for those whose attachment to Sulla had been not merely political but personal, Pompey's support of Lepidus' candidature in 79, which had led Sulla to cut him out of his will,<sup>115</sup> must have been remembered. Indeed the clash must have been recalled to many by the law of the consuls of 72 requiring payment of those whom Sulla had excused from paying for goods of the proscribed,<sup>116</sup> and, even more, in 70 by the *Lex Plotia de reditu Lepidanorum* passed by a tribune whose agrarian law demonstrated his connection with Pompey.

To sum up the themes of Pompey's first consulship: a concern with remedying the corruption and oppression in Rome's treatment of her subjects; a willingness to make concessions to popular tribunician demands, recognized by many as necessary but for which the credit would go to Pompey and, to a lesser extent, Crassus;<sup>117</sup> a fulfilment of the promises made long ago to the Italians to be enrolled as citizens but long deferred by the leaders of the nobility because of the uncertainty that would thereby be introduced into their methods of controlling elections. These themes dominate the tribunate of Pompey's ex-quaestor Cornelius. The sources make clear that his political conflicts, too, were with the *principes civitatis*, the *pauci*, rather than with the majority of the senate whose support he had in fighting bribery and the law about praetorian edicts and at least the second *solutio* proposal.<sup>118</sup>

Seager has already noted that Cornelius' crusade against *ambitus* was aimed at the control of the elections by the *principes civitatis*, who had opposed Pompey and the tribunes in the matter of the tribunician powers, the prosecution of Verres, and the candidature of Palicanus. Cornelius' law differed from Piso's weaker one in attacking the *divisores*, whose role Cicero had described so vividly in his first speech against Verres, and who according to Cicero had played a similar role in Piso's own election as they would again in the defeat of Cotta and Torquatus in 66.<sup>119</sup> These methods had been intensified no doubt to deal with the enrollment of the new citizens by the censors in 70,<sup>120</sup> whose expulsions of senators they would also be used to undo. Cornelius would also have had these expulsions in mind when he framed his proposal about dispensations, as Dio notes,<sup>121</sup> and as the chronology of Cornelius' tribunate here proposed permits us to believe. Finally, two of Cornelius' measures would have protected provincials from oppression. First he approached the senate with a proposal to prohibit the lending of money to foreign envoys at Rome.<sup>122</sup> When the senate refused, alleging that a *senatus consultum* of 94 provided for prohibitions of the

<sup>112</sup> Taylor, *VDRR* 120; 128-9. But Brunt, *JRS* lv (1965), 109 seems to be right that the effective registration of the Italians as citizens with voting rights only took place in 70-69, whereas Taylor holds that the censors of 86 enrolled a substantial number and that many more were given by the S.C. of 84 (Livy, *Epit.* 84) the right to vote in the tribal assembly though not in the centuriate assembly.

<sup>113</sup> Plut., *Pomp.* 13, 5.

<sup>114</sup> See Badian, *Hermes* lxxxiii (1955), 116 and n. 2, on the usual practice whereby the returning pro-magistrate dismissed his army on reaching Italy. So Metellus did in 70 (Sallust, *Hist.* iv, 49 M), and Pompey in 62 despite gloomy expectations (Plut., *Pomp.* 43, 1-2).

<sup>115</sup> Plut., *Pomp.* 15.

<sup>116</sup> Sallust, *Hist.* iv, 1 M.

<sup>117</sup> The law about the tribunate is everywhere said to have been passed by them both, and Cicero mentions them both in that connection in the *Pro Cornelio* (I frag. 48 P in Asconius 76 C).

<sup>118</sup> For the *ambitus* measure, see p. 199 and n. 29.

For the other two, both restating traditional principles (n. 125, Asconius 58 C), see Asconius 59 C according to whom they were passed without overt opposition though displeasing to the *pauci*. Their smooth passage shows that Cicero has not distorted the issues when he insists that only the *nobilissimi homines* were Cornelius' enemies (*Corn.* II frags. 1, 3, 9, 11, 12 P).

<sup>119</sup> *Corn.* I frags. 40-41 P. In 40 P: '(re)pnat) ut divisores, quos honoris suis ministros esse voluerat, lege ambitus vellet affligere', the subject is clearly Piso, cf. Dio xxxvi, 38; I *Verr.* 21-5.

<sup>120</sup> The enrolment was presumably only finished in 69. The evidence suggests that the *optimates* concentrated their efforts on the consulship in the early 60's when, on the other hand, three popular ex-tribunes won their praetorships: Lollius Palicanus (69), L. Quinctius (68) and C. Licinius Macer (probably 68).

<sup>121</sup> Above, n. 35.

<sup>122</sup> The provision 'at Rome' seems to have been stipulated in the *Lex Gabinia* which embodied Cornelius' idea (Cicero, *Att.* v, 21, 12).

practice *ad hoc* and had in fact been applied to envoys of the Cretans in a decree of 70, Cornelius held a *contio* in which he complained that the provinces were being drained to pay the interest on loans contracted by envoys in order to give bribes, presumably to Roman senators.<sup>123</sup> The parallel with Pompey's speech in 71 will not have been missed, nor the connection with Cicero's sneer that Verres would be eager to attend the senate only when such envoys were due to appear.<sup>124</sup>

Echoes of the Verres case must again have been detected when Cornelius proposed his law requiring *ut praetores ex edictis suis perpetuis ius dicerent*. This law only made a legal duty what *fides* already required, but Cornelius' reaffirmation of the principle may have been prompted by recent scandals, in particular those recently publicised in Cicero's Verrine orations. For, in 74, many had found protection in the *intercessio* of Verres' fellow-praetor L. Piso, on the occasions when Verres, as *praetor urbanus*, 'contra illud ipsum edictum suum sine ulla religione decernebat'.<sup>125</sup> But, as is well known,<sup>126</sup> *praetor* is also a generic term for a provincial governor, and Verres had shown similar inconsistency in his jurisdiction as governor of Sicily.<sup>127</sup>

In taking up Pompey's programme of good provincial administration, Cornelius may have had Pompey's backing or only have hoped for it, as was alleged of Manilius.<sup>128</sup> Certainly Pompey did not exert himself for Cornelius, except perhaps to ensure that his ex-quaestor had the best defence lawyer at his trial in 65. But nothing is heard of any later career. Cornelius' fellow-tribune Gabinius—whose marriage to a Lollia suggests a connection with Pompey prior to 67 and whose activities in that year were of more immediate benefit to Pompey<sup>129</sup>—was certainly much more of a *protégé* in 66 when he went out as legate under the Lex Manilia and thereafter. Yet, at least in the interrelations of the tribunes themselves, there was something to justify the feeling of the *pauci* that they were dealing with a 'gang' of Pompeian tribunes, a feeling which emerged at Cornelius' *maiestas* trial in the charge that Cornelius had drawn up the proposal made by Manilius at the very start of his tribunate in December 67 to distribute the votes of freedmen in all the tribes.<sup>130</sup> Later, when he had already put through his bill giving Pompey the Mithridatic command, Manilius was thought to have provided the gangs that terrorized Cornelius' accusers in 66, at their first attempt to try him for treason.<sup>131</sup> It is likely that Gabinius, strong after his successful proposals regarding the Eastern commands, carried through Cornelius' measure about loans to foreign envoys in his tribunate, although there is no allusion to his law before 56.<sup>132</sup> For Gabinius was not merely concerned with the advancement of Pompey's career in that year, as is clear from the Gracchan role in which he cast himself by threatening to depose his fellow-tribune Trebellius Rufus and in his subsequent challenge to the consul Piso, which Pompey himself intercepted.<sup>133</sup> Then, when we consider that bribes could be used by envoys to obtain a hearing as well as to win support for a particular proposal, it becomes tempting to credit also to this Gabinius in 67 the Lex Gabinia, reserving the whole of the month of February for the hearing of foreign embassies, with the right of

<sup>123</sup> See above, n. 14; Asconius 58 C where Clark's reading is eccentric, being unrelated to the problem Cornelius was considering as revealed in Dio frag. 111, and grammatically faulty, as pointed out by Stangl, who reads: 'exhauriri provincias usuris propter id unum, ut haberent legati unde praesentia munera darent.'

<sup>124</sup> II *Verr.* 2, 76.

<sup>125</sup> Asconius 59 C; F. Schulz, *Principles of Roman Law*<sup>2</sup> (1936), 229-30; II *Verr.* 1, 119.

<sup>126</sup> See Badian, *Studies* 74, n. 24, defending Mommsen, *Staatsrecht*<sup>3</sup> ii, 240, n. 5. Cicero, when governing Cilicia, calls himself *praetor* in the context of the Lex Gabinia about loans to foreign envoys (*Att.* v, 21, 11).

<sup>127</sup> II *Verr.* 2, 90 (Cicero often calls Verres *praetor* in speaking of his governorship, e.g. *Div. in Caec.* 28; 72; I *Verr.* 13).

<sup>128</sup> Dio xxxvi, 42, 2.

<sup>129</sup> Suet., *Caesar* 50. Before the law giving Pompey the command against the pirates, Gabinius prepared the way for the Mithridatic command and bought the quiescence of one consul by a law giving M'. Acilius Glabrio control of Bithynia and Pontus—the last step in the dismantling of Lucullus' command (*MRR* II, 143; 150, n. 7).

<sup>130</sup> *Corn.* I frag. 10-11 P in Asconius 65 C = 15 and 16, Kumaniecki.

<sup>131</sup> Asconius 59-60 C: 'a notis operarum ducibus'; 'Manilius qui iudicium per operarum duces turbaverat'.

<sup>132</sup> *Att.* v, 21, 12; vi, 2, 7. Against Mommsen and Niccolini who prefer 58, Gabinius' consulship, Broughton (*MRR* ii, 145, 150) appears to favour 67.

<sup>133</sup> Asconius 72 C; Plut., *Pomp.* 27; Dio xxxvi, 37, 2.

postponement reserved to senatorial decision rather than, as before, to the discretion of the consul.<sup>134</sup>

Cornelius' proposal concerning *ambitus* may well have given Piso the feeling of tribunician persecution, for in 68, when he himself was indicted on that charge, the tribune Antius Restio passed a sumptuary law which contained specific provisions against banquets given by candidates for office or magistrates in office.<sup>135</sup> Again, though Lucullus had his enemies among men of his own rank, it was tribunician activity that had largely brought about the disintegration of his command. Before Gabinus in 67, there had been tribunician agitation in 68 supporting the praetor Quinctius and resulting in the replacement of Lucullus in Cilicia by the consul of the year Q. Marcius Rex.<sup>136</sup> Now dating probably from that year we have a law, passed by the ten tribunes, renewing certain privileges given earlier to the city of Termessus, near the pass through the mountains surrounding the Pamphylian plain, in the region Marcius Rex now took over.<sup>137</sup> It had been proposed in and accepted by the senate first, but as Marcius had been despatched by that body and was notoriously uncooperative with Lucullus,<sup>138</sup> we have every reason to suspect that this law had an anti-Lucullan colour. The first tribune listed in the prescript is C. Antonius Hibrida; but he is not first because he was at the top of the poll, which his expulsion by the censors from the senate two years before makes unlikely and which would render inexplicable his failure to appear first on another law listing the same tribunes. Like the tribune Rullus whose colleagues allowed his name to appear first on the *lex agraria* of 63, Antonius must be the principal author of the *Lex Antonia de Termessibus*.<sup>139</sup> He had an interest in reviving his family's connections with that area, for his distinguished father and his notorious brother had both held commands against the pirates in the Mediterranean. He was not a man to Pompey's taste, as the expulsion in 70 and later events show. But he also had reason to hate the Luculli: in 76 he had only been saved from making restitution to the Greeks by appealing to the tribunes from a hostile decision by the younger of the two brothers, then *praetor peregrinus* in a civil extortion case.<sup>140</sup> The *Lex Antonia* in part reaffirms the *status quo* of 91 B.C., before the first Mithridatic War, relating to the property of the city and its citizens and of jurisdiction relating to it,<sup>141</sup> and confirms privileges granted by a law of 72, apparently autonomy and *amicitia* with Rome, and control of land rent despite a prohibition against rental in that same law.<sup>142</sup> It also gives protection against the billeting of troops for the future and guarantees the city its *portoria*.<sup>143</sup> Clearly the *Lex Antonia* is basically designed to confirm the loyalty of Termessus and other cities in the south of Asia Minor, where Lucullus had not gone and which had been raided by a general of Mithridates.<sup>144</sup> But its provisions suggest that Termessus and any other cities which may have been granted similar privileges at the same time are to recover what they had lost not only through Rome's enemies but also through the encroachments of Roman officials—confiscations of a violent or quasi-judicial sort, erosions of local autonomy—starting with Sulla.<sup>145</sup> Lucullus, like Antonius, had been a collecting agent for Sulla, but both could see the advantages of protection and generosity at times. Magie, in fact,

<sup>134</sup> For a full discussion of the dating of this law, see Niccolini, *FTP*, 256-8. Broughton, *MRR* ii, p. 643 accepts the view of Carcopino, *Mél. Glotz* (1932) i, 120-2 that the author of the law was A. Gabinus, tribune in 139 B.C.; but Carcopino's inference from the Piracy Law (Ricobono, *FIRA*<sup>2</sup>, no. 9) B 17-19 is unjustified: our best evidence for the content of the *Lex Gabinia* (Cicero, *Fam.* i, 4, 1; *Q. Fr.* ii, 12, 3) does not show that the senate was thereby forbidden to receive envoys at other times, only that February was reserved for that use. See also the points made against the idea by G. Colin, *Fouilles de Delphes* iii, 4 (1930), p. 48.

<sup>135</sup> Gellius ii, 24, 13; Macrobius iii, 17, 13. See Syme, *JRS* liii (1963), 59: 'an attack on intrigue no less than on luxury, a curb on the habits of opulent Optimates, such as Q. Hortensius.'

<sup>136</sup> Plut., *Luc.* 20, 5; 33, 4: δημαγωγοί. Dio xxxvi,

2 says of the transfer of Asia to praetors in 69 that Lucullus was blamed παρά τοῖς πολιταῖς, which might suggest tribunician activity.

<sup>137</sup> *CIL* I<sup>2</sup> 389; *ILS* 38. On the date see *MRR* ii, 141, n. 8; and Syme, *JRS* liii (1963), 58 who discusses what is known of the tribunes of 68.

<sup>138</sup> Dio xxxvi, 17.

<sup>139</sup> *CIL* I<sup>2</sup> 744; *ILS* 5800; Cicero *Leg. ag.* ii, 22: 'ei locus primus in indice et in praescriptione legis concessus est'; cf. ii, 13: 'princeps erat agrariae legis'.

<sup>140</sup> Asconius 84 C. Plut., *Caes.* 4, 1 is highly confused.

<sup>141</sup> I, lines 12-35; II, 1-5; 18-30.

<sup>142</sup> I, 1-11; 20-3.

<sup>143</sup> II, 6-17; 31 ff.

<sup>144</sup> Appian, *Mith.* 75. Magie, *RRAM* i, 294-5.

<sup>145</sup> Appian, *BC* i, 102; Rostovzeff, *SEHHW*<sup>2</sup> ii, 947-8.

suggested that the Lex Antonia extended Lucullus' generous policy in Asia to another area, but there may be one significant difference: Lucullus' settlement interfered with the profits of the Roman *publicani*, who made the loudest noise in the agitation leading to his replacement.<sup>146</sup> The Lex Antonia, however, specifically exempted them from the *portoria* collected by Termessus.<sup>147</sup>

It is not surprising then to find that of these tribunes, one, Q. Caecilius Metellus Celer, was Pompey's brother-in-law and was to serve as his legate in 67; with him as legate went another member of the college, Cn. Cornelius Lentulus Marcellinus, a patron of the Sicilians who had been active in support of Sthenius against Verres.<sup>148</sup> A third tribune of 68, C. Fundanius, was a father or brother of the wife of M. Terentius Varro, who after serving for many years under Pompey in Spain, and after writing him a handbook for conduct in the senate in 70, was to go out with him again in 67.<sup>149</sup> That interest had previously been shown in Termessus in 72, the year when Pompey's friends held the consulship, is also suggestive.

Although C. Cornelius was only a minor figure in Roman politics, his tribunate provided an occasion for intense conflict on major issues: the *potestas* of the tribunate and the *potentia* of its chief restorer. Another occasion was to be provided by his trial.

### III. THE POLITICAL SIGNIFICANCE OF CORNELIUS' TRIAL

Between Cornelius' tribunate in 67 and his trial in the middle of 65,<sup>150</sup> Pompey's career reached its apex, electoral corruption became more scandalous, and tribunician violence (as well as other forms) increased. Cicero claims that the prosecution of Cornelius was aimed at undoing the restitution of tribunician powers by Crassus and Pompey in 70 while one of them was away.<sup>151</sup> It was probably in this context that Cicero inserted 'popularis illa virtutum Cn. Pompeii commemoratio',<sup>152</sup> and referred to the misappropriation of public funds by corrupt governors, funds collected through 'tribuniciae leges'.<sup>153</sup> He gave an emotional account of the origins of the tribunate, praised other popular legislation, and, in interrogating the witnesses, spoke of two *consulares* as 'inimici tribuniciae potestatis'.<sup>154</sup> The fact that Cornelius was charged with having damaged *maiestas tribunicia* does not contradict Cicero's claims, as the defence of the tribunician veto was entirely in keeping with support of the Sullan curtailment of tribunician powers which Cicero says his opponents wish to revive. These *principes civitatis* might be trying to show how the negative role of the tribunate could be weakened by the exercise of those legislative powers Sulla had removed. Two things confirm Cicero's interpretation of the motives of the prosecution. First there is the fact that Cornelius was supported at his trial by his fellow-tribunes of 67, in particular by P. Servilius Globulus, whose veto, interposed at the instigation of 'potentissimi quique ex senatu quorum gratia magnopere minuebatur' Cornelius had tried to

<sup>146</sup>Plut., *Luc.* 20. P. A. Brunt, *Second International Conf. on Econ. Hist.* 1962, (1965), 148-9, points out that some senators too must have opposed Lucullus, but minimizes too much the role of the *equites*: see Broughton, *ibid.*, 154-5; Badian, *Publicans and Sinners* 98-9.

<sup>147</sup>II, 34-7. cf. Livy xxxviii, 44 where all Roman citizens (and Latins) are exempted.

<sup>148</sup>Syme, *JRS* liii (1963), 56, 58. For his role in the Verres case, Cicero, *Div. in Caec.* 13; II *Verr.* 2, 103; 4, 53.

<sup>149</sup>Syme, *JRS* liii (1963), 58.

<sup>150</sup>The time of year is not given by Asconius for 'eodem illo tempore erat reus repetundarum (Catilina)' in 66 C apparently refers to the time of the disturbed trial of Manilius which the citation under consideration discusses. The trial of Cornelius clearly came after this trial of Manilius for extortion ('meis alienissimum rationibus' indicates that Cicero was involved either as president of the extortion court at the end of 66 or as would-be defender at the abortive trial before Attius Celsus) and, if that is different, that

planned before Attius Celsus, mentioned in *Corn.* I frag. 12 P = 17 Kumaniecki, in Asconius 65 C, and Manilius' ultimate conviction for *maiestas* (Asconius 60 C). Cornelius' trial cannot be contemporaneous with Catiline's trials for extortion in August 65 (Cicero, *Att.* i, 1, 2), as Asconius would then have known that Cicero could not have defended Catiline because he was otherwise engaged (85, 87 C). It probably preceded Catiline's trial, as *Att.* i, 1, 2 shows that Cicero was thinking of leaving Rome in September when the closed periods of the courts set in. Asconius' 'reus repetundarum' (66 C) then just shows that the preliminary arrangements for Catiline's trials started early in the year, or is frankly anticipatory.

<sup>151</sup>*Corn.* I frag. 48 P in Asconius 76 C; 52 P in Asconius 78 C; II frag. 3 P in Asconius 79 C.

<sup>152</sup>Quintilian iv, 3, 13; cf. ix, 2, 55 = *Corn.* I frag. 47 P = 48 Kumaniecki (see 48 ff.).

<sup>153</sup>*Corn.* I frag. 35 P, properly relocated by Kumaniecki, 48 ff. as frag. 51.

<sup>154</sup>*Corn.* II frag. 3 P in Asconius 79 C.

override.<sup>155</sup> If we press Cicero's 'testibus conlegis suis' (*In Vat.* 5) to mean all of his colleagues (except Gabinius who was away with Pompey), that would include L. Trebellius and L. Roscius Otho, who had opposed the Gabinian law giving Pompey his command against the pirates: the presence of the latter is perhaps suggested by Cicero's allusion to the *Lex Roscia* in his appeal to the equestrian *iudices*.<sup>156</sup> But even Globulus' support alone would be enough to show that there was something about this accusation of a man who had shown himself flexible enough to back down and to compromise that suggested an attack on the tribunate itself.

The other fact that confirms Cicero's version of the political aims of this prosecution is his own willingness to undertake the defence. For Cornelius was only one of a series of tribunes who had come under fire since 67. Gabinius had been removed from danger by Pompey, but towards other *seditiones* who were attacked Cicero had not been very sympathetic. In 66, when Cornelius had first been accused of *maiestas* and escaped through the connivance of the praetor in charge of the court and gangs said to belong to Manilius, Cicero as *praetor de repetundis* presided over the condemnation of C. Licinius Macer, the fiery tribune of 73, said to be supported by Crassus. He had also offended the tribunes of 65 when Manilius was first brought before him at the end of 66 for trial.<sup>157</sup> And, though in the *Pro Cornelio* he gives a popular colour to his action, he had spoken out against an attempt by a tribune of 66 to recover Sulla's profits for the treasury by prosecuting his heir, Faustus Sulla, in the *quaestio de peculatu*<sup>158</sup> — a cause dear to the hearts of his opponents in the Cornelius case.<sup>159</sup> To Atticus he claims sympathy for Macer and he had supported the *Lex Manilia* regarding Pompey, but clearly he was being cautious. Now in 65, when he was already starting his canvass for the consulship in which he would be opposing Palicanus and hoping for the help of that old enemy of Cornelius, C. Calpurnius Piso,<sup>160</sup> he delivered the most *popularis* speech of his career, even seeming to approve of Gabinius' Gracchan tactics.<sup>161</sup> It is true that he was tactful in handling his noble opponents, and in condemning Manilius' first proposal about freedmen; it is also true that he wanted Pompey's support for his consulship,<sup>162</sup> but even so he would hardly have taken such a case and pleaded it in such a manner had he not thought that even the majority of the senate would feel with him that the *pauci* were launching an attack, through Cornelius, on *bona fide* popular institutions: Cicero himself later in *De Legibus*, when he was not addressing the people, was still prepared to defend the tribunate in its post-70 form.

If Cicero is right to insist that it was not merely the pre-70 position of the tribunate that Cornelius' enemies wished to restore, but the pre-75 Sullan situation in which flourished nonentities like M. Terpolius whom he caricatures,<sup>163</sup> then the opinion of men like Catulus had hardened indeed since 70. That is not to say that the *nobiles* were any more a unified group in politics than they had been before. In Asconius' list of the great men who testified against Cornelius, i.e. Q. Hortensius, Q. Lutatius Catulus, Q. Metellus Pius, M. Lucullus and M'. Lepidus (60 C), there are at least two conspicuous names missing: P. Servilius Isauricus and C. Scribonius Curio, both of whom had supported the *Lex Manilia* giving Pompey his Eastern command. Servilius' feud with the Luculli may explain his conduct now as then,<sup>164</sup> but Curio was, according to a late scholiast at least, one of the 'pauci homines adrogantes' who, along with Hortensius and Catulus, had victimized the tribune Opimius for supporting Cotta's

<sup>155</sup> *In Vat.* 5; Asconius 61 C, cf. 58 C.

<sup>156</sup> *Corn.* I frag. 53 P in Asconius 78 C.

<sup>157</sup> *Att.* I, 4, 2; Plut., *Cicero* 9, 1-2; Val. Max. ix, 12, 7.

<sup>158</sup> *Corn.* I frag. 34 P in Asconius 75 C. See above, n. 25.

<sup>159</sup> *Corn.* I frag. 34 P: 'id quod palam iam isti defensores iudiciorum propugnauerunt'; Cicero avoided mentioning the potential threat of Rullus' law to Faustus Sulla in his speech to the people, but emphasized it in that to the senate (*Leg. ag.* I, 12).

<sup>160</sup> *Att.* I, 1, 1-2.

<sup>161</sup> R. Heinze, 'Ciceros politische Anfänge', *Vom Geist des Römertums*<sup>3</sup> (1960), 132-3.

<sup>162</sup> *Att.* I, 1, 1, cf. *Leg. ag.* II, 49. In the light of this, Badian, *Hist.* xviii (1969), 475, is clearly right to reject the reading 'Pompeium' in *Corn.* I frag. 54 P in Asconius 79 C as the 'hominem dis ac nobilitati perinvisum'. He accepts 'Pomponium', a fellow-tribune of Varus in 90, an opponent of the *Sullani*, hence probably in favour of all-equestrian courts. This fits the context: Cicero is urging that a mixed jury acquitted such a man on a *maiestas* charge: therefore, *a fortiori*, they should acquit this blameless champion of the plebs (*Corn.* I frag. 55 P).

<sup>163</sup> *Corn.* II frag. 8 P in Asconius 81 C.

<sup>164</sup> Above, n. 106.

law about the tribunate in 75, and in 70 he had been a supporter of Verres.<sup>165</sup> He may have been jealous of Lucullus, or perhaps, as an old follower of Livius Drusus, sympathetic to the enrollment of the Italians by Pompey's censors as of Crassus' efforts on behalf of the Transpadani in this very year.<sup>166</sup>

Nonetheless, the attitude of Catulus does seem significant, especially when we add the evidence for a change of heart on the part of M. Aemilius Lepidus between his consulship in 66, when he was prepared to support Cornelius at his abortive first prosecution for *maiestas*,<sup>167</sup> and the trial in 65, when he appears in Asconius' list of *infesti principes civitatis*. It has been suggested that in both Asconius and Valerius Maximus the text should be corrected to give us, as Cornelius' hostile witness, Mamercus Aemilius Scaurus, the consul of 78, perhaps *princeps senatus* since 70.<sup>168</sup> But there is nothing substantial to support such a correction, except the apparent contradiction in Lepidus' behaviour. Yet a fragment of the *Pro Cornelio* I is most plausibly interpreted as an allusion to this. When Cicero says, 'Das enim mihi facultatem eos qui *tum* adfuerunt Cornelio nominandi', he is probably speaking of the support of the consuls of 66 for Cornelius, a fact presumably omitted by the accuser when he was describing his escape from the gangs surrounding the praetor's tribunal, but which, thanks to Cicero, Asconius could incorporate in his description of that occasion (59-60 C).<sup>169</sup> In the fragment Cicero seems about to give names that will surprise and also strengthen his case, which would certainly be the situation if Lepidus had at the time of speaking changed sides. Nor is it difficult to imagine why he might do so. In 66, besides the violent interference with Cornelius' prosecution, there had occurred disturbances associated with the trials of Autronius and Sulla for *ambitus*, and, later, with the abortive attempt to prosecute Manilius for extortion.<sup>170</sup> Cicero said in the *Pro Cornelio* that the enemies of Cornelius hoped that Manilius' tribunate would have created hostile prejudice against the office.<sup>171</sup> Clearly, all of these events could have combined to change the attitude of Lepidus. But with Catulus and others, the degree to which the restored tribunate had served the ambitions of Pompey must have weighed as much or more as the increasing need to curb violence.

Cicero's position too was soon to need adjustment. In pleading for Cornelius, he appealed to a *concordia* of the plebs with the senate and *equites* represented on the jury,<sup>172</sup> against the *pauci*,<sup>173</sup> hinting that the latter were on the scent of bigger game. He probably meant Catiline,<sup>174</sup> whom he was then planning to defend. But events moved quickly; by the time Pompey returned in 62, Cicero had momentarily achieved his *concordia*, but it was with the *pauci* and against Catiline.

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<sup>165</sup>Ps.-Asc. 255 St. on II *Verr.* 1,155; I, 18-19. Münzer, *R-E* ii B (1923), 862 ff., held (with Ps.-Asc. 207 St.) that Curio was the governor of Macedonia that the 'Achaicus inquisitor' of I *Verr.* 6 was pretending to prosecute in order to delay Verres' trial, and identified the abortive proceedings with those described in *Corn.* I frag. 9 P in Asconius 62-4 C. But as Zielinski (*Philologus* lii (1893), 256-7) rightly noted, Curio could not be introduced so deferentially, twelve chapters after being alluded to anonymously as one picked 'ex senatu qui reus fieret' in I, 9, and nothing suggests that the case mentioned was not in fact carried out to an acquittal.

<sup>166</sup>Sisenna iii, 44 Peter; Cicero, *Off.* ii, 88. Kumaniecki, o.c. (n. 6), 23, n. 38, thinks the deferential reference to Curio in *Corn.* I frag. 9 P and 36 P shows he was active on the prosecution side. But Asconius' identification (74 C) of the man in 36 P is doubtful (Badian, *Hist.* xviii (1969), 453) and in 9 P Cicero is equally deferential about Metellus Nepos, who was away serving under Pompey.

<sup>167</sup>Asconius 59-60 C.

<sup>168</sup>Sumner, *JRS* liv (1964), 41 ff.; Syme, *Ten Studies in Tacitus* (1970), 141 is highly sceptical of

this solitary late appearance.

<sup>169</sup>*Corn.* I frag. 16 P = 13 Kumaniecki; Kumaniecki, o.c. (n. 6), 15, 31. Another change of personnel concerned the accusers: there were two Cominii in 66 (Asconius 59 C), one in 65 (Asconius 61 C): *Corn.* I, frag. 61 P: 'coeptum igitur per eos, qui agi volebant, desitum est per hunc, qui decessit' may refer to this, in which case it probably belongs after frag. 8 P. (On their *praenomina*, see Badian, *JRS* xlvi (1956), 220).

<sup>170</sup>Cicero, *Pro Sulla* 15; Dio xxxvi, 44.

<sup>171</sup>*Corn.* I frag. 48 P in Asconius 76 C.

<sup>172</sup>*Corn.* I frags. 53-4 in Asconius 78-9 C. The plebs are said to have favoured the Lex Aurelia and the Lex Roscia (cf. Plut., *Cicero* 13), while mixed juries acquitted the tribune Pomponius (above, n. 162).

<sup>173</sup>Vatinius was later to say that Cicero thus offended 'boni viri' (Cicero, *Vat.* 5).

<sup>174</sup>*Corn.* I frag. 8 P in Asconius 62 C. Note Q. Metellus Pius, one of Cornelius' hostile witnesses, was an important witness against Catiline in the same year (Cicero, *Tog. Cand.* frag. 8 P in Asconius 87 C).