

CICERO AND MILO*

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INTRODUCTION

The battle of Bovillae on 18th January, 52 B.C., which led to Clodius' death, was literally treated by Cicero in a letter to Atticus¹ as the beginning of a new era—he dated the letter by it, although over a year had elapsed. It is difficult to exaggerate the relief it afforded him from fear and humiliation for a few precious years before civil war put him once more in jeopardy. At one stroke Cicero lost his chief *inimicus* and the Republic lost a *hostis* and *pestis*.² Moreover, the turmoil led to a political realignment for which Cicero had been striving for the last ten years—a reconciliation between the *boni* and Pompey, as a result of which Pompey was commissioned to put the state to rights. Cicero's behaviour in this context, especially his return to the centre of the political scene, is, one would have thought, of capital importance to the biographer of Cicero. Yet two recent English biographies³ have but briefly touched on the topic. It is true that, in the background of Cicero's personal drama, Caesar and Pompey were taking up positions which, as events turned out, would lead to the collapse of the Republic.⁴ However, Cicero and Milo were not to know this, nor were their opponents; friendly cooperation between the two super-politicians apparently was continuing. Politicians on all sides were still aiming to secure power and honour through the traditional Republican magistracies, and in this pursuit were prepared to use the odd mixture of violence, bribery and insistence on the strict letter of the constitution, which was becoming a popular recipe. In retrospect their obsession with the customary organs of power has a certain irony. Yet it is a testimony to the political atmosphere then. Their manoeuvres are also important because both the instability caused by the violence of Clodius and Milo, and the eventual confidence in the rule of law established under Pompey's protection, helped to determine the political position of the *boni* associated with Pompey in 49 B.C. Cicero's relationship with Milo is at first sight one of the more puzzling aspects of his career. What had they in common, except that Milo, like most late Republican politicians, was at one time associated with Pompey? Properly interpreted, however, this relationship may not only illuminate Cicero's own attitudes but illustrate the character of the last years of Republican politics.

THE GROWTH OF AMICITIA

Milo was by birth a Papius from Lanuvium, adopted by his mother's father T. Annius. The latter was conceivably the connection of Cicero's, who was also a friend to Oppianicus and family-adviser to his wife Sassia. Milo may have received his estate at Oriculum in Umbria from his adoptive father, while inheriting property and standing at Lanuvium from his natural father.⁵ Cicero's other friends from Lanuvium included the senators, C. Velleius and L. Thorius Balbus, Q. Roscius the actor and L. Aelius Stilo, the grammarian and speech-writer, with whom he had studied in his youth. He twice makes complimentary allusions to Lanuvium in the peroration of his speech for Murena, the first consul from this *municipium*.⁶ In 49 B.C. he was considering buying property there, but it was a mere dream, which was not apparently fulfilled till 45.⁷ There is no sign that he had a residence there before, and his attitude in 49 implies the contrary.

We know nothing of Milo's early life and political career before he was elected tribune for the year 57. In early 57 there were eight tribunes prepared to back a bill for Cicero's

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¹ *Att.* v, 13, 1: 22 July, 51 B.C. = 560th day after Bovillae (with *quinto* emended to *quingentesimo*).

² *Mil.* 78; 88.

³ D. L. Stockton *Cicero* 224–5; D. R. Shackleton-

Bailey, *Cicero* 97–8. Relatively fuller treatment is given by R. E. Smith, *Cicero the Statesman* 195–7, and a careful survey of the evidence is now available as part of a book by M. Gelzer, *M. Tullius Cicero* 206 ff.

⁴ See my *Violence in Republican Rome* 4, 91, 199 ff. ⁵ 53 C; *Clu.* 78; 182; *Mil.* 64 (cf. T. P. Wiseman, *New Men in the Roman Senate* 195, and 50, n. 1.).

⁶ *ND* i, 79; *Fin.* ii, 63; *Div.* i, 79; *Brut.* 207; *Mur.* 86; 90.

⁷ *Att.* ix, 9, 4; 13, 6. Cf. *Att.* xii, 41, 1; 43, 2, etc.

recall.⁸ The chief proposer was neither Milo nor Sestius (although the latter had visited Caesar and had been in communication with Cicero the previous year)⁹ but a certain Q. Fabricius. On the 23rd of January, when Fabricius tried to hold a final vote on the bill in the *concilium plebis*, the meeting was broken up by Clodius' gangs¹⁰ (including gladiators belonging to the entourage of his brother Appius, then praetor¹¹). Milo subsequently imprisoned these gladiators but they were released by Serranus.¹² After this Milo attempted to accuse Clodius in the *quaestio de vi* but was prevented by edicts suspending judicial business.¹³

In consequence both Milo and Sestius got together armed entourages of their own, apparently composed for the most part of professional gladiators and beast-fighters.¹⁴ How far these forces were instrumental in getting the final bill about Cicero's return through the *comitia centuriata* on 4th August is a matter of conjecture. Dio suggests that Milo's men were a deterrent to Clodius, but there is no confirmation for this in Cicero's speeches after his return.¹⁵ Veto and obstruction were forbidden by the senate¹⁶ and the senate's authority probably received practical support from pressure exerted by Pompey. The failure of the harvest in the corn-growing provinces had caused unrest in the city, leading to an attack on the house of the *praetor urbanus*, L. Caecilius Rufus.¹⁷ Previous opponents of Cicero who wished the rioting to stop were no doubt happy to make concessions to Pompey, on condition that he took this problem off their hands. Hence it came about that the *senatus consultum* urging the consuls to restore Cicero was regarded as a sign that Pompey was to be called in to manage the corn-supply, and so the price of grain dropped.¹⁸ Even the mass of Italian voters was brought to the *comitia* not only by Cicero's reputation but as a result of the movement organized in the *municipia* by Pompey.¹⁹

It is arguable that at this point Milo's services to Cicero were indirect, by virtue of his support for Pompey, inasmuch as his resistance to Clodius' gangs prevented Pompey from being physically immobilized as in 58. Certainly Milo did not provide Cicero with physical protection when he first returned to Rome. Clodius was able to attack the sites where Cicero's and his brother's houses were being rebuilt without opposition from Milo, who lived nearby, and Cicero had his own bodyguard when attacked in the *via Sacra*.²⁰ Milo's men only went into action when his own house in the Cermalus area of the Palatine was attacked.²¹ According to Cicero, his detractors assumed that he was behind Milo's obstruction to Clodius' election to the aedileship, but in fact it was Milo's own plan, something of a personal vendetta, which Cicero, a little envious of Milo's recklessness and ruthlessness, expected to end in Clodius' murder, if Milo got the chance.²²

By the next year Cicero's relationship to Milo had grown closer. Some time after the middle of December²³ the aediles were elected without Clodius being tried. Clodius took advantage of his office to prosecute Milo before the people, and Cicero seems to have helped organize his defence.²⁴ We have a brilliant picture in a letter to Quintus²⁵ of the second of the preliminary *contiones*—in some ways a foretaste of what was to come in 52. Pompey had to speak against a continuous uproar of barracking and organized chants but nevertheless managed to get through his speech. After hearings on 2nd, 7th and 17th February, Clodius

⁸ First promulgated on 29th October, 58 B.C. (*Att.* iii, 23, 1) but perhaps revised, before being presented again by the new college of tribunes (cf. *Sest.* 72).

⁹ *Sest.* 71; *Att.* iii, 17, 1; 18, 1.

¹⁰ *Sest.* 75–8.

¹¹ *Sest.* 78; 85.

¹² *Sest.* 85. Milo as yet had no effective force of his own. Compare what happened when Sestius used *obnuntiatio* (*Sest.* 79).

¹³ *Red. Sen.* 19; *Sest.* 89; 95; cf. *Red. Sen.* 6; *Sest.* 85; Ed. Meyer, *Caesars Monarchie* 109, n. 3.

¹⁴ *Sest.* 84 ff.; 127; cf. *Vat.* 40; *Off.* ii, 58; *Caes. BC.* iii, 21.

¹⁵ Dio xxxix, 8, 2–3. However, this may be inference and Dio's account can be misleading through compression; cf. xxxix, 7, where two separate accusations by Milo of Clodius are treated as one. *Red. Sen.* 30 is vague and probably a reference to earlier events in 58 B.C. Plutarch (*Pomp.* 49, 3) talks of Pompey himself protecting Cicero's brother against Clodius

when he was appealing for Cicero's return in the forum.

¹⁶ *Red. Sen.* 27; *Sest.* 129.

¹⁷ *Dom.* 11–14; *Asc.* 48C; *Att.* iv, 1, 6; Dio xxxix, 9, 2.

¹⁸ *Dom.* 14. Cf. *Red. Sen.* 26; *Sest.* 129.

¹⁹ *Red. Sen.* 29; *Mil.* 39; *Asc.* 3C.

²⁰ *Att.* iv, 3, 2–3. Earlier, on 5th Sept., Clodius' men who were on the Capitol were allegedly dispersed by a larger crowd looking for bread and so Cicero reached the senate safely (*Dom.* 6).

²¹ *Att.* iv, 3, 3–4.

²² *Att.* iv, 3, 5.

²³ After *QF* ii, 1, written after 10th Dec., 57, and probably before the *feriae* and *dies comitiales* at the end of the month. Dio deliberately dates the election in 56 (xxxix, 18, 1).

²⁴ In *QF* ii, 3, 1 Cicero says that he had asked M. Marcellus to speak for Milo and goes on 'honeste discussimus'.

²⁵ *QF* ii, 3, 2.

postponed a final vote by the *comitia* until 7th May, but we do not know whether it even took place.²⁶ Meanwhile Milo's gangs had grown so strong that Cicero could declare that they would without reinforcement be far superior to Clodius' men on 17th February. Cicero had finally come to accept the use of political violence by those whom he supported. Instead of 'diaeta curare incipio, chirurgiae taedet', his view in November 57, we find a confident anticipation of a battle; and this is matched by a remarkable justification of violence on behalf of the *boni* given to the public at large in *pro Sestio*.²⁷ Milo showed his gratitude by providing a guard for Cicero's house, which was subject to new attacks in April: for Clodius took advantage of the reply of the *haruspices* about prodigies to claim that its rebuilding on consecrated ground had provoked the gods' anger.²⁸ Thus there had grown up a political connection based on more than mutual gratitude. Cicero was treating Milo as he had wished to be treated by Pompey, 'et in re publica et in amicitia adiunctum'. It is significant that Cicero's justification of the violence used by Milo and Sestius in *pro Sestio* (90-92) is closely followed (after a brief transitional passage denouncing the opposition) by his laudatory description of the true optimate (96 ff.), the politician who seeks to satisfy the best men of every class and so saves the state. This was a public commitment to Milo and Sestius, as fulsome as his praise of Pompey in *pro lege Manilia*, which no one would easily have forgotten.

MILO'S CONSULAR CANDIDACY

Though Pompey's new agreement with Caesar at Luca led to his reconciliation with Clodius,²⁹ he does not seem to have immediately abandoned Milo for this reason. The probable date for Milo's praetorship is 55 B.C., since otherwise he would have violated the *lex annalis* by not allowing a two-year gap between his praetorship and consulship. Pompey helped him in his candidature,³⁰ and this would have been of enormous consequence when the praetorian elections for 55 were eventually held in 55, after Pompey and Crassus had been declared consuls by an interrex.³¹ In a letter of 55, Cicero speaks of attending on Milo in the morning on the second of a month. Atticus was going to be there too.³² I suspect that they were to be members of Milo's *consilium* during the hearing of some case. Milo's wedding on 18th November was a 'must' for Cicero. The bride was Fausta, daughter of the dictator Sulla and recently divorced from C. Memmius.³³ The events of the following year show clearly that this was a step towards the consulship, which Cicero did his best to support. The candidates for the consulship of 53 were C. Memmius, backed by Caesar and originally by Pompey, Cn. Domitius Calvinus, M. Valerius Messalla and M. Aemilius Scaurus.³⁴ Scaurus was half-brother to Fausta and Faustus Sulla, and thus now an *adfinis* of Milo.³⁵ He was expected to enjoy the support of Pompey, his old commander in the East; he had married his ex-wife, Mucia Tertia, and was also connected with him through Faustus Sulla and his wife Pompeia, but at his trial for extortion in August-September 54 Pompey was lukewarm, and later dropped him altogether.³⁶ The political rivalry between Memmius and Scaurus had no doubt contributed to Fausta's divorce. The tensions between the candidates found expression not only in notorious competitive bribery but in violence.³⁷

²⁶ *ibid.* and *QF* ii, 6, 4. Dio's statement (xxxix, 19, 2) that Milo was 'in theory condemned, in fact convicted without even making his defence' seems to be a false inference from the events of 7th February, in view of the silence of the other sources and the disqualification from being a senator attendant on condemnation by the people, even if the charge was non-capital (*Asc.* 78C.)

²⁷ *QF* ii, 3, 4. Cf. *Att.* iv, 3, 3; *Sest.* 86-7; 90-2.

²⁸ *Att.* iv, 7, 3; Dio xxxix 20, 3. Cf. *Har. Resp.* 15 for a *s.c.* of 56 as well as of 57 protecting the reconstruction; *ibid.*, 8 ff. for Clodius' arguments. See Courtney, *Philologus* 1963, 155 f.

²⁹ Already detectable in *Har. Resp.* 51 ('reconciatio gratiae'). Dio (xxxix, 29, 1) makes this too dramatic and puts it too late—after C. Cato's obstruction to the elections. In the preceding chapters Dio ignores Luca and assumes that Pompey

and Crassus made an agreement to topple Caesar from power!

³⁰ *Mil.* 68.

³¹ Dio xxxix, 31. See Plut., *Cato min.* 42, 3 ff. (cf. *Pomp.* 52, 2; *Crass.* 15, 7) on the subsequent praetorian elections where Pompey and Crassus got their own candidates elected by manipulating the omens, bribery and force.

³² *Att.* iv, 12. The second day of a month was regularly a *dies fastus*, not *comitialis*.

³³ *Att.* iv, 13, 1, cf. *Asc.* 28 and 31C, *Att.* v, 8, 2.

³⁴ *Att.* iv, 16, 6; 15, 7; 17, 2-3.

³⁵ 28C.

³⁶ 19 and 28C; *QF* iii, 6, 3. Cf. App., *Syr.* 51, 255; Jos., *AJ* xiv, 29 ff.; 74. Faustus Sulla was married to Pompey's daughter, probably since about 59 B.C. (*RE* iv, 1510; xxi, 2, 2263-4). Earlier Pompey had been himself married to Scaurus' sister.

³⁷ 20C—a few days after charges had been laid against Scaurus.

When Scaurus was tried for extortion, Milo joined Faustus Sulla and a number of distinguished politicians, including both Cicero and Clodius, in his support.³⁸ Milo had every reason to believe in 55 that his marriage would have reinforced his links with Pompey. In fact it endangered them. Furthermore, he must have hoped when he married Fausta that Scaurus would be elected consul in 54 and eventually preside over his own election the next year as consul for 52. As it turned out, he backed the wrong horse, and for a time it even looked as if Memmius might be presiding over the election in 53 instead. Cicero's own favoured candidate was Messalla.³⁹ Nevertheless, he knew how important it was to get support from all quarters in support of a consular candidature. About the beginning of July 54 both he and Milo were reconciled with C. Cato, who as tribune in 56 had been an ally of Clodius.⁴⁰ He had written to Caesar commending Milo early in 54. Then Clodius also wrote to Caesar complaining about Milo's popularity in the theatre (perhaps at the *ludi Apollinares* in July where Cicero also received a great reception), but Caesar did not reply.⁴¹

Cicero was worried, however, about Pompey's attitude to Milo, his old protégé. In October he told Quintus that he had not accused Gabinius because he did not want another battle with Pompey; there was already one on the horizon over Milo. By the end of November Pompey was so hostile to Milo that he was trying to enlist Caesar's support against him.⁴² The consular elections had meanwhile been delayed through religious obstruction. This had been instigated by Scaurus, who wished to catch up with his rivals in bribery, but seems to have been backed later by the other candidates who were now subject to bribery charges, especially no doubt those whose best hope lay in the elections being held by an interrex or a dictator.⁴³ There was only one plausible candidate for dictator—Pompey. His appointment would not have suited Scaurus and Milo. Milo even considered using force to back a veto on such a proposal.⁴⁴ Cicero shows no moral scruples when he relates this plan. The argument against it was the danger of Pompey's enmity, which also had deterred Cicero himself from accusing Gabinius (see below).

Cicero's support of Milo at this time seems at first sight to be becoming more of an act of personal devotion to an *amicus*. Could the prolonging of anarchy at Rome be squared with optimate principles? Milo was perhaps not the only man with whose political ambitions Cicero was then involved. Wiseman has recently suggested that Cicero was preparing for his brother's consular candidacy too.⁴⁵ In my view, Quintus could not have decided to stand for 52. Otherwise he would have been already planning to return from Gaul in winter 54. However, a second Ciceronian consulship in 51 would be facilitated if Milo was consul in 52, while Milo's failure would weaken Cicero's own influence. Whether or not Quintus' consulship was Cicero's ultimate aim, Cicero may well have believed that only Milo's success would restore him his lost authority and bring back the republic of all the best men.

Milo was preparing in late November a most spectacular dramatic festival. He had already given a gladiatorial show, perhaps when praetor.⁴⁶ It is not clear in what capacity he was intending to give the second show. Cicero says that Milo was stupid since his proposed games were not required for two or three reasons, 'vel quia munus magnificum dederat vel quia facultates non erant vel quia potuerat magistrum se non aedilem putare.'⁴⁷ The third clause must mean that Milo, if he had not been preparing these games, could have thought himself a *magister* (which he was) rather than an aedile (which he was not). Milo was in fact acting as if he was an aedile whose unavoidable task it was to put on stage shows.⁴⁸ However, what sort of *magister* was he? Hardly an executor, as Tyrrell and How suggested.⁴⁹ The Romans did not have executors of wills such as we are used to, apart from the *sui*

³⁸ 28C.

³⁹ *Att.* iv, 16, 5; 17, 3; *QF* iii, 3, 2; 6, 3.

⁴⁰ *Att.* iv, 15, 4; Asc. 28C. The election was expected on July 27 at the time *Att.* iv, 15 was written (see § 8).

⁴¹ *Fam.* vii, 5, 3; *QF* iii, 1, 11 and 13, cf. *Att.* iv, 15, 6; *QF* ii, 15, 2.

⁴² *QF* iii, 2, 2; 6, 6; 7, 2.

⁴³ *Att.* iv, 17, 4; *QF* iii, 2, 3; 3, 2.

⁴⁴ *QF* iii, 6, 4 and 6, cf. 7, 3; *Att.* iv, 18, 3; 19, 1.

⁴⁵ *JRS* lvi, 1966, 108 ff. See especially *QF* ii, 16, 1; iii, 1, 12; 6, 1.

⁴⁶ *QF* iii, 6, 6; Asc. 31C. The gladiatorial show would have violated Cicero's own bribery law, unless

it had been given *ex testamento* (*Sest.* 133; *Vat.* 37). Granted that it was, Milo's praetorship would have been a convenient opportunity.

⁴⁷ I follow Watt's O.C.T. in secluding *vel quia magister*, but it would not affect the argument if these words were retained.

⁴⁸ If Milo was in fact aedile, his preparation of a festival could not be criticized as unnecessary. Moreover, any aedileship in this period would have violated the *biennium* which had to elapse between regular offices in the *cursus*.

⁴⁹ *Correspondence of Cicero* ii, 224; *Cicero: Select Letters* ii, 240.

heredes. *Magistri* were only appointed over a dead man's property when it had to be sold up, because there was no heir competent to handle the debts.⁵⁰ Such a person could not be giving games on behalf of the dead man. I would tentatively suggest that Milo had become *magister* of a *collegium*, probably one of the more respectable kind like the *Capitolini* or *Mercuriales*, since the proletarian associations had strong ties with Clodius.⁵¹ The importance of *collegia* in elections is attested by Quintus Cicero's pamphlet,⁵² and it would not be surprising if Milo was exploiting his presidency to make himself popular. These games took place in or after December 54 and Milo's subsequent burden of debt was notorious. Cicero indeed had to reply to an accusation by Clodius in the senate in early 52 that Milo had not fully admitted his debts.⁵³

Our knowledge of events in Rome in 53 B.C. is sparser than in any other year of the late Republic. There were no curule magistrates at the beginning of the year. Nor were these elected until either July or August.⁵⁴ Our secondary sources concentrate on describing how Pompey was manoeuvring to get a dictatorship voted to him.⁵⁵ He was in fact requested by the senate to maintain law and order in the Campus Martius as a proconsul when the elections finally occurred, but so far no further office was voted him.⁵⁶ Turmoil, however, continued during the struggle over the elections for 52. Clodius' gangs assailed the consuls of 53, Messalla and Domitius Calvinus, in a battle which had begun between the entourages of Hypsaeus and Milo in the Via Sacra.⁵⁷ M. Antonius, at that time a candidate for the quaestorship,⁵⁸ attempted to kill Clodius, according to Cicero.⁵⁹ Clodius himself had originally planned to be praetor in 53, but, when the elections were delayed for so long, he postponed his candidature and so was in conflict with Milo on his own account as well as on behalf of Hypsaeus and Scipio, the consular candidates favoured by Pompey.⁶⁰

There are two important pieces of evidence about Cicero's attitudes and policy during this year. First, in one of a series of letters to Curio (who was returning from Asia intending to give gladiatorial games and seek higher office) Cicero begs his help in securing Milo's election.⁶¹ He roundly states that Milo's consulship occupies his entire thoughts, for it will bring him not only reward for *officium* but glory on account of *pietas*. There follows a *commentariolum petitionis* in miniature. The various sections of the electorate are theirs, the

⁵⁰ This is the point of *Font.* 10 = Quint. vi, 3, 51:—'Platorum matrem dum vixisset ludum, postquam mortua esset magistratos habuisse.' See my Appendix, p. 77 below.

⁵¹ See *QF* ii, 6, 2 and my *Violence in Republican Rome* 77 ff. for further references and discussion.

⁵² *Comm. Pet.* 30.

⁵³ The *de aere alieno Milonis*. See the *argumentum* in *Schol. Bob.* 169 St. fr. XVI (172 St.) 'tuamque praetura non tuo more differas' is interpreted by the scholiast as a reference to Clodius' postponing his candidature 'etiam praesenti anno', i.e. for the second time, cf. *Mil.* 24. The first time was 53, so the scholiast thought the speech belonged to 52.

⁵⁴ Dio xl, 45, 1; App., *BC* ii, 19.

⁵⁵ App., *BC* ii, 19–20; Plut., *Pomp.* 54, 2–3; *Cato min.* 45, 7. Cf. Dio xl, 45, 5.

⁵⁶ Dio xl, 45, 2; Plut., *Pomp.* 54, 3. Dio associates this with the imprisonment of Pompeius Rufus while tribune by the senate. This can hardly be. The imprisonment of a tribune was unprecedented. At best it would have required a magistrate with *imperium* in the city and cooperation from the other tribunes. Pompeius Rufus was tribune in 52, and an immediately preceding tribunate in 53, is unlikely; nor does Dio himself comment on the phenomenon (xl, 55, 1). It is conceivable that Rufus was imprisoned as a *privatus* in 53 or tribune-elect (Meyer, *Caes. Mon.* 210, n. 2) (in which case much of the point of the story disappears). Pompeius Rufus' counter, the imprisonment of Favonius as aedile (Dio xl, 45, 4), should fall in 52 (see *MRR* ii, 240). In view of a possible confusion with 52, Dio's account of Pompey's security measures at the election in 53 is suspect, but Plut., *Pomp.* 54, 3 hints at the same thing. In *Violence in Republican Rome* (199, n. 5; 215, n. 1) I was for rejecting Dio's statement, on the ground

that the continuation of disorder was difficult to explain if the statement was true. It now seems to me acceptable if it is taken strictly to refer to a decree relative to the elections alone. I cannot believe with Meyer (*Caesars Monarchie* 210, n. 2) and Gelzer (*Pompeius* 181) that this was a *s.c.u.* Nor can I believe Dio's (xl, 46, 1) unsupported allegation that Pompey refused a dictatorship in 53 (accepted by Meyer, loc. cit.) in view of the opposition to this proposal in the senate in 52.

⁵⁷ 48C; *Schol. Bob.* 172 St. on 'lapidibus duo consules ceciderunt'.

⁵⁸ He was to accuse Milo the next year (Asc. 41C). I doubt whether he eventually stood for the quaestorship of 52 (as assumed in *MRR*) when the elections were eventually held in July–August of that year (Plut., *Pomp.* 54, 7, cf. *ILLRP* 786a). About the middle of the year he was acting as Caesar's legate in Gaul (Caes., *BG* vii, 31, 1) and is not called quaestor in the commentaries until 51 (*BG* viii, 2, 1). He would have returned from Gaul in late 52 to stand for election then, and immediately returned to Gaul, chosen by Caesar without the lot (*Phil.* ii, 50; *Att.* vi, 6, 4).

⁵⁹ *Phil.* ii, 49; *Mil.* 40 (where 'iudici laqueos declinantem' need not imply that Antonius himself was accusing Clodius and 'iam inretitam' seems to mean that Clodius was physically trapped).

⁶⁰ *Mil.* 24; Asc. 30, cf. 31 and 35C; *Schol. Bob.* 172 St., on which see note 53 above. Since Cicero made this allegation in *de aere alieno Milonis*, while Clodius was still alive, it cannot be easily discounted, as Badian suggests, *Studies in Greek and Roman History* 150. The last five months of 53 (with all the interruptions to public business) would not have been ideal for legislation.

⁶¹ *Fam.* ii, 6, 3 ff.

boni, the *multitudo*, the *iuventus*, i.e. young *equites* of the centuries, and the *gratiosi in suffragiis*, presumably the leaders of *collegia* and *sodalitates*. Cicero asks Curio to be the campaign manager, to steer the campaign and control the winds that fill its sails. It is doubtful if Curio did in fact help. No letter survives thanking him for his support and the appearance later of his friend, M. Antonius, as an accuser of Milo does not encourage the assumption.⁶²

Secondly, Cicero's defence of Gabinius in the *quaestio de repetundis* casts important light on his policy, provided that it is dated correctly. The only contemporary evidence for this is to be found in the speech *pro Rabirio Postumo*.⁶³ Rabirius was accused of receiving money improperly acquired by Gabinius under the 'quo ea pecunia pervenerit' clause of the *repetundae* law. In the speech Cicero rebuts charges that he had defended Gabinius and Postumus to avoid offending Pompey. Dio retails the story of Gabinius' trials as a pendant to his account of his proconsulship; he then briefly mentions Julia's death and Pomptinus' triumph,⁶⁴ and in the next book moves on to Crassus' Eastern campaign and Caesar's suppression of the Gallic revolts. On this evidence scholars have tended to date Cicero's defence of Gabinius to late 54,⁶⁵ although Dio's narrative sequence follows topic rather than chronology. In my view, it was legally impossible that Gabinius' trial *de repetundis* was completed in late 54 or early 53, and highly unlikely that it ever started. He entered Rome on 27th September, 54, having been already summonsed on a charge of *maiestas*, and appeared before the praetor the next day.⁶⁶ On 11th October there was a contest to decide who should accuse him *de repetundis*. By 21st October he was also accused of bribery. By 24th October he had been acquitted of *maiestas* by 38 votes to 32;⁶⁷ the trial thus ended just before the period in the year when, according to Cicero in the first Verrine,⁶⁸ litigation was almost impossible. The *ludi victoriae Sullae* ran from 26th October to 1st November, the *ludi plebei* from 4th to 17th November, and many of the remaining days of the year were not available. If his *repetundae* case had begun in 54, it would have been impossible to complete it in early 53 through the lack of praetors or other curule magistrates competent either to handle the case themselves or appoint a *quaesitor*. Even private litigation was almost impossible, although in theory litigants could approach the interrex, asking for a formula and a judge (or judges) to decide the case. Cicero says in a letter to Trebatius of early 53 that his advice to anyone being sued would be to ask each interrex for two adjournments on grounds of seeking legal assistance.⁶⁹ By this device the case would never come to court. There are two further points. An accuser in a *repetundae* case needed time for an *inquisitio* to collect evidence. Thirty days was thought sufficient for Sardinia; fifty days had to suffice for Cicero in Sicily, though he had originally asked for 110, because a competing prosecutor had been granted 108 days to go to Achaia.⁷⁰ 150 days would be a very conservative estimate for a period required for *inquisitio* in Syria and Egypt (a fast journey from Seleucia Pieria to Brindisi took 28 days⁷¹). Thus the case would not be expected to

⁶² 41C, cf. *Phil.* ii, 4 and 45.

⁶³ 19; 32; 41. It appears later in Val. Max. iv, 2, 4 and Dio (see below).

⁶⁴ xxxix, 62 ff. Cicero's defence of Gabinius (xxxix, 63, 5) is selected as a reason for a further deterioration of Cicero's repute, because he was an *automolos*. Dio believed that he originally got his bad name from his defence of Manilius in 66 (xxxvi, 44, 2), though his explanation of this is not very convincing. It was not difficult to denounce Cicero as a *transfuga* on account of his later behaviour, as the invective attributed to Sallust shows (ps. Sall., in *Cic.* 4, 7). However, Dio completely ignores the palinode of 56. Cicero's defence of Gabinius is also maliciously described (in company with his defence of Milo) in the invective Dio assigns to Fufius Calenus (xlvi, 8, 1). Dio's information on 'Cicero the deserter' may derive from a previous invective (cf. p. 74 below). His preoccupation with Cicero's failings and the preceding account of Gabinius' proconsulate may explain why the trials of Gabinius (with Julia's death and Pomptinus' triumph) are the only domestic events narrated between xxxix, 40 and xl, 45 (55 B.C. to mid-53).

⁶⁵ Groebe (Drumann-Groebe, *Gesch. Roms* iii, 54

ff.) assumed that Gabinius' *maiestas* trial was over well before 24th Oct., 54 (the date of *QF* iii, 4) and thus the *repetundae* trial could start mid-October. I think this unlikely in view of Cicero's eagerness to pass on news to his brother. But, even if it were, one could not hope to complete a *repetundae* trial in the time remaining in 54 after c. Oct. 17 (cf. *QF* iii, 2 and 3). Groebe's view is supported, e.g., in Rice-Holmes, *Roman Republic* ii, 157 and *RE* vii, 428. Meyer (*Caesars Monarchie* 206-7) more shrewdly placed the commencement of the *repetundae* trial after the last letter of 54 (c. mid-December), thus explaining why Cicero's change of attitude is not manifested in his correspondence and why Cicero could expect to be Pompey's legate (*Att.* iv, 19, 2), but he was not more precise.

⁶⁶ *QF* iii, 1, 15 and 24.

⁶⁷ *QF* iii, 2, 1; 3, 2; 4, 1-2; cf. for chronology 4, 6 and 3, 3; *Att.* iv, 18, 3.

⁶⁸ *Verr.* i, 31. Cf. *Fam.* viii, 10, 3 for 17th Nov. being *exitus anni*.

⁶⁹ *Fam.* vii, 11, 1.

⁷⁰ Asc. 19C; *Verr.* i, 6; *II Verr.* i, 30.

⁷¹ *Att.* xi, 20, 1.

begin before March 53. Furthermore, it is unlikely that Cicero was asked to defend Gabinius in late 54 after the *repetundae* proceedings had been initiated, in view of his complete silence on the point in the numerous letters at the end of this year. Through fear of offending Pompey he had refrained from joining in the accusations of *maiestas*, a course recommended by some of his friends. He felt it necessary to justify himself at some length on this score in letters to Quintus: the accusation was bungled, but the jury would never have convicted anyhow; as for defending Gabinius (Pansa's proposal), he would have collapsed. It appears that he had in fact given evidence against Gabinius 'summa cum gravitate . . . et summa cum lenitate', but apart from his vigorous testimony he did not identify himself with the prosecution case.⁷²

Gabinius' trial for extortion would not have come up before the consuls for 53 had been elected in July or August.⁷³ The elections which would decide whether Cicero would attain his current ambitions for Milo (and perhaps for Quintus) were then due, and it seemed likely that they could only be held if Pompey was once again requested by the senate to ensure security. It becomes understandable why Cicero should have sacrificed his feelings then in a desperate attempt to recover Pompey's goodwill for Milo. This was a change of heart that Pompey himself does not seem to have expected in 54.⁷⁴ However, Cicero's advocacy for Gabinius and Rabirius Postumus failed as a propitiatory offering to Pompey.⁷⁵ No curule elections for 52 were held in 53, and at the beginning of 52 Pompey through the tribune T. Munatius Plancus prevented the creation of an interrex, for fear that his future father-in-law Metellus Scipio⁷⁶ might fail at an election held then.⁷⁷ If, as has been suggested, an interrex merely had to produce his nominees and the assembly approved or rejected them,⁷⁸ there was a danger that both Pompey's candidates might not be nominated. If the election was free, Milo's bribes might have prevailed. Once again with Cicero's backing he was determined not to yield before Pompey's ambitions. His election now would have also been a greater threat to Clodius, as, once chosen, one of the consuls of 52 would have presided over the praetorian elections. Thus Milo might have had charge of the election at which Clodius was candidate.

BOVILLAE AND AFTER

On 18th January, 52, Q. Pompeius Rufus and C. Sallustius Crispus each delivered harangues attacking Milo before an informal assembly of the people.⁷⁹ Although this was a *dies comitialis*, a meeting of the senate was also held which broke up early, about the fourth hour of the day.⁸⁰ Later, but before the *contiones* had finished, Milo left Rome by the Via Appia for Lanuvium, where he was dictator, in order to proclaim the appointment of a priest, according to Cicero, on that very day.⁸¹ Meanwhile Clodius, who had left Rome the previous day to address the local senate at Aricia (presumably as part of his election campaign), had returned on the 18th by the Via Appia and stopped at his Alban villa, a little

⁷² *QF* iii, 2, 2; 4, 1-2; 5, 5; 7, 1, cf. 3, 3.

⁷³ There is a further point in favour of this view, but it depends on Appian whose account of 53-2 B.C. (surely not taken in detail from Pollio) is full of careless inaccuracy. He says (*BC* ii, 24) that the first people convicted under Pompey's laws of 52 were absentees, Milo for murdering Clodius, Gabinius for *maiestas*. If this is in fact a reference to Gabinius (like Milo) being tried in absence for *ambitus* in 52, then it suggests that there was no chance for P. Sulla's accusation of Oct. 54 to take place beforehand.

⁷⁴ At the end of 54 Cicero expected to be Pompey's legate from the Ides of January 53 (*Att.* iv, 19, 2). This suggests that at that time Pompey had little hope of him becoming Gabinius' defence counsel. In fact he does not seem to have gone (cf. *Fam.* vii, 11-3) though the *legatio* was apparently still a possibility in early 52 (*Schol. Bob.* 173 St.).

⁷⁵ *Pro Rabirio Postumo* was also intended to preserve Cicero's good relationship with Caesar (41 ff.). Note especially the praise of Caesar's winter campaigns, presumably those of 54-3 B.C.

⁷⁶ 31C, suggesting that the marriage had already taken place by the beginning of 52. However,

Plutarch (*Pomp.* 55, 1) relates that Pompey was criticized for marrying Cornelia immediately after his appointment as consul, on grounds of *levitas* and because this led to improper practice at Scipio's trial.

⁷⁷ *Asc.*, loc. cit.

⁷⁸ See the discussion of Staveley, *Historia* iii, 1954, 193 ff. (esp. 201 ff.), on this point based on Dion. Hal. iv, 75, 2; 80, 2; 84, 5. However, his view is in conflict with Livy's description of the consular elections for 216 (xxii, 34-5) and Dio's of those of 55 B.C. (xxxix, 31). See now J. Jahn, *Interregnum und Wahl dikatur* (Frankf. althist. Stud. 3, 1970), esp. 25 ff., 124 ff., 167 ff. and cf. *JRS* lxii, 1972, 187 f.

⁷⁹ *Mil.* 45; 49C.

⁸⁰ 34-5C.

⁸¹ *Mil.* 27-8, cf. 46. Though Asconius (31C) states that the installation of the *flamen* was to be the following day (*postera die*), Cicero states explicitly in *Mil.* 46 that the *flamen* had to be installed 'illo ipso die' and there is no other day in question but that of the journey. On this point, which is in fact not entirely favourable to him, Cicero's statement should be respected.

south-east of Bovillae. He apparently also visited Pompey's Alban villa nearby some time late in the day.⁸² Milo paused on his journey at Bovillae itself before the ninth hour, that is, at least three hours before dusk.⁸³ Later—Asconius puts it about the ninth hour, Cicero about the eleventh⁸⁴—Milo, who was riding in a carriage with his wife and a friend, and was accompanied by a long train of armed slaves and gladiators (allegedly more than 300), met Clodius. The latter was proceeding north on horseback with three companions and about thirty slaves with swords, but was otherwise unencumbered.⁸⁵ The encounter occurred near a shrine to the Bona Dea in front of Clodius' property.⁸⁶ According to Asconius, the tails of the columns became involved in a brawl, which led to Clodius turning round with a threatening gesture. One of Milo's chief gladiators wounded him in the shoulder and the rest of Milo's men ran up. Clodius was removed to a nearby taverna, but this was stormed by Milo's men on his orders and Clodius was killed.⁸⁷ Milo thus fulfilled the threat that he had originally made five years before. Perhaps he feared a wounded Clodius more than a dead Clodius. The body was abandoned in the road, where it was subsequently found by a senator returning to the city. It was sent by him in his *lectica* to Clodius' house on the Palatine, reaching there before the first hour of the night had passed. Eleven of Clodius' slaves were killed, the rest were wounded and went to ground. Apparently only two of Milo's slaves were wounded, but his coach-driver was probably killed.⁸⁸

I shall discuss Cicero's method of defending Milo later, but it is appropriate to point out here that the description of the nature and timing of the fight propounded in the published *pro Milone* is both rejected by Asconius and goes against probability. Since the fight took place about thirteen miles from the centre of Rome,⁸⁹ it is difficult to see how it could have started as late as the eleventh hour, if Clodius' corpse reached his home before the first hour of the night. Furthermore, Milo would surely have had to appoint the priest at Lanuvium before sundown and he would have left things too late, if he only had reached Bovillae at the eleventh hour. Cicero also seems to have misrepresented the affray in order to make Clodius' exit from his villa the more suspicious.⁹⁰ According to him, Milo was attacked simultaneously down a slope and from in front; his coachman and many others were killed. Cicero implies that the terracing of Clodius' villa, which was still being built, concealed a vast number of men. Asconius says nothing of Milo's men dying. If they were killed, this may have happened during the assault on the taverna. The whole course of the fight down to the fate of Clodius' corpse suggests that Clodius' men were completely outnumbered. The fact that, when wounded, he was not taken to his own villa implies that Milo's column was between him and the villa when the battle took place, and that he got no support from the villa. Therefore, Asconius' view of the affair, which was based on a study of the evidence and pleas on both sides in the *Acta Diurna*, should be accepted. The fight began accidentally but ended in deliberate murder.⁹¹

On the 19th, urged by the tribunes Pompeius Rufus and Munatius Plancus, the crowd carried the corpse to the *rostra* and then into the senate house, where it was cremated.⁹² The curia itself caught fire together with the Basilica Porcia: the crowd was still in the forum watching it smouldering at the ninth hour (the supper hour).⁹³ A meeting of patricians was held on the Palatine to choose the first interrex, M. Aemilius Lepidus. He was installed the next day, two days after Clodius' murder, and his house was immediately attacked by the

⁸² 31C; *Mil.* 51; 54. Cicero alleges that Clodius finally left his Alban villa after the tenth hour on the news of the death of the architect Cyrus (48).

⁸³ Quint. vi, 3, 49—from the speech of Milo's accuser, but not refuted by Cicero and implicitly accepted by Asconius.

⁸⁴ 31C; *Mil.* 29.

⁸⁵ 31-2C; 35C; *Mil.* 28-9.

⁸⁶ 31C; *Mil.* 53; 86.

⁸⁷ 32; 35C.

⁸⁸ The allegations of Metellus Scipio (35C) about Clodius' slaves seem to be accepted by Asconius himself (32C). The allegation about Milo's slaves seems to be in conflict with Cicero's direct statement that Milo's coach-driver was killed (*Mil.* 29), but the latter could have been a *libertus* (cf. *ILLRP* 130) and Metellus' allegation literally true but misleading.

Cicero's vague assertion about other deaths among Milo's men should be treated with suspicion.

⁸⁹ See Lugli's map in *BCAR* 42, 1914, tav. ix-x, cf. 251 ff.

⁹⁰ *Mil.* 29; 53-4.

⁹¹ 32; 41C. For explicit references to the *Acta* see 31, 44, 47, 49C, cf. 19C, but they must have been the source of much other material in Asconius and, as the extracts show, were verbatim reports, cf. Tac., *Dial.* 37, 2 ff. (clear evidence that *forensic* speeches were so reported, against the view of Settle, *TAPA* xciv, 1963, 274 ff.).

⁹² 32-3C. Dio xl, 49; App., *BC* ii, 21 (Appian here as in neighbouring chapters has added circumstantial detail to the story of Milo which seems to derive from his own imagination).

⁹³ Dio xl, 49, 3.

mass of Clodius' followers.⁹⁴ Supporters of Scipio and Hypsaeus demanded that he should immediately hold an election, which was illegal, and when this was refused besieged his house throughout his five day term of office.⁹⁵ Lepidus, the son of the consul of 78, whose rising had been put down by Pompey, did not give way to Pompey's friends. Even if an interrex had tried then to get either Milo or Scipio and Hypsaeus elected, the election procedure would have been wrecked by violence, perhaps in support of a tribunician veto. On the other hand, some satisfaction had to be given to the *Clodiani* if peace was to be restored. This meant at the least putting Milo on trial, which required the existence of regular curule magistrates or someone with special powers. The Clodian mob also carried *fascēs* to the homes of Scipio and Hypsaeus and then to Pompey's *horti*, a garden villa on the west of the Pincio,⁹⁶ hailing him sometimes as consul, sometimes as dictator. Thus the fifteen-month-long agitation for a dictatorship, which Pompey himself had obliquely fostered, attained a new impetus.

Milo for his part did not give up. Perhaps foreseeing that Pompey was likely to be given authority in the city, he tried to visit him on 22nd January, but was rebuffed. Pompeius Rufus the next day held a *contio* in which he declared, 'Milo has given you someone to burn in the *curia*; he is about to give you someone to bury on the Capitol.'⁹⁷ In spite of obstruction by Pompey's associates, Milo and Cicero seem still to have hoped for a reconciliation.⁹⁸ Indeed, the very insistence with which Clodius' friends continued to exploit an apparently genuine fear of Pompey's that he would be murdered by Milo shows their anxiety about such a reconciliation, and their determination not to allow it.⁹⁹ For the moment Milo had the support of Cicero and of Caelius Rufus, who was linked with both of them through a common hostility to Clodius. The bond between Caelius and Milo was strong enough for Caelius to seek Milo's support when he broke with the Caesarians in 48.¹⁰⁰ Now, in his capacity as tribune, he allowed Milo to address the people some days after his return and, spoke himself at this meeting.¹⁰¹ Both alleged that Clodius had been plotting to kill Milo, thus preparing the ground for the plea of self-defence that was eventually used.

Cicero cannot have rated Milo's chances very highly, now that he was caught between the violence of the *Clodiani* and the danger of a trial which would follow a restoration of order. Yet Milo's impolitic behaviour in murdering Clodius had brought Cicero revenge and an emotional satisfaction which can still be detected in the *pro Milone*. Moreover, this murder, however impolitic, was not in Cicero's eyes immoral. Since 59 he had been supporting in theory the use of private force, if necessary, to eliminate the bad men.¹⁰² He did not use the argument that Clodius' murder was *pro re publica* in the defence speech that

⁹⁴ The more detailed account in 43C must be preferred to the compressed passage in 33C which seems to imply that the attack on the house of Lepidus, as interrex, occurred on 19th Jan. 'Post biduum medium quam Clodius occisus erat interrex primus proditus est M. Aemilius Lepidus' must mean that Lepidus was installed on the second day after Clodius' murder and perhaps in the afternoon (cf. Dio 40, 49, 5 for an echo of this). Conrad has shown decisively (*CP* ix, 1914, 78 ff.) that 'biduo post' means 'two days afterwards' and is not equivalent to 'postridie'. Asconius' phrase seems to be equivalent to 'biduo post quam Cl. occ. erat post meridiem'. The facts, moreover, point to Lepidus taking office on the 20th. The turmoil in the forum on the 19th, which lasted till supper-time, hardly provided an atmosphere conducive to the solemn installation of the interrex by the patricians. Nor was the Palatine (where Dio says that the meeting of patricians was held) any calmer, since the homes of both Clodius and Milo were there. See Tamm, *Auditorium and Palatium* 27 ff. for a new reconstruction of their relative position on the Cermalus plateau.

⁹⁵ 43C.

⁹⁶ 33C; 43C. On the *horti Pompeiani* see also Plut. *Pomp.* 44, 3 (used in early 62 B.C.); Cic., *Phil.* ii, 109; Vell. ii, 60, 3; App., *BC* iii, 14 (presented by

Caesar to M. Antonius); *CIL* vi, 6299. Grimal, *Jardins Romains* 129 ff., argues that they extended over the line of the *via Flaminia*.

⁹⁷ 50-1C. Some citizens and their families were granted the right of burial within the city boundary as a special privilege—Valerius Poplicola, Postumius Tubertus and C. Fabricius Luscinus (Cic., *Leg.* ii, 58). Poplicola was in fact buried near the forum under the Velia (Dion. Hal. v, 48, 3). This is similar to the hero-cult of founders and benefactors in Greek cities, cf. e.g. Fustel de Coulanges, *Cité Antique* 168 ff.; Nilsson, *Geschichte der Griechischen Religion* i, 677 ff.; ii, 128 ff.; Gomme's *Commentary on Thucydides* v, 11, 1; L. Robert, *L'Antiquité Classique* xxxv, 1966, 420 ff.

⁹⁸ See below pp. 71, 73. Milo's continued bribery (33C) suggests that he foresaw an election being held by a dictator.

⁹⁹ 36-7; 50-1C. Cf. *Mil.* 63-4 for allegations that Milo would try a *coup d'état*.

¹⁰⁰ Caelius had not only been accused *de vi* by Clodius in 56 but also brought to court by the *gens Clodia* on some unknown charge in 54 (*QF* ii, 12, 2). See also Caes., *BC* iii, 21-2.

¹⁰¹ 33C; *Mil.* 91. The conjecture 'ac Cicero ipse' printed in Clark's text of Asconius is doubtful in view of Cicero's silence on this in *Mil.* 91.

¹⁰² See my *Violence in Republican Rome* 54 ff.

he was to deliver, but its brief appearance in the published version is a reminder that it still carried weight for him.¹⁰³ There is also an earlier reference to two other such private defenders of the state, Servilius Ahala and Scipio Nasica (cunningly associated with two magistrates who had acted after a *senatus consultum ultimum*), which may have been in the speech he delivered.¹⁰⁴ Thus, paradoxically, Cicero's association with Milo must have grown closer, the less hopeful its future became.

POMPEY'S SUPREMACY

In February the senate passed the *senatus consultum ultimum* urging the *interrex*, the tribunes and Pompey as proconsul near the city to defend the *res publica*.¹⁰⁵ An emergency levy was also decreed throughout Italy, including Cisalpine Gaul, and Caesar, who had arrived there simultaneously with the news of Clodius' murder, carried out the levy there.¹⁰⁶ Pompey, who was charged with the levy in Italy, had received a much wider mandate than in 53, one which established an important constitutional precedent. As proconsul he did not enter the *pomoerium* but, apart from his recruiting tour, stayed in his Pincian villa, protected by a ring of troops.¹⁰⁷ However, his soldiers kept order throughout Rome, and so for the first time a proconsular army entered Rome as an agent of law-enforcement.

Moreover, Pompey's proconsular authority was assumed to extend to other civil matters in Rome. On his return from collecting a city guard legal proceedings against Milo were also begun. The two young Appii Claudii, who were Clodius' nephews,¹⁰⁸ wishing to question the slaves of Milo and Fausta involved in the Bovillae battle, brought before Pompey an *actio ad exhibendum*, an ordinary private law action, used *inter alia* as a preliminary to a noxal action against a master for damage done by his slaves.¹⁰⁹ It then required the production of slaves so that the plaintiff could pick out and extract testimony from those which he alleged had harmed him. It is interesting that these applications were not made to the *interrex* who, as Cicero states in his letter to Trebatius,¹¹⁰ theoretically handled litigation during his term of office. This shows how far Rome had become part of Pompey's *provincia* apparently with the consent of the senate. Nor did Caelius question this procedure or use his veto on Milo's behalf, but himself demanded before Pompey to see the slaves of Hypsaeus and Q. Pompeius Rufus.¹¹¹

When the actions against Milo were brought during the intercalary month,¹¹² Hortensius successfully argued that the slaves concerned were now free men, manumitted for defending their master's life. Milo was supported by an impressive gathering of *boni*—Cicero, Cato, Faustus Sulla, M. Marcellus and Calpidius. However, more widespread backing was necessary to counter Pompey's influence and that of Clodius' friends. In a senate debate about 20th February, when Brutus gave Milo's version of the battle, Metellus Scipio vigorously rebutted him, alleging a plot by Milo and subsequent brutalities.¹¹³

Pompey's behaviour to Milo remained correct. When brought a report that Milo's slaves and freedmen were plotting to kill him, he asked Milo about the names he had been given, and had Cicero among the *consilium amicorum* which discussed the matter.¹¹⁴ When Milo

¹⁰³ 41C; *Mil.* 72 ff.

¹⁰⁴ *Mil.* 8.

¹⁰⁵ 34C. This is misleadingly placed by Dio xl, 49, 5 in close conjunction with the nomination of the first *interrex*, apparently as a second instance of senatorial reaction to the riots of 19th Jan. For the formula see *Violence in Republican Rome* 151 f.

¹⁰⁶ Asc., loc. cit.; Caes., *BG* vii, 1, 1—'Caesar . . . in Italiam . . . proficiscitur. Ibi cognoscit de Clodi caede deque senatus consulto certior factus, ut omnes iuniores Italiae coniurarent, dilectus tota provincia habere instituit.' Cf. Dio xl, 50, 1, who also mentions a change of clothing by the senate, possibly the assumption of *saga* rather than of mourning, as measures were being taken similar to those after a *tumultus* declaration, on which see *Viol. Rep. Rome* 19 f.; 153 ff.

¹⁰⁷ 36C; 51C.

¹⁰⁸ Sons of C. Claudius Pulcher (*pr.* 56), on whom see now Wiseman, *HSCP* lxxiv, 1968, 207 ff.

¹⁰⁹ 34C. Cf. *Dig.* x, 4, 3, 7; 4, 61 and 20. This

action existed during the time of Aquilius Gallus (*Dig.* xix, 1, 17, 6). See Watson, *Law of Property* 107–9, who does not, however, mention the present instance.

¹¹⁰ *Fam.* vii, 11, 1.

¹¹¹ 34C.

¹¹² This, since 23 days were inserted into the calendar (calculated from *Att.* v, 13, 1, see n. 1), would have begun on the second day after Terminalia (25th Feb.). Cf. *CQ* n.s. xviii, 1968, 189, with n. 2. I have taken 'haec agebantur mense intercalari' in Asc. 34C to refer simply to the *actiones ad exhibendum*. If it is taken to refer to the *s.c.u.* as well, then this, Pompey's recruiting tour and the legal actions have to be fitted into the first twenty three days of the intercalary month. Moreover, it would be difficult then to explain why Asconius' account of Scipio's speech (*c.* Feb. 20) is placed after the section, 'itaque primo factum erat . . . mense intercalari.'

¹¹³ 34–5C.

¹¹⁴ *Mil.* 65; 51C.

offered to abandon his candidature at Pompey's recommendation, Pompey's official reply was that it was not his decision whether anyone should undertake or abandon a candidature. However, he privately requested Milo not to bring him into an invidious position by such approaches.¹¹⁵ Milo's offer was shrewdly devised to exploit the division in aims between Pompey and the two consular candidates whom Pompey had been supporting. Scipio and Hypsaenus would have been content with unopposed election to the consulship; Pompey was hoping for a second summons to save the republic with a more regular constitutional appointment.

It should have been possible to hold the elections without violence, but it remained likely that any pair of consuls announced by the interrex would be vetoed by one side or another. Pompey seems to have done nothing to break the deadlock. As a result the senate was forced to find a solution itself and also to remove the anomaly of Pompey's own position. Pompey was created sole consul after a *senatus consultum* proposed by Bibulus and supported by Cato.

On the 26th of the intercalary month he proposed that special courts were to be set up to deal with violence and bribery with stiffer penalties and shorter form of procedure.¹¹⁶ These proposals were debated for two days in the senate. On the 27th, Hortensius tried with Cicero's support to avert the creation of a special court by simply proposing that the killing of Clodius, together with the firing of the senate-house and the attack on Lepidus' house, should be declared *contra rem publicam*. Accusations on these counts should have precedence in the regular *quaestio*.¹¹⁷ This *contra rem publicam* declaration by the senate was made in the late Republic in order to facilitate a prosecution in the *quaestio de vi*, which only dealt with violence against the public interest.¹¹⁸ Cicero and Hortensius were in effect conceding that the killing of Clodius was an offence against the state,¹¹⁹ in the hope that before a regular *quaestio* the charge could be submerged in the multitude of other acts of violence in which Clodius and Milo had been involved and the case be turned into a judgement on Milo's whole political career. However, Fufius Calenus proposed a division of the *sententia* so that the *contra rem publicam* declaration should be separated from the motion on the form of trial, and this second motion was vetoed by Plancus and Sallust. The surviving part was used by Pompey as backing for his bill which covered the three incidents mentioned by Hortensius.¹²⁰ Thus Munatius Plancus in fact helped to dig his own political grave,¹²¹ and Pompey created a means of eliminating both awkward opponents and undesirable supporters. Caelius tried to veto both the bills on the ground that the procedure laid down was too hasty and that the *lex de vi* was a *privilegium* directed at Milo alone,¹²² but was

¹¹⁵ 35C.

¹¹⁶ 35-6C; Plut., *Pomp.* 54, 3-5; *Cato min.* 47, 2-3; Dio xl, 50, 3-4; App., *BC* ii, 23 (unfortunately combining this with the story of Cato's mission to Cyprus). Dio is our only source for the suggestion that this was done in order that they might not have to make Caesar his colleague. There is no sign that Caesar was yet planning to return from Gaul, which was not yet pacified. The suggestion looks like later conjecture, perhaps Dio's own. The stiffer penalty under Pompey's bills was almost certainly exile combined with confiscation of the condemned man's property (see Appendix, p. 77 below). Linderski (*HSCP* lxxvi, 1972, 181 ff., esp. 190 ff.), has argued from the existence of a *IIIvir capitalis* in March (37C) that the elections, including that of Cicero to the augurate, took place as soon as Pompey was created consul. It would be remarkable if Asconius had missed this fact. It would also have been odd if Pompey had conducted the praetorian elections without electing a fellow consul (not elected before July, cf. *ILLRP* 786a).

¹¹⁷ *Mil.* 13-14; 43-4C.

¹¹⁸ *Viol. Rep. Rome* 116 ff.

¹¹⁹ Cicero in *Mil.* 13-4 is disingenuous over the meaning of the decree. The law did not yet regard all violence between citizens as a public matter, nor was *insidiae* a legal criterion for defining *vis* or indeed any other charge. The true significance of the decree was understood by Fufius Calenus and the tribunes.

¹²⁰ 36C.

¹²¹ For his later condemnation *de vi* see *Fam.* vii, 2, 2-3; *Phil.* vi, 10; xiii, 27; Dio xl, 55: Cf. 37-38C for his continued hostility to Cicero, whom he threatened with prosecution before the people (cf. *Mil.* 100), in contrast with the apparent change of heart of Pompeius Rufus and Sallust. Plancus must have had assurances of Pompey's continuing support (cf. Dio xl, 55, 1). He was not to know that it would be ineffective.

¹²² 36C. Viewed objectively Caelius' arguments were questionable. Swifter procedure was necessary in view of the backlog of cases. At least the procedure had been laid down by law, as for example under the Mamilian and Varian laws, but not during the *quaestio* of Popillius Laenas. The basic meaning of *privilegium* was a bill about an individual person (Gell. x, 20, 3-4). These had been forbidden by the Twelve Tables in a judicial context (ix, 1), though the exact force of the clause is disputed and may not have been understood in Cicero's day. However, since the second century, tribunals had been set up by *lex* as well as by *s.c.* to deal with specific instances of crime and therefore specific offenders (cf. Cic., *Brut.* 89 on L. Scribonius Libo's *rogationem in Galbam privilegii similem*), and thus Pompey's bill had many precedents. For evidence of these tribunals see, e.g., Mommsen, *Strafr.* 256 ff.; Kunkel, *Kriminalverfahren* 45 ff.; for a discussion of *privilegium* see Bleicken, *ZSS* lxxvi, 1959, 352 ff.

deterred when Pompey threatened to use force of arms against him to push the bill through. This threat was similar to the one he made in 59, when Caesar asked him what he would do if the *lex agraria* was resisted.¹²³ The difference was that he now had the backing of the *senatus consultum ultimum*.¹²⁴

If Pompey's bills were formally promulgated on 1st March, a market-day, they could in my view have become law by 18th March¹²⁵ (without a dispensation from the *trinundinum* regulation). It seems likely that in this period occurred the last and most serious attempt by Cicero to placate Pompey over Milo. In 50 B.C. Cicero lamented that to please Pompey he had met Caesar at Ravenna and promised to dissuade Caelius from vetoing the law which permitted Caesar to stand for his next consulship in his absence.¹²⁶ Pompey's *amicitia* with Caesar was as yet unbreached, and now that he had achieved his own ambitions he probably felt it politic to support this concession to Caesar to reduce the likelihood of indirect interference by Caesar in domestic politics in 52. The proposal must have been mooted after Pompey had achieved his consulship and before Caesar set off back for Gaul, probably by the end of the third week in March.¹²⁷ This *beneficium* by Cicero to Caesar and Pompey seems to have procured no compensating service. However, Cicero was not in a strong negotiating position, and he may have thought it enough to secure Pompey's neutrality, in case Clodius' friends wished to invite him to testify against Milo.¹²⁸ Pompeius Rufus and Sallust were suspected about this time to have reconciled their differences with Cicero.¹²⁹ As far as Pompeius Rufus is concerned this must be false, in view of Cicero's continuing hostility to him culminating in prosecution. However, it is possible that they no longer felt it safe to attack Cicero, since his stand on Milo's behalf was apparently being respected by Pompey. As for their colleague Plancus, he maintained his attacks to the last moment, evidently believing that Milo might win an unexpected victory, if the pressure was not maintained.¹³⁰

THE TRIAL

In the second half of March Milo was accused of violence, bribery and forming illegal electoral associations. The violence trial was held first on 4th April, and on the first day M. Marcellus, appearing for Milo, was so intimidated by the uproar of the *Clodiana multitudo*, when cross-examining a witness, that he took refuge on the president's tribunal. He requested physical protection and accordingly for the next two days, Pompey sat in on the trial with a bodyguard.¹³¹ The fourth day of the trial, 7th April, was largely a rest day when the lots for the selection of jurors were prepared.¹³² Plancus used it to address the people, urging them to come in force the next day so as not to allow Milo to escape punishment.¹³³ On the 8th, the last day, shops were closed and soldiers both scattered throughout

¹²³ Plut., *Pomp.* 47, 4-5.

¹²⁴ On the position of tribunes after the *s.c.u.* see *Viol. Rep. Rome* 172.

¹²⁵ See *CQ* n.s. xviii, 1968, 193, and for my interpretation of *trinundinum CQ* n.s. xv, 1965, 281 ff. I still believe that it was a promulgation over three market-days. A. K. Michels, *The Calendar of the Roman Republic* 191 ff. has accepted one of the points I made against Mommsen while herself arguing for a 25-day *trinundinum*. However, her view depends on taking 'triduo post' in *Pis.* 9 to refer to 5th January, when the date last mentioned (*Pis.* 8) is 1st January.

¹²⁶ *Att.* vii, 1, 4; 3, 4; 6, 2; viii, 3, 3—said to have occurred in Pompey's third consulship. Cf. Dio xl, 49, 1; Plut., *Pomp.* 56, 2-3; Suet., *Caes.* 26, 1; *App.*, *BC* ii, 23.

¹²⁷ *BG* vii, 6, 1. Caesar later crossed the Cevennes into Arvernian territory 'durissimo tempore anni' when the road was blocked by deep snowdrifts. Cf. Meyer, *Caesars Monarchie* 227, 233-4.

¹²⁸ For Pompey's continuing hostility to Milo, see *Mil.* 67; 36-8C.

¹²⁹ 37-8C.

¹³⁰ *Mil.* 12; 38C; 40C.

¹³¹ 39-40C. Cicero must be referring to these security measures at the trial in *Fam.* iii, 10, 10 ('cum armis denique textis suis'). In 49 (*Att.* ix, 7B,

2) Balbus argued that, as Cicero sought protection of Pompey with his own approval then, so he should seek protection of Caesar, without prejudice to his obligations to the other side.

¹³² We must assume that the procedure laid down by the *lex Pompeia*, as detailed by Asconius (39C), was in fact followed, even though the text of 40C gives a different impression. Asconius there moves straight on from the evidence of Sempronius and Fulvia to 'Dimisso circa horam decimam iudicio T. Munatius pro contione populum adhortatus est ut postero die frequens adesset . . .' This *contio* was in fact held the day before Milo's condemnation (*Mil.* 3). However, the MSS of 30C give the final day of Milo's trial as *a.d. VI Id. April* (April 8) and this, though unsupported by the MSS of 40C, which have variously corrupt readings of *a.d. II* and *III*, is confirmed by a calculation based on *Mil.* 98—Cicero's statement that it was the 102nd day from Clodius' murder—given that there were 23 days added by intercalation (see nn. 1 and 114). Plancus' *contio* must then fall on the 7th, the day after the evidence of Sempronius. Either Asconius has slipped or else a further *postero die* was originally in his text between *iudicio* and *adhortatus est*.

¹³³ *Mil.* 3; 40C; 42C.

the forum and stationed at the entrances. A special detail protected Pompey himself in front of the *aerarium*. After the prosecution had used its allotted two hours, Cicero was entrusted with speaking for the whole three hours allocated to the defence.¹³⁴

His performance on this occasion provided handy material for his detractors. Dio alleges that Cicero through fear of Pompey and the soldiers delivered a short and dead speech, after forgetting what he prepared. This allegation also appears later in Book 46, in the anti-Philippic put in the mouth of Fufius Calenus and it is likely that Dio encountered it in a literary invective against Cicero, while seeking material for the debate he composed between Cicero and Calenus.¹³⁵ Asconius, on the other hand, states that it was the barracking of the *Clodiani* which discomfited Cicero so that he did not speak with his usual *constantia*.¹³⁶ This contrasts with the *constantia* of the speech Pompey delivered against similar opposition in 56.¹³⁷ Asconius seems to be suggesting that Cicero did not disregard interruptions and finish everything he wanted to say. Quintilian, discussing unprepared digressions by an orator in response to interruptions, says that Cicero had to digress in the introduction to his speech for Milo, as was clear from the actual little speech he delivered.¹³⁸ This speech was taken down at the time, according to Asconius, and still preserved in his day, presumably as part of the *Acta*, which may have also recorded the interruptions.¹³⁹ It is clear that Dio's account is misleading. Cicero may have made a mistake in taking on his barrackers and lost the rhythm and impetus of his speech, he may have been frequently inaudible, but the brevity of the written record is no reason to think that he gave up before his time ran out.¹⁴⁰

Asconius implies that the argument of the speech actually delivered was that found in the published *pro Milone*. However, he points out a discrepancy. Cicero, he says, decided not to argue that the killing of Clodius was a service to the state, as M. Brutus did in a published speech.¹⁴¹ This is understandable since he himself had suffered before through maintaining that enemies of the state could be killed without proper trial. The section of *pro Milone*, therefore, which uses this argument, is a later addition. In both the published and the delivered speech Cicero could not deny that Milo's slaves killed Clodius. He, therefore, argued that it was not premeditated murder but justified by the principle of self-defence. Under attack Milo's slaves had behaved automatically as good slaves should.¹⁴²

Cicero was helped by the prosecution case. The young Appii Claudii had argued that Milo had plotted in advance to kill Clodius and Cicero had no difficulty in refuting that.¹⁴³ It is at first sight puzzling to us that the prosecution tried to prove too much. Of course, the Claudii were inexperienced and, like Metellus Scipio,¹⁴⁴ may have sincerely believed that Clodius' death had been engineered. However, it is worth considering the precise terms under which the court is likely to have been set up. It would have been of little value for an enquiry to have been held simply *de capite eius quicumque fecit* the various acts of violence. Pompey was not primarily interested in the slaves and members of the proletariat who had fought on the Via Appia and rioted in Rome. He wanted to try the instigators. One of the functions of the words 'dolo malo' (which mean roughly 'with malice aforethought' or 'criminal intent') was to bring the instigators of violence in property disputes

¹³⁴ 41C, cf. 39C.

¹³⁵ Dio xl, 54, 2, cf. xlvi, 7, 2-3. Plutarch (*Cic.* 35, 2-5) tells a similar story in a more friendly tone. Milo, afraid that Cicero might get an attack of nerves at the sight of Pompey's troops, especially as he was always a nervous starter, urged Cicero to wait in a *lectica* until the court convened, but he was still shaken when he finally emerged and spoke. The inadequacies of this story are patent. No mention of the barracking and interruptions. Cicero's nerves are attributed to the sight of Pompey's troops when he had already spent two days in court examining witnesses with them present, and had just spent two hours listening to the prosecution under the same conditions. The troops may have had some effect, but it was of small account compared with the effect of the *Clodiani*. See n. 131 above for later references by Cicero and Balbus to the protection Cicero received. In general cf. Settle, *TAPA* xciv, 1963, 268 ff. (although I cannot accept his view of the *oratio excepta*, see n. 91).

¹³⁶ 41-2C.

¹³⁷ *QF* ii, 3, 2. See above p. 63.

¹³⁸ iv, 3, 16-17. Cf. *Schol. Bob.* 112 St.

¹³⁹ 42C. On the *Acta* see note 93, and cf. *Vat.* 3 and *Fam.* viii, 1, 2 on the *operarii* who reported public proceedings. Settle (274 ff.) is excessively sceptical on this point.

¹⁴⁰ Cicero later talked of his performance with equanimity (*Opt. Gen. Or.* 10).

¹⁴¹ 41C. Cf. *Mil.* 72-83. The rest of the discussion in 41-2C implies that Cicero's case on the day was fundamentally that of the rewritten speech.

¹⁴² *Mil.* 8-11; 29-31. Technically it was a *constitutio iuridicalis* involving *relatio criminis* (*Inv.* ii, 78 ff.). For the principle, *vim vi repellere licet*, see *Dig.* xliii 16, 1, 27. On the application of this principle in *pro Milone* see Cahen, *REA* xxv, 1923, 119 ff. and my *Viol. Rep. Rome.* 23.

¹⁴³ 41C; *Mil.* 46 ff.

¹⁴⁴ 35C.

under the scope of praetorian action and interdict,¹⁴⁵ and it is likely that these words were used in the laws establishing *quaestiones de vi*.¹⁴⁶ However, 'dolo' was also used to distinguish the deliberate from the accidental act of violence as early as the homicide law attributed to Numa,¹⁴⁷ 'si qui hominem liberum dolo sciens morti duit, paricidas esto.' The killing must be conscious and with intent if it is to be treated as equivalent to kin-murder. Under the *lex Cornelia de sicariis et veneficis* it was the carrying of a weapon for offensive purposes or the handling of poison which was the criminal offence, and the occurrence of a murder merely substantiated a charge which might otherwise be proved on evidence of intention.¹⁴⁸ I therefore think it probable that the words 'dolo malo' occurred in Pompey's bill. For example after listing the killing of Clodius, the burning of the senate-house and the attack on Lepidus' house the law may have gone on 'cuiusve dolo malo quid eorum factum est, de eius capite quaerito.' It would thus have been understandable if the Claudii, who had to prove that Milo had criminal intent to kill Clodius, alleged that he left Rome with this in mind.

Cicero exploited the approach adopted by the prosecution from the first. He harped on the words 'insidiae' and 'insidiator'¹⁴⁹ and also used the unproved assumption that one of the two (but not both) had plotted to kill the other in order to argue that, since Milo had not plotted to kill Clodius, Clodius must have plotted to kill Milo.¹⁵⁰ As for proving that it was right to kill an *insidiator*, he dealt with the justification of murder in certain circumstances by natural law almost casually in the introduction as if it raised no problem at all.¹⁵¹ The significance of the senate's declaration that the murder on the *Via Appia* was *contra rem publicam* was misinterpreted, so that it ceased to be evidence that the battle of Bovillae was considered a threat to public order but became testimony to a murder plot.¹⁵² The brief *narratio* stressed not only self-defence but the lack of instruction from Milo to his slaves (though Cicero did not go so far as to suggest that they acted contrary to Milo's intentions).¹⁵³ He had already used the argument from self-defence against a charge of *vis* in *pro Sestio*, when he had tried to show that Sestius' and Milo's violence in 57-6 B.C. was a natural reaction to the intolerable provocation of Clodius and his associates.¹⁵⁴ It was even more appropriate when violence had been committed in an emergency in response to a sudden attack. The weakest point in Milo's case, the scene at the taverna, was passed over. Thus, with less than a third of the published speech completed, Cicero was free to fight on easier ground—to rebut the prosecution's case that Milo had planned to kill Clodius then, and to cast suspicion on Clodius' own behaviour. We cannot, however, assume that the *pro Milone*, if delivered as we possess it, would have been enough to double the votes cast in favour of Milo and acquit him, as Milo implied in the comment attributed to him when he received the written speech in Massilia.¹⁵⁵ The jurors were not passing a verdict on the prosecution's case, but on Milo's guilt in the light of Pompey's law.¹⁵⁶ Moreover many jurors who favoured Pompey's restoration of order would have wanted the new trials to begin with a condemnation as an earnest for their future success.

CONCLUSION

Because Cicero's association with Milo ended in failure, it is easy to dismiss it in retrospect as an unimportant and somewhat unsavoury feature of his career. To do so is to neglect the hatred which Cicero felt for Clodius, and the threat which, in Cicero's eyes, Clodius posed to the Republic. The *compensatio* and peroration of the published *pro Milone* (72 ff.) may seem to us verbose and exaggerated, but they express feelings which are amply

¹⁴⁵ *Tull.* 7; 24 ff. cf. *Viol. Rep. Rome* 127 ff.

¹⁴⁶ cf. *Dig.* xlviii, 6, 10; *ibid.* 3 for 'qui consilium inierint'.

¹⁴⁷ *FIRA* i, p. 13 (Festus 247 L). Cf. *Dig.* xlviii, 8, 16—'qui caedem admiserunt sponte dolo malo . . .'. On *paricidium* see Cloud, *ZSS* lxxxviii, 1971, 1 ff., who has extensive references to previous discussions.

¹⁴⁸ Kunkel, *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens* 65 ff.; Cloud, *ZSS* lxxxvi, 1969, 258 ff.

¹⁴⁹ *Mil.* 10, 11, 14, 23, 28, 30, 31. On Cicero's

treatment of the opposition case see the recent article of Wellesley, *Acta Classica Univ. Scient. Debrecen.* vii, 1971, 27 ff.

¹⁵⁰ 23; 31 ff.

¹⁵¹ 7-11.

¹⁵² 12-14.

¹⁵³ 28-9.

¹⁵⁴ *Sest.* 88 ff.

¹⁵⁵ *Dio* xl, 54, 3. He had been condemned by 38 votes to 13 (53C).

¹⁵⁶ This was not a private case in which the plaintiff had to prove his *intentio*.

attested elsewhere, in Cicero's speeches after his return and in his conduct especially in relation to Milo. Cicero's conduct, on the contrary, deserves highlighting because he played the political game according to the traditional rules. 'Nullum a me amoris, nullum studi, nullum pietatis officium defuit.'¹⁵⁷ He put the demands of *amicitia*, *gratia* and *fides* first, where Milo was concerned, and his concessions to more powerful *amici* were means to this end. Furthermore, his close association with Milo had begun as an attempt to reassert in his own period the virtues of the optimates who had fought to preserve the security of 'the best men' in the past. Even in the tangle of self-seeking bribery and violence during 54-52 B.C., Milo's candidature for the consulship was for Cicero something of a crusade to re-establish his own authority and his cause. By 52 there was also a more precise aim: Milo as consul was the best answer to the threat that Clodius might revive his urban influence through his praetorship.¹⁵⁸

The expression of his optimate principles by means of personal attachment gives his career at this period a single-mindedness which had been lacking since his consulship. By contrast, his attachment to Pompey had always been more to a political vision of his own than to a man, since he could not fully sympathize with Pompey's personal ambitions. Moreover, during his association with Milo they clashed with his own. Ironically, Pompey's realization of the aim for which he had so deviously worked led to 'divinus ille tertius consulatus'.¹⁵⁹ Once Pompey became the protector of 'the best men', Milo and his methods were obsolete. Cicero helped Pompey in negotiations with Caesar and earned his right to independence in other matters. He could not save Milo, but he saved his lieutenant, Saufeius, and the ensuing convictions of *Clodiani*, especially those of Pompeius Rufus and Munatius Plancus in which he was personally involved, must have enhanced his *auctoritas*. Indeed, the condemnation of Plancus may have been taken by the *boni* as a sign that this was a genuine return to *res publica*, and not the personal domination of Pompey. On the eve of his departure for Cilicia he was well content with the new dispensation.¹⁶⁰

Yet this does not detract from his loyalty to Milo. Asconius delivers a panegyric of his behaviour just before the trial. His constancy and loyalty were so great that he could not be deterred from defending Milo by the alienation of the common people, the suspicions of Pompey, the danger of prosecution and the threat of violence.¹⁶¹ In forming this judgement, Asconius is likely to have been influenced by his sources; and it is tempting to detect the influence of another Patavine student of history.

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APPENDIX

Cicero and the Sale of Milo's Property

Recently Carcopino¹ and Shackleton-Bailey² have charged Cicero with sharp practice in the sale of Milo's property after he went into exile. According to Carcopino, the property was confiscated, bought *en bloc* by a syndicate which included Cicero and then slowly resold piece by piece with profit. Shackleton-Bailey writes, 'His property was sold for a song to pay his debts, and Cicero, acting through his wife's man of business Philotimus, bought up some of it—for Milo's own sake, as he told Atticus. But Milo was not grateful, and the suspicion cannot quite be put aside that Cicero's Arpinate fondness for a good bargain here got the better of his finer feelings.'

¹⁵⁷ *Mil.* 100.

¹⁵⁸ *Mil.* 87; 52C, for the proposal to redistribute the freedmen's votes. Cicero's remark (*Att.* ix, 7, 3), 'Beneficium sequor, mihi crede, non causam, ut in Milone . . .', has a kernel of truth but, especially when taken in context, is an over-simplification. Cicero must have had private scruples about Milo's *causa* as he did about Pompey's in the civil war, but this did not mean that his attachment to both was merely a matter of personal allegiance. Politically, for Cicero they both represented the lesser evil.

¹⁵⁹ *Att.* vii, i, 4.

¹⁶⁰ This is clear from the tone of his letters. He had had a long and reassuring interview with Pompey himself and even recommended to Caelius that he should make up his previous differences with him (*Att.* v, 6 and 7; *Fam.* ii, 8, 2). On the trials see *Phil.* vi, 10; xiii, 27; *Fam.* vii, 2, 2-3; viii, i, 4; *Asc.* 54-6C; *Dio* xl, 55; *Val. Max.* iv, 2, 7.

¹⁶¹ 38C.

¹ *Secrets de la Correspondance de Cicéron* i, 183 ff.
² *Cicero*, 98. Cf. *Cicero's Letters to Atticus* iii, 21 and 202.

This charge is a modern discovery, which does not appear in any ancient invective against Cicero known to us. In my view it cannot be sustained on a close interpretation of the evidence in the light of the legal procedure involved. On this neither Carcopino nor Shackleton-Bailey is explicit. In fact, as will appear, they had different procedures in mind, Carcopino on this point being nearer the truth. Asconius says of Milo, 'bona eius propter aeris alieni magnitudinem semuncia venierunt' (54C). This might refer either to the sale of his property by the state to a *sector* as an additional penalty following condemnation, or to the seizure and sale of property granted by the praetor's edict to creditors, when there was no one competent and prepared to deal with debts in a certain name, *inter alia* because the debtor had voluntarily gone into exile (cf. *Quinct.* 60, citing the relevant portion of the edict).

In general, *publicatio bonorum*, confiscation of property by the state, was not associated with the penalty of exile, *aquae et igni interdictio*, under the *quaestiones perpetuae* before the dictatorship of Caesar, who 'poenas facinorum auxit et cum locupletes eo facilius scelere se obligarent, quod integris patrimoniiis exulabant, parricidas, ut Cicero scribit, bonis omnibus, reliquos dimidia parte multavit' (Suet., *Caes.* 42, 3).³ Thus, before Caesar's dictatorship those condemned to exile by *quaestiones* were no worse off than those forced into self-imposed exile by the impending financial penalties of the *lex repetundarum*. Indeed they were more fortunate in that they could legitimately keep their property intact. However, those treated as *perduelles* by curule magistrates or tribunes, whether condemned, already dead or in exile, regularly had their property confiscated.⁴ Under the *lex Plautia de vi* the penalty seems to have been exile,⁵ but Asconius (36C) says that the *lex Pompeia* involved 'poena graviore'. Confiscation of property would have been an appropriate aggravation. Moreover, if we compare the two procedures of *publicatio* and *sectio bonorum* on the one hand and *possessio* and *venditio bonorum* on the other, it will appear that the evidence about Milo's property indicates *publicatio*, i.e. penal confiscation, rather than a private action by creditors.

Under the first procedure a *quaestor aerarii* would have seized Milo's property⁶ and sold it by auction to the highest bidder, who was known as *sector*.⁷ He became the legal successor to the property (Varro, *R.R.* ii, 10, 4) and would have been responsible for paying off creditors (cf. *Cod. Just.* iv, 39, 1—a Severan rescript; *Dig.* xlix, 14, 41 (Paulus)). *Sectores* would frequently have required financial backing and, not surprisingly, we find them with partners called *socii in bonis* at the time of the Sullan proscriptions (*Rosc. Am.* 99; 102; *Quinct.* 76).

*Venditio bonorum*⁸ on the part of creditors was introduced as an alternative to personal execution by a praetor P. Rutilius (*Gai.* iv, 35)—unlikely to be P. Rutilius Rufus, *pr.* 114, as the procedure seems well-established by the time of the *lex agraria* of 111 (l. 56). The creditor or creditors were granted *en masse* possession by the praetor. The seizure was then advertised (*proscriptio*, cf. *Quinct.* 50) and after a period of thirty days (assuming the debtor was alive) a *magister bonorum* was appointed by the creditors to conduct the sale, as in *Att.* i, 1, 3. In the meanwhile the property was administered by the creditors, or sometimes (perhaps when no disgrace attached to an absent or dead debtor) by a *curator bonorum*.⁹ The *magister* published the conditions of sale, including an inventory of goods and a list of debts (*Quinct.* 50), and the sale took place within ten days of the end of the thirty-day period, if the debtor was alive. The goods were sold *en bloc* to the highest bidder *pro portione* (apparently in return for a percentage promised to each creditor on the money owed him). The successful bidder was the *bonorum emptor*, who could be a relative of the debtor or a creditor, as the rules for deciding between bids of equal value show (*Dig.* xliii, 5, 16).

One point arises immediately from a comparison of these procedures. Whether 'semuncia' in Asconius means 'for a tiny sum' or literally 'for a twenty-fourth part', it is somewhat improbable that creditors present at an auction by a *magister bonorum* would have been satisfied with such a small return on the sums Milo owed them. On the other hand, it is understandable that *sector* would not have bid highly, if he was to be liable for Milo's debts in full. Three other points are particularly relevant to the interpretation of Cicero's correspondence about Milo's property. (i) Under *venditio bonorum* by creditors, Milo's property would have passed to a single *emptor bonorum* within forty days of the creditors taking possession, probably long before the end of 52 B.C., and thus a complaint from Milo in mid-51 was very belated. (ii) The *magister bonorum* had *ex officio* to discover and sell all the debtor's property without exception. So under *venditio bonorum* any friend of Milo who wished to save his possessions could only do so for sure by becoming the eventual *emptor bonorum* and this was simply achieved by making the highest bid at the auction. (iii) There is no mention of a *socius in bonis*

³ See Mommsen, *Strafr.* 1005 ff., esp. 1009; and on parricide Cloud, *ZSS* lxxxviii, 1971, 60 ff.

⁴ cf. e.g. Livy, xxv, 4, 9; xxix, 19, 5; Cic., *Rab. Perd.* 16; *Cat.* iv, 8 and 10; *Dom.* 44; *Planc.* 97; *Plut.*, *C. Gr.* 17.

⁵ *Sulla* 89; *Sest.* 146, cf. *Phil.* i, 23 on Caesar's law.

⁶ As under *Lex Acilia*, 57, *Lex Lat. Bant.* 11.

⁷ *II Verr.* i, 52 and *Ps. Asc. ad loc.*; *Phil.* ii, 64-5.

Cf. *Rosc. Am.* 80-1; 102-3; *Fam.* xv, 19, 3. On the difference between *sectio* and *venditio bonorum* see Solazzi, *Il Concorso dei Creditori nel Diritto Romano* i, 5 ff.

⁸ See esp. *Quinct.* 30; 50; 73; *Gai.* iii, 79 ff.; *Dig.* xlii, 5; Solazzi, *op. cit.*; Wenger, *Procedura civile romana* 227 ff. (= *Zivilprozessrecht* 222 ff.).

⁹ *Lex agrar.* 56; *Dig.* xlii, 5, 5; 7, 1 ff.; 8, 1.

in *venditio bonorum* by creditors and indeed no one to whom the term could refer, whereas it is an attested term for the partner to a *sector*.

In a letter to Atticus of early June, 51, Cicero writes that he had learnt that Milo was complaining of his unfairness 'quod Philotimus socius esset in bonis suis' (*Att.* v, 8, 2). Cicero goes on to say that this had been his idea, supported by C. Duronius. Their aim had been 'ut in nostra potestate esset res', first in case some ill-disposed buyer from outside should deprive Milo of the many slaves he had with him, secondly in order to make good undertakings to Milo about Fausta, thirdly in order to keep anything which could be preserved for Milo himself with the minimum of trouble. In view of Milo's complaints Cicero was prepared that Philotimus should withdraw as he had promised he would if Milo disapproved.

Shackleton-Bailey clearly believed that Philotimus had become a partner to the man whose bid was later successful at an auction held for creditors.¹⁰ In view of the likelihood that Milo suffered confiscation of property, the delay before Milo complained and the fact that a *socius in bonis* is not attested in *venditio bonorum* for creditors, it is safer to believe that he was a partner to the *sector*, who was surely C. Duronius himself, since Cicero says that 'his and my plan had been to have the matter in our control'. The partnership would have been made before the auction, when it was not known whether a *bonus* or *malus emptor* would get control, in order to assure Duronius of sufficient financial support to make the winning bid. In fact Duronius did not have to bid very high, which is no doubt why it was possible for Philotimus to withdraw at the time of *Att.* v, 8. It is easy to see why Milo complained. A *sector* (unlike an *emptor bonorum*) had an evil name¹¹ and Cicero's arguments are designed to rebut the suggestion that he and Duronius 'quem et amicissimum Miloni perspexeram'¹² were out to profit from Milo's distress. However, granted that they were sincerely helping Milo, they also had to satisfy Milo's creditors, many of whom would have been Cicero's friends. If these were not satisfied, Cicero's own financial credit might suffer. Hence he says 'statues ut ex *fide fama* reque mea videbitur' (*Att.* v, 8, 3) and Caelius later assures him 'dedimus operam ut et Philotimus quam honestissime Miloni absentis eiusque necessariis satisfaceret et secundum eius fidem et sedulitatem *existimatio tua* conservaretur' (*Fam.* viii, 3, 2). Cicero's later suspicions over Philotimus seem to have been that he had embezzled some of the proceeds of the sale of Milo's property (*Att.* vi, 4, 3; 5, 2) and failed to repay the creditors of Milo's estate (who were now his creditors) as he should. In *Att.* vi, 5, 2 and 7, 1 Cicero is worried about paying up the interest due. After Duronius' payment to the state, Milo's property was in effect being divided between Milo's creditors, Milo himself and his family, Duronius and Cicero (via Philotimus). Cicero, who may have guaranteed Duronius against any loss through concessions to Milo, was unlikely to profit except at the expense of the creditors, and this was the last thing of which he wished to be accused.

¹⁰ He rightly argued against Carcopino that Cicero's reasoning in the letter is senseless, if he himself was a *socius in bonis* too.

¹¹ *Rosc. Am.* 99 ff.; *Phil.* ii, 64 ff.; *Fam.* xv, 19, 3.

¹² The rare *nomen* Duronius is later attested in Arician territory near the Via Appia (*CIL* xiv, 2188).