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Religious Transgression in the Roman Republic

Mann, Caroline Palo

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RELIGIOUS TRANSGRESSION IN THE ROMAN REPUBLIC

Caroline Palo Mann

A DISSERTATION

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Abstract

Religious transgression was an observable cultural phenomenon during the Roman Republic. It occurred in a variety of forms, from petty thefts committed out of greed, to elaborate cursing rituals. Willful, knowing actions that violated correct religious behavior caused religious crises that had potentially deleterious consequences for both the responsible individual and for the community or state. Religious transgression was most fundamentally a problem of violating the will of the gods. The Romans had underlying assumptions that the will of the gods was knowable, and that to disregard it could cause disaster. Divine vengeance was viewed as a very real threat, and operated in concert with civic methods of punishment. Moments of religious wrongdoing were opportunities to realign public actions with the preferences of the gods, both by punishing transgressors and by enacting expiatory actions. Roman political institutions, particularly the senate, played the key roles in determining what had gone wrong religiously and how to rectify it. In smaller communities, equivalent civic bodies or magistrates fulfilled that role. The goal in rectifying a transgression was to propitiate the wronged deities and to realign Roman actions with divine interests. Transgression also developed as a trope in invective and historiographical writing, an application that was effective because it was rooted in a legitimate fear of retribution from the gods. Religious misdeeds had the power to retrospectively explain misfortunes that the Romans experienced because they were regarded with genuine trepidation.

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Introduction

In the mid-50s BCE, an earthquake shook the *ager Latiensis*.[1] The senate called in the haruspices to give an opinion on the matter. In the wake of this, Clodius publicly implied that his old enemy Cicero had caused the earthquake because he had taken back his house, where Clodius had dedicated a shrine to Libertas.[2] The conversation between Cicero and Clodius became one about who had really committed the religious crime. Cicero retorted with a speech in which he brought up an earlier crime of Clodius', namely his entrance into the women's-only festivities of the Bona Dea in the winter of 62, supposedly in order to pursue an affair with Caesar's wife Pompeia.[3] Though his case was taken to trial, he was acquitted, probably after bribing the jury. In reference to the acquittal of the previous decade, Cicero says, *tibi vero, si diligenter attendes, intelleges hominum poenas deesse adhuc, non deorum*.[4] He goes on to describe Clodius' continued raving, crazy behavior, which Cicero presents as evidence of divinely sent insanity.

When Clodius infiltrated the Bona Dea rites, was he concerned that the gods might inflict madness upon him, as Cicero claims they in fact did? Did Cicero's audience respond to his insinuations with knowing shivers of dread, or did they laugh off the threat of the gods at Clodius' expense? Why did Clodius attend the Bona Dea ritual in the first

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[1] All dates are BCE unless otherwise noted.
[2] On the date and historical and cultural context of the speech, see Lenaghan (1969) 11-28.
[3] The major ancient sources are Cic. *Att*. 1.12, 13, 14, 16; *Dom*. 104-105; *Har. resp. passim*; Schol. Bob. 85-91; Sen. *Ep.* 97; Plut. *Caes*. 9-10, *Cic*. 28-29. Many works of modern scholarship have discussed this incident, among the most important of which are Tatum (1990) and (1999) 64-86; Mulroy (1988); Moreau (1982); Balsdon (1966).
[4] Cic. *Har. resp.* 38: "If you pay careful attention, you will understand that so far you lack the punishments of humans, not of gods." See Lenaghan (1969) *ad loc*. for discussion of Clodius' divine punishment.

place? This dissertation aims to answer the question of how Romans thought about religious transgression. While the Bona Dea incident is arguably one of the most famous cases of religious transgression, and one of the only ones for which concrete evidence of a formal trial survives, it was in many ways atypical. It was neither a deliberate violent deed in response to duress, nor a militarily nor politically expedient choice, nor one leading to any particular personal (monetary) gain. For all that a number of people committed acts that could be considered religious transgressions, no one else had infiltrated forbidden rites like Clodius did, and Clodius inspired no copycats. Despite his reputation as Rome's religious rebel, on other occasions Clodius showed himself to be extremely perceptive. His move to dedicate the shrine of Liberty in Cicero's house was a masterstroke. Someone who was transgressive could also behave in an appropriate manner, and could even accuse someone else of impiety. This apparent contradiction lies at the heart of the phenomenon of religious transgression. Most transgressions were committed not by godless troublemakers, but by otherwise normal Romans who, for varying reasons, violated correct behavior.

The struggles between Cicero and Clodius raise larger questions of how to identify the causes of religious misfortune, as well as the respective roles of the gods and humans in judging and punishing transgressors. What was at stake, and for whom, when something had gone wrong with Roman religious practice? Cicero was disappointed that the court did not convict Clodius for his crimes at the Bona Dea festival. Yet inconsistency was more usual than not when it came to punishing Roman transgressors. This dissertation will explore the risks of religious transgression in Rome for its agents and for their society. By studying cases in which people broke religious rules, it is

possible to understand the fundamental mechanics of Roman religion. Transgressions lay bare how Rome conceived of its relationship with the gods, a question that had multiple components: What kind of gods did they have? How should they treat those gods? How did Rome have to respond when the gods had been violated? Who was responsible for deciding whether or not there was a problem? Finally, what form, if any, did justice take?

I. What was Religious Transgression?

"Religious transgression" was not a native category to the Romans. I use it here to denote an instance in which a person knowingly violated expected and appropriate religious behavior. Knowledge of one's crime was essential to committing a transgression. Roman legal language distinguished between crimes committed *dolo malo* and those committed without ill intent.[5] In a religious context, intent was also key. Some laws on transgressions specified one punishment for intentional transgression and a lighter one for unintended faults.[6] For example, Quintus Mucius Scaevola said that a praetor who conducted business on *dies nefasti* unintentionally could expiate the fault with a pig and by paying a fine, but the praetor who did so knowingly (*prudens*) could not.[7] For my purposes, it is essential that the violation was intentional because Rome had

[5] E.g. Festus s.v. *doli*.
[6] The *lex luci Spoletina* (*CIL* XI 4766 = I² 366 = *ILS* 4911) uses this formulation. Modern scholars, beginning with Tromp (1921) and followed by Scheid, most expansively in (1981) 137-146, have formulated a concept of *inexpiabilitas*, according to which a person who committed an intentional transgression could not expiate the crime and was therefore doomed. I disagree slightly with the concept of complete inexpiability, as I argue in chapter four.
[7] Macr. *Sat*. 1.16.9-11; Varro *Ling*. 6.30; Cic. *Leg*. 2.9.22. The *lex luci Spoletina* contains a similar provision, on which see chapter four.

a sophisticated practice of repeating rites that failed or were subject to errors. This dissertation is not concerned with processes of *instauratio*.[8] Systematized repetitions were crucial to the functioning of Roman religion, but their study has tended to obscure the distinction between mistakes and acts intended as sabotage.[9]

I specify that the transgression violated "expected" and "appropriate" behavior in order to acknowledge that Roman religion was a social phenomenon and that its rules were defined by a variety of authorities including the pontifices, magistrates, senate, and general population of practitioners.[10] I use qualitative factors to identify transgressions such as expressions of outrage in the senate, or a prevalence of negative omens after a certain incident. In several cases, the community was not in agreement as to whether a transgression had taken place or not. In those cases, the controversy itself was telling. My category excludes episodes in which people participated in rituals that were considered to be outside the ambit of mainstream Roman religion, most notably the Bacchic scandal of 186. It also does not as a rule include interactions with the gods of non-Romans, though I make a partial exception in order to discuss the looting of sacred objects in warfare. Here I aim to study moments at which Romans intentionally violated their own mainstream cultic practice.

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[8] E.g. Cic. *Har. resp.* 23.

[9] E.g. Tatum (1999) 67, 73: "But the point that must be made straightaway is that this disgrace, though a weighty burden in Roman society, is all that Clodius need have suffered. Once Clodius had been driven back into the night, the Vestals repeated the sacred rites. Any harm done to the *pax deorum* was remedied by this act of *instauratio*."

[10] I follow an approach influenced by Douglas' (1966) understanding of pollution as a socially-defined phenomenon.

There is currently no monograph-length study of Roman transgression.[11] The primary contribution to the topic is John Scheid's long article, "Le délit religieux dans la Rome tardo-républicaine" from the 1978 round table *Le Délit religieux dans la cité antique*.[12] Part of the reason that no one has devoted a monograph-length study to the topic before is that some of the vestiges of the old view of Roman religion as endlessly manipulable and unemotional have lingered.[13] A closer look at how the Romans thought about religious wrongdoing is essential to an understanding of how they conceived of their relationship with religious practice and with the divine. It is also an important step towards an appreciation of the religious experience of the individual.[14] While many recorded transgressions took place on a national scale, the dramas also played out in the lives of the individual culprits and victims. A reluctance to take religious transgression seriously has diminished our ability to understand both the centrality of correct practice to Roman religion and the role of religious awe in the Roman world.

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[11] Lee (2012) is a partial exception. His unpublished dissertation on religious transgression argues for a Roman conception of sin and traces it from the Republic to the Christian period. My project differs from his in scope and in interpretive approach.

[12] Scheid (1981). Cornell (1981) wrote an article specifically on *incestum* for the same volume. While individual instances of transgression have been discussed by scholars, general work has been limited in quantity. Tromp's (1921) *De romanorum piaculis*, referenced above (n. 6), articulated the version of the concept of inexpiability that still persists in scholarship. Tromp separates the civic fault, which could be fixed, and the divine fault, which could not if committed with intent.

[13] Beard, North and Price (1998) 129 explain that sacrilege is not important to their portrayal of Roman religion because they see transgression as expected. Scheid (2013), especially 19-23, continues to argue against forefronting the individual and emotion in studies of Roman religion.

[14] Rüpke (2016) makes the important point that religious deviance could be a method for individualizing practice. My own approach is influenced by his findings but places greater emphasis on the power of existing norms.

Recently, a number of scholars have devoted attention to specific incidents of religious transgression.[15] Isabel Köster has written an important article on a particular act of theft that occurred during the Second Punic War in which she analyzes the characterization of a quintessential transgressor from a historiographical perspective;[16] Jack Lennon has made a case for the existence of a concept of ritual pollution in the Roman world;[17] Lindsay Driediger-Murphy argues compellingly that the popular rhetorical claim that a person had violated the auspices was based in "genuine Roman anxieties about the gods' attitude towards the Roman state."[18] Each of these scholars treats Roman religion as something that was regarded seriously by its practitioners, and as a system in which wrongdoing was carefully guarded against. I agree with this interpretation and claim here that it should be applied to a broader class of transgressions. By doing so, it is possible to observe general trends that are obscured in studies that take up only single cases, such as the consistency with which the Romans devoted care to controlling transgression across a variety of types of deviant actions, and the ways in which they relied on institutions to do that. In order to rehabilitate religious transgression as a feature of Roman religion, I make two major interventions in previous thought: I argue for a heightened importance of both the gods and of the individual than has previously been recognized. I maintain also that the Roman senate was the mediating body for most of the cases when a transgression needed to be assessed and addressed.

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[15] Recent scholarship on the Greek world includes Nevin (2017) and Petrovic and Petrovic (2016).
[16] Köster (2014).
[17] Lennon (2014).
[18] Driediger-Murphy (2018) 184.

Despite the lack of a regularized formula for punishing transgressors, the senate, or an equivalent governing body in smaller communities, appears again and again.

My primary contribution is in studying transgression broadly as a phenomenon, while at the same time recognizing that Roman religious practice was messy and flexible. People broke rules, which was distressing, but Rome did not have a regular system for fixing the problems that resulted. Additionally, it was at once possible for a person to strategically manipulate political outcomes by means of transgressions, and to be driven to ruin by religious fear; Roman religion had room for both rules and emotion.[19] This relationship is obscured if one understands the surviving narrative accounts of religious transgression as nothing but retrospective fictions. Roman authors certainly did construct traditions of transgression after the fact, but it is profitable to ask why they would have done that. Religious transgressions appear in historiographical narratives first and foremost in order to explain negative outcomes that the Romans experienced. In order for transgression to have explanatory power, it must have been regarded with deep trepidation. A real fear for the wellbeing of Rome underlay the use of transgression as an element of retrospective narratives and of invective. The few surviving inscriptions that mention religious transgression confirm this; they prescribed substantial punishments and expiations for anyone who violates the property of the relevant god.

For Scheid, *délit religieux* endangered the republic itself, and was fundamentally social, being decided, punished, and expiated by the community at large.[20] Transgression was absolutely socially constructed and adjudicated by the community, and often that

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[19] Dodds (1951) made a similar argument for the roles of fear and irrationality in the Greek world.

[20] Scheid (1981), (1985) 27, and again in (2016a) 98-99 claims also that the crime of the individual did not interest the community.

process occurred well after the supposed offense. However, the experience of the transgressive individual has been neglected. That person has either been written off as forfeit and inexpiable, or of little interest to the community. However, transgressions were the acts of individuals. Clodius made a choice to break rules and enter the Bona Dea festival. A person made the choice to cut wood from a sacred grove. A diviner made the choice to misrepresent an observed sign. Regardless of whether or not a given act of transgression actually occurred or was seen as problematic immediately, ancient authors attributed these actions to individuals. My study treats the transgressors as agents and takes an interest in the way that blame and punishment were distributed following a religious crime.

The most striking way in which an individual was held to account was through divine retribution. As Cicero alluded, people who committed transgressions could be driven to insanity by the gods, or be killed, or both. The stories that developed around transgressive episodes, especially those that involved thefts of items from sanctuaries (the topic of chapter two), emphasized the risk of divine response. The question of whether people actually feared the gods' anger before they transgressed remains open. Clodius seems to have gone into the Bona Dea rites with glee. Yet the narrative that was cultivated around transgressions was one of great risk. Transgressions contributed to a Roman ideology of piety because the Romans displayed a great interest in determining and following the will of the gods in rectifying transgressions. Another way of defining transgression is that which one knows to go against divine preference. Cicero highlighted the need to keep the opinions of the gods in mind while arguing against Clodius'

consecration of his house, explaining that the chief matter in religious obligations is interpreting the will of the immortal gods (*voluntas deorum immortalium*).[21]

Ascertaining and following the will of the gods was essential to Roman religious practice. That duty must be placed alongside two other features of Roman culture that have caused religious transgression to be overlooked in the past. First, as mentioned above, there was not a regularized procedure for addressing most varieties of transgression. Second, several Roman authors wrote statements that imply that the gods could take care of their own injuries, the most famous of these being *deorum iniurias dis curae*: the gods' injuries are the gods' concern.[22] It is odd that these two facts have been used to diminish both Roman interest in addressing transgression and the gods' agency. I seek to restore both. While there was no one way to identify or punish transgression, it is not true that the matter was left entirely to the gods. In this dissertation, I discuss the varied possible responses to transgression. A common theme was that each of them attempted to realign human action with divine will after the disruption of the transgression. Divine vengeance was an important component of the process, but there was often a complementary response on the human level.

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[21] Cic. *Dom*. 107. Compare to Barton and Boyarin (2016) 19, who see the claim that the gods might have caused fear to be Christianizing. On p. 22 they imply that the Roman gods were not seen as inhibiting transgressions because that was done solely within the social sphere. As the gods themselves were a social construct, I see no objection to the idea that they could inspire fear, as is suggested by numerous ancient sources.

[22] Tac. *Ann*. 1.73. See Scheid (1999) 333 for an explanation of this sentiment. Compare also Cic. *Leg*. 2.19, *deus ipse vindex erit*. "The god himself will be the avenger."

II. Scope and Terminology

This project studies religious transgression from roughly the year 300 to 43 BCE. The upper limit represents the point at which evidence becomes available, but it is also so defined because the Roman conception of transgression that prevailed in the mid-late Republic developed during the third century. That era's Roman colonization efforts corresponded to a period in which religious rules were expressed more clearly across Italian communities, a trend visible most clearly in the few surviving grove regulations that are discussed in chapter three. The third century also saw Rome in conflict with first Pyrrhus and then Carthage, two events that drove Rome to define correct conduct around sanctuaries and booty items more precisely. The lower limit represents the death of Cicero, the chief voice on occasions of religious drama in the late Republic. Though religious changes did occur throughout the Republic, the Augustan period and following saw such significant innovation that they are excluded from this study except as points of occasional comparison.

Throughout this project I refer to the acts I am placing under the rubric of "religious transgression" variably as "transgressions," "crimes," or various other circumlocutions. These word choices are not loaded but instead allow me to avoid using misleading terms. The language of sin would imply a moral valence to the transgression that was missing from the Roman case. Terms such as "sacrilege" are anachronistic; the Latin word *sacrilegium* technically referred to the theft of sacred objects, though it was not consistently used in a technical sense, and I avoid it except where specifically noted

(in chapter two).[23] I have instead elected to use more general terms. There is no Latin term for religious transgression in the sense in which I intend it here.[24] Candidate terms include *impius*, *sacrilegium*, *nefas*, and *scelus*/*sceleratus*, none of which provide a perfect conceptual match.[25] A single given transgressive act could be referred to by a variety of terms. For example, Cicero calls Clodius' Bona Dea scandal a *nefas* and complains about the *religio Clodiana* within the space of a month in 61, and later calls it a *scelus*.[26] Many of these terms were used to describe religious crimes, but did not have a technical meaning. A *scelus*, for example, could denote a religious transgression, but it could also refer to a general crime with no religious dimension. More directly useful is language referring to specific subtypes of religious transgression such as *ementita auspicia* or *incestum*. *Ementita auspicia* does appear to have been a category of auspices recognized in antiquity; every surviving Latin source discussing falsified auspices uses a formula of some combination of *ementiri* and *auspicium*. *Incestum* was used to identify multiple acts, but was also consistently employed to describe the specific act of sexual contact with a Vestal Virgin. Also relevant are *sacer* and *religio*, related concepts used to describe sacrality.[27] The term *sacer* could refer to something that had been consecrated, but it could also be used to describe a person who was religiously forfeit because of a

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[23] See p. 75.

[24] Most of my source materials are Latin. On Greek terminology, see Parker's (1983) (especially pp. 2-10) discussion of words relating to pollution.

[25] For attempts to define a vocabulary of pollution, which overlaps substantially with the vocabulary for transgression, see Lennon (2014) 15-18 and 30-41. Lee (2012) 7-8 offers a list of terms related to transgression. Thome (1992) remains the fullest discussion of the Latin terminology of misdeed.

[26] Cic. *Att*. 1.13; 1.14; *Prov. Cons*. 24.

[27] Fiori (1996) treats the legal and religious implications of labeling someone as *sacer*. For a more recent discussion of sacrality and law, see Rives (2011) and Scheid (2006).

religious crime.[28] *Religio* carried a sense of obligation, fear, or prohibition, as well as the potential for divine retribution, as when Cicero accused Antony of having bound the Roman people with *religio* (*obstringere populum Romanum religione*).[29]

Generally, however, transgression was not signaled by a particular vocabulary, but by the account of the events themselves. The dissertation does discuss the various terms related to religious transgression when relevant (particularly technical terminology such as *ementita auspicia* and *sacrosanctitas*), but it does not rely heavily upon them as analytical tools. I prefer instead narrative and the ways in which contemporary Romans are portrayed as having reacted as means of identifying transgressions. Expiations or lustrations, for example, could convey that a transgression was thought to have taken place, as sometimes could an abundance of negative prodigies.[30] The category of religious transgression was not a closed or technical one. Social norms determined whether an act was transgressive or not.

Finally, I term my phenomenon "religious" transgression in full awareness of recent discussions about the validity and limitations of religion as a conceptual category for the Roman world.[31] The topic of religious transgression puts a point on the lack of distinction between the religious and the political in Rome. While "religion" as a term is inadequate to capture the integration of the divine with the practical and political in the Roman world, it is intelligible to a modern audience as denoting the sphere of activity

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[28] This category is discussed most fully in chapter five.
[29] Cic. *Phil*. 2.33. *Religio* as a term has many valences. Nongbri (2013) 26-34 offers a recent, concise perspective on the meanings of *religio* over Rome's history with the overarching aim of demonstrating that it cannot be equated with the English "religion."
[30] On prodigies, see MacBain (1982), Rasmussen (2003), and Engels (2010).
[31] Notably Nongbri (2013); Barton and Boyarin (2016).

roughly concerned with the divine. I therefore continue to use the word for the sake of convenience, despite its limitations.

III. Overview of Chapters

The dissertation proceeds thematically, taking up in turn three major categories of transgression: violations of ritual; violations of property; and violations of protected people. The reasoning behind this organizational schema is that it puts into juxtaposition a variety of disparate phenomena that all involved the contravention of religious rules. While the Romans did not have an umbrella concept that encompassed lying about the auspices and attacking a tribune of the plebs, placing these behaviors in conversation here throws into relief the commonalities between responses to different types of transgressions as well as illuminating the salient factors that motivated unique reactions. What was it about the Vestals, for example, that caused the Romans to develop a regularized system of punishment, while thefts of temple property were adjudicated on an individualized, ad hoc basis?

The first chapter discusses occasions on which rituals themselves were intentionally misconducted. The analysis begins with the specific transgression of falsified auspices, in which someone taking the auspices reported a different sign than the one that had actually been observed. I argue that, contrary to previous scholars, it troubled the Romans when the reported sign was discovered to differ from the observed omen.[32] Ignoring reported omens was regarded similarly. When a general joined battle

[32] Chiefly Linderski (1986)

despite bad signs, such as in Crassus' failed Parthian campaign, he was seen as culpable for his failure. This type of transgression could also easily be blamed on a ritual attendant, thus opening religious transgression beyond a privileged elite. A *pullarius* could be blamed for claiming the sacred chickens had eaten when they had not, for example. The question of blame and punishment is a slippery one, however. Almost all of the surviving instances of falsified auspices and ignored omens come from literary sources that enjoyed the benefit of hindsight. An evidence base like this one cannot be used to argue for the seriousness with which the Romans regarded transgression, but it can be used to understand how religious transgressions could be used to explain past failures. One of the chief uses of charges of ritual transgression was to determine the fitness of generals to lead, which is related to the fact that most examples come from falsified pre-battle rites or problems in sacrifices upon taking office.

The themes of retrospection and of establishing the appropriateness of a particular individual's leadership carry over into chapter two, which analyzes rules against and responses to theft of sacred objects from temples. This chapter is based on a contradiction in Roman thought and behavior: while appropriating dedicated objects from sanctuaries was disallowed, Romans regularly seized booty items from sanctuaries in enemy towns. In this case again retrospective review was essential in determining whether a transgression had occurred or whether the appropriation was considered justified. The senate was the authority that adjudicated the correctness of an army's looting, though the pontiffs were the ones who conducted a review of the stolen objects when such a process was needed. Whether the senate engaged in a review process at all appears to have depended upon whether or not the wronged populace was able to make an appeal to them

in Rome. The ability to do so was contingent upon a community's preexisting relationship with Rome. A former ally that later defected, such as Locri, stood a better chance of success than a community that had only ever been an enemy. This was due both to the existence of prior diplomatic ties and to the fact that the Romans were more likely to be familiar with and intimidated by the strengths of the local gods. As occurred to a lesser extent in cases of ritual transgressions, the senate also determined whether or not a commanding officer was fit to continue to lead Roman armies. Disaster, such as the defeat at Arausio, which was preceded by a temple robbery, could befall the armies if a theft was not redressed. The human review of purported thefts was not carried out without input from the gods, however. The censor Fulvius Flaccus went mad after taking marble tiles from a sanctuary of Juno, for example. Object theft occasioned the most dramatic cases of divine retribution, which is interesting to consider because it was also the most context-dependent and contingent form of transgression.

Chapter three, which forms a pair with chapter two, continues to study property violation but turns from theft to the violation of spaces. I argue that sacred spaces in the Roman world could be polluted by dirtying substances like human bloodshed or by incorrect actions. Roman pollution was not like Greek *miasma*, an uncleanness that clung to a person who needed to be purified, but it could render a space inhospitable to its god. A dirty temple caused Juno Sospita to decide to forsake Rome in Caecilia Metella's famous dream. While the previous chapters rely almost entirely on literary evidence, epigraphic evidence survives on the topic of space. The inscriptions provide evidence that conceptions of transgression were not exclusively post-factum. Grove laws, for example, established normative guidelines against anticipated transgression before it occurred. The

lex luci Spoletina, from the Umbrian city of Spoletium is the most extensive text of this category. It explains what constituted a crime against the sacred grove at Spoletium as well as the process by which a crime could be evaluated and rectified. This inscription and those like it indicate that in smaller communities, civic authorities with religious competences played roles similar to that of the Roman senate in identifying and adjudicating crimes.

The final two chapters of the dissertation turn towards violated people. Chapter four, on priests, is approached via two case studies on priests who possessed some variety of bodily sacrality: the flamen Dialis and the Vestal Virgins. I selected these two priesthoods because most priesthoods only demonstrate a shadowy hint of being protected from harm by virtue of their sacrality, while the flamen Dialis and the Vestal virgins were both bound by numerous strictures that could be broken. Interestingly, the priests were not usually figured as victims of transgressions, but as the knowing agents of crimes. Furthermore, their transgressions presented a special threat: unfit, deviant priests might continue to perform rituals on behalf of Rome, putting the entire apparatus at risk. The priests were able to use religious transgression as a weapon. The flamen Dialis Cornelius Merula did so to dramatic effect when he turned his suicide into a curse on Cinna. With stakes so high, it is unsurprising that in the case of some priests, Rome did have a regularized procedure for responding to transgressions. While very little is known about how transgressive flamines were punished, the Vestal Virgins were famously buried alive.

The final chapter turns to the tribunes of the plebs. The tribunes were, like the flamines and Vestals, protected from certain types of actions being taken against them.

Beginning with the murder of Tiberius Gracchus and continuing through the tribunes harmed in the last decades of the Republic, this chapter studies how legal inviolability protected the tribunes and when harm was permitted to befall them without redress. I argue that during the late Republic, violence against tribunes went from unthinkable to permissible through the development of a clever workaround, the seeds of which were already sown during the Gracchan period: claiming that an enemy tribune was not a tribune at all, and moreover, that he was instead a threat to the Republic. Because the tribunes' sacrosanctity was traditionally thought to have been motivated by an actual need for protection during the Struggle of the Orders, the tribunes provide an interesting answer to the question of when and why something became protected in the Roman world, as well as how those protections could fail or change over time in response to changes in the political climate.

This dissertation argues that Roman religion did not allow for infinite manipulation, but instead holds that Romans responded to intentional errors in a deeply serious manner. Such a view does not preclude post-factum assessments of a certain circumstance as transgressive when another, similar one was apparently allowed, nor do such retrospective evaluations indicate that transgression did not still provoke significant religious fear. In many cases, the senate itself determined whether or not a transgression had taken place, a finding that has implications for the conception of the senate as a body with religious competence and also for the intertwined nature of religion and politics. I argue also that the Roman responses to transgression betray a real and immediate fear of divine retribution, and not only on a state level, but also for the individual perpetrator.

Roman religion was nimble and practical and could shift to accommodate challenges, but its practitioners also had clear ideas about what lines you did not cross.

Chapter 1:

Ritual Transgression

During the Third Samnite War in 293, the Roman army prepared to fight the Samnites at Aquilonia. The consul Lucius Papirius Cursor was in command. The odds were in the Romans' favor and their eagerness to engage the Samnites was high. Hours before the planned battle, Papirius woke in the middle of the night to ask the keepers of the sacred chickens to take the auspices.[33] But the consultation of the auspices did not go as planned; the chickens did not eat. One of the *pullarii* was forced to choose between deferring the battle to the following day or lying. He chose to lie. Papirius gladly received the announced positive auspices, giving the signal for battle, and announcing that the fight would take place *deis auctoribus*.[34]

Yet, while Papirius ordered the battle lines, a dispute about the auspices arose between the chicken keepers. This was reported to Papirius' nephew, who, after inquiring into the matter, alerted his uncle. The consul praised his nephew's *virtus* and *diligentia*, but said that he would nevertheless continue with the battle.[35] However, Papirius also ordered that the chicken keepers (Livy uses the plural) who had announced the false signs

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[33] Livy 10.40.3-4.

[34] Livy 10.40.4-5: *Nam cum pulli non pascerentur, pullarius auspicium mentiri ausus tripudium solistimum consuli nuntiavit. consul laetus auspicium egregium esse et deis auctoribus rem gesturos pronuntiat signumque pugnae proponit.* "For when the chickens did not eat, the *pullarius* dared to lie about the auspices and announced a most favorable *tripudium* to the consul. The consul rejoiced that the auspice was outstanding, announced that the affair would be carried out with the gods as guides, and ordered the signal be given for battle."

[35] Livy 10.40.11.

be put in the front lines where they would receive punishment.[36] The responsible man was mysteriously speared before the battle even began. Papirius interpreted the *pullarius*' death as an auspice in itself saying, *di in proelio sunt … habet poenam noxium caput*.[37] At the same moment, a crow flew in front of the consul, an auspice that he accepted joyfully.[38] The bad auspices had been changed into favorable ones. In the ensuing battle, the Romans were successful.

This chapter investigates ritual transgressions such as the falsified auspices at Aquilonia. The story of Papirius already has shown the difficulties that the Romans faced in observing and interpreting signs. How did Rome make sense of the fact that the lying chicken keeper was killed, but the rest of the army fought and won despite the lie? Papirius came out of the battle looking rather good even though he had technically drawn up the battle lines following a sign that he knew to have been false. One cannot help but wonder whether the crow that flew across the sky and gave Papirius the last-minute good omen that he needed was a later embellishment. How would the story have developed differently if the Romans had lost the battle?

The account of the battle of Aquilonia has introduced the elements of ritual transgression that will be at issue in this chapter. Perhaps the most fundamental variety of religious transgression was the mismanagement of rites themselves. This type of crime

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[36] The fact that falsifying auspices here was considered an act worthy of punishment weighs against the prevailing view (e.g. Linderski (1986)) that lying about the auspices was a normal, accepted means by which the Romans controlled their gods.

[37] Livy 10.40.12-13: "The gods are present in the battle… The guilty man has paid the penalty."

[38] Livy 10.40.14: *ante consulem haec dicentem corvus voce clara occinuit; quo laetus augurio consul, adfirmans nunquam humanis rebus magis praesentes interfuisse deos*… "A loud-voiced crow appeared before the consul as he was saying these things. The consul rejoiced at this augury, confirming that the gods had never been more present in human affairs…"

did not have an external object, like murder or theft. The violation was committed against the ritual itself, making it a true crime against religion. The ritual itself consisted in the very rules of correct conduct that were transgressed. Ritual transgression was complicated because it was open to variations in interpretation, as the conflict between Papirius and the chicken keepers has illustrated, particularly because the questions of who had transgressed and whether they had transgressed could become a matter of opinion.

I take falsified auspices as an entry point into the problem of ritual transgression. The Romans took signs from the gods seriously and it was considered deeply dangerous to meddle with an observed auspice. The technicalities of auspice-taking establish the precision with which auspices were traditionally observed and affirm the centrality of the act of observation in determining the actual will of the gods. The second section expands the category of ritual transgression to include the intentional neglect of omens and of required rituals and argues that transgression was claimed to have occurred retrospectively in order to explain disastrous occurrences. Intentional ritual neglect became a trope of invective, traces of which survive in the historiographical record. This was a trend that complicated the problem of assigning responsibility for wrongdoing and the related difficulty of identifying who had the power to determine whether or not a transgression had occurred. As the interaction between the *pullarii* and Papirius has shown, claims to power, expertise, and knowledge could conflict. Transgression was a means by which to hold a failed general, or a political opponent, to account. However, often multiple factors led to a given disaster that was ultimately explained via transgression. The evaluation of causality was crucial for determining how transgression

could be rectified. That assessment was done by some combination of the senate, favorable contemporaries, and political opponents, or others who stood to benefit from a transgressor's downfall (like Papirius who blamed the *pullarius*). Ritual transgression was therefore at the same time a locus of piety and one of acute political contention.

I. *Ementita Auspicia*: Case Studies

It is interesting that omens and auspices became recurring loci for religious transgression whereas other ritual errors did not. For example, there are no recorded instances of an intentionally mispronounced prayer. Omitted vows or sacrifices were occasionally at issue, but not as frequently as auspices. Falsified auspices remained rare, but their relative frequency is partially the result of the multiplicity of individuals involved in reporting and interpreting auspices. There was room for manipulation and blame and plausible deniability, because a magistrate, a ritual specialist, and an audience (often of troops) could interpret, contradict, and alter signs. More than that, however, the auspices were special because they were messages from the gods. The interpretation and neglect of auspices threw into question the obligations of humans to the gods and the ways in which those obligations related to actions of political and military importance. If the gods were thought to always favor the Romans, but those same gods also prohibited an apparently advantageous action by means of a negative sign, could it ever be permissible to act anyway? Did the gods really favor a positive outcome for the Romans in every case?

I begin with falsified auspices because they present the clearest case of contravention of divine will, and because "falsified auspices" seems to have been a native category for the Romans. The few incidences of the phenomenon that are attested in ancient texts are all identified with some form of the words *ementiri* and *auspicium*.[39] This consistency of vocabulary indicates that *ementita auspicia* had a technical meaning in augural law. The existence of a phenomenon of deliberately falsified auspices signals that there was a view among Romans that certain signs did express divine will and that the flagrant contradiction of those signs was not in keeping with divine preferences.[40] The principle can be extended to the more general act of ignoring observed omens, which lacks the aspect of attempted alteration of the messages of the gods, but which is nevertheless presented by ancient authors as similarly transgressive. A false auspice occurred when someone observing the auspices lied about seeing a sign that they had not, in fact, seen.

It has been claimed that falsifying auspices was a permissible choice for Romans that allowed them to assert pragmatic control over religious realities.[41] Ritual transgressions were certainly used to explain misfortunes or to attack political enemies, especially in retrospect. However, a technical study of false auspices demonstrates that

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[39] This linguistic consistency means that *ementita auspicia* can be treated as a salient category, distinct from other cases of manipulation of auspices. Ignoring signs or declaring that one is going to observe the sky (*de caelo servare*) with the goal of achieving a particular political end are therefore distinct from falsifying the auspices.

[40] I concur with Driediger-Murphy's (2018) argument that the Romans attacked those who announced false auspices out of a genuine fear of the gods.

[41] Stated most clearly in Linderski (1986) 2214. See also 2207, n.225, n.256. Linderski (1995) 478 sums up, "[The phenomenon of *ementita auspicia*] expresses an active, bold but careful attitude of the Romans toward supernatural powers; one should do whatever one can to appease them, but also whenever it was possible one should try to gain control over them. This attitude is very revealing for the proper understanding of Roman religion." See also Santangelo (2013) 198; Wardle (2006) 180; Konrad (2004) 183.

Romans had a very precise conception of correct and incorrect augural behavior that they scrupulously policed. I argue instead that ancient discussions of falsified auspices show not only that it was not possible for humans to "change" divine signs by misreporting them, but also that to do so was in direct contravention of divine will.[42]

There exist only a few examples of *ementita auspicia* in ancient literature: the already-discussed battle at Aquilonia during the Samnite Wars; the story of the cursed departure of Crassus from Rome to Parthia in 55 BCE described in Cicero's *De Divinatione*; and the charge of falsified auspices at the consular election of Dolabella laid on Mark Antony by Cicero in the *Philippics*.[43] Mention of *ementita auspicia* also occurs briefly in Livy Book 21 when the consul Flaminius slips out of Rome without the proper ceremony, to disastrous results.[44] Appian records a senatorial attempt to use false auspices to obstruct Dolabella from taking up command of Syria in 44 BCE.[45] The paucity of examples, combined with the attention given to the phenomenon in the surviving instances, suggests that falsifying signs was not very common. The battle at Aquilonia presents the earliest and most complete portrayal of an incident of falsified auspices, so I return to that episode briefly before comparing it to later incidents.

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[42] I separate falsifying and ignoring observed signs from the (intentional) failure to observe them in the first place, which was an acceptable means by which the Romans avoided obstruction, e.g. Cic. *Div*. 2.77.
[43] Livy 10.39-42; Cic. *Div*. 1.29; Cic. *Phil*. 2.79-84, 88, 3.9, 5.9.
[44] Livy 21.63.5. Flaminius suspects that one of his political enemies will use *ementita auspicia* in order to detain him in Rome though he avoids this through his own transgressive maneuver, discussed below, 44ff.
[45] Appian *BC* 3.1.7.

According to Livy, the Roman army at Aquilonia had been eager to fight, hating the idea of a delay.[46] Under that pressure, the *pullarii* preferred to lie about the sign rather than postpone the battle when the chickens refused to eat.[47] When Papirius unknowingly received their (false) report and chose to act on it, he rendered the false auspice technically valid.[48] However, because after learning the truth he saw the need to ensure the punishment of the responsible *pullarius*, it is clear that he considered the lie about the *tripudium* to have been wrong. The ultimate victory of the Romans was taken as an indication that Papirius acted correctly in proceeding with the battle despite the initial negative auspices. Papirius received no censure from Livy and was instead praised for not being intimidated by the dispute over the auspices.[49] Livy portrays Papirius as having rectified the wrong of the false signs by punishing the *pullarius*. He allowed the gods themselves to offer further direction in the form of the mysterious spear to the chicken-keeper's chest. In killing the *pullarius*, the gods took their own, very direct, vengeance for a religious crime. According to the religious logic as Livy presented it, Papirius was correct in following the omen that had been reported to him rather than the one that had really occurred, but there was not a sense that the gods were bound by the announced

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[46] Livy 10.40.1: *simul divinae humanaeque spei pleni clamore consentienti pugnam poscunt; paenitet in posterum diem dilatum certamen; moram diei noctisque oderunt*. "At the same time, full of hope both human and divine, they asked for battle with a united cry. They were sorry that the battle was put off until the next day; they hated the delay of a day and a night." The mention of a delay until the next day is surely an oblique reference to the augural formula, *alio die*.

[47] Livy 10.40.3-5: *is ardor omnium etiam ad eos qui auspicio intererant pervenit*. "This universal *ardor* even reached those involved in taking the auspices."

[48] Auspices, once accepted, were binding upon the Romans. See Linderski (1986) 2214. This does not mean that the false signs were endorsed by the gods, *pace* Linderski.

[49] Livy is usually clear about expressing displeasure towards transgressive generals, e.g. Caius Claudius at 41.10, who rushed off to his command without the proper ceremony. It is telling that Papirius is not criticized.

auspices rather than by the true ones. In fact, the gods sent a further sign in the appearance of the propitious bird that flew across the field of battle.[50] That sign indicated that they now approved of the battle despite the debacle with the *pullarii*. The gods killed the *pullarius* for misrepresenting their original will, but they sent an additional positive sign that signaled a change of heart. Rome emerged from the battle appearing both victorious and pious.[51]

Normally, the gods would not overturn a bad omen on the same day because augural law required new omens to be sought the following day. However, it was entirely expected that the gods would eventually support the Romans' proposed course of action. Even though a battle could be put off for a different day, it would eventually go forward. A similar assumption was at work when sacrifices were iterated; though initially unfavorable, at some point favorable signs would be observed. The practice of repeatedly asking the gods the same question implies that it was expected that they would change their answer eventually. Sometimes there were casualties in this process. If a consul's election was vitiated, for example, he had to resign and another man was elected in his place. At Aquilonia, the *pullarius* who had been involved in taking the negative auspices was killed. Nevertheless, the assumption remained that a favorable consul, or date for

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[50] The positive oblative sign of the crow overrode the negative impetrative sign obtained from the sacred chickens. The sign observed later took priority. More usually, a negative oblative sign that was observed after a positive impetrative sign would override the positive sign. This was the case when Ateius Capito attempted to block Crassus' departure for Carrhae with bad omens. On the temporal variables involved in determining which of several observed signs held precedence, see Valeton (1890) 430-2, 447.

[51] Livy's narrative is largely about the military aspects of the battle and is less useful for a religious reading, but it is important to note that he mentions the Samnites' perverted religious proceedings (particularly in 10.41.1-3), discussed in chapter four. The Samnites act as a foil to the Romans, providing more evidence that the Romans observed *religio* correctly throughout this episode.

battle, or sacrificial victim would eventually be found. That is, the gods favored a normally functioning Roman state. It may be that the overturning of negative auspices on the same day via an oblative sign in the form of the crow was not really so functionally different from waiting and taking the auspices the next day. In either case, the gods were expected to affirm Roman desires.

Papirius' story does not necessarily reflect opinions prevailing in the third century since it has been filtered through the lens of Livy. Fortunately, Cicero offers a contemporary perspective on the religious upheavals of his own era, including the falsified auspices that he witnessed. In his treatise on divination, Cicero presents an analysis of how false auspices operated in a discussion of a sign reported as Crassus left Rome for his doomed Parthian campaign in 55 BCE.[52] A tribune of the plebs, Ateius Capito, reported *dirae*, particularly grave negative omens.[53] There are several versions of the incident.[54] While, according to Cicero, Capito simply said that he observed the omens, Plutarch claimed that he actually cursed Crassus in a strange ritual over a flaming

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[52] Driediger-Murphy (2018) is the most complete analysis of this episode from an augural perspective.

[53] Cic. *Div*. 1.29.

[54] Plut. *Crass.* 16.5: … κατ᾽ αὐτήν ἐπιθυμιῶν καὶ κατασπένδων ἀρὰς ἐπηρᾶτο δεινὰς μὲν αὐτὰς καὶ φρικώδεις, δεινοὺς δέ τινας θεοὺς καὶ ἀλλοκότους. "… offering incense [on the brazier] and pouring libations, he pronounced curses both horrible and awful and called upon horrible and strange gods." Cass. Dio 39.39.6 presents the curses and the reporting of signs as separate actions by a group of tribunes, not Capito alone: καὶ τοῦτο μὲν ἐν τῷ Καπιτωλίῳ τὰς εὐχὰς αὐτοῦ τὰς νομιζομένας ἐπὶ τῇ στρατείᾳ ποιουμένου καὶ διοσημίας τινὰς καὶ τέρατα διεθρόουν, τοῦτο δὲ ἐξορμωμένῳ οἱ πολλὰ καὶ δεινὰ ἐπηράσαντο. "… and while he was pronouncing the customary prayers over the army on the Capitoline they reported divine omens and signs, and as he was setting out they called down many terrible curses." Ateius Capito is credited independently with only a failed arrest attempt (39.39.6-7). Cass. Dio 39.39.7 is ambivalent as to whether Crassus' ultimate defeat was a result of the curses or of chance. Velleius Paterculus 2.46.3 also attributes the *dirae* to the tribunes as a collective but mentions nothing of them being fabricated signs. See also the discussion of Capito and Crassus in chapter five.

brazier. Cassius Dio and Velleius Paterculus contended that Capito acted alongside other tribunes. Cicero's account seems the most likely, but the multiplicity of versions illustrates the way in which a mythology could grow around an act of transgression.

In any case, Crassus did not heed the warning and died along with his army in the East two years later. After Crassus died in Parthia, the censor and augur Appius Claudius gave Capito a censorial *nota* for having fabricated the *dirae* and thereby having brought disaster on all of Rome: *C. Ateium notavit, quod ementitum auspicia subscriberet*. *Veram enim fuisse obnuntiationem, ut ait idem augur et censor, exitus adprobavit.*[55] The causality here is key. The censor gave Ateius Capito a *nota because he had falsified auspices*.[56] This shows that in the late Republic it was possible for Roman authorities to formally punish falsified auspices.

More problematic, however, is that Appius Claudius' argument went on to claim that the false auspices were actually true because they caused Crassus' death in Parthia.[57] Quintus rejects the argument that signs could cause events, explaining: *etenim dirae, sicut cetera auspicia, ut omina, ut signa, non causas adferunt*…[58] For Quintus, the issue of

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[55] Cic. *Div*. 1.29: "He censured Caius Ateius on the grounds of having falsified the auspices. For that the *obnuntiatio* had been true, as that same consul and augur says, [Crassus'] death confirmed."

[56] This is in opposition to Bayet's (1960) 43-44 claim that Capito's practice of *obnuntiatio* was simply his exercise of a traditional tribunician right. It was not appropriate to announce either false signs or *dirae*.

[57] Cic. *Div*. 1.29: *Veram enim fuisse obnuntiationem, ut ait idem augur et censor, exitus adprobavit.* "For that the *obnuntiatio* had been true, as that same consul and augur says, [Crassus'] death confirmed." *Pace* Wardle (2006) 184. At issue here is the attribution of this utterance, set up with *ut ait*. Schäublin (1986) 178-181 sees this line as Quintus' attempt to point out a contradiction in Appius Claudius' thought: if the sign was true, it wasn't falsified.

[58] Cic. *Div*. 1.29: "Even *dirae*, like other auspicial signs, like omens and signs, do not cause events." Schäublin (1986) 179 suggests compellingly that Quintus is mocking Appius Claudius when he offers his rather pedantic education on the power of signs.

whether or not Ateius Capito's signs had been fabricated is of secondary interest. The problem that emerges instead is the suggestion that bad omens could cause ruin. Though Quintus claims that the idea is absurd, Claudius the censor was responding to a real concern among knowledgeable Romans that bad signs could cause bad outcomes; Claudius was an augur, just like Cicero. Quintus and Claudius' dissension and confusion are telling. Maybe it was not clear exactly what was at stake when signs were altered. Manipulation of signs was feared to have led directly to disaster.

Quintus is arguably incorrect about whether *dirae* were curses, which would have been able to cause events. The blurring of the line between bad omens and curses is picked up in several other versions of the story.[59] As mentioned above, Capito is said in some sources to have tried to detain Crassus by physical force and that the *dirae* were a final effort to stall his departure. Some authors attest that Capito engaged in elaborate cursing rituals instead of observing signs. There is scholarly dissent as to whether Cicero omitted the curses from his narrative or whether they were a later invention.[60] Arguably, *dirae* themselves were a variety of curse.[61] They were anti-social acts, and were especially dangerous when leveled against the commander of a major Roman force. Regardless of whether or not Capito fabricated signs, the equivalency drawn between

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[59] Plut. *Crassus* 16.3-8, Cass. Dio 39.39, and a brief mention in Vell. 2.46.3.

[60] Bayet (1960) 34 rejects Simpson's (1938) denial of the historicity of the curses. Wardle (2006) 183 quips (reasonably) "Cic. fails to mention the curses, not because he does not wish to slight someone who was supporting the Optimate line (*pace* Pease), nor because they are unhistorical (*pace* A. D. Simpson …), but because they are irrelevant to the discussion of auspices …"

[61] The term *dirae* comes from *deorum irae* according to Serv. *Aen*. 4.453. According to Cic. *Leg*. 2.21, someone who ignores *dirae* is doomed to die. Bayet (1960) 41 explains that *dirae* are themselves a kind of curse. Pease (1963) 138 acknowledges that argument but believes that here *dirae* are distinct from curses. For Cicero, *dirae* seem to occupy a middle ground between a curse and a normal omen. See chapter four for an extended discussion of *dirae*.

possibly false auspices in some accounts and curses in others shows that falsifying signs had the effect of jeopardizing the safety of those involved just as curses did. This does not necessitate believing that false signs caused events, but rather serves to emphasize that they were dangerous and worthy of censure and that they were not a legitimate means of blocking a sub-optimal action by a political enemy.

Further complications are introduced by the fact that, even within *De Divinatione*, Capito's was not the only reported prodigy relating to Crassus' defeat.[62] His loss was over-determined, which makes it difficult to evaluate the efficacy of Capito's actions.[63] In this way, Crassus was paradigmatic; multiple negative signs supplemented many episodes of ritual transgression. The act of ignoring obvious negative prodigies itself was figured as a sort of transgression, as will be discussed more fully below. While the appearance of a prodigy in no way obligated Romans to accept the sign as meaningful or valid, the fact that failure to do so was so frequently identified as a cause of subsequent disaster indicates the explanatory power that religious transgression had among Romans. Transgression was a logical explanation for a misfortune suffered. It placed blame upon the "wrongdoer" as the party responsible for their own fall.

In some ways, religious transgression could make a disaster easier to understand. Rome expected to eventually be victorious against the Parthians.[64] Ventidius Bassus' celebration of a triumph over the Parthians, as well as Augustus' eventual triumphalist

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[62] Cic. *Div*. 2.22, 84, 99. For others, see Plut. *Crass.* 18-20, Vell. Pat. 2.46.3, App. *B. Civ.* 2.18.
[63] Pease (1963) 137-8 attempts to combine these varied accounts into a likely narrative.
[64] Clark (2014b) *passim*, summarized at 208ff., explains that Romans expected victory though this was often achieved by interpreting defeats as only steps on the way to a future victory.

portrayal of his success in regaining Crassus' lost standards show this.[65] Religious transgressions provided explanations that allowed Rome to explain disaster despite expectations of victory and of divine favor. The growth of the story of Ateius Capito's cursing ritual provides further indication of how useful stories of religious misbehavior could be in justifying misfortunes.[66] In the case of Carrhae, both Ateius Capito's actions and Crassus' own mistakes played a role in the loss. The implication of Capito in the defeat was obviously attractive, but did not preclude the application of blame to Crassus also. Not only could transgression explain defeat, but multiple transgressions could lead to one single misfortune. A cursing ritual by Capito would not have posed as many problems of interpretation as an unfavorable battlefield omen, so it was especially useful as an explanation for how religious failings could lead to defeat. In all examples of ritual error, the possibility exists that the error was a post-factum invention used to explain misfortune. While that was certainly the case in some situations, and while those transgressions do not become disinteresting for this reason, Capito's actions appear to have caused trouble from the start. The unifying and hopeful moment of a new military enterprise was marred by a very public show of dissent by one or more tribunes.

Transgression, again in the form of false auspices, could place the entire state at risk, as a further episode from Cicero demonstrates. Cicero censures Antony in the *Philippics* for fabricating a negative sign during the election of Dolabella as suffect

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[65] On Ventidius Bassus' campaign, see Plut. *Ant*. 33-4. Augustus portrayed the Parthians as suppliants in the *RG* 29, the Prima Porta statue, and coinage (e.g. *RIC* 288) as well as likely on his victory arch.

[66] The interest in Ateius Capito's transgression was also part of a broader trend towards commemorating defeats. Clark (2014b) 10 notes that the defeat at Carrhae is discussed nine times between the works of Horace, Propertius, Ovid, and Lucan alone.

consul in 44 BCE prior to the death of Caesar.[67] Antony had announced on the Kalends of January that he intended in the future to obstruct Dolabella's election using his power as an augur.[68] For Cicero, this was a red flag, since logic dictates that anyone who predicts the auspice that he will observe in several months' time is planning to fabricate the sign.[69] Cicero remarked, *ergo hercule magna, ut spero, tua potius quam rei publicae calamitate ementitus es auspicia; obstrixisti populum Romanum religione.*[70] Cicero's concern, while rhetorically motivated, was also a contemporary, before-the-fact expression of religious anxiety. He suggests that the best outcome he could expect from Antony's false signs would be for Antony to have brought disaster upon his own head. There was also risk that it would come upon the Republic. The election of Dolabella had to be halted because, though obviously fabricated, Antony's omens could have caused

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[67] Cic. *Phil*. 2.79-84, 88.

[68] Cic. *Phil*. 2.80: … *dixit ut comitia auspiciis vel impedire vel vitiare posset*. "… he said that he would either be able to impede the comitia using the auspices or create a ritual flaw."; Cic. *Phil*. 2.81: *Multis ante mensibus in senatu dixit se Dolabellae comitia aut prohibiturum auspiciis aut id facturum esse quod fecit. Quisquamne divinare potest quid viti in auspiciis futurum sit, nisi qui de caelo servare constituit?* "Many months before in the senate he said that he would inhibit the comitia at which Dolabella was being elected with the auspices, or he would do something that would prohibit it. Who could guess what flaw would be in the auspices, unless he had decided to observe the sky?"

[69] In this passage, Cicero shames Antony for his ignorance of augural law. Antony never announced that he was going to engage in *spectio*, which had to be concluded *prior* to the election and which was the only means by which an augur could obstruct proceedings. He relied on *obnuntiatio* instead, which was permissible since he was also consul. Cicero takes the opportunity to mock Antony, however, for his poor understanding of the powers of his various offices. These complaints are more interesting rhetorically for their invective content than from an augural perspective. See Linderski (1986) 2198 for a fuller technical explanation of Antony's error. See also the discussion of Bibulus, who attempted a similar stunt, in the conclusion.

[70] Cic. *Div*. 2.83: "I hope, by Hercules, that you lied about the auspices to your own great misfortune rather than to that of the republic; you have bound the Roman people with *religio*." Here, as in the example from *Div*. above, is the suggestion that *ementita auspicia* could lead to ruin for the entire state.

chaos for the Republic if they were not respected.[71] For all anyone knew, the signs could have been real, and they had to be treated as such. But Cicero insinuates that Antony himself, who was aware of his lie, remained at personal risk even if his auspices were heeded. This is an acknowledgement that, just as Papirius Cursor was correct in following the reported auspices of the *pullarius*, the Roman state was correct in obeying Antonius'. They were "bound," as Cicero suggests.

This is not to imply that there was any sense that either Antony or the *pullarius* at Aquilonia had behaved correctly. Rather, I suggest that knowledge played a major role in the evaluation of obligations to obey auspices or not. If auspices were reported and accepted by the magistrate in question, the person (or the state, in the case of an election) was obligated to follow them. This was true regardless of whether one suspected that there was foul play at work, as was the case in Dolabella's election, because technically all they could know was what the observer of the sign reported. Antony had taken the risk of divine retribution upon himself by lying. But he left open the rest of Rome to similar divine displeasure, because they were trapped between an obligation either to obey the false signs that misrepresented the opinion of the gods, or to ignore the signs and risk angering the gods by disregarding what, for all they knew, were genuine omens. The key danger of false auspices was that they both misrepresented the will of the gods and forced the Romans unwittingly into actions that did not have divine approval. This was not an insurmountable obstacle. Papirius Cursor, for one, was able to "fix" the auspices by punishing the *pullarius* and acquiring a new positive sign. But in the absence of intelligence of the sort that Papirius Cursor acquired about the *pullarii*, a commander

[71] See Plut. *Ant*. 11.3 for Caesar abandoning his plan to made Dolabella consul alongside Antony.

would fall into the trap Cicero describes: bound to obey signs suspected of being false, but unable to behave in a manner actually aligned with divine preference.

II. Refusal to Heed Omens

The problem of falsified auspices is a specific one, but it highlights a larger difficulty that Romans had with the willful neglect of omens generally. Just as faking signs was in contravention of the will of the gods, so was ignoring impetrative signs such as bad auspices. Generals who entered into battle despite failed sacrifices or abstemious chickens tended to meet bad ends. Sometimes ruin would fall also upon their entire armies and consequently upon all of Rome. Publius Claudius Pulcher's rash actions at the battle of Drepana in 249 provide an extreme example that illustrates the larger phenomenon. In the famous story, as told by Cicero, Publius Claudius Pulcher's sacred chickens would not eat. He threw them into the water instead: *etiam per iocum deos inridens … mergi eos in aquam iussit, ut biberent, quoniam esse nollent*?[72] Rome lost the battle. Claudius' error was in rejecting the sign he had been given and for proceeding with the fight despite opposition from the gods. Cicero's editorializing about Claudius Pulcher's mockery of the gods (*per iocum*; *inridens*), combined with his snide "Let them drink!" remark projects intent onto the general. Claudius Pulcher's mockery emphasizes the dramatic and ridiculous nature of his transgression, and sets up expectations for his

[72] Cic. *ND* 2.3.7: "Mocking the gods in jest … he ordered them (the chickens) to be thrown into the water, so that they could drink, since they didn't want to eat." See also Cic. *Div*. 1.29; 2.20; Livy *Per*. 19; Livy 22.42.7-12; Flor. 1.18.29; Eutrop. 2.26.1; Val. Max. 1.4.3; 8.1 abs 4; Suet. *Tib*. 2.6; Schol. Bob. p. 337. Gell. *NA* 5.17.5 and Macr. *Sat* 1.16.26 also record that Cannae was fought on a *dies ater*.

failure. Surely someone who so flagrantly drowned the sacred chickens while simultaneously scoffing at the gods, before rushing into a battle the gods had expressly prohibited, should be expected to fail.

The insinuation in Cicero's discussion of Drepana was that religious transgression could explain bad outcomes. He suggests obliquely that it followed that transgression could also *cause* disasters, though that is never spelled out. Multiple factors led to defeat, and influenced both the supposed transgression itself and its later representation. The story of the battle of Cannae demonstrates how complicated questions of causality could become. At Cannae in 216, the tradition also held that the chickens failed to produce a *tripudium*, and that negative signs prevailed across Italy.[73] The consul and commander Gaius Terentius Varro was temporarily checked by the negative auspices reported to him by his colleague Lucius Aemilius Paulus. But Hannibal ultimately tempted Varro into the fight through a stratagem in which he pretended to abandon his camp. Fooled, the majority of the commanding officers shared Varro's opinion and were eager to fight. With even fate turned against them (*urgente fato*), the Roman forces made their ill-advised departure.[74] They lost disastrously, and accounts of the defeat show that the question of whether a fault had been committed had to be renegotiated. In Livy's account of the battle it is not clear that Varro had actually committed a religious transgression.[75]

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[73] Livy 22.42.8-9; App. *Hann*. 18 for the chickens; Sil. 8.622-676, 9.1-4 for omens across Italy.

[74] Livy 22.43.

[75] From Livy's timeline, it appears that the initial auspices (22.42.8-9) were taken for the day *before* the fatal engagement at Cannae. If so, the negative signs would not have been valid on the second day. New auspices would have been taken. We do not know what these signs were. I am not sure that Livy intended for his discussion of the auspices to be read for such precision, however. He likely included the initial notice in order to convey primarily a sense of unease. In contrast, Rosenstein (1990) 85 claims that Livy showed

The initial reactions of the senate and soldiers similarly show an uncertainty about the nature of the fault that had been committed. After the battle of Cannae, the surviving troops were dispatched to Sicily under orders not to return until the end of the war.[76] A soldier who attempted to appeal this sentence before the senate felt the need to assert that the defeat was due to human error rather than divine action or fate, a claim necessary only in a society predisposed to see defeat as the consequence of religious failure.[77] The soldier was not, he argued, dangerous by reason of being held in ill-favor by the gods. The soldier's opponents could have seen his assertion that the troops were *not* hated by the gods as perhaps a case of protesting too much.

Varro's career did not end after Cannae, demonstrating that it was possible for a general to transcend both defeat and religious transgression. He served as a promagistrate between 215 and 213, and again from 208-207, as well as later being an ambassador in 203 and 200 and finally a *triumvir coloniae ducendae* in 200.[78] While Varro was able to resuscitate his political career, his afterlife suffered. In later centuries a clear tradition grew that Varro had committed the crime of treating bad auspices as good. By Silius Italicus' lifetime, in the 1st century CE, a whole host of stereotypically bad omens had greeted all of Italy before Cannae: earthquakes, floods, bees and owls in the camps,

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Varro to be pious by having him obey the initial negative auspices after the brief disagreement with Scaevola. I understand the episode instead as Livy painting Varro as the *sort of person* who disobeys auspices even though he technically obeyed them.

[76] Livy 25.5.10-11.

[77] Livy 26.6.6.

[78] *MRR* 1.256, 265, 292, 296, 313, 325. Rosenstein (1990) 103, 123, 139-40 uses Varro's thanksgiving from the senate to argue that generals were not blamed for religious transgression.

dreams of ghostly Gauls.[79] Varro was not to be deterred, and he instead took these signs *ac si fausta forent et prospera pugnae*, "as if they were fortunate and favorable for the fight."[80] Varro's mistake here was in ignoring, and even daring to reinterpret, the signs of the gods. This was the retrospective tradition that could explain his great misfortune, and its development is a testament to the role that religious transgression played in the Roman cultural imagination. The assumption was that if a disaster like Cannae could occur, surely it had to have been caused by someone acting improperly towards the gods. The amount of blame levied against a defeated general cannot be assessed by looking only at his subsequent career. Sometimes underlying currents of blame arose in his afterlife and came to define his reputation in the historical tradition. Though the troops and the gods were held more responsible for the defeat at Cannae than Varro was within his lifetime, it subsequently made sense to blame the general. The gods had inflicted a defeat *because* Varro had made mistakes.[81]

In the examples of both Drepana and Cannae, the commanders received omens that they did not like and responded with acts of defiance that were in direct contradiction of the expressed opinion of the gods and the norms of Roman warfare.[82] In each case the entire Roman army met ruin because of a transgressive action by their general. In some

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[79] Sil. 8.622-676. Cicero's comment at *Div*. 2.71 could also be read as implying Varro's guilt in contrast to Paulus' innocence. I find the tradition about the false signs to be more likely and better supported than the argument that Varro's sole error was fighting on a supposed *dies ater*, a dating based only on a notice of Claudius Quadrigarius (Gell. *NA* 5.17.5; Macr. *Sat*. 1.16.26). See Rosenstein (1990) 84-85 for discussion.

[80] Sil. 9.3.

[81] The development towards blaming the general, a trend that Rosenstein (1990) 159-161 observes in the late 2nd century, may in fact have begun earlier. See also the case of Petillius, below.

[82] Schäublin (1986) 177 observes that, whether the magistrate acknowledges ill omens or not, danger still threatens. See, in contrast, M. Flower (2008) 169ff., 200-201 for Greek examples of generals respecting omens even when they were not favorable.

accounts, Varro also ignored further oblative signs, another typical feature of transgression on the battlefield. His example begins to demonstrate the ways in which multiple causes could compound to trigger and explain mass destruction. The disregard of omens was a classic case in which the causes of disasters would compound and in which blame would be fixed to a general. Rosenstein contends that failure to notice ritual errors or to ignore omens was difficult to blame on generals because the import of a given sign could only be determined post-factum.[83] This is true. However, we see that the general's special prerogative to accept or reject signs in the field could be used to affix responsibility for a neglected sign to the general himself. Also, while the exact meaning of an omen could not be understood until after an event, the omens recorded in our sources as related to defeats come from the corpus of omens that were traditionally bad. While the omens themselves may have been fictions, they are represented in later accounts as having been obviously negative. In those accounts, the generals' decision to disregard signs was blatantly misguided. Such stories tell us far more about the way that ignored omens could explain disasters than it does about actual practice.

Quintus Petillius' fate in 176 illustrates the way in which several factors could compound until the resulting misfortune could be most easily explained through the general's ritual transgression. In 176 the consul Quintus Petillius was facing the a war against the Ligurians. When in doubt about what route to take between Pisa and Gaul, he cast lots, but did so outside of consecrated ground, thus rendering the result invalid.[84] He

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[83] Rosenstein (1990) 69.

[84] Livy 41.18.8. The text is problematic at this point so the precise nature of Petillius' *vitium* is unclear. Briscoe (2012) 99 comments upon the textual issues and suggests that the fault to which the *pullarius* refers cannot have been with the sortition but with auspices taken before the battle. See also Linderski (1986) 2173-2175 for the possible

was killed in battle. After he died, one of the *pullarii* announced that Petillius had also not been ignorant of a fault in the auspices: *super tam evidentem tristis ominis eventum etiam ex pullario auditum est vitium in auspicio fuisse, nec id consulem ignorasse*.[85] Despite the consul's death, the Roman army was extremely successful in the battle. There was no tactical blunder. Logic followed that the ill omen must have just been for Petillius. With Petillius dead, the rest of the army was free to be victorious.[86] Livy's text is in bad condition in this passage, which is frustrating to our attempts to understand the reception of the consul's death. Some sources seem to suggest that rather than blaming the commander, the surviving suffect consul instead blamed the troops for shirking their duty to their commander and withheld a year's salary.[87] This was typical of the Roman preference for laying responsibility on the troops over their commander for defeats, though it should be noted that in this case, Rome had won.[88] While blaming the troops was one tradition, Livy's account shows that there was another existing view that Petillius himself was religiously problematic.

Petillius' failure went deeper than that one incident. He had a spotty religious past. On the day of his consular inauguration, his sacrificial victim's liver had lacked a

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mechanics of sortition. In the same episode Petillius is supposed to have claimed that that day he would capture Letum, referring to a nearby mountain. Naturally, the *double entendre* was taken as an omen. See Livy 41.18.10, see also Val. Max. 1.5.9.

[85] Livy 41.18.14: "After such a clear consequence of the ill omen, it was also heard from the *pullarius* that there had been a fault in the auspices, nor was the consul unaware of it."

[86] Linderski (1986) 2174-5.

[87] Val. Max. 2.7.15 and Frontin. *Strat*. 4.1.46. Briscoe (2012) 99 does not believe that Livy's account, which seems to blame Petillius' recklessness, can be reconciled with Frontinus and Valerius Maximus', suggesting that the latter tradition must stem from a different source.

[88] Rosenstein (1990) 92-114, esp. 120-123 for troops bearing the responsibility for Roman defeat.

head and the sacrifice had to be repeated until a positive sign could be obtained.[89] Later, both Petillius and his colleague failed to obtain positive omens – Petillius sacrificed three adult cows without finding a liver with a head and was told by the senate to keep trying.[90] He was scrupulous in obtaining good omens before holding elections for a new consular colleague after his died, and repeating the Latin festival, which had been vitiated.[91] An atmosphere of religious doom hung around Italy, where omens had been abundant the previous year as well as this one.[92] Yet again, Petillius' death was overdetermined and his consulship doomed before he even first took up the office. It appears as if there was not any course of action that Petillius could have taken that would have spared him. Once Petillius took office, the ill-feeling coalesced around him and his consular colleague until both were dead.

When disaster came upon Petillius, a consul plagued by a bad religious history, but not upon his troops, it must have made the most sense to a Rome beset by omens to say that Petillius had been killed because he had done something wrong. The gods had sent so many bad omens to the Romans in 176 because the consuls were defective, and Petillius' refusal to heed the negative signs before he fell against the Ligurians proved them right. Petillius' religiously contentious magistracy suggests that Roman generals could bear primary responsibility for divine ill favor already in the early 2nd century.[93] Petillius' death lifted the religious burden from Rome. After he was killed the Ligurian conflict was successfully resolved and celebrated with a three-day *supplicatio* held in the

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[89] Livy 41.14.7.
[90] Livy 41.15.
[91] Livy 41.16.
[92] Livy 41.13, 16.
[93] See Rosenstein (1990) 161-162 for the argument that generals were not blamed for religious misfortunes until after the Social War.

following year (175 BCE).[94] There was no further sign of religious distress until a plague arose in 174.[95]

The afterlife of the famous Roman defeat at the Allia shows a similar transformation of a failure to gain positive signs into a paradigm for religious failure. Before that battle in 390, the military tribune Quintus Sulpicius could not obtain positive signs. Livy explains, *quod postridie idus Quinctiles non litasset Sulpicius tribunus militum neque inventa pace deum post diem tertium obiectus hosti exercitus Romanus esset, etiam postridie idus rebus divinis supersederi iussum…*[96] Sulpicius' ritual failure set a precedent for avoiding action on a class of days referred to by some authors as *dies atri*, special days on which non-essential action was forbidden. Marcobius explains the problem of ritual failure slightly differently. He explains that Sulpicius *rem divinam dimicandi gratia fecisse*, but defeat nevertheless followed.[97] Similarly, despite sacrifice before the battle at the Cremera, Rome was beaten. The solution was avoiding ritual action on these dates, known as *dies atri*.[98] While Macrobius does not explicitly state that they had failed to obtain positive signs, such a deficiency can be assumed on analogy with the Livian tradition as well as with Rome's actual defeat.[99] Neither tradition implies

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[94] Livy 41.19.1-3.
[95] Livy 41.21.
[96] Livy 6.1.12: "[Certain people think]… because the military tribune Sulpicius did not obtain good omens on the day after the Ides, nor was the *pax deum* acquired, and three days after the Ides the Roman army was thrown before the enemy, that religious affairs are ordered to be suspended on the day after the Ides even now."
[97] Marc. *Sat*. 1.16.23: Sulpicius "did the 'divine thing' in order to fight."
[98] Marc. *Sat*. 1.16.21-24. On *dies atri* see Hemina's comment at *FRH* 23 = Macr. Sat. 1.16.21; Fest. 144-5L, 348L; Gell. 5.17.1-2. Santangelo (2011) 181-182 says that *dies atri* were not days of atonement, but rather days on which there was no communication between men and gods.
[99] Another possibility could be that positive signs were obtained on those days, but that they were invalid because of the cursed nature of the date.

unwillingness to attempt to obtain good omens, but they do imply (Livy explicitly so) failure to obtain them. Livy's explanation makes Sulpicius' story similar to Petillius'. Both had difficulty in obtaining good omens, and both went into battle despite this challenge, in contravention of the will of the gods.

The variation between their outcomes shows the versatility of the trope of the dubiously pious leader. Sulpicius' action led to disaster for the Republic, and Petillius' led to personal ruin but public victory. Papirius Cursor's, though a more complicated case, led both to personal and military victory. The fact that these results were all possible further demonstrates the complications involved in assessing the risks associated with fighting wars without good signs. While the Romans clearly disallowed armies from engaging under bad omens, to do so was not a guarantee of complete ruin for all. Sometimes, a lone individual might take the blame, but in other cases ruin fell upon the entire army. Cicero pointed out this disjunction. In *De Divinatione*, Marcus complained that Quintus had implied that, if only a wayward general had obeyed the auspices, a disaster could have been averted.[100] Marcus protested both because of a sense that the auspices had lost their authenticity over the course of the Republic, but also because crises frequently seemed to have too many causes. Was the problem with the auspices, additional oblative signs, fate, or a normal human error? The variations observed in the ascription of blame show that the Romans assessed these on a case-by-case basis and that consequently the conclusions could be and were contested.

Petillius and Sulpicius' failure was in never obtaining good signs and marching to battle despite this. But the crime of omission could prove even more serious than the

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[100] Cic. *Div*. 2.21, 71.

crime of ignoring a series of negative signs. Gaius Flaminius' behavior in the year 217, culminating in his massive defeat and death at Trasimene, is the classic case of this phenomenon. Gaius Flaminius stole out of Rome at the beginning of his second consulship in 217 without completing the required sacrifices and vows on the Capitoline and without conducting the Latin Games. He chose to take up his office in the field instead because he feared that his enemies would detain him by religious means: false auspices and fabricated delays in the Latin Festival. Livy narrates:

> simulato itinere privatus clam in provinciam abiit. ea res ubi palam facta est, novam insuper iram infestis iam ante patribus movit: non cum senatu modo sed iam cum dis immortalibus C. Flaminium bellum gerere. consulem ante inauspicato factum revocantibus ex ipsa acie dis atque hominibus non paruisse; nunc conscientia spretorum et Capitolium et sollemnem votorum nuncupationem fugisse, ne die initi magistratus Iouis optimi maximi templum adiret, ne senatum invisus ipse et sibi uni invisum videret consuleretque, ne Latinas indiceret Iovique Latiari sollemne sacrum in monte faceret, ne auspicato profectus in Capitolium ad vota nuncupanda, paludatus inde cum lictoribus in provinciam iret. lixae modo sine insignibus, sine lictoribus profectum clam, furtim, haud aliter quam si exsilii causa solum vertisset. … revocandum universi retrahendumque censuerunt et cogendum omnibus prius praesentem in deos hominesque fungi officiis quam ad exercitum et in provinciam iret.[101]

[101] Livy 21.63.5-11: "He pretended to take a trip and left for his province in secret as a private citizen. When it was exposed that this had been done, it aroused new anger in the already cranky senators: Caius Flaminius was waging war not only with the senate, but with the immortal gods! Before, when he had been made consul without the auspices, he had not obeyed gods or humans calling him back from that battle. Now, aware of his

Flaminius had omitted, according to his senatorial opponents, the sacrifices on the Capitoline upon entering his magistracy, the Latin Festival, and the assumption of the auspices and further sacrifices upon going out on campaign. He had acted *conscientia spretorum*, they said. A series of problems arose, including not having properly respected the dignity of his office. But the central problem was that he was now in command of an army but lacked the auspices. The dialogue around Flaminius' religious failures was controlled by his political opponents who attempted to recall him from the field.[102] They contended that Flaminius had gone to war without consulting with the gods about his magistracy or his campaign. While their goal was partially vituperative, the example of Petillius and his colleague, who had so much difficulty obtaining positive signs in these rites, demonstrates the very real possibility that warning signs could arise during these rituals. That is, Flaminius' political enemies were arguing from a reasonable angle. Flaminius' own past also provided a cautionary tale. His previous consulship in 223 had been vitiated for failure to obtain the auspices.

As it happened, once the gods were able to express their will, they did so unfavorably for Flaminius. He attempted to sacrifice a calf a few days after becoming consul. The animal broke free after it had been struck and spattered the bystanders with

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spurning, he had fled both the Capitolium and the required announcement of vows, so that he might not approach the temple of Jupiter Optimus Maximus on the day he began his magistracy, nor unwillingly see the senate, inhospitable to him alone, nor declare the Latin Festival and make the required sacrifice to Jupiter Latiaris on the Alban Mount, nor arrive with the auspices on the Capitoline to pronounce vows and thence leave for his province in military dress with lictors. Like a camp follower, without insignia, without lictors, he had departed in secret, like a thief, not at all unlike if he had left because of exile. … They all thought that he must be recalled and brought back, and forced to fulfill all his duties to humans and gods in person before going to his army and province."

[102] Further complaints about the auspices from Flaminius' opponents follow at Livy 22.1.4-8.

blood, a bad sign that struck terror into those at camp.[103] In Rome there was a rush of reported prodigies from around Italy followed by extensive expiation efforts.[104] Did people connect the prodigies with their consul's actions? While most of the opposition to Flaminius originated in the senate, other people would have noticed when his consular colleague, Gnaeus Servilius, was sworn in alone, surely a striking image.[105] In Flaminius' camp at Arretium, the consul agitated for an engagement with Hannibal. Cicero records that he failed to obtain a *tripudium*.[106] Two oblative signs befell the Roman army as they began to march: first Flaminius' horse stumbled and threw him, and then it was reported that the standards had stuck in the ground. Flaminius heeded neither and continued to fight at Trasimene. During the battle there was an earthquake, another bad sign, and the Roman army was roundly defeated by Hannibal.[107]

Flaminius had purportedly experienced religious difficulties previously during his first consulship in 223.[108] At that time, despite waging a successful war against the Gauls, he was supposed to have neglected such ominous signs as a river of blood and three moons.[109] A report also was made by the augurs in Rome that the elections of Flaminius

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[103] Livy 21.63.13-14.
[104] Livy 22.1.8-20. The prodigies were evaluated by the senate, a body in opposition to Flaminius. They may have promoted an anti-Flaminian rhetoric as part of the process of expiation.
[105] Livy 22.1.4.
[106] Cic. *Div*. 1.77-78.
[107] Horse and standards: Livy 22.3.11-14; Cic. *Div*. 1.77-78; 2.67. Earthquake: Livy 22.5.8; Plin. *HN* 2.200; 2.241 (burning lake); Plut. *Fab. Max*. 3.2; Cass. Dio 14. See also Livy *Per*. 22; Val. Max. 1.6.6; Cic. *ND* 2.7-8; Cic. *Div*. 2.71; Cic. *Div*. 2.21; Ov. *Fast.* 6.763-68; Oros. *Hist*. 4.15.6; Min. Fel. *Oct*. 7.4; Zonar. 8.25 for more general statements about Flaminius' failure to obey omens.
[108] On this consulship, see Polyb. 2.32f. Polybius does not comment upon the auspices but does indicate mismanagement of the battle by Flaminius.
[109] Plut. *Marc*. 4.1.

and his consular colleague had been compromised by a bad sign.[110] It is unclear what the augurs had been doing in the intervening months since the election. The senate attempted to recall Flaminius, but he refused to open their missives until after concluding battle with the Gauls. He was later allowed to triumph with his Gallic spoils but was thereafter stripped of office.[111] The fact that the episode parallels too closely that of 217, and the evidence of the triumphal *fasti* recording a March triumph lead me to doubt the historicity of the events of 223.[112] It seems likely that the story was a product of the negative tradition that developed around Flaminius in retribution for a land distribution scheme that he had championed while tribune and for his loss at Trasimene.[113] This tradition serves to establish a pattern of behavior for Flaminius by implying that he was the kind of person who repeatedly transgressed.[114] It also serves to call into question his previous successful mission in Gaul, casting his whole career under the shadow of Trasimene.

Flaminius' fate was over-determined. Any of his individual acts were sufficient to be considered transgression, especially considering that they were layered with the pattern of behavior supposedly established by his first consulship. With Flaminius, the

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[110] Plut. *Marc*. 4.2. The incident is referred to also at Livy 21.63. Technically Flaminius was not acting in contempt of the gods when he refused to open the letter though his actions were certainly self-serving. See also Zon. 8.20.

[111] Plut. *Marc*. 4.3, Zon. 8.20. Develin (1979) 274 prefers Plutarch's version, in which the people give Flaminius a lukewarm reception at his triumph. This was one of the means by which they censured him for bad conduct (including religious conduct).

[112] Beck (2005) 254-255.

[113] Polyb. 2.21.7-9 on Flaminius' tribunate in 232. Feig Vishnia (2012) argues for the importance of Flaminius' agrarian program particularly for Polybius' negative assessment. On reception of Flaminius in antiquity and in modern scholarship, see Develin (1979). It should be noted that Flaminius apparently willingly stepped down as Master of Horse in 222 after his appointment was vitiated by a mouse's squeak (Plut. *Marc*. 5.5; Val. Max. 1.1.5).

[114] Jacobs (1937), the fullest treatment of Flaminius, argues (p. 136) that the Livian presentation of Flaminius as opposed to religion must stem from the aristocracy's self-conception as champions of religion. See also Beck (2005) 245-266.

development of a multi-faceted tradition of transgression was more important than the historical reality of his misdeeds. It is noteworthy that the creation of the paradigmatic "bad commander" was accomplished through the accumulation of ritual failings. Flaminius' error was not negligence, it was blatant and repeated disregard for proper procedure. The scale of his defeat was commensurate with his transgression. Rosenstein claims that religious negligence (distinct from willful wrongdoing, in which he shows little interest) did not play an important role in explaining Roman military catastrophes because it would have caused blame to be bandied about between generals, disturbing the normal operation of the Roman aristocracy.[115] He downplays and treats intentional transgressions like Flaminius' as rare because he is disposed to downplay incidents that were politically divisive, as the senate's attempt to recall Flaminius demonstrates his was.[116]

The language of religious transgression was used by Romans to make character generalizations. This was true also in the more securely historical episodes recorded by Cicero in the first century, such as the examples of Ateius Capito's *dirae* and Antony's false signs, as discussed above. With all of these examples, contemporary or reflected primarily through earlier writers, it is difficult to see through the political complications

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[115] Rosenstein (1990) 55-59, cf. 67. Rather than emphasizing the intentional transgressions of Roman generals, Rosenstein emphasizes unnoticed errors and claims that only once, after Trasimene, was an unremarked omission found to have caused a defeat (the flawed discharge of a vow to Mars, Livy 22.9.9). Rosenstein claims (p. 59) "… if defeat were seen as the product of unnoticed mistakes in performance, it might follow that failure on the battlefield could have been avoided if only more care had been taken in carrying out the ceremonies properly. … Therein lay the germ of a political contest…."

[116] Rosenstein (1990) 77ff. discusses Flaminius as a scapegoat for a united religious establishment. Clark (2014b) 58-59 observes that the blame placed upon Flaminius distracted attention from the defeat at Trasimene and instead allowed it to focalize on Flaminius as a negative *exemplum*.

that prompted and created these episodes of transgression. In the final section of this chapter, I will suggest that the religious actions taken after disasters like Cannae and Trasimene were indications that religious unease was actively addressed in real time for reasons that went beyond political jockeying. Here I suggest only that, even if post-factum stories of dubious factuality were all that survived, we would still have secure grounds on which to assert the explanatory power religious transgression could have for personal and statewide calamities.

Transgressors ignored and circumvented divine will, or, in cases of omitted rites, prevented the gods from even expressing their endorsement or disapproval. The idea that the gods had an opinion and that it was inappropriate to interfere with its expression runs through all of the above examples. The problem with transgression was that it violated the will of the gods. The ill-effects of transgression were merited because of the incorrect actions taken by transgressors, and the ruin that resulted from transgression shows that it was considered unacceptable.[117] Most, if not all of these examples were modified and massaged by the historical tradition after they occurred. They do not reflect contemporary reality, with the exception of some of Cicero's comments, but rather reflect prevailing ideas about what impact religious transgression could be thought to have had on generals and on the Roman state. The Romans believed that the signs spurned by transgressive individuals had been send by the gods, and they also believed that such contempt could explain the later demise of these same men.

[117] This is similar to the argument made at Min. Fel. *Oct*. 7.

III. Ritual Specialists and Blame

In many of the above examples, the difference between a transgression and an "honest mistake" lay in whether or not the agent knew about a given negative auspice or bad omen.[118] Knowledge of the reality of an observed sign was crucial in many of the above examples because it was entirely correct to obey a false sign unknowingly, but unacceptable to do so knowingly. The ritual specialists in charge of divination were key figures both in observing signs and in transmitting information about them. Though ancient discussion of transgression emphasized the actions of magistrates, a more granular approach is informative for understanding not only how guilt operated in instances of wrongdoing, but also the role that knowledge of observed signs played in establishing when transgression was occurring and who was committing it. It is also essential for understanding the involvement of non-elites in major state actions.[119] In most literary accounts of the taking of auspices or sacrifice, the figures who did most of the physical work were eclipsed in favor of the magistrates on whose behalf they acted. In artistic representations of rituals, figures such as the *victimarii* fare better, for example on the altar of Domitius Ahenobarbus. Yet *pullarii* and *victimarii* lie behind every instance of battle and sacrifice that survives and were crucial to assessing and communicating the success or failure of a given act of divination.

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[118] Compare to Scaevola's stance on unintentional transgression at Varro *LL* 6.30, Macr. *Sat*. 1.16.9-11, Cic. *Leg*. 2.9.22.

[119] Linderski (1995) 478 explains that the assistant's relationship to the augur was the equivalent to that of the augur to Jupiter, and that the assistant's observations were therefore binding on the augur. See Cic. *Leg*. 2.21.

To illustrate the role of religious specialists, I return to the Battle of Aquilonia, this time with a focus specifically on the mental state and actions of the chicken keepers. When Papirius Cursor asked the *pullarii* to take the auspices, the mood in the camp was high:

> nullum erat genus hominum in castris intactum cupiditate pugnae; summi infimique aeque intenti erant; dux militum, miles ducis ardorem spectabat. is ardor omnium etiam ad eos qui auspicio intererant pervenit; nam cum pulli non pascerentur, pullarius auspicium mentiri ausus tripudium solistimum consuli nuntiavit.[120]

The *pullarii* were aware of the situation in camp, and they knew that the Roman army was in a favorable position to fight the next morning. They must have had access to information about the particulars of their situation and acted in accordance with this intelligence.[121] Livy claims that *ardor* is what led them to falsify the signs, though his use of *etiam* ("even") indicates that ideally the augurs would have been objective. It is noteworthy also that, though the lying appears to have been the act of a singular *pullarius*, multiple *pullarii* were present in the army, as the plural *eos* indicates.

The *pullarii* engaged in an internal dispute after the false auspices were announced, most contesting that the action was inappropriate:

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[120] Livy 10.40: "There was no specimen of the human race in the camp untouched by desire to fight; high and low alike were eager; the leader observed the ardor of his soldiers, the soldiers that of their leader. This universal ardor even reached those involved in taking the auspices; for when the chickens did not eat, the *pullarius* dared to lie about the auspices and announced a most favorable *tripudium* to the consul."

[121] M. Flower (2008) 153-157 discusses the pressure the Greek seer could experience to observe certain signs, an impulse that had to exist in balance with an appearance of objectivity in divination.

> dum his intentus imperator erat, altercatio inter pullarios orta de auspicio eius diei exauditaque ab equitibus Romanis, qui rem haud spernendam rati Sp. Papirio, fratris filio consulis, ambigi de auspicio renuntiaverunt. iuvenis ante doctrinam deos spernentem natus rem inquisitam ne quid incompertum deferret ad consulem detulit.[122]

Here again, the lying appears to have been the act of one *pullarius* and was a cause of controversy among the group. Some unnamed *equites* reported the fight to Papirius' nephew, who in turn reported the dispute to the consul. In the nephew's report, the *pullarii* remained the ultimate authority on what signs had or had not been observed. It was only the claim of the other *pullarii*, who had apparently themselves observed the negative omen, that revealed their colleague's lie and had the power to call his announced auspices into question. The *pullarii* therefore possessed significant interpretive power.[123] Had the lying *pullarius* managed to convince his colleagues to agree to the falsehood, the entire scandal might have been avoided. He must have assumed that the other chicken keepers were infected with the same urgency to start the battle as he was. While the consul was the one who made the decision to enter battle, the *pullarii* were authoritative on the appetites of the chickens and could plausibly have manipulated them at will. They

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[122] Livy 10.40: "While the general was engaged in these things, a dispute arose among the *pullarii* about the auspices of that day. It was overheard by some Roman knights, who, thinking that this affair should definitely not be ignored, reported the argument over the auspices to Spurius Papirius, the son of the consul's brother. This youth, since he had been born before people learned to spurn the gods, inquired into the matter so that he would not bring forth anything under-investigated. Then he brought it to the consul."

[123] Rüpke (2005) 224 observes that the process of taking the auspices was not public; only the result was. Manipulation was easily accomplished and it was impossible in practice to distinguish between real and false results. He consequently argues that it did not matter what the actual results were, though the Papirius episode indicates that the process did matter.

may have done so without detection on other occasions. However, the argument between *pullarii* shows that there was a dedication within the group as a whole to accurately reflect the behavior of the chickens. They chose to quarrel at personal risk.

It was also a *pullarius* who reported after Petillius' death that the dead consul had not been unaware of the negative auspices that had attended the day of battle.[124] This confirms the *pullarius*' authority over the auspices. The *pullarius* himself must have observed the chickens and reported the signs to Petillius, who then made the decision to fight despite the omens. Similarly, in *De Divinatione*, Cicero has Flaminius and a *pullarius* argue over the necessity of obeying the auspices before Trasimene:

> Idem, cum tripudio auspicaretur, pullarius diem proelii committendi differebat. Tum Flaminius ex eo quaesivit, si ne postea quidem pulli pascerentur, quid faciendum censeret. Cum ille quiescendum respondisset, Flaminius: "Praeclara vero auspicia, si esurientibus pullis res geri poterit, saturis nihil geretur!"[125]

The *pullarius* recommended faithful adherence to the auspices, while Flaminius was apparently confused about how the auspices worked in a general sense. This appears to be one of the cases when transgression was linked with low intelligence in the historiographical tradition, but it does raise the interesting question of just how much magistrates would have understood about augural law.[126] Cicero's portrayal of the conversation between Flaminius and the *pullarius* is surely exaggerated and fanciful, but

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[124] Livy 41.18.14.
[125] Cic. *Div*. 1.77: "Similarly, when the auspices were taken for a *tripudium*, the *pullarius* deferred the date of joining battle. Then Flaminius asked him, if the chickens also should not eat subsequently, what did he think should be done. When he responded that they must remain still, Flaminius said, 'Lovely auspices, indeed, if things can be done when the chickens are hungry, but nothing done when they are full!'"
[126] Compare to Mummius' ignorance about Greek art (e.g. Polyb. 39.2.1-2).

also likely accurate in mechanics since Cicero was himself a member of the augural college.[127] An analogous quarrel must be imagined between Publius Claudius Pulcher and his chicken keepers at Drepana.[128]

Controversy is central to the literary depiction of *pullarii*. Strikingly, attestations of *pullarii* in the literary sources come disproportionately from incidents in which there was some religious transgression. In fact, nine out of a total of nineteen attested uses of the word "*pullarius*" in Latin literature relate directly to the incident with Papirius Cursor. Since it is known that the chicken keepers were present in all armies and operated without comment most of the time, we can conclude that their presence only in narratives of transgression is due to the importance of the act of observation and of the transmission of their reports to commanding officers, which were particularly at issue when things went wrong.

The *pullarii*'s interpretive role is confirmed by the way in which Papirius Cursor laid responsibility for the religious transgression at Aquilonia upon the *pullarius* who reported the fabricated sign. Papirius sent the *pullarii* (plural) into the front lines, implying collective guilt, but apparently only the one responsible for the false sign was pierced with a spear. Papirius interpreted the chicken keeper's death as an indication that the gods had taken their due.[129] Papirius Cursor's is the only surviving case of disciplinary action being taken against *pullarii*. It shows that the chicken keepers were thought to be able to bear responsibility, though in this case it was certainly also the convenient choice for the consul. Punishing the *pullarius* was crucial for Papirius because

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[127] See Cic. *ad Fam*. 10.12.3 for the relationship between the *pullarii* and the augurs.
[128] Suggested most clearly at Val. Max. 1.4.3.
[129] Livy 10.40.12-14.

he himself was not blameless that day; once he had learned of the false sign, he should have turned back. The refocusing of responsibility onto the chicken keepers was clever, and it worked only because the *pullarii* had the primary role of interpreting the auspices in the first place.

The *pullarii* had a lot of power over the auspices because they could manipulate the appetites of the chickens and therefore influence the results. It is crucial to note that such manipulation did *not* count as an unlawful falsifying of the signs. Cicero's Quintus described a *tripudium* resulting from the common practice of starving chickens before battle as a *coactum tripudium*, a "forced tripudium."[130] While Marcus attempts to use the fact that auspices could be manipulated, for example by starving the chickens to make sure that they ate, to discredit the entire apparatus of the auspices, there is a large gulf between allowable manipulation and an outrageous act like Claudius Pulcher's. In the former instance, despite human interference, the sign itself – the chickens eating – actually occurred. In the latter, the chickens never ate. Being thrown in the water was not a sign, nor did it negate the previous ill omen of the chickens' abstention. A comparison is drawn between the manipulation that was viewed as acceptable (starving the chickens) and that which was not (rejecting the given signs). The *pullarii* were competent to do the former, but not the latter, because their central duty was to observe and report the birds' actual behavior.

The *pullarii* were non-magistrates who performed crucial interpretive work in the Roman religious system. Their case proves that religious transgression could play a role in the lives of non-elite people. While we know little about Republican *pullarii*, in the

[130] Cic. *Div*. 1.28. See also *Div*. 2.73.

imperial period surviving epigraphic evidence indicates that most were freedmen, and it is possible that others were public slaves on analogy with *victimarii*, though they are likely to have outranked *victimarii*.[131] In the late Republic Cicero classified *pullarii* with *apparitores* such as *scribae*, lictors, and *praecones*.[132] This would indicate that they were part of the Roman civil service, a status that appears to have continued into the imperial period.[133] If so, they would have received a salary from the state. Private *pullarii* also existed in the republican era, though only one is attested. He worked for Tiberius Gracchus.[134]

Other religious specialists played similar key interpretive roles. In Lucius Petillius' series of failed sacrifices upon assuming the consulship, the *victimarius* was the one who identified the series of defects in the liver.[135] While *victimarii* have been thought to have been socially low-ranking individuals, it appears that they had the prerogative to assess the signs in the sacrifices they performed.[136] Most *victimarii* appear to have been

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[131] E.g. *CIL* 14.2523, a 1st century CE funerary relief of Marcus Pompeius Aspro given by a freedman who was a *pullarius*. See also *CIL* 6.1815, 2198, 2200, and Foti (2011) 111ff.

[132] Cic. *Leg. Agr.* 2.31-32. Harvey (1972) 60-63 observes that Cicero listed the professions in the traditional order of descending salary and also concludes from the presence of the *pullarii* in these lists that they belonged to the civil service. Foti (2011) 113-114 similarly argues this. Lennon (2015) 76 comments that *victimarii* had a lower social status than *apparitores*.

[133] *CIL* 11.7555 is the funerary inscription of a man who was both a *scriba* and the *pullarius maior*.

[134] Val. Max. 1.4.2; Plut. *Tib. Gracch.* 17.1-5. This chicken keeper failed to persuade the chickens to eat on the day that Tiberius Gracchus was killed.

[135] Livy 41.15.1. Petillius' previous encounters with the *victimarii* included ordering them to burn the books of Numa (Livy 40.29; Aug. *CD* 7.34, reporting Varro). On Petillius, Numa, and *religio*, see Penwill (2004) 41-42. Penwill remarks that these are the only two times Livy mentions *victimarii*.

[136] Woodard (2013) 68. Lennon (2015) argues that the role of *victimarius* was a prestigious position for slaves and freedmen but had been downplayed by elitist Roman authors.

freedmen or slaves.[137] They again were non-elite individuals, and ones who likely had been or were currently enslaved, who had the ability to impact the actions of Rome's highest magistrates. As with the *pullarii*, the *victimarius* was responsible for observing and communicating accurately the observed phenomenon that fell within his (or her) area of expertise.[138]

Haruspices also were tasked with observing and commenting upon the signs directly observed in the liver. When Marcellus, eventual victor at Syracuse, sacrificed at the beginning of his term of office, a *haruspex* was the specialist who expressed distress at a missing liver head followed by the large or double head.[139] Whereas the *pullarii* and *victimarii* were low-ranking individuals and may have even been enslaved, *haruspices* were often, though not always, of elite Etruscan extraction.[140] Regardless, they were not Roman magistrates. They could be held in contempt by being figured as *barbari*.[141] *Haruspices* were likewise held to account for the accuracy of their signs. Aulus Gellius describes an incident likely from the 2nd century BCE. A statue had been struck by lighting and haruspices were called from Etruria to give counsel. They recommended on

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[137] For the social status of *victimarii*, see Weinstock (1958), Aldrete (2014) 29, and Lennon (2015) 73-76. Isid. *Orig*. 19.33.4, though late, seems to refer to an enslaved *victimarius*.

[138] For a possible female *popa*, which would indicate that women could perform animal sacrifice, and therefore possibly serve as *victimarii*, see *CIL* 6.9824 and Lennon (2015) 74-75.

[139] Livy 27.26.14-27.1.

[140] For the limited Etruscan prosopography of haruspices, see Briquel (2005), especially 184-185 on the social status of the Etruscan haruspex. For the more voluminous Latin evidence, see Haack (2005), including her appendix III listing attested haruspices. Rüpke (2008) also lists attested haruspices, including some of equestrian rank (C. Fabius Sabinus Campanus), some who were patrons or office holders of towns (C. Umbricius C. f. Melior; L. Servius L. f. Clemens; Anonymous 2), and a number who were military tribunes (Marcus Valerius M. f. Bassus and Marcus Valerius M. f. Saturninus; Anonymous 2; ***scus).

[141] Cic. *ND* 2.10-11.

false pretences that the statue be moved to an undesirable location, for which crime they were tried by the people, and killed after confessing.[142] Gellius claims that the haruspices deceived the Romans out of hostility towards the Roman people, so this story is a case of an external power transgressing against Rome rather than a crime that was self-directed. However, it does demonstrate that haruspices too could be called to account for devious actions, just like *pullarii* and *victimarii*. *Haruspices* were probably also present for Petillius' problematic sacrifices. It is unclear why the task of observing the bad omens fell to the *victimarius* in his case instead. For the observers of sacrifice, physical state of the victim was once again important. It represented the sign that the gods themselves had sent. The *pullarii*, *victimarii*, and *haruspices* all emerge as the central authorities in declaring both what an omen indicated and in determining who would have knowledge of that sign. They were thought to have had the agency and knowledge to accurately ascertain and report the will of the gods, regardless of the surface concerns of their given situation.[143] When they failed to do so, they were personally called to account.

Non-elites were also involved in the reporting of oblative signs in a military camp. Before Trasimene, people reported to Flaminius that the standards were sticking in the ground, a bad sign.[144] That observation must have begun with the standard bearers themselves, or bystanders, before making its way to the general. As with the story of Papirius and the *pullarii*, the mechanics of sign reporting in the field were complicated and involved many more individuals than just the consul and the religious specialists. While those two parties played key roles in interpreting signs and acting upon them, other

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[142] Gell. *NA* 4.5. See also Lenaghan (1969) 36.
[143] See M. Flower (2008) 202 for this sentiment in a Greek context.
[144] Livy 22.3.12-14.

people were able to make observations and make the decision of whether or not to pass them on. In the field there was not time for a process of senatorial review like the one that took place when signs observed across Italy were reported in Rome, so all decisions had to be made in real time before the battle involving only the people physically present. The magistrate also does not appear to have had a monopoly on the accepting or rejecting of omens in the field.[145] He could choose to disregard an omen, as Flaminius did for the sticking standards, but he could be proven incorrect in his decision.

While the literary records of specific events cannot necessarily be taken as historically accurate, the general reflection of the exigencies of religious interpretation at war likely is. Correct religious observation was not merely an object of elite concern. Moreover, a number of anecdotes portray non-elites, whether religious specialists or soldiers, as displaying a vested interest in accurately transmitting and interpreting observed signs. They wanted the will of the gods to be correctly preserved and obeyed. These stories give us access to a much finer-grained approach to agency and responsibility in assessing religious faults than has previously been recognized. Responsibility depended directly on how much one knew, so the people who actually conducted the rites were in a key position to determine outcomes. A number of decisions appear to have been made by committee, like the *pullarii*, or by the conference of a number of different individuals, in cases of reported oblative signs on the battlefield. While these incidents may not have been public and had a restricted audience, they did

[145] See Linderski (1986) 2196 on the process of reporting a sign to a magistrate for acceptance.

involve enough people that errant individuals could be checked.[146] This is why the ritual specialists discussed above showed such interest in mentioning that a defeated general had been aware of defective auspices. The tracking of the passage of information emphasizes that knowledge was essential to evaluating correct and incorrect responses. Finally, while some competencies were unique to magistrates, such as the ability to accept oblative signs, Romans could have recourse to rejected signs in order to explain any disaster that may have followed. Signs were physical events that could be observed, and the act of observation was important and had explanatory power.

IV. Responsibility, Punishment, and Propitiation

Though ritual specialists played a key role in identifying and evaluating religious transgression, they were not the primary figures involved in assessing or punishing misdeed. In a number of the above-discussed instances of religious transgression, there was a formalized process by which authorities censured a renegade magistrate or ritual specialist. There was not, however, consistency in how punishments were assessed or exacted. In broad terms, there were several possible scenarios: 1) The responsible party could be killed in the field. 2) The responsible party could survive the transgression and then face punishment under the jurisdiction of the senate. 3) There could be no recorded disciplinary reaction, formal or informal. In any of the above cases, it was additionally

[146] Compare to Rosenstein (1990) 68, who sees most rituals as having been public, which would allow the blame for error to be communally held. Instead, knowledge seems to have been contained among a few individuals, and those individuals seem to have often attempted to ascribe blame to a specific person. Greek battlefield sacrifice, in contrast, was more public, on which see M. Flower (2008) 155.

possible, and indeed common, that acts of punishment against the transgressor were supplemented by activities designed to propitiate the gods. While there was no standardized means of assessing and punishing religious wrongdoing in the field or in politics, a pattern of senatorial interest emerged. Interestingly, it was not considered sufficient, in most scenarios, to allow the gods to take their own revenge and to leave it at that. Human agents often either aided the gods in their revenge, or engaged in additional actions to please the gods after acts of perceived transgression.

It should be stated up front that Roman authorities did not always punish transgressors. This is partially because the leading figures in the state were those who were perpetrating some high-profile transgressions. Religious obstruction was an important feature of Roman government, but the complete fabrication of signs went beyond obstruction because false signs did not represent the supposed will of the gods.[147] Nevertheless, there are troubling mentions of senatorially-backed falsified auspices. Flaminius fled Rome before properly taking up his consulship because he feared that his senatorial opponents would themselves falsify auspices to prevent him from going on campaign.[148] In 44, the senate attempted to convince Antony to announce false signs to obstruct Dolabella from taking up command in Syria. Antony became angry, but only because he actually wanted Dolabella to go to Syria.[149] It is unlikely, coming from someone who himself had a history of lying about observed signs, that Antony's complaint stemmed from piety. It is possible that if a Ciceronian reaction existed, we would have some indication of what the opposition to the plan of falsifying signs on

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[147] Lintott (1999) 104. See also Linderski (1995) for a discussion of late-Republican skepticism of divination and its political purpose.
[148] Livy 21.63.
[149] App. *B. Civ.* 3.1.7. See Sumner (1963) 357 on this episode.

religious grounds would have looked like, considering that impiety was one of Cicero's favored angles from which to attack Antony. Moreover, both of the above examples come from moments of crisis in Rome: the Second Punic War and the aftermath of Caesar's assassination. That is, transgression correlated positively with public distress, and it was not only the unique province of the late Republic.[150] It is undeniable that Roman authorities sometimes failed to check religious transgression and were in fact the culprits of a number of ritual crimes. The senate was, unsurprisingly, no less culpable than wayward magistrates. Governing forces abused religious conventions in order to achieve political goals. That does not mean that the religious conventions had no value. In a number of cases these same authorities worked to enforce correct conduct.

The clearest case of the senate censuring a transgressive general is the legal process against Publius Claudius Pulcher after Drepana. He was recalled by the senate and stripped of his consulship. This is similar to the recall that the senate issued later against the wayward Flaminius before he died at Trasimene. The senate forced Publius Claudius Pulcher to name a dictator to take his place. He is said to have done so flippantly, appointing his unsuitable *viator* as dictator.[151] He was subsequently tried by the tribune Fundanius for *perduellio*. Though the trial was interrupted by a bad omen and it was forbidden to try someone twice on the same charge, he was ultimately condemned by the people for a different crime (possibly *maiestas*) and heavily fined.[152]After abdicating, the *Periochae* of Livy say that Claudius Pulcher nevertheless attended games

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[150] M. Flower (2008) 110-114 observes that omens cluster around crises for the same reason. It is a common human phenomenon to search for signs that signaled distressing events.
[151] Livy *Per*. 19; Suet. *Tib*. 2.6.
[152] Polyb. 1.52.2f.; Cic. *ND* 2.3.7; Schol. Bob. 90. For the possible charge of *maiestas*, see Bauman (1967) 28.

wearing consular garb. This, combined with the glib remark by his sister that another naval defeat would reduce crowding in the streets of Rome, suggests that the family was stereotyped as unscrupulous.[153] Claudius must have died fairly soon after Drepana, because when his sister Claudia reportedly made her scandalous comment from 244, she wished that her brother would come back from the dead to cause a second disaster. His consular colleague, Junius Pullo, is supposed to have killed himself in order to avoid being tried like Claudius.[154] Should a similar fate be assumed for Claudius?

The truth behind the claims about the Claudii's misbehavior is irrelevant. More important is that there was a punitive procedure, beginning with the senate and concluding with a trial by the people, that held Claudius Pulcher accountable for his choices at Drepana. His trial and fine were more closely linked to his defeat than to his impiety. His fine, for example, was proportional to the number of ships he lost.[155] Publius Claudius' crime and punishment were over-determined, just like his defeat. The retribution he faced in Rome was not only because of his impiety, but his legal case should be considered as one of a series of punitive measures *connected to* impiety that were conducted by authorities in Rome. The Romans themselves liked to classify transgressive episodes together. Incidents of apparent impiety that led to military failure were frequently discussed as a group. For example, in Livy's assessment of the aftermath at Cannae, a battle fought under dubious auspices, he mentions the previous defeats at Trasimene and at Drepana. All three disasters took place in the context of religious

[153] Livy *Per*. 19.
[154] Cic. *ND* 2.7.
[155] Cic. *ND* 2.3.7.

transgressions.[156] In later memory, Drepana became a shorthand for religious outrage. The Antonine-era Florus would claim, *Appio Claudio consule non ab hostibus, sed a dis ipsis superatus est, quorum auspicia contempserat*...[157]

There is a rare surviving record of an occasion when a Roman leader was put on trial specifically for religious malfeasance. In 104-103, in the wake Rome's major loss at Arausio, a tribune of the plebs, Cnaeus Domitius Ahenobarbus, charged Marcus Aemilius Scaurus, a former censor and head of the grain supply, for having performed the *sacra publica populi Romani deum Penatium quae Lavini fierent opera eius minus recte casteque*.[158] Domitius Ahenobarbus is said to have brought charges against Scaurus in retribution for not co-opting him into a priesthood, though the timing suggests that the trial may also have been motivated by a need to explain the outcome of the battle of Arausio.[159] Scaurus' trial should not be seen only as an attempt to explain Arausio, but as

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[156] Livy 22.42.7-12. Cicero does similarly at *Div.* 1.29, where he classes Drepana with Ateius Capito's curses against Crassus in 53.

[157] Flor. 1.18.29: "When Appius Claudius was consul, he was defeated not by his enemies, but by the gods themselves, whose auspices he had held in contempt…" Florus mistakenly writes Publius' *praenomen* as Appius. See also Val. Max. 8.1 abs 4 for a similar sentiment.

[158] Asc. 21: "his duty, the public rites of the *penates* of the Roman people which happen at Lavinia, incorrectly and insufficiently chastely." Asconius is the only author to record the nature of the charge against Scaurus. On the incident, see also Cic. *Deiot*. 31; Val. Max. 6.5.5; Suet. *Ner*. 2.1; Cass. Dio 27 fr. 92; Plut. *Inim. Util*. 9.

[159] Much debate has surrounded the question of whether Scaurus was an augur or a pontiff, and whether he was performing rites at Lavinia in his capacity as priest, senator, or whether the incident dated back to his consulship of 115. On this debate see Scheid (1981) 168-171, Marshall (1985) 130, and Geer (1929) 293 arguing for the pontificate, and Bates (1986) 266 and Rüpke (2008) 518 n. 8 arguing for the augurate. His priestly affiliation is less important for my purposes than the fact of his trial. For the connection to Arausio, see Rosenstein (1990) 160-161 and Scheid (1981) 124-125.

a twin on the home-front to the religious crimes that occurred in the field before the defeat.[160]

Scaurus' trial demonstrates that it was possible to charge someone formally with a ritual crime, albeit uncommon. Asconius explains that, though twenty-one tribes absolved him and only three voted to convict him, the vote within the tribes had been close.[161] The narrowness of his acquittal shows that the case against Scaurus was compelling, and that Romans were willing to vote to convict someone for religious wrongdoing. Given this, it is interesting that few other attempts are known to have been made to try someone for ritual malpractice. Though Scaurus was unusual in having been actually taken to court, Cicero made a similar claim about violated rites when he said that Clodius had tainted the festival of the Megalesia. Cicero maintained that Clodius had made the games *polluti* on account of having celebrated them *minus diligenter*.[162] Clodius' trial for violating the Bona Dea rites may also be usefully seen as a parallel. The fact that Clodius and Scaurus' trials were rarities is further evidence that there was not a standardized protocol for censuring religious transgression. The response depended on the situation. Trials presented one option, but were in no way the most popular.

Most punishments for wrongdoing were not conducted via senatorial procedure or formal trial. The censor also appears to have had the power to punish impious actions. As discussed above, after Crassus was killed in Syria, the censor Appius Claudius tried to punish Crassus' old enemy Ateius Capito on the grounds that he had cursed the fallen

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[160] For a full discussion of Caepio's transgressive thefts before his defeat at Arausio, see chapter two, below.
[161] Asc. 21. On the vote, see Marshall (1985) 133.
[162] Cic. *Har. resp.* 21.

general.[163] That process could apparently also be used against non-office holders as well. In 184 the elder Cato gave an equestrian a *nota* for neglecting his required rituals.[164] These few instances of formal punishment for religious misconduct indicate both that there was not one single method for addressing transgression, but also that there were multiple channels by which redress for transgression could be acquired. Those seem to have typically involved reducing a guilty individual's civic status, either by revoking membership in a desirable class or by taking away a political office. Financial redress could also be required, as will be seen to have also been the case for episodes of property transgression.

In many situations, it was not necessary to punish specific Romans who committed ritual crimes because they were killed in the resulting battles. In certain cases, wholesale responsibility for religious faults could be set upon the fallen figure's shoulders, allowing others to escape blame. Papirius Cursor accomplished this sort of scapegoating with aplomb at Aquilonia. By having the *pullarius* killed, Papirius lifted the religious anxiety from the situation and paved the way for his own glorious victory. Livy closes his description of the episode with a summary of Papirius' character and a dramatic telling of the climax of the fight. He claims that Papirius' victory was owed to his *ingenium* and *fiducia*, but also to his persistence in the face of the dispute about the auspices:

> ab eodem robore animi neque controverso auspicio revocari a proelio potuit et in ipso discrimine quo templa deis immortalibus voveri mos erat voverat Iovi

[163] Cic. *Div*. 1.29. While Quintus quibbles with Appius Claudius over his belief that omens could cause events, he does not contest the appropriateness of punishing Capito for his curses.
[164] Fest. 344L.

> Victori, si legiones hostium fudisset, pocillum mulsi priusquam temetum biberet sese facturum. id votum dis cordi fuit et auspicia in bonum verterunt.[165]

Livy praises Papirius Cursor for having fought a desired battle well and even claims that the gods were so pleased by his (somewhat cheeky) vow that they changed the auspices for him. Because his ploy was successful, the general went on to give his victorious army special rewards and to allow them to sack the captured Samnite city.[166] Papirius himself was permitted to celebrate a triumph in Rome before the conclusion of his term as consul.[167] He was also elected consul for a second time in 272. The pestilence that ravaged Rome during the 290s is almost passed over in Livy's account of 293 because of the military success that Rome experienced against the Samnites.[168] This is a departure from Livy's normal practice of using prodigies to increase the religious tension of his history during episodes of impiety. The story of Papirius Cursor and the *pullarius* represents one extreme. Guilt was pinned neatly to one person, and that person was killed by a combination of human and divine revenge.[169] The other figures, who could potentially have been implicated and who were fairly clearly complicit in the lie, emerged as heroes, and religious optimism apparently prevailed in Rome.

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[165] Livy 10.42.7: "… it resulted from that same strength of spirit that made it such that he could not be called back from battle by the controversy of the auspices. And in the time of crisis, when it is customary to vow temples to the immortal gods, he vowed to Jupiter Victor, that if he should vanquish the legions of the enemy, he would give Jupiter a small cup of mead before he himself drank strong wine. This vow pleased the gods and they turned the auspices to good."
[166] Livy 10.44.2-5.
[167] Livy 10.46.2-6.
[168] Livy 10.47.6-7.
[169] Davies (2004) 24: "The episode as a whole is a striking vindication of the consul's judgment that the gods would avenge themselves on whoever misreported ill omens."

Petillius' death largely followed the model of Aquilonia. When he fought the Gauls despite many bad omens and negative auspices, his personal ruin seems to have saved his army from a similar fate. But often, the question of guilt was more complicated. Other scenarios had more variables and could not be neatly rectified by the death of a responsible party. For example, the consul Lucius Postumius Albinus marched out in campaign against the Lusitanians in 154 despite a series of defective livers in his sacrificial victims. He took ill within the week, was brought back to Rome, and died. His army suffered setbacks at the hands of the Gauls and Lusitanians that apparently could not be averted by his death.[170] Nor was Postumius' transgression considered sufficient cause for his demise; his wife was also accused of poisoning him.[171] Postumius' over-determined death represented a more typical and complicated religious logic: the gods could take vengeance upon the person whose action they disapproved. However, this did not necessarily mean that the rest of the army would be safe from further divine action. Such a view was more consistent with the role that the auspices normally played in Rome. Bad auspices indicated that the gods did not approve of the proposed action, so it is natural that ruin would fall upon all involved, not only upon the commander who was technically "at fault."[172]

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[170] Obseq. 17. Compare to the fate of Rutilius Lupus (cos. 90), who either ignored a prophecy of Magna Mater that he would die on her festal day, or ignored bad omens in the *exta*. He was then killed in fight against the Marsi. On the *exta*, see Obseq. 55. On Magna Mater, see Ov. *Fast*. 6.563-568.

[171] Val. Max. 6.3.8.

[172] Rosenstein (1990) 85 argues that auspication provided protection for generals. If they obtained good auspices and were subsequently defeated, the auspices offered an escape from blame. I contend instead that bad auspices could also occasion an instance of religious transgression, in which blame could be put on the commander rather than deflected from him.

Flaminius was killed under circumstances similar to Postumius and Petillius, a military action that took place under bad omens. He suffered the traditional fate of transgressors in that their bodies were not recovered.[173] Flaminius bore most of the blame for the defeat, especially when taken in comparison with Cannae where the surviving army was also shamed.[174] But his death did not release Rome from the religious tension that it faced during Hannibal's invasion of Italy. Rather than absolving Rome of responsibility towards the gods, Flaminius' disregard seems to have attracted further issues. This was true regardless of the fact that many in Rome had disapproved of his actions and actively attempted to obstruct his transgressive acts by recalling him. In Livy's account, the story of Trasimene is punctuated by the prodigy lists for 218 and 217.[175] Livy relates a series of prodigies and expiations in 217 as an interpunct between his telling of Flaminius' dramatic exit from Rome and his disastrous spring campaign.[176] These prodigies had been reported from around Italy and laid before the senate at the bidding of Servilius, Flaminius' more tractable consular colleague. The senate approved the prodigies and the *decemviri* recommended a series of expiations consisting of gifts to the gods and *lectisternia*. While this series of events is not explicitly connected with Flaminius, its placement within Livy's narrative suggests that they were measures

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[173] Plut. *Fab. Max*. 3.3. Compare to Marcellus' body, which similarly met an unknown fate, discussed in chapter two.
[174] See Beck (2005) 245-246 for the senate's attempted scapegoating of Flaminius, and for the contention that the negative tradition surrounding him began with his death.
[175] Livy defers the 218 prodigy list until after Flamininus took office (Livy 21.62. Levene (1993) 37-38 connects this choice with the election of Flamininus and his transgressions. See Livy 22.1 for the 217 list.
[176] Livy 22.1.8-20.

intended in part to repair Rome's damaged relationship with the divine.[177] Livy's language focuses upon the gods; the expiations were *placandis deis*, and the gifts recommended by the Sibylline books were given *ut ita fierent quem ad modum cordi esse deis*.[178] The expiatory measures were meant to please the gods, the same gods who had been recently offended by the *other* consul.

After Trasimene, Livy's Fabius Maximus Cunctator encouraged a religious interpretation of the losses there: *ab dis orsus, cum edocuisset patres plus neglegentia caerimoniarum quam temeritate atque inscitia peccatum a C. Flaminio consule esse quaeque piacula irae deum essent ipsos deos consulendos esse*.[179] He therefore ordered the *decemviri* to consult the Sibylline books and ordered a series of propitiations.[180] He also vowed a Sacred Spring, which was not propitiatory but was rather a promise to honor the gods in the future should the Roman state be safe in five years' time.[181] King Hiero in Sicily similarly interpreted Trasimene as a religious disaster. He sent a golden Victory statue to Rome that was dedicated in the Capitoline temple. Fabius Maximus made similar choices after Cannae, though with an escalating sense of urgency, greater

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[177] Scheid (1981) 143-144 claims that Flaminius' acts did not require separate expiation because they were subsumed into all of the other prodigies occurring in Rome at that time.

[178] Livy 22.1: "so that it could happen as the gods desired."

[179] Livy 22.9.7: "Beginning with religion, he (Fabius Maximus) taught the senators that the error committed by the consul Caius Flaminius had been more through the neglect of ceremonies than through temerity and ignorance, and that the gods themselves should be asked which *piacula* might ease the anger of the gods."

[180] While it emerges that an unknown failed vow to Mars had caused the defeat at Trasimene, Flaminius' transgressions dominated the tradition of religious misconduct leading to that battle. See Rosenstein (1990) 58 and Clark (2014b) 58-59.

[181] Livy 22.10. Clark (2014a) and (2014b) 61-62 argue for the optimism implied by the vow of the Sacred Spring.

innovation, and with a less tight connection to Varro's religious misdeeds.[182] Because Varro and a number of his troops remained alive, it was more appealing to attack them on the grounds of recklessness, especially for Livy, who used Varro as a foil for Fabius Maximus. It became difficult to associate the extended religious procedures that followed Cannae with transgression in the way that those around Trasimene connected with the wrongdoing of Flaminius. After Cannae the crisis had simply grown larger and the variables multiplied.[183]

Just as ritual transgressions arose because of multiple factors, real and retrospective, they were addressed through a multi-pronged approach. Some combination of divine vengeance, civic punishment, and propitiation of angered gods was used. The aftermath of Trasimene showed elements of all three, but more typically one or two elements were missing. Most frequently the decisions about punishments and expiations originated with the senate, though commanders themselves also could take charge of such efforts, as Papirius did when he leveled blame for the false auspices on the *pullarii*. More important than a coherent program of holding specific transgressive people to account, which could be difficult due to the multiplicity of involved individuals and the status of certain generals, was restoring Rome's relationship with the gods.

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[182] Livy 22.57.1-6. See also Fabius Maximus' mission to Delphi at Livy 23.11.1-6. On the innovative nature of the religious measures after Cannae and the ways in which they were a response to those that had followed Trasimene, see Clark (2014b) 78-80.

[183] Santangelo (2013) 208 notes that in the soldier's speech after Cannae (Livy 25.6.6), the defeat is blamed on human action rather than divine action or fate. Levene (1993) 47-9 also observes that the gods are not discussed as having interfered at Cannae.

Conclusions

It is well known that the Romans turned to religious solutions in times of crisis. Many of the above examples of religious transgression came from crises, in which many variables influenced a given effort to address a perceived wrong. Labeling an incident as a case of religious transgression was a specific variety of crisis response used by the Roman senate and by individual magistrates. It provided unique opportunities for scapegoating a perceived culprit and for allowing civic or divine punishment to address their crime. Responses to ritual transgressions have a similar profile to those that will be described as occurring in response to thefts of sacred objects in the next chapter. It was thought that the gods could take vengeance, but in complex crises, simple scapegoating of the transgressor was not sufficient. Sometimes it was also necessary for human legal action to supplement or replace divine revenge if the culprit was left alive, such as the *nota* that was given to Ateius Capito or the trial to which Scaurus was subjected. Ultimately, the goal in responding to transgressions was to earn back divine goodwill and to restore religious control to the state. Transgression could be a tool, albeit a dangerous one, of a wayward magistrate or of the political faction, and the process of addressing it was also a process of reasserting a *status quo*.

Ritual transgression manifested itself particularly in those rites in which the gods expressed their opinions on Roman actions, such as the taking of auspices or the sacrifice of animals for ritual inspection of the livers. It was a particularly scary variety of transgression for the Romans because it was the alteration of the expressed will of the gods; the gods had sent a specific sign to signal their intent. The importance of the actual

observed sign itself can be seen in the fact that ritual specialists who often went unremarked were frequently involved and implicated in narratives of cases of transgression. Amelioration efforts confirm that the real problem with religious transgression was the disregard of divine will. Punishing wayward individuals was one means by which Rome recovered from crises. Punishment, however, was only part of the process of reconciliation with the gods. To fix problems, then, expiations were also often made to please the gods. In many cases, Trasimene being the best example, it was crucial for Rome to complete propitiary actions despite the fact that the gods had already taken revenge on a guilty individual. In light of the military losses in that battle, it was impossible for the Romans to say that the gods had only been displeased with Flaminius. Transgression at once allowed blame to be fixed on the individual and implicated the entire state, as Cicero suggested when he told Antony, *obstrixisti populum Romanum religione.*[184]

The punishments levied against transgressors shows that their actions were recognized by the community as unacceptable, but the lack of consistency in how and when punishment was required shows that there was a certain amount of flexibility in determining whether or not it was useful to see a specific misfortune as the result of transgression or not. Many surviving examples, such as those of generals who ignored omens in the field, appear to have been later interpretations or fabrications. Religious transgression could be used to tarnish the memory of a rival or to attack an opponent, and, most importantly, to explain an occurrence that had been disastrous for Rome. The role that transgression could play in helping Rome make sense of the misfortunes that it

[184] Cic. *Div*. 2.83: "You have bound the Roman people with *religio*."

suffered – despite the fact that they thought themselves to enjoy general divine favor! – will reappear as a motif throughout this study.

Transgression's ability to "justify" misfortunes is both why Romans created a tradition of transgression and why they feared it. Rome was on the one hand scrupulous in ascertaining and adhering to divine preferences, but simultaneously was able to justify questionable actions under certain circumstances. Stories like the episode of the mendacious *pullarius* at Aquilonia, or the suggestion that senators planned to falsify auspices to keep Flaminius in Rome, indicate that there were times when Romans would knowingly transgress, feeling it justifiable and perhaps even for the good of the state. Transgression was a convenient way to stop one's political enemies or to initiate a military maneuver that was not approved by the gods. But transgression also gave the Romans a way of evaluating and understanding a misfortune, and finally of addressing it.

Chapter 2:

Spoliatio Sacrorum: Thefts of Consecrated Objects

Mid-late Republican warfare presented a dilemma: how could victorious Romans acquire wealth from conquered cities, and at the same time respect the property of the gods? Cato the Elder marveled that commanders *audere atque religionem non tenere, statuas deorum, exempla earum facierum, signa domi pro supellectile statuere*.[185] Cato's disbelief pinpoints the conflict at the center of this chapter. As Cato suggests, the Romans were nominally opposed to destroying temples or appropriating temple property; tradition maintained that when Alba Longa was demolished in the reign of Tullus Hostilius, the Romans spared the temples of the gods out of piety.[186] When the Romans did appropriate objects from temples, they sometimes explicitly claimed to have done so with the assent of the relevant god, or along with the god themself, as when Juno Regina was called from Veii. To plunder impiously was regarded not only as a character defect, but as dangerous to the state. On the other hand, the looting of previously dedicated objects was a reality of Roman warfare, and the line between allowable behavior and sacrilege was not immutable.

Consequently, one of the exigencies of Roman military and political life was the negotiation of what was and was not allowable with regards to looted items, and what should happen to those who had committed an outrage. A behavior that was acceptable in one context could be condemned in another. This chapter seeks to understand when and

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[185] *ORF* Malcovati Cato fr. 98: from *Uti praeda in publicum referatur*: "I marvel that they dare and do not maintain *religio*, to place the statues of the gods, examples of their faces, and sculptures, in the home like furniture."
[186] Livy 1.29.6.

why the "theft" of sacred objects was considered sacrilege, as well as what the resulting punishments were, at the hands of both gods and of men. Here, I use the word sacrilege advisedly and in its technical sense, which originally meant theft of *sacra*, from the roots of *sacrum*, "sacred," and *lego* "remove, take, steal."[187] "Theft" on the other hand, is here a modern concept that maps on to a variety of Roman looting practices, some of which were religiously acceptable and some of which were not.

In practice, it seems as if the Romans looted temple objects more often than not, particularly as they began to interact more regularly with Magna Graecia and the Greek East.[188] This may have been true even in the early period. Pliny the Elder mentioned that Rome seized 2000 statues from the city of Volsinii in 264. Pliny contended that the number was high enough to indicate that some of them were not sacred; presumably a smaller figure would have almost certainly been mostly sacred.[189] There is physical evidence to support Pliny's account. One or two statue bases have been recovered in excavations at San Omobono and are inscribed with Marcus Fulvius Flaccus' name, the consul who triumphed over the Volsinii.[190] It is worth noting that Fulvius Flaccus' statue bases were part of a sacred complex at San Omobono, so at least some of the booty's

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[187] Rüpke (2016) 80, with references to Paul. *Dig*. 48.13.11, Plaut. *Rud*. 706, *Ps*. 363, and Ter. *Ad*. 304. In ancient texts *sacrilegium* had taken on a generalized meaning already in Plautus, however, so the term has limited utility as a means by which to diagnose temple theft.

[188] This is true of many world powers. For comparative examples, see Polybius' discussion of Philip V's sacrilegious activities (e.g. Polyb. 5.8; 11.7; 16.1). Lee (2012) 48-50 offers additional citations and discussion. See Taylor (2014) for the ways in which Seleucid kings looted temples of conquered populations as income sources in a system of "predatory rule."

[189] Plin. *HN* 34.34.

[190] *CIL* I^2.2836. On the San Omobono site, see Diffendale (2016), esp. 159-160. Diffendale rejects seeing San Omobono as an extensive building project by Fulvius.

ultimate display was still in a religious context.[191] Pliny says that Metrodorus of Scepsis is supposed to have remarked that Rome had only attacked Volsinii in order to acquire the statues. His comment, and the large number of statues cited by Pliny, indicates that warfare was synonymous with the acquisition of booty objects, and Fulvius Flaccus' statue bases show that, though the figures may have been inflated, the stories of looting from Volsinii were not apocryphal. For the Romans, looting, display, and rededication were a complex of actions that accompanied conquest.

This chapter is the first of two that take up the problem of violation of sacred property, defined broadly. In this chapter, I discuss the cooptation of consecrated objects from sanctuaries. The following chapter turns to the related (indeed, overlapping) issue of violation of sacred spaces. This category of religious transgression appears to be very contingent. Because the practice of looting was so normalized in Roman warfare, not all instances of theft were considered transgressive by the Romans. This chapter seeks to understand when and how the line between allowable and transgressive looting was drawn. I argue that during the Second Punic War, the Roman senate emerged as the body that reviewed cases of possible sacrilege when a wronged city was able to bring a complaint to Rome. I devote the majority of the discussion to Roman conduct in international conflict in the Second Punic War, before turning to the late Republic and smaller civic communities in the second half of the chapter. Contrary to previously held views, I will argue that the Romans did punish sacrilege on an individual level, both when it was deemed to have occurred in international conflicts and within

[191] This sort of thieving and display was hereditary. Marcus Fulvius Flaccus was the grandfather of Quintus Fulvius Flaccus, who famously took decorative tiles from a temple of Juno, and the father of Quintus Fulvius Flaccus, the victor at Capua, as will be discussed at length in this chapter.

communities.[192] Punishment of sacrilege was used as an opportunity for Rome to ally itself with the gods as they both sought vengeance upon a guilty party. This alliance helped to realign Roman values with those of the gods and to repair the relationship between gods and men. The process of assessing and rectifying thefts also allowed Rome to negotiate its political relationships. The senate's reaction to the claim that a theft had occurred depended on whether Rome had a prior relationship of alliance with the location, and also whether it had knowledge of the god whose property had been taken. A current or former ally, and a notably vindictive god, were more likely to be successful in their suit for the stolen property. Known entities provoked feelings of responsibility and fear in the Romans that were less prominent when facing unknown gods of enemies. Rectifying sacrilege was a tool in conducting successful geopolitics, but its usefulness as a tool was rooted in respect for gods' property.

I. Sacrilege at War: The Second Punic War

An incident that occurred in Southern Italy in 204 presents one of the most useful surviving case studies on the misuse of sacred objects and illuminates the contours of the drama that could arise over sacrilege. In 205-204 BCE, P. Cornelius Scipio was preparing an army for the controversial Roman invasion of Africa, with hopes of drawing Hannibal out of Italy. Prior to crossing over to Sicily and mustering troops there, however, the Romans retook the southern Italian city of Locri. Locri had formerly been a Roman ally but had defected and been occupied by a Carthaginian garrison throughout the previous

[192] Scheid (1981); Wells (2010).

decade.[193] Scipio roundly upbraided the Locrians for their defection and instructed them to appeal to the senate in Rome for negotiation of Locri's privileges and punishment.[194] Crossing over to Sicily, Scipio left Locri in the charge of his legate Quintus Pleminius, who orchestrated a looting operation.[195] Pleminius' abuse of the Locrians was, Livy tells us, extensive and violent: *in corpora ipsorum, in liberos, in coniuges infandae contumeliae editae*.[196] He continues:

> nam avaritia ne sacrorum quidem spoliatione abstinuit; nec alia modo templa violata, sed Proserpinae etiam intacti omni aetate thesauri, praeterquam quod a Pyrrho, qui cum magno piaculo sacrilegii sui manubias rettulit, spoliati dicebantur.[197]

Pleminius is charged with having despoiled multiple temples – an action assessed by Livy in a clearly negative light. However, the crime of stealing the treasure from the sanctuary of Proserpina is presented as Pleminius' most flagrant outrage.[198]

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[193] Livy 24.1, 28.30.8. See Toynbee (1965) 613ff. for a discussion of the context of Locri's occupation by Carthage. He presents Rome as "liberating" Locri from Carthaginian control.
[194] Livy 29.8.1-5.
[195] In addition to the full discussions in Livy and Valerius Maximus (1.1.21), Pleminius is mentioned in App. *Hann*. 55 and Zonar. 9.11.
[196] Livy 29.8.8: "against the bodies of the townsmen, against their children, against their wives, unspeakable abuses were inflicted."
[197] Livy 29.8.9: "For their avarice did not even abstain from the theft of sacred objects. Not only were other temples violated, but even the treasure of Proserpina, intact for all time except that it is said to have been spoliated by Pyrrhus, who, paying a great *piaculum* for his sacrilege, returned the loot." Pyrrhus' attempt to expiate his own crime presents a potential refutation of Scheid's idea (most completely argued in his 1999 article) that impieties committed with ill-intent could not be expiated by the responsible individual, because Pyrrhus at least believed it to have been worth making the attempt.
[198] Livy's favoritism for the temple of Proserpina will be discussed below, but it should be noted here how briskly Livy notes the violation of a series of sanctuaries.

It was within the context of this general looting that the wrath of Proserpina first made itself felt, and here the story gets a bit fantastical. A regular soldier under Pleminius' command seized a silver cup from a private home, and was spied by military tribunes who were in command of the other portion of the troops brought over to Locri from Rhegium. The tribunes envied the cup, confiscated it, and incited a riot between the soldiers under Pleminius and those commanded by the tribunes. The struggle ended only when Pleminius' soldiers were beaten and Pleminius, who was in supreme command, flayed the tribunes. In retribution for this, soldiers loyal to the tribunes attacked Pleminius and are said to have mutilated his ears and nose, nearly killing him.[199] At this point the conflict had risen to such a pitch that Scipio is supposed to have intervened in person on behalf of his legate by sending the military tribunes to Rome in chains.[200] For Pleminius, who had apparently recovered from his wounds, this was not enough. He ordered that the tribunes be tortured, killed, and then left unburied. This behavior was itself impious, and it should be noted that Livy claimed that the conflict was thanks to the vengeful intervention of the wronged goddess Proserpina: *omnibus contactis ea violatione templi furorem obiecit atque inter se ducem in ducem, militem in militem rabie hostili vertit.*[201]

The trouble for Pleminius did not end in Locri. The Locrians sent an embassy to the Roman senate to seek restitution for the abuses they had suffered at the hands of the Roman garrison. The story of the religious violations found a sympathetic audience in the senate, and Pleminius was arrested. This is where versions of Pleminius' downfall start to

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[199] Livy 29.9.1-7.
[200] Livy 29.9.8.
[201] Livy 29.8.11: "She directed anger at all touched by that violation of the temple and turned commander against commander, soldier against soldier with mad hostility."

diverge.[202] The mechanics of Pleminius' arrest and imprisonment are described in different ways, but in all variants he was ultimately incarcerated in Rome. He remained so until his death, likely in 204 prior to his proper sentencing.[203] In another version, oddly, he survived for ten more years, until in 194 he was accused of being involved in an arson plot during Scipio Africanus' votive games.[204]

Pleminius' tale establishes the parameters for my inquiry into the violation of sacred objects within the context of Roman military action. The incident involved not only the legate himself, but also his soldiers, as well as the antagonistic military tribunes. When they looted the temples, were they anticipating Proserpina's anger, or did they expect that their rights as victors protected them? How did they assess their own risks and levels of responsibility? Was everyone implicated equally, or did the commanding officer incur an exceptional measure of the guilt? How did civic and divine authorities assess punishment? I take up the Second Punic War cases first in order to establish the state of the phenomenon of looting at a specific moment. The war was a time of change that corresponded to an adjustment in how the Romans thought about sacrilege. This section asks what characterized theft of sacred property during the late third-century, and how it

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[202] Köster (2014) studies the development of a variety of traditions around Pleminius that allowed him to be cast as a perfect transgressor. For a technical reading of the traditions surrounding the arrest and death of Pleminius, see Grosso (1952) and Venturini (1969) 42-51.

[203] Livy 29.22.9; Val. Max. 1.1.21. Wells (2010) 230, following Scheid, claims that sacrilege was not treated as a crime in Rome. Lee (2012) 62 similarly claims a lack of formalized procedure. While transgression was not tried according to a regular pattern, Pleminius' trial contradicts this, as do the regulations in the *lex Furfensis*, discussed below.

[204] Livy 29.22.10. This tradition is attributed to Clodius Licinius. Many scholars think that Pleminius' involvement with arson is fictional, possibly an interpolation. Köster (2014) 323-326 and Krysiniel-Józefowicz (1951) 139-140 suggest that it may have resulted from a later assimilation between Pleminius and Catiline. Venturini (1969) 42-43 suggests instead the games Scipio held in 200 as an alternative, more likely date.

was addressed by locals and Roman authorities. The political circumstances under which Rome decided to respond to claims of sacrilege in military situations will be addressed first, with the subsequent sections turning to issues of divine retribution. These two issues will be emphasized serially but cannot be fully uncoupled. A tension exists in all of these examples between the rights of the victors in war and the exigencies of piety.

The likelihood of an act being designated as "sacrilege" by Roman authorities depended in large part on the wronged community's prior relationship with Rome. A former ally was likely to succeed in acquiring restitution via appeal to the senate. The senate had the authority to accept or reject claims of sacrilege in addition to its other religious capacities. The Second Punic War exhibited a number of cases in which a city in possession of desirable temple wealth defected from the Romans and was subsequently recaptured. Locri was an example of this. The former Roman ally spent the decade of Hannibal's ascendancy as a Carthaginian partisan. Upon recapturing the town, the Romans punished the Locrians, both individually – Scipio confiscated the private property of the individuals who had been most responsible for the city's defection – and as a political unit. The temple robbing, while certainly motivated partially by greed, as Livy says, also should be seen as a component of the more general retributive abuse of the city. The balance between revenge, covetousness, and piety was difficult to maintain in the cases of cities that defected, and the Romans could apparently be made to change their minds about what was unacceptable, as occurred in the example of Locri after the Locrians reported the temple looting in the senate.

A similar situation had arisen in Syracuse earlier in the Second Punic War. The Syracusans had violated their existing treaty with Rome and aligned themselves with

Carthage.[205] In 212, the Roman general Marcus Marcellus recaptured Syracuse. He looted the temples in an episode that became famous as a pivotal moment for the introduction of *luxuria* into Rome. Varying traditions, both positive and negative, emerged surrounding Marcellus' actions in Syracuse.[206] Marcellus came to be regarded by some as possessing a near-legendary wisdom in the correct distribution of loot.[207] However, Livy also connects the sack of Syracuse with the beginning of profligacy for Rome: *sacra profanaque omnia volgo spoliandi*.[208] Livy uses religious transgression as a means by which to denigrate Marcellus' actions. The Sicilians themselves made a similar move in attacking Marcellus. Upon announcement of Marcellus' reassignment to command in Sicily in 210, a group of Sicilians stood in public in Rome waiting while the announcement was made. Once they heard that Marcellus had received the command, the Sicilians went around to the houses of senators, lamenting his treatment of Sicily after the capture of Syracuse and threatening that they would leave Sicily if he was left there.[209] Once the issue reached the senate they specifically claimed that *certe praeter moenia et tecta exhausta urbis et refracta ac spoliata deum delubra, dis ipsis ornamentisque eorum ablatis, nihil relictum Syracusis esse*.[210] The victims charged the commander with abuse

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[205] Levene (1993) 54-57 comments that Livy used Hieronymus' violation of the treaty between Syracuse and Rome to present the Syracusans as impious themselves.
[206] See Flower (2003) on the memory of Marcellus, especially on the development of the negative traditions that surrounded him in the 2nd and 1st centuries.
[207] Livy 25.40 claims that Marcellus *non modo suam gloriam sed etiam maiestatem populi Romani augeret*. "… increased not only his own glory, but also the majesty of the Roman people." The portrayal of Marcellus as a positive *exemplum* of a conquering general characterizes Cicero's *Verrines* throughout, particularly 2.4.
[208] Livy 25.40.2: [the beginning] "of despoiling all things, sacred and profane, in common."
[209] Livy 26.29.3-4.
[210] Livy 26.29.9: "Certainly besides the burned walls and roofs of the city and the broken and despoiled shrines of the gods, with the gods themselves and their ornaments having

of the city, but outrages against temples and the items therein were presented as the final straw.

The Sicilians lodged a complaint very similar to the one that the Locrians would make a few years later by couching their grievances against the general in his looting actions. But Marcellus had a more complex religious profile than Pleminius. After his victory over the Insubres in 222, he made a number of notable dedications, most notably the *spolia opima* for Jupiter Feretrius.[211] At that time he also gave dedications to Delphi, and, notably, Syracuse.[212] After Marcellus was tried for misconduct in Sicily and acquitted, the Sicilians even honored him in a manner similar to a Hellenistic monarch by granting him an honorific statue and games.[213] But all was not well between Marcellus and the gods. In Rome the pontifices blocked the foundation of his proposed temple of Honos and Virtus.[214] Still, eventually some of his looted Sicilian artworks were displayed there and the temple became famous and was apparently frequented even by foreign people.[215] The historiographical tradition did not treat Marcellus as simply a deviant general like Pleminius both because pro-Marcellus narratives and his family persisted

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been carried off, there was nothing left at Syracuse." Here the distinction between the gods and their statues is collapsed. The relationship between gods and images was contentious.

[211] On Marcellus and the *spolia opima*, see Flower (2000) 39.

[212] Plut. *Marc*. 8.

[213] Cic. *Verr*. 2.2.50-51, 2.4.151. See Rives (1993) and Flower (2003) 47 for the relationship between Marcellus and the Syracusans.

[214] Plut. *Marc*. 28. They claimed that two deities could not share a single sanctuary. The complaint could have been more about the repurposing of Verrucosus' original sanctuary of Honos rather than about the use of the Sicilian spoils.

[215] Livy 25.40: *visebantur enim ab externis ad portam Capenam dedicata a M. Marcello templa propter excellentia eius generis ornamenta*… "The temples dedicated by Marcus Marcellus at the porta Capena were visited even by foreign people on account of their spectacular ornaments of that type."

throughout the rest of the Republic, but also because he did concretely contribute to the religious well-being of the Romans.

The relationship between Marcellus and Syracuse did not mirror that of Pleminius and Locri, but the cities are represented as responding similarly through recourse to the senate. This tells us something both about the representation of transgression and about the way that wronged cities could actually address looting. Against Marcellus' more complex backdrop, Livy's treatment of the Syracusans' complaint indicates that even a complicated situation was addressed via a formulaic set of behaviors. The wronged city lodged a complaint against a general, and the means by which that city attempted to make the charge compelling was by claiming that sacred items had been looted. In this process the senate again, and even the individual senators, appeared as the authority that was interested in sacrilege and as the one that could judge whether or not sacrilege had occurred. In fact, the looting of Capua followed a very similar pattern and immediately followed the Syracusans' complaint in Livy.

At around the same time, in 210 BCE, Quintus Fulvius Flaccus succeeded in recapturing the city of Capua, another Roman ally turned defector. The Capuans went to the senate to beg for mercy. The surrender document yielding Capua to the Romans as transmitted by Livy states:

> Omnes Campani, Atellani, Calatani, Sabatini, qui se dediderunt in arbitrium dicionemque populi Romani Q. Fulvio proconsuli, quosque una secum dedidere,

quaeque una secum dedidere, agrum urbemque, divina humanaque, utensiliaque sive quid aliud dediderunt, de iis rebus quid fieri velitis vos rogo, Quirites.[216]

The arrangement explicitly not only handed over the Campanian people, their land holdings, and other property to the Roman people, but also *divina*. It was important to state in writing that the divine property of the Capuans was now under the jurisdiction of Rome.[217] The gods do not explicitly appear as agents in this passage, but the provision for the treatment of their property indicates that there was seen to be no issue with its transfer to Roman control.

The surrender document continues with the outline of a procedure by which the status of objects from Capua could be assessed. Sacred objects were surveyed by a board of pontiffs.[218] Bronze statues and *signa* are named specifically as the items under review, which implies that monetary value was a criterion in the capture of said items. Although only mentioned here and not in analogous citations, the review by pontiffs may in fact

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[216] Livy 26.33.12-14: "All Campanians, Atellans, Catalani, Sabatini, who have given themselves in the judgment and dominion of the Roman people with Quintus Fulvius being proconsul, and those they have given together with themselves, and those things they have given together with themselves, field and city, divine and human, useful materials or whatever else they have given, I ask you, Quirites, what you wish to be done with these things."

[217] The language referring to what the Capuans were to give up is more expansive compared to epigraphically attested *deditiones*, collected in Potter (2015). Capua's punishment was extensive. It did not become a colony or have its rights restored until 83 (Vell. Pat. 2.44).

[218] Livy 26.34.12: *signa, statuas aeneas quae capta de hostibus dicerentur, quae eorum sacra ac profana essent ad pontificum collegium reiecerunt*. "…statues, bronze sculptures which were said to have been captured from the enemies – it was put before the college of pontiffs which of these was sacred or profane." Note the lack of consistency in whether objects were called *divina*, as in 26.33.12-14 above, or *sacra*, as here. For Gruen (1992) 103, the pontiffs were not so much making a determination of the status of these objects but merely assuring that they maintained the same status they had held in Capua. I do not see why we should assume that the Roman pontiffs did not possess the power to make independent judgments if it suited them.

have been a common practice. It was a necessary measure in the importation of sacred objects into Rome that went beyond the *ius belli*. The Romans could justly appropriate the objects, as per the surrender agreement. They could not, however, dispose of them as they wished. Livy does not explain what fate eventually met the objects named sacred, but it is clear that by 210, a procedure existed in Rome for the dispersion of sacred war booty.

The specific mention of statues in the *deditio* document raises the problem of what was co-opted, and specifically the problem of taking images of the gods. The Romans did not consistently slip between the categories of cult statue and god, but in some cases they could discuss an object as if it were the god. In a poem that mocks superstition, Lucilius satirizes people who think that bronze statues are alive.[219] Lucilius' comment demonstrates both that it was possible for a mid-Republican Roman to see a god in a statue, and also that there were already intellectual currents that dismissed it. The aniconic stone that was the Magna Mater is perhaps the most famous example of the state implying that an object was a god.[220] The phenomenon was general and not restricted to public cult images; in the imperial period, Statius could refer in his poetry to a statuette of Hercules Epitrapezios as if it were an epiphany of the god.[221] The numinosity of a statue could be expressed for rhetorical effect, especially if someone wanted to imply that the mistreatment of a statue was particularly bad. However, it was just as likely that the looted items would not be images of the gods, but rather valuable non-figural objects.

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[219] Fr. 484-489 Marx. See Feeney (1998) 92-97 for discussion.
[220] E.g. Livy 29.11.7.
[221] Stat. *Silv*. 76. Coleman (1988) 190 claims, "The identification of the god with his statue is a remnant of the primitive belief that they were the same thing."

One Roman general took gold bullion.[222] If those objects had been dedicated, their looting could nevertheless still pose a problem.

The Capuan statuary was probably displayed in public, inaugurated spaces, as Marcellus had done with his Syracusan booty. However these objects were ultimately treated, the pontiffs approved of the procedure, which indicates that the solution was seen by the state as being acceptable for the maintenance of good relations between the gods. The Campanians are supposed to have blamed the *iniquitas deum et exsecrabilis fortuna sua* rather than the Romans for their fate.[223] By this logic, the gods actually preferred the Romans, an important underlying assumption of the Roman imperial project that will be seen to have been operative in most situations in which Romans took sacred booty. On a more concrete level, the appropriation of divine property and its displacement to Rome was approved under certain conditions. The original god lost the item from their sanctuary. Whereas for the Locrian Proserpina, this was unacceptable, it was tolerated in the case of Capua as long as the items' sacred status was maintained. The provision that the pontiffs were able to judge whether an item was sacred or profane also hypothetically gave them the power to desanctify a previously sacred object by declaring it not to be sacred. While the pontiffs and not the senate were the ultimate deciding body, the *deditio* had been arranged in the senate and transmitted to the tribune. Here again the senate held a key role in maintaining religious propriety.

Like the Syracusans in 210, the Capuans had also attempted to resist Rome. Before the city was taken, five Capuans committed arson in Rome. They set fire to the

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[222] Strabo 4.1.13.
[223] Livy 26.34.13: "unfairness of the gods and the unavoidability of their fortune."

temple of Vesta, among other buildings, but it was saved.[224] More officially, the *deditio* arose in the first place because a group of Capuans appealed to the consul Laevinus to be allowed to petition the senate in order to beg Fulvius Flaccus not to harm their city. Flaccus' refutation was that they merited harsh treatment as enemies of Rome, particularly because the five Capuans had recently set fire to *Vestae aedem … et aeternos ignes et conditum in penetrali fatale pignus imperii Romani.*[225] The Romans could charge the Capuans with attempted temple destruction, and could claim that they themselves were comparatively more pious in following the protocols carefully laid out in the surrender documents. The contrast of Roman piety (usually) with enemy impiety (usually) occurs as a trope in the Second Punic War.[226]

The practice of consulting a central authority on the correct dispensation of sacred items is a common theme in each of our Second Punic War case studies. Either the Romans themselves took the initiative in determining the correct treatment of certain objects thought to be sacred, as in the case of Capua, or the victims could send representatives to file specific complaints, as the Locrians and Syracusans did. The appeal to Roman authority gave the Romans the opportunity either to accept or reject the claim that a violation had occurred in a system that mirrored the one that gave the senate power to accept or reject reported prodigies.[227] The senate became the focal point of

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[224] Livy 26.27.
[225] Livy 26.27.14: "the temple of Vesta … and the eternal fires and the pledge of the Roman power, planted in the holy inner sanctum." Briquel (2002) studies the fire in depth.
[226] E.g. Hannibal's plunder of the grove at Feronia (Livy 26.11.8-13). Pirates also were known for plundering sanctuaries (Plut. *Pomp*. 24.5).
[227] Wells (2010) 235 similarly connects the senate's role in policing temple looting with their responses to prodigies.

debates over sacrilege.[228] In 200, a robbery of the sanctuary of Proserpina at Locri was reported again. In that case also it was the senate that restored the temple's property a second time and prompted an investigation into the incident.[229]

Concomitant with the senate's power, however, came an obligation acknowledged by the Romans to accept the claims that certain objects were sacred when charged with having violated them, even when it was not economically expedient to do so.[230] For victims, the charge that a sanctuary had been violated was likely to be taken seriously by the senate. Perhaps a certain portion of senators were not interested in hearing about abuses by a certain Roman general, but it was comparatively uncontroversial to claim that restitution of sacred objects was required. In practice this was true especially in politically contentious situations, as when Pleminius' violation occurred. Though the senate debated the culpability of Scipio at length, addressing the actual religious violation does not seem to have been divisive. The senate returned property to the temple of Persephone twice, after seeking out the specific objects that had been stolen by Pleminius and his men and then paying an amount equal in value to those objects that they could not find.

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[228] Like the Locrians and Syracusans already discussed, appeals to the senate were also made by the Ambracians to protest the conduct of Fulvius Nobilior (Livy 38.43.2-5). See Gruen (1992) 108-110. He observes (p. 108), "The very fact that Nobilior's political rivals prompted the Ambraciotes to protest the seizure of sacred images implies that Rome's official policy frowned upon sacrilegious plunder."

[229] Livy 31.12-13. The senate also administered the acceptance of prodigies that occurred in concert with the incident. See Toynbee (1965) 621-622 on this theft. He argues that the senate's involvement indicates that the culprits are likely to have been Roman citizens.

[230] Wells (2010) sees Roman piety towards the gods of southern Italy in the late 3rd century as part of a process by which southern Italian cults came under Roman protection and jurisdiction. For Wells, the Pleminius affair was a watershed moment in this process.

The rectifying of transgressions was an important aspect of geopolitics during the fraught years of the Second Punic War. It has been observed a number of times that Rome took greater care in respecting the gods of their former allies than those of other antagonists. Rome had a responsibility towards allies' deities even when estranged from those allies. On a related note, known gods provoked more fear than unknown gods. Proserpina was especially scary to the Romans because she had attacked Pyrrhus already, and a similar fear surrounded gods like the Delphic Apollo, as will be discussed below. Religious politics depended upon familiarity and often correlated with actual politics.

II. Who was Culpable?

At Locri the debate over the relative culpability of Scipio, Pleminius, and the military tribunes was far more controversial than the return of the booty. That dispute serves well as a case study to understand the ascription of blame in instances of theft. The debate in the senate provides an answer to the question of why it was important to establish who was responsible for a transgression. The situation was similar to the one faced in the ritual transgressions of the previous chapter. On the one hand, any transgression put all Romans at risk, especially once the senate had been alerted to a possible danger. The Locrians claimed that when the legate and military tribunes stole the treasure, the thieves contaminated themselves, their households, *and* the Roman soldiers.[231] Even if a single individual had provided the primary impetus for a given act

[231] Liv. 29.18.7–8: *se ipsos ac domos contaminare suas et milites vestros*. "They contaminated themselves and their homes and your soldiers."

of sacrilege, sacrilege was contagious in most ancient societies. On the other hand, vengeance did also fall specifically upon individuals and imperiled their enterprises.[232]

Functionally, it appears that guilt could be ascribed expansively, though in senatorial debate and in the subsequent historiographical tradition (written from an elite perspective), it tended to focalize on military leaders. Diodorus Siculus claims that the anger of the gods fell upon all, inclusively, after the theft of the treasures of Locri.[233] In Livy's account, the military tribunes were treated as culpable during the initial altercation at Locri, though their deaths rendered the point moot by the time the debate reached the senate.[234] When Pleminius was arrested, so were twelve other co-conspirators, about whom we hear nothing more in Livy.[235] There were a multitude of guilty parties even though the nature of historiography and the context of the event led to an emphasis on Pleminius. This was due largely to Scipio's involvement in the affair. Partly in order to exculpate Scipio, Pleminius became a perfect villain.[236] Pleminius and the tribunes are portrayed as acting very much outside the acceptable norms of Roman behavior, especially in Livy's version.[237] In the senate, the Locrian representative presented

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[232] Scheid (2016a) 97 contends that Romans only understood liability for sacrilege communally, to be expiated by the collective, with only limited interest in punishing guilty parties. While I do not deny that expiation was of great importance to the community, this section and the one that follows aim to refute the idea that no interest was taken in individual culpability.
[233] Diod. Sic. 27.4.7.
[234] E.g. Livy 29.18.7-8.
[235] Livy 29.21.12.
[236] Köster (2014) is the best analysis of the portrayal of Pleminius as a sacrilegious man. Toynbee (1965) 619-621 is the most complete discussion of the potential of collusion between Scipio and Pleminius. Toynbee concludes that Plemininus was likely operating on Scipio's orders. See Burck (1969) for source-criticism of Livy's account. He sees one of Livy's chief goals to be the dissociation of Scipio from the incident.
[237] Livy 29.9.

Pleminius as a monster who was human only insofar as he spoke Latin.[238] Pleminius and the tribunes' guilt was, once-again, over-determined; they stole from the gods because they were terrible and impious people. In contrast, Scipio Africanus was not called inhuman. Rather, his reputation suffered because of the actions of Pleminius: *infamiae atque invidiae non sibi modo sed etiam imperatori esse*.[239]

According to the Roman worldview, the misfortunes that befell the tribunes and Pleminius were proof of their guilt. In their initial pitch to the senate, the Locrians claimed:

> at hercule milites contactos sacrilegio furor agitat; in ducibus ipsis puniendis nullum deae numen apparuit. Immo ibi praesens maxime fuit. Virgis caesi tribuni ab legato sunt; legatus deinde insidiis tribunorum interceptus, praeterquam quod toto corpore laceratus, naso quoque auribusque decisis exsanguis est relictus.[240]

The senate accepted this logic, which is usual in cases of religious transgression. If one transgresses, one is subject to divine vengeance.[241] According to Livy, once the senate was informed of the travesty at Locri there was never an argument against conducting an expiation. Nor was Pleminius' guilt ever properly questioned, though he was given some semblance of due process. The goddess herself had evidently endorsed his guilt by allowing (or causing) his misfortunes, and it did not need to be questioned. The debate

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[238] Livy 29.17.10ff.
[239] Livy 29.9.12: "… a source of infamy and malicious envy not only for himself (Pleminius) but also for the general (Scipio)." There were other concerns about Scipio's conduct at the time, discussed in chapter five.
[240] Livy 29.18.12: "But, by Hercules, fury impelled the soldiers touched by sacrilege. No *numen* of the goddess appeared to punish the leaders themselves? No, rather she was most present there! The tribunes were scourged with switches by the legate; the legate then was arrested by the plot of the tribunes, and besides was mutilated in his entire body, and he was left bloodless with his nose and ears cut off."
[241] Caepio at Toulouse is another excellent example.

was about whether or not Scipio had been involved. Livy explains, *non Pleminius modo, sed etiam Scipio principium orationibus lacerari*.[242]

Despite the fact that the altercation in the senate between Fabius Maximus and the pro-Scipio faction was about the larger issue of whether the war against Hannibal should be pursued in Africa, the issue on which it came to a head was one of religious propriety.[243] The argument at hand was whether Scipio should be allowed to continue his command in Sicily. The view of the senate among both his partisans and his opponents was that if guilty of the outrages against the Locrians, he could not.[244] The anti-Scipionians therefore sought to demonstrate his guilt, while his supporters urged the rest of the senate to exculpate him. It was taken as given by both factions that the Locrians had been wronged and that anyone who was responsible could not lead Roman military endeavors.[245] In addition, Fabius argued that all troops also had to be removed, implying that *any* involved party could not continue to represent Roman interests. The crux of the argument in Scipio's favor was that he had not even been present when the struggle had

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[242] Livy 29.20.3: "Not only Pleminius, but also Scipio was abused by the speeches of the leading men."

[243] Venturini (1969) 40-41 sees the debate over Pleminius in the senate as nothing more than a thinly-veiled debate over Scipio's African campaign. This is surely true, but undersells the degree to which both sides of the senate were compelled by Locri's religious argument.

[244] For Toynbee (1965) 615-617, the religious transgression is of minimal interest compared to the civil struggle between Roman commanders in the field and between Scipio's friends and opponents in the senate. Toynbee's senate is "too highly sophisticated any longer to believe that the wrecking of Pyrrhus' fleet had really been Persephone's doing, or that she would take similar vengeance on Rome if the Roman Government did not make satisfactory redress for Pleminius's sacrilege."

[245] Quintus Fabius Maximus argued for his recall. See Livy 29.19.6. Fabius' grounds for recall are that Scipio left his province *iniussu senatus*. The entire issue of Scipio's endeavors in Africa is in question, not merely his involvement at Locri. However, investigating Scipio's implication in the Locri scandal is the angle that Metellus took on the senate debate, so it should be understood as an undercurrent in Fabius' speech as well (Livy 29.20).

taken place.[246] In the end, an investigative team, headed by the praetor Marcus Pomponius Matho, was sent after Scipio.[247] They were supposed to discern the degree to which he had been involved in the events at Locri. If he was deemed innocent, he would be left to carry on the war as he pleased.[248] Even Scipio's allies in the senate were willing to concede (though surely they knew that he would get away with it) that if Scipio had been in command at the time of the theft at Locri, he should not continue the war. The altercation in the senate addressed the question of what responsibility the general had for his officers. Ultimately it was decided that Scipio was innocent, but only because he was apparently ignorant of his general's choices.

In reality, of course, the plundering of a sacred precinct was not the work of only the commanders. Though public discussion of the theft of sacred objects tended to center on the culpability of the commander, soldiers too could be held personally responsible for plundering.[249] This was true on both a civil and divine level. Again, the case of Locrian Proserpina provides a useful example. Livy claims that the stolen money *omnibus contactis ea violatione templi furorem obiecit*.[250] In the civic sphere, the senate decreed that any soldier in possession of objects from the temple of Proserpina must return them on pain of death.[251] Complete restitution had to be made to relieve the community of the

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[246] Livy 20.20.3.
[247] Livy 29.20.4; 31.12.3. On his involvement see Brennan (2000) 141-142.
[248] This investigation at Locri did take place, as told in Livy 29.21.7-11. The Locrians claimed that the wrongs were perpetrated *neque iussu neque voluntate P. Scipionis* ("neither according to the order nor the will of Publius Scipio").
[249] Grosso (1952) 241 is oversimplifying when he claims that only the commander bore the blame for temple theft rather than those who carried it out.
[250] Livy 29.8.11: "brought fury on all those touched by the violation of the temple."
[251] Diod. Sic. 27.4.7. Livy explains that they were told that if a Locrian recognized any piece of property as being their own, they could reappropriate it from the Roman soldier. Related is the claim that the plundering of Locri occurred partially because the troops

risk posed by transgression. In the aftermath of the theft from Locri, the individual soldiers too felt bound to offer restitution. Diodorus Siculus claims,

> Ὅτι μετὰ τὸ ψηφισθῆναι τὰ κατὰ Πλημήνιον φιλοφρονοῦντες τοὺς Λοκροὺς οἱ τὰ πολλὰ τῶν ἀναθημάτων ἡρπακότες καὶ θεωροῦντες τὴν τῶν χιλιάρχων καὶ τοῦ Πλημηνίου τιμωρίαν ἐπὶ δεισιδαιμονίαν ἐνέπιπτον. οὕτως ὁ συνειδώς τι φαῦλον ἑαυτῷ σιωπωμένην ἀναδέχεται τιμωρίαν, κἂν τύχῃ διαλεληθὼς τοὺς ἄλλους. διὸ ποινηλατούμενοι τὰς ψυχὰς τὸ θεῖον ἐξιλασκόμενοι ἐρρίπτουν τὰ χρήματα.[252]

Their act is condemned as δεισιδαιμονία, but it motivated them to return the stolen objects. Diodorus uses religious fear as a key motivator throughout his account of the Pleminius affair.[253] The appropriateness of the troops' worry is supported by other instances in which soldiers feared, or actually suffered, vengeance from the gods. At Feronia, Hannibal's troops plundered the gold and silver from the grove, but tossed behind them piles of rude bronze as an offering to repair the sacrilege, *religione inducti*.[254] An early Roman example shows that troops could themselves face direct penalties from the gods for following the misguided orders of their generals. In 291 Postumius Megellus' soldiers were taken ill for having cut down a sacred wood near

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were jealous of Laelius' army returning laden with booty from Hippo (Livy 29.6.1). Pleminius' troops may have been Italian volunteers; see Toynbee (1965) 620.

[252] Diod. Sic. 27.4.8: "When, after the affairs regarding Pleminius had been voted on with good will towards the Locrians, the men who had stolen most of the treasures beheld the retribution coming upon Pleminius and the tribunes, and fell into religious fear. Thus does the coconspirator receive a paltry silent torment, although he had been lucky in escaping the notice of other men. Therefore, these men, tortured in spirit, cast away the goods to propitiate the divinity."

[253] Diodorus Siculus' reading of the Pleminius episode most explicitly emphasizes religious fear. See Köster (2014) 313-315.

[254] Livy 26.11.8-13.

Gabii on his orders.[255] During Verres' depredations in Sicily, local people refused to help him steal statues of gods because of *religio*.[256] There was also the obvious risk of defeat in battle as a consequence of following an impious general, which related to the need to distance commanding officers from charges of impiety as discussed above. While the historiographical tradition often fixes responsibility upon generals as individuals, other people were complicit, and escaped notoriety in the memory of posterity by virtue of their comparative obscurity.

On one occasion at least, Rome transformed a sacrilege into an opportunity to oversee a troublesome population more closely under the guise of holding the culprits to account. When Proserpina's temple at Locri was robbed again in 200, it was initially unclear who had committed the crime. The praetor Quintus Mucius Rufus was tasked with identifying the guilty parties. Livy does not identify them, but says that they were sent to Rome in chains, and were held personally responsible for their actions.[257] The response to this theft was deliberately modeled on Pleminius' and emphasized punishment, restitution, and expiation. The property was extorted from the accused individuals and sent back to Proserpina with expiatory interest.[258] Mucius Rufus had his praetorship prorogued for another year in order to continue to oversee the process of

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[255] Livy *Per*. 11; Dion. Hal. *Ant. Rom.* 18.4-5; Cass. Dio fr. 36.32. It was claimed that they were taken ill because they were forced to do non-military labor. The most important article on this episode is Palmer (1990).
[256] Cic. *Verr*. 2.4.73-79. For full discussion, see pp. 103-104, below.
[257] Toynbee (1965) 622 argues that the thieves were probably Roman citizens, and that they were famous enough for their names to be kept secret, because they were sent to Rome for punishment. I am not convinced by this for two reasons, the first being that they were sent back to Locri to complete the expiation, and the second being that Mucius Rufus' praetorship was prorogued in order to continue to monitor Bruttian plots. This would not make sense if the criminals were Romans.
[258] Livy 31.12.1-5, 31.13.1.

punishment. He sent the guilty men back to Locri from Rome for punishment (*ad supplicium*). The incident also offered an opportunity for Rome to investigate further supposed *coniurationes* in Bruttium, which was appealing to the Romans because the Bruttians had sided with Carthage in the Second Punic War.[259] In doing so, the Romans implied that sacrilege, potentially even by non-Romans, was an occasion for a large-scale expiation and repayment process, and then used it as a pretext to continue heightened surveillance over problematic Italians.[260] This episode also indicates that by 200, violating the temple that had just been put to rights by the Roman senate a few years earlier was tantamount to revolt from Rome.

III. Divine Vengeance and Divine Consent

The issue of culpability has touched on the question of the involvement of the gods, to which I now turn. Thus far I have primarily discussed the responses of civic entities to reports of transgression, and the interplay between politics and transgression. A person's status (commander or not) impacted their likelihood for being condemned as one of the major perpetrators of a transgression. Of course, it is artificial to uncouple civic and divine authorities in discussions of sacrilege. The Romans did not view the pontiffs and senate as the only judges of transgression, though they had great authority. The gods, too, were active partners in the assessment and punishment of transgressions against them.

[259] Livy 32.1.7-8.
[260] Brennan (2000) 132 n.135 on Roman surveillance of the Bruttii.

The mutilation that Pleminius suffered at Locri was done by human hands, yet Proserpina herself was understood to have been behind it.[261] Pleminius' actual death was not explicitly connected to the action of the goddess in the surviving sources, but Valerius Maximus claims that he was killed by a *taeterrimo genere morbi*, a mysterious ailment consistent with the punishment experienced by other sacrilegious people.[262] Livy reports that the exact circumstances, and even decade, of Pleminius' death are unclear, leaving his fate somewhat mysterious, like that of other transgressors.[263] In Roman prisons, the agent of a prisoner's death was often unclear. Long-term imprisonment did not occur, but there is no record of Pleminius' execution. Pleminius likely died from being abandoned, in a manner not unlike the "culprit-less" deaths of unchaste Vestals in their underground cells.[264] He could therefore be thought to have been killed by Proserpina herself, though he had been placed in the prison by human hands.

Most major public transgressors' demises were similarly doubly determined. The over-determination however does more than justify human retribution by claiming divine accord. By punishing transgressors alongside the gods, Romans were able to transform offended deities into partners in vengeance.[265] Seeing divine agency in the destruction of

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[261] Livy 29.8.10-11. See also, 29.18.12-13. Diod. Sic. 27.4.7 makes a similar claim.
[262] Val. Max. 1.1.21: "a terrible type of sickness." Compare to the death of Sulla. For Köster (2014) 310-311, Pleminius' death in historical accounts becomes a reflection of his entire life.
[263] Scheid (1981) 138-139 argues that Pleminius was thought to have died because he could not personally expiate his outrage.
[264] David (1984) 145 explains that death within the Tullianum would have essentially been a death by abandonment, clean and without a direct human agent. This is convenient because it leaves room for a divinity.
[265] In this regard the Roman people may have lost an opportunity in Pleminius' case. If Livy is correct in reporting that hatred for Pleminius was in abatement as the trial went on, it is possible that, had a sentence ever been pronounced, it would not have condemned Pleminius (Livy 29.22.8-9).

transgressors is often condemned as "credulity" on the part of either our ancient authors or the historical actors they have written about.[266] Instead, it should be seen as a sophisticated logical manipulation that allowed a people to understand their gods as allies who required respect and cultivation, but who would ultimately and consistently take action on their behalf. Punishment of the culprits also suggested that the gods were now happy and that there was nothing more to fear.

In 208 Marcellus, the victor over Syracuse, was killed in an ambush by Hannibal, and his body was probably never recovered. Multiple versions of the story of his death emerged almost immediately.[267] According to some traditions, Marcellus fell into Hannibal's hands after his death. Plutarch claims that Hannibal had planned to inter Marcellus honorably, but his remains were scattered during a tussle between Hannibal's urn-bearers and some Numidian troops.[268] Hannibal did not regather the remains because he concluded that Marcellus must have been deprived of burial according to the preference of some god (κατὰ θεόν τινα), implying that Marcellus had been personally singled out for dishonor after death by divine will. Regardless of what the circumstances of Marcellus' burial were, the persistence of a tradition that he had not been properly buried indicates an ambivalence surrounding him that could stem from his potentially sacrilegious actions at Syracuse.

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[266] See, for example, Wardle (1998) 24 on Valerius Maximus: "V. himself presents religious explanations, but that need not indicate that he or other Romans were incapable of thinking in other terms – for example chapter 2, on false worship, presents examples of religious actions which were politically motivated and about which Roman authors displayed due skepticism. We need not be bound by their credulity in other respects."
[267] Flower (2003) 49-50.
[268] Plut. *Marc*. 30. Compare to Livy 27.28, in which Hannibal does bury Marcellus.

A century after Pleminius and Marcellus' deaths, the proconsul of Cisalpine Gaul, Quintus Servilius Caepio, committed one of the most flagrant and notorious temple thefts. His act is supposed to have precipitated his disastrous defeat at Arausio in 105.[269] While in Tolosa (modern Toulouse) earlier that year, Caepio stole gold and silver from the temple of Apollo. Those treasures were believed to have been originally taken from Delphi by the Tectosages during the Gallic invasion of Greece in the 3rd century BCE.[270] The Delphic origin of the treasure appears to have been a fanciful fiction, but it is agreed that Caepio did steal Apollo's property from the temple in Gaul.[271] Like Capua and Syracuse in the Second Punic War, Tolosa had previously been an ally of Rome but had defected to the Cimbri. Caepio and his men entered the city in secret by night and retook Tolosa. They took the opportunity to plunder, seizing for themselves (σφετερίζω) the treasure from the temple of Apollo at Tolosa.[272]

Soon thereafter, Caepio and his troops were defeated at Arausio, the largest defeat since Cannae. Despite immense losses of manpower in battle (Livy estimates that 80,000

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[269] On the military defeat, see Livy *Per*. 67; Oros. 5.15.25-5.16; Sall. *Jug*. 114. Plut. *Luc*. 27.7 explains how Lucullus ignored the fact that the anniversary of the defeat was a *dies ater*. See the appendix to Goudineau and Thollard (1999) for a compilation of all episodes relating to Caepio's theft.

[270] The tradition is transmitted by Timagenes and Cass. Dio 27.90. On the actual theft of the gold, Strabo 4.1.13 is the fullest account. See also Just. *Epit*. 32.3.9-11. See Miles (2008) 37-39 for a history of violations against Delphi that helpfully contextualizes Caepio's and Sulla's actions. Strabo favors the interpretation of Poseidonius, who believes that the Gauls would not have found any gold or silver bullion at Delphi. See Goudineau and Thollard (1999) 55 for the evidence that Delphi successfully checked the attack by the Gauls.

[271] Goudineau and Thollard (1999) 54 also suggests that Caepio's involvement with the gold of Toulouse may have been a later fiction, post-dating Cicero because he fails to specifically mention Caepio despite clear allusions to a trial about the gold, as at *ND* 3.74. This argument seems weak, not least because Strabo mentions Timagenes, a contemporary of Cicero, as one of his sources for the story.

[272] Cass. Dio 27.90. The fullest account of the origins of the treasure is Strabo 4.1.13.

Roman troops were killed), Caepio survived and stood trial in Rome after his defeat.[273] He was convicted. The trial was likely occasioned by the loss of the army, but some allusions to the trial focus instead upon the stolen treasure as the real reason for Caepio's conviction.[274] Caepio's conviction is therefore another example of an instance in which sacrilege was itself cause for punishment, but had also been a cause of the defeat in the first place. Indeed, the theft of the gold is sometimes portrayed as having been a sufficient cause for a major military disaster.[275] The ancient sources do not explicitly claim that the loss was seen as divine revenge for the theft, but the relation can be assumed due to the varying reports of whether the gold or the battle occasioned his trial. If the connection is at all accurate, the theft from the temple was interpreted as a serious threat to Roman military endeavors and also to the safety of the entire state; it was feared that the Cimbri would invade Italy next, as they in fact did.[276] This was ruin on an empire-wide scale, and it could all be seen as stemming from the actions of the proconsul

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[273] Churchill (1999) 105-106 openly takes no interest in a religious interpretation of this episode and presents the religious reading as obscuring the "actual" problem of *maiestas*.
[274] Cic. *ND* 3.74 mentions the trial of Caepio briefly, but only as the [*quaestio*]… *auri Tolossani*. Similarly, Strabo 4.1.13 says that Caepio was exiled because he was a temple-robber, not because he had lost the battle of Arausio. Compare to Val. Max. 4.7.3, which claims that Caepio was put in the *carcer*, *quod illius culpa exercitus noster a Cimbris et Teutonis videbatur deletus*. "prison, because it seemed that it was his fault that our army was destroyed by the Teutones."
[275] Gell. *NA* 3.9.7 is especially explicit about the connection between the sacrilege and ruin: *quisque ex ea direptione aurum attigit, misero cruciabilique exitu periit*. "Whoever touched the gold from that theft died a miserable and painful death." The reason for Caepio's defeat at Orange is also reported as his own temerity (as in Liv. *Per*. 67).
[276] On the Cimbri turning next to Italy, see Oros. 5.16.7: *maximus tunc Romae non solum luctus, verum etiam metus fuit, ne confestim Cimbri Alpes transgrederentur Italiamque delerent.* "There was then not only great mourning at Rome but also fear that the Cimbri would cross the Alps and destroy Italy."; Sall. *Jug*. 114.2: *Quo metu Italia omnis contremuit*. "With which fear all of Italy trembled."

and his troops. Caepio's was an unambiguous case of theft that was ruinous for Rome and broadly condemned.

Like Pleminius, Caepio was thought to have received a personal punishment from the gods. According to Timagenes, he had only female children who ended up having to become sex workers – was this because of poverty following their father's disgrace?[277] One of Caepio's slaves also castrated himself and was exiled, indicating that Caepio's theft was transmuted into sexual deviance.[278] Caepio himself was exiled and his goods were confiscated as a result of the trial.[279] His exile was a punishment imposed by humans, but Strabo also presents it as a result of vengeance from Apollo, pairing the exile with the fates of the daughters.[280] Caepio's example provides a useful model for understanding how human agency was seen as carrying out the will of the god himself. Rome was ultimately able to cast itself as in league with Apollo against the thief Caepio.[281] They also declared the date of the battle of Arausio a "black day."[282] Both of these acts were attempts to recover from the dramatic loss of troops at Arausio and to regain control over Rome's relationship with the gods. Caepio's punishment was an acknowledgment that something had gone wrong and was an attempt to join Apollo in seeking revenge. There was, however, no mention of a restitution process for Apollo or Tolosa. If Caepio's confiscated property had included the gold, it is possible that some of

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[277] Strabo 4.1.13, citing Timagenes.
[278] Obseq. 44a.
[279] Val. Max. 4.7.3; Livy *Per*. 67.
[280] Strab. 4.1.13: προσαψάμενον δ' αὐτῶν τὸν Καιπίωνα διὰ τοῦτο ἐν δυστυχήμασι καταστρέψαι τὸν βίον. "… for having touched these things (the Delphic treasure), Caepio ended his life in misfortune…"
[281] It is interesting to note, however, that Rome subsequently sold the sacred lakes. See Strabo 4.1.13.
[282] Plut. *Luc*. 27.7.

it entered the Roman treasury. The mystery over the gold's fate shows the difference in how a victorious Rome addressed religious transgression compared to a defeated Rome. When the Cimbri invaded Italy, perhaps returning the gold became impossible, or perhaps the army had already lost it at Arausio.

In the examples studied so far, a military context has been central to the process of punishment and restitution. Both Pleminius and Caepio committed their transgressions during major wars. In contrast, Verres took religious property from Sicily in the 70s while the province was under his charge as governor.[283] His action can be compared to the situations in which Romans violated the rights of former allies or recently captured cities, but is even more unambiguously problematic because Sicily was a Roman-controlled territory at the time. Because Rome was not at war with the communities Verres plundered, it is likely that there would have been no acceptable means for him to acquire the sacred objects that he seized, even if he had displayed them in public. An opponent who wished to argue about religious scruples would have had a strong position from which to do so. Cicero does not mention any explicit involvement by the gods disrespected by Verres. However, he does allude to locals' fear of the potential for divine disfavor.

At Segesta, Verres attempted to seize a statue of Diana from a sanctuary. This was an image with which Rome had a history; Scipio Aemilianus had restored it to Sicily after the defeat of Carthage in 146.[284] Cicero claims that *repertum esse, iudices, scitote*

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[283] Cic. *Verr*. 2.4 contains most of the relevant discussion. Miles (2008) 152ff. offers a good modern analysis of concern for art and sacred property.

[284] Cic. *Verr*. 2.4.73-74. Scipio Aemilianus had undergone an extensive project of returning objects looted from Carthage to Sicily. See Miles (2008) 96-99 for discussion.

neminem, neque liberum neque servum, neque civem neque peregrinum, qui illud signum auderet attingere.[285] No one could be found to remove the statue until some workmen from Lilybaeum were hired. Cicero assures us that they agreed only because they were *ignari totius negoti ac religionis*.[286] Presumably these people still would have been able to recognize a cult statue well enough, especially because Lilybaeum was not so distant from Segesta, so Cicero explains away their compliance by calling them *barbari*. The need to resort to "ignorant" workers in order to find someone willing to displace a sacred statue reveals something about the operation of ideas of the sacred and the vengeance of the gods: the degree to which a god was thought to have presented a danger was predicated on how much one knew about that god's history. This can also help explain the senate's response to the raiding of the temple of Proserpina. Proserpina had ruined Pyrrhus, so Rome took note in turn. This is why she, rather than the other deities offended at Locri, sparked fear in the Romans. Similarly, the possible Delphic origin of Caepio's gold subjected him to a particularly prestigious and formidable brand of Apollo's anger. In Segesta, Verres capitalized upon the Lilybaeans' lack of information about that Diana to convince them to uproot the cult statue. They did not know, and for a price, were willing to overlook, the *religio* that prevented others from doing Verres' bidding.

Verres' sacrilege is unique because it was documented contemporaneously by Cicero. His speeches are a different kind of evidence. They show the degree to which the

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She argues that Scipio was attempting to establish Rome as a patron to Sicily while also promoting Roman success.

[285] Cic. *Verr*. 2.4.77: "No one at all was found, judges, neither free nor slave, neither citizen no foreigner, who dared touch that statue." See also Cic. *Verr*. 2.4.75.

[286] Cic. *Verr*. 2.4.77: "unaware of the whole matter and of religious fear."

historical narrative sources are the product of a tradition that used divine vengeance to understand defeats, geopolitical shifts, and even personal misfortunes. Cicero faced different constraints. He could not include divine vengeance in his narration, because at the time of the *Verrines*, Verres was still alive in exile, apparently unharmed. Moreover, Cicero's dramatic purpose necessitated writing as if Verres had not yet departed from Rome, so even his absence could not be cast as divine punishment. Instead, Cicero has given indication that the malice of gods was feared by those around Verres, as in the example of the Segestans above. Cicero presents religious fear as a valid motivation for the Sicilian people rather than denouncing it as *superstitio*.[287] The power of the gods is thus maintained as a live threat throughout his commentary on Verres' predations, even if the gods never actually take direct action.[288] Of course, Cicero's orations were rhetorically charged and cannot be thought to accurately represent the mental state of the Sicilians or anyone else. Nonetheless, the most important feature of the Verres episodes for my purposes is the interpretation of recent history and evaluation of possible actions taken by Verres (and those refused by the locals) in explicitly religious terms. Cicero represents divine vengeance as a real force that could be identified as operational in the world for the culprits of sacrilege, and imagines it as a potential future threat that the Roman authorities should seek to avoid.

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[287] Cicero does not hesitate to present the piety of the Sicilians as effeminate and excessive elsewhere. See Cic. *Verr*. 2.4.47.

[288] The Segesta episode can be compared the to the failed attempt by Verres' men to detach a statue of Heracles from his pedestal (Cic. *Verr*. 2.4.93-95). The Agrigentines said that Heracles himself had prevented it (as a joke). Their comment does not have to be read only as a joke.

IV. Other People's Incense: The Challenges of Importing Goods (and Gods)

There arose a natural conflict for the Romans between their desire to acquire wealth, and their desire to keep the gods happy. In conjunction with emerging norms dictating the conduct of governors in Rome's provinces over the course of the 2nd and 1st centuries BCE, an ideology developed that stated that it was not acceptable for a general to co-opt spoils of war, particularly sacred spoils, for his own gain.[289] The historian Cincius Alimentus, who himself was a praetor in Sicily during the Second Punic War, explained *solere Romanos religiones urbium superatarum partim privatim per familias spargere, partim publice consecrare*.[290] Both Cato, referenced at the opening of this chapter, and Cincius Alimentus reference the practice of displaying religious objects in private dwellings, which was one of the main areas in which controversy over the seizure of booty came to a head.

The actions of a Pleminius or of a Caepio, who took temple spoils for their personal property, were clearly sacrilegious. But a Marcellus, who put formerly dedicated statues from Syracuse in his temple of Honos and Virtus, was viewed as generally

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[289] Churchill (1997) represents the prevailing current view that *praeda* was public property to be used in public interest. He views *manubiae* as property reserved from looting by an individual with *imperium*. Shatzman (1972) offers an argument for *manubiae* as denoting more than the money earned from sale of booty, but thought that *manubiae* could only be the property reserved by a general after a triumph. Miles (2008) offers a helpful extended discussion of plundered art with some concern over what the general was permitted to appropriate. Rüpke (2016) 80-82 discusses the distinctions between private, public, and sacred, on which see also Russell (2016). See also Cic. *Off*. 2.76 for a supposed ethos of correctly conducted looting in the period between the Second Punic War and the sacks of Corinth and Carthage.

[290] Arnob. *Adv. Nat*. 3.38 (from Cincius Alimentus): "The Romans were accustomed to scatter part of the religious items of conquered cities privately among families, and to consecrate part in public."

tolerable.[291] Yet this method was not foolproof. During his censorship in 174 BCE, Quintus Fulvius Flaccus (son of the victor at Capua) took a roof of marble tiles from the temple of Juno Lacinia in Croton.[292] He did so for the express and sole purpose of adorning his new temple of Fortuna Equestris in Rome.[293] Flaccus had vowed the temple to Fortuna Equestris six years previously while fighting against the Celtiberians as proconsul in Spain.[294] Livy explains that Flaccus took the tiles in order to make his temple the most beautiful in Rome, not for personal financial gain.[295] He could not even have done so in order to curry electoral favor for himself, having already attained the censorship.[296] However, upon his arrival back in Rome with the tiles, the senate decreed that the tiles must be returned to the original temple. *Piacula* were also performed. Still, the community could not find anyone who could reinstall the tiles, so they remained in a pile on the ground.[297] Worse, the theft of Juno's tiles took place amid an atmosphere of

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[291] For McDonnell (2006) 84, Marcellus' practice of spreading captured wealth around to other locations is part of a new self-promotion strategy that he pioneers, though the practice of keeping dedicated objects in sacred contexts was not new. See below for exceptions to Marcellus' tolerability.

[292] Val. Max. 1.1.20 reports the location of this temple as Locri in an apparent confusion between the incident involving Flaccus and that involving Pleminius. Croton is the correct location. See Mueller (2002) 36.

[293] The tiles were supposed to be magical. Anyone who wrote their name on a tile would live as long as the name remained there. See Wardle (1998) *ad* Val. Max. 1.1.20, citing Serv. Auct. *Aen*. 3.552.

[294] Livy 42.10.1-5. For his proconsulship, see Livy 40.39.1.

[295] Livy 42.3.1-11. Flaccus was a pontiff himself (Livy 42.28.10) and therefore in theory familiar with the correct treatment of sacred items.

[296] Orlin (1997) 191. Orlin speculates at some length about Flaccus' reasons for his vow. Of course, he could have made the temple grand in order to gain prestige for his family. At the time he had two living sons and a brother, Lucius Manlius Acidinus Fulvianus, who had been his consular colleague in 179.

[297] I am not certain why it was acceptable for the Roman senate to return the tiles but not to reassemble them. One of the problems cited against Flaccus' action was that the bared roof laid open to rot in the rain (Livy 42.3), a situation that was not rectified by simply piling the roof covering beside the temple. My best guess was that the main wrong done against Juno was the removal of her property, which was sufficiently rectified by its

religious malaise.[298] Immediately prior to the story of Juno Lacinia, Livy lists prodigies that occurred in light of the possible undertaking of a Macedonian War.[299] These were expiated with a *supplicatio* and the celebration of *feriae* that had been vowed the previous year. The connection between the prodigies and the tiles is heightened somewhat by the fact that Fulvius Flaccus' insanity, part of his punishment for sacrilege, is linked with the death of one of his sons and the wounding of the other in the context of the Macedonian War.[300]

Like the temple at Locri, the Crotonian sanctuary had a pedigree. Pyrrhus, and later even Hannibal, had respected the temple. Hannibal had dedicated an altar there that he labeled with an inscription in both Greek and Punic.[301] Incongruously, however, upon leaving Italy to retreat back to Africa, Hannibal murdered Italian defectors who had taken refuge within that very temple, *in templo ipso foede interfectis*.[302] As discussed above, the

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return. The arrangement of the tiles was either irrelevant or became so because of the apparent difficulty in reattaching them. Miles (2008) 78 n. 95 calls the failure to repair the roof on the grounds that it was too difficult "patently absurd," claiming that marble tiles were not so much more complicated to assemble compared to terracotta ones nor were they so uncommon.

[298] It should be noted, however, that temple plundering is never included in prodigy lists in Julius Obsequens (nor in Livy).

[299] Livy 42.2. Levene (1993) 108 remarks that it is slightly surprising that there was a prodigy list in the first place in the "optimistic context" of the Macedonian War. He also connects the prodigies with Flaccus' transgression and ties it to the broader phenomenon of Roman mistreatment of allies in books 42 and 43 of Livy.

[300] Val. Max. 1.1.20: *quin etiam per summam aegritudinem animi expiravit, cum ex duobus filiis in Illyrico militantibus alterum decessisse, alterum graviter audisset adfectum*. "But he died in great sickness of spirit, since of his two sons fighting in Illyricum, he heard that one had died and the other had been gravely wounded."

[301] Livy 28.46.16: *propter Iunonis Laciniae templum aestatem Hannibal egit, ibique aram condidit dedicavitque cum ingenti rerum ab se gestarum titulo, Punicis Graecisque litteris insculpto*. "Hannibal passed the summer near the temple of Juno Lacinia, and there he founded and dedicated an altar with a huge inscription of his deeds, engraved with Punic and Greek letters."

[302] Livy 30.20.5-6: "in the temple itself foully killed."

history of a specific god and a specific temple was important in determining which god would be angered by an outrage, and the degree of anger that had to be feared. Surely while reporting the theft of the tiles to the senate, the Crotonians had mentioned the pious actions of Pyrrhus and Hannibal.

The residents of Croton had been unable to stop Flaccus because of his position as censor. Flaccus' story is undeniably one of abuse of censorial authority, but it is also a story of sacrilege.[303] Livy explains that the senate at large condemned his action and had the tiles returned not because he was a bad censor, but on the grounds that Flaccus had managed to *obstringere religione populum Romanum*.[304] Livy puts a major theological statement into the mouths of the senate when he has them universally claim that Flaccus had acted *tamquam non iidem ubique di immortales sint, sed spoliis aliorum alii colendi exornandique*.[305] The inappropriateness of cultivating gods with the spoils of other gods is a view professed here, but it is not one that was always maintained. The spoils of Syracuse, which seem to have been largely acceptable when displayed in sacred contexts, present a key counterexample. In Flaccus' case, it is extremely important that Croton was an ally at the time rather than an enemy. Items were not, apparently, transferrable from one ally to the other.[306]

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[303] Livy 42.3.8 cites the censor's duties in repairing shrines in contrast with Flaccus' despoliation. Orlin (1997) 156 observes that Flaccus "must have used censorial money to transport the tiles to Rome."
[304] Livy 42.3.9: "constrain the Roman people with *religio*."
[305] Livy 42.3.9: "as if the immortal gods were not the same, but some could be cultivated and decorated with the spoils of others."
[306] Livy 42.3.3.8 explains that Flaccus was charged with *per sociorum urbes diruentem templa*, "destroying temples through the cities of allies." This is similar to the complaint Pausanias lodges against Sulla for his rededication practices, on which see below, p. 115.

Oddly, Fulvius Flaccus' censorship, shared with Aulus Postumius Albinus, was reviewed by Livy as lacking in drama. The dedication of the temple of Fortuna Equestris occurred without apparent disruption that year, including four days of stage games and one of circus games.[307] This is strange, because the temple dedication appears to have occurred after the drama in the senate regarding the surrender of the tiles, which arose as the tiles were unloaded from the ships.[308] Perhaps, however, the dedication took place before Fulvius Flaccus began to suffer from the insanity afflicted upon him by the angered goddess. However, in Valerius Maximus' version, the senate ordered the tiles to be returned to Juno because of the fate of Flaccus (*cuius casu*), which is incompatible with Livy's account, which implied an immediate response from the moment the tiles were unloaded from the boat.[309]

But the disjunction between Livy and Valerius Maximus, while frustrating for understanding the actual historical consequences of Flaccus' actions, is instructive for what it indicates about Roman understandings of the relationship between civic and divine authorities. In the case of Quintus Fulvius Flaccus and his tiles, as far as we can tell from the accounts of Livy and Valerius Maximus, *both* the senate *and* the goddess policed his action, possibly simultaneously. The senate and the gods had twin purposes here. This was a statement on the authority of the senate to determine – correctly – the

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[307] Livy 42.10.1-5.
[308] Livy 42.3.4-5.
[309] Val. Max. 1.1.20. Mueller (2002) 38 explains, "…it would not be unreasonable to conclude that Valerius actually implies that after the senate perceived the misfortunes of the man, they realized the irreligious nature of his previous deeds, and of course then hastened to set things right again." He notes this as a particular feature of Valerius Maximus' reading, observing that in Livy, Flaccus' misfortunes postdate his censorship. In contrast, Wardle (1998) *ad* 1.1.20 feels strongly that the incident with the tiles occurred in 174 and claims (p. 124) that Valerius Maximus believes Flaccus to have been insane from the moment he took the tiles.

will of the gods. It is the same principle that was at work when the senate declared that the statues taken from Capua could be reviewed by the pontiffs to determine their sacred character. It is also the same principle in operation when the senate determined which prodigies were valid and which were not.

Both Valerius Maximus and Livy diagnose Fulvius Flaccus with insanity that led him to suicide by hanging after his censorship. Livy offers grief over the fate of his sons as a possible explanation, but also reports an opinion (held *volgo*) that his insanity was thanks to the "anger of Juno Lacinia on account of the despoiling of her temple."[310] Valerius Maximus offers only divine madness as explanation. The plurality of explanations does not matter for my larger point. Livy's account tells us at least that there was public talk that Flaccus had suffered for his actions against Juno. Rome as a body had rectified the looting situation by returning the tiles and making *piacularia*.[311] This seems to have been the end of the affair as far as the rest of Rome was concerned. The Romans did not even need to repair the temple of Juno. The key to appeasing the goddess was only in returning her property, not in restoring the building. This is an odd detail considering how important the structural integrity of sanctuaries was, as will be discussed in the next chapter. But although the state had been absolved of wrongdoing, that did not mean that an individual culprit would face no consequences, as Valerius Maximus tells us. His story of Flaccus' insanity shows that the relationship between the gods and Rome could be rectified while still leaving a responsible individual figure vulnerable to divine vengeance.

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[310] Livy 42.28.10-13: *Iunonis Laciniae iram ob spoliatum templum.*
[311] *Piacularia* are mentioned only by Livy 42.3.10.

Fulvius Flaccus was not alone in being criticized for stealing sacred objects for religious use in Rome. Marcellus, later held up by Cicero as a paragon of correct behavior regarding plunder, could be reasonably criticized for the threat he posed to dedicated objects.[312] Livy remarks that in his own era, none of the statues Marcellus had placed in the temple of Honos and Virtus remained.[313] They had been subsequently co-opted by someone else in a sort of comeuppance for the Romans, who had looted them in the first place. This is what Livy means when he comments:

> *primum initium mirandi Graecarum artium opera licentiaeque hinc sacra profanaque omnia volgo spoliandi factum est, quae postremo in Romanos deos, templum id ipsum primum quod a Marcello eximie ornatum est, vertit*.[314]

This sort of argument against the placement of plundered artifacts in Roman temples is partly practical, but with theological implications. If Marcellus could transfer sacred objects from one temple to another, those objects could be transferred again. It is surprising that Marcellus' successful family was not able to protect the items (unless they themselves played a role in the despoiling?).[315] The collection of booty, sacred or not, opened a secondary spoils market that could begin even before the objects arrived back in Rome.[316] The secondary market carried risks for generals that were similar to those they

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[312] Cic. *Verr*. 2.1.55.
[313] Livy 25.40.
[314] Livy 25.40.2: "The first beginning was made of admiring works of Greek art and of license in despoiling all things sacred and profane in common, which finally turned against the Roman gods, first upon that temple itself which had been splendidly ornamented by Marcellus."
[315] On shrines founded by other Marcelli near the temple of Honos and Virtus, see Flower (2003) 48.
[316] Cic. *Att*. 5.5.20 records that he sold the captives from Pindenissus within three days of taking the city. Strab. 14.5.2 discusses the growth of the slave market at Delos in the wake of the capture of Carthage and Corinth. See Miles (2008) 156 on the growth of an

faced when taking spoils directly from the sacking; Scipio Aemilianus is supposed to have refused to purchase any booty from Carthage.[317] And items could be passed to more or less pious owners, as supposedly had happened to the Hercules Epitrapezios praised in the poem of Statius, which was said to have witnessed the abuse of Saguntum by Hannibal, before passing to Sulla, another owner with a penchant for taking items from temples.[318] A market in formerly dedicated objects, once established, could be perpetuated. The effect was a slippery slope; on the one hand, the Romans had generally condoned the practice of displaying spoils from enemies in appropriate contexts in temples and not in personal villas. On the other hand, it inevitably led to the practice Pausanias wryly referred to as worshipping gods with others' incense.[319]

In scholarship, discussion of successful integration of a new god, or of a new god's items, into Roman religious life is not frequently paired with a similar discussion of instances of failure. Instances in which a god was brought to Rome are often connected to the ritual of *evocatio*, or are explained as arranged importations, such as that of Asclepius.[320] But the phenomenon of *evocatio*, a rarely performed ceremony and possibly not even a formalized process, was only one of the means by which a new god, or new

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art market after the capture of Corinth. She alludes to dedication as a means by which objects could be kept out of the market, but Livy's comment indicates that this method was imperfect.

[317] Polyb. 18.35.9. See Miles (2008) 71.

[318] Stat. *Silv*. 76-84.

[319] Paus. 9.30.1.

[320] Gruen (1992) 86f is the best existing discussion of the relationship between *evocatio* and plunder. See also Miles (2008) 46, 94; Ando (2008) chapter 6 discusses the phenomenon at length. Ando (2008) 143 claims that in every case of *evocatio*, the gods consented to move to Rome. I would argue that if *evocatio* is studied in the context of sacrilege, the episodes of sacrilege could be seen as species of failed *evocationes*.

objects pertaining to the gods, could enter Rome.[321] I propose an alternative to the model of *evocatio* – an *evocatio* spectrum, as it were – in order to understand the full range of possible reactions that a god could have to Roman appropriation. In some cases, the god firmly conveyed his or her refusal to have objects possessed by Rome with a display of vengeance that could either accompany or replace state-sponsored punishment. This was the response of Proserpina and of Juno Lacinia. However, there were also marginal cases in which a general rededicated plundered sacred items in a temple context back in Rome, like Marcellus or Fulvius Nobilior did, in moves that were criticized by some but were largely successful.

Sulla's co-optation of religious property in Greece during his Mithridatic campaign provides a useful case study for understanding the interplay of political dominance and divine consent required to successfully bring religious booty back to Rome. Sulla was a deeply religious individual, and he appears to have largely successfully managed to acquire treasure from sanctuaries in a way that was seen as permissible by his Roman audience, if not always a Greek one.[322] In 87-86, Sulla invaded Greece in order to attack Athens, which had sided with Mithridates. Athens knew that he posed a threat to religious items; that winter a shrine to Demeter and Kore at Eleusis burned. The Athenians appear to have anticipated the Romans' arrival by stashing particularly valuable monumental statues of the gods in warehouses in the Piraeus.[323]

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[321] See Gustafsson (2010) 46-62 for all apparent historical instances of *evocatio*. See Livy 5.21 for the most complete description of *evocatio*, and Macr. 3.9.9b-15 for the prayer formula supposedly used at Veii.
[322] On Sulla's religious background, see Flower (2015a).
[323] Habicht (1997) 304-311. For the burning of the shrine at Eleusis, which Habicht thinks was probably a Roman action, see *IG* II^2.1338.11-12, 27. Sulla may have been initiated in the mysteries at Eleusis when he returned to Athens in 84 (Plut. *Sull*. 26).

Sulla appropriated a number of religious objects in a tight time frame during his campaign against Mithridates and his supporters in Greece in the 80s.[324] Some of these items, such as the columns from the Olympieion in Athens, were intended for use in religious structures back in Rome, similar to the purpose intended by Fulvius Flaccus for the tiles of Juno Lacinia.[325] It is unclear whether Sulla experienced any negative reception in Rome for the specific theft of the columns. They had been taken in a war context and for a religious purpose, both factors associated with divine and civic approval. Pausanias recounts another incident in which Sulla captured a statue of Dionysus from the Minyae of Orchomenus, presumably in the wake of the Battle of Orchomenus in 85. He dedicated that statue later at Helicon, a pious act, but one that Pausanias explains was still subject to censure locally because it was worshipping the gods θυμιάμασιν ἀλλοτρίοις.[326] Pausanias makes it clear that the criticism was derived from a specifically Greek saying. On the basis of the number of booty objects dedicated in Rome, Romans do not appear to have entirely shared this perspective. Cicero later charged Verres with having also taken gold from the Parthenon. Without mention of Sulla, Cicero complained that Verres had put the treasure in a private home. It is implied that display in a public space was laudable.[327]

Regarding the statues, the Athenians themselves may have taken them from Delos, according to some scholars.

[324] Hoff (1997) describes the Sullan plundering of sacred and secular objects from Athens.

[325] Plin. *HN* 36.45. From Pliny's notice (*ex quo Sulla Capitolinis aedibus advexerat columnas*), it seems as if the columns were employed in more than one structure on the Capitoline because of the plural *aedibus*. They cannot originally have been intended to rebuild the Capitoline temple, which would not burn until 83.

[326] Paus. 9.30.1: "with other people's incense." Pausanias seems similarly grieved in 10.21.5-6 where he recounts that Sulla took a shield from the temple of Zeus Eleutherios that had been dedicated by the family of a youth killed in the struggle between the Greeks and Brennus. Pausanias does not reveal what Sulla did with the shield.

[327] Cic. *Verr*. 2.1.45, on which see Habicht (1997) 331.

Sulla's actions were more calculated when it came to the items appropriated for the sake of raising capital during the siege of Athens. As with Greek communities in duress, it was acceptable in the Italian peninsula to use dedicated objects to raise funds for the good of the community and with the consent of that community, as the *lex Furfensis* illustrates.[328] This is the principle to which Sulla was adhering here. He had the ἀναθήματα of Epidaurus and Olympia sent to him.[329] Here ἀναθήματα seem to refer specifically to religious dedications, an identification that becomes more secure when Plutarch follows with his account of Sulla's appropriation of the Delphic treasure. The Delphic material is the most interesting because rather than simply taking it, Sulla convinced the Amphictyones that the items would be safer in his hands than at Delphi. He used coercion to gain the resources he wanted, but it was a technically acceptable path insofar as the god's property was being given (lent, even) rather then technically stolen. Sulla had gotten approval for his action from the civic authorities. Plutarch, who himself served as a Delphic priest, would have had access to Delphic archives and understood the administration of the dedications. He also is known to have made heavy use of Sulla's memoirs, and would therefore have been aware of the way that Sulla himself characterized the events at Delphi.[330] Given that, Plutarch probably accurately describes the procedure as Sulla saw it, and also conveys its coerciveness due to his own self-interest and specialized knowledge.

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[328] See discussion of the *lex Furfensis*, below. On Roman borrowing of temple property, see Granio Cecere (2009) 37-38. Val. Max. 7.6.4 records a *senatus consultum* that allows for the melting down of metals in temples during the conflict between the younger Marius, Carbo and Sulla for *stipendia* payments.
[329] Plut. *Sull*. 12.3.
[330] On Plutarch's views on Delphi, see Casanova (2013). On Plutarch's use of Sulla's memoirs, see Flower (2015b).

Sulla left the possibility open that he would spend the treasure and need to repay the amount spent. There is an odd dissonance in Sulla's promise to "more safely guard" the treasure if he was intending to use it as an income source. He intended to preserve only the financial value of the items rather than the items themselves. In the same passage, Plutarch laments the fate of a silver jar dedicated by Croesus that Sulla had cut up for transport. The items had to be secreted away without the knowledge of most of the Greeks, Plutarch explains, presumably because they would have disapproved. Sulla evidently did not place the same cultural value upon Croesus' treasure as Plutarch later did, but he later treated a statue of Apollo taken from Delphi as a talisman, carrying it with him whenever he went into battle. Both the form and pedigree of the object were important in Sulla's selection of that particular statuette, indicating that he was not inclined to disassemble *all* of the treasure callously.

Having addressed the civic barriers to the acquisition of Delphic gold, Sulla then faced the religious ones. When Sulla's man, Caphis, was sent to gather the treasures, he did not want to touch the items and he wept. The Amphictyons told him that they had heard the lyre of Apollo playing in the sanctuary, which they appear to have taken as a sign of his displeasure. Caphis relayed this to Sulla, who σκώπτων ἀντέγραψε θαυμάζειν τὸν Κάφιν, εἰ μὴ συνίησιν ὅτι χαίροντος, οὐ χαλεπαίνοντος, εἴη τὸ ᾄδειν: ὥστε θαρροῦντα λαμβάνειν ἐκέλευσεν, ὡς ἡδομένου τοῦ θεοῦ καὶ διδόντος.[331] A religious man who consulted the oracle himself, Sulla could be depended upon not to make the error of

[331] Plut. *Sull*. 12.5: "Scoffing, he wrote back that he was astounded that Caphis did not understand that the playing was done in joy, not in grievance. Therefore he ordered Caphis to courageously take what the god gladly gave."

underestimating a god like the Delphic Apollo the way that Caepio had.[332] His method to avoid divine anger while committing an act that looked a lot like sacrilege was to assume that the god's purpose was the same as his. The σκώπτων, Sulla's scoffing, does not compromise Sulla's clever and serious religious interpretation. Sulla cast himself as the one who could decode Apollo's sign, undermining the concerns of the locals.[333] His cavalier attitude in Plutarch's account is likely to be an indication of the author's own displeasure with Sulla's action rather than a reflection of account of Sulla's own attitude. The Delphic incident is remarkable because it preserves a variety of opinions on a single act of appropriation. The Amphictyons differ from the Capuans or Sicilians, whose complaints were taken seriously in the senate, only in that they had themselves agreed to allow the Roman to take the treasure. Sulla also dodged the divine rejection that brought down Caepio and Fulvius Flaccus. Sulla's interpretation of the lyre omen is not so different from Rome's reading of the nod that Juno Regina is supposed to have made when she consented to forsake Veii, though Apollo approved the movement only of his possessions rather than of himself. In this episode, Delphic Apollo settled for something

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[332] Balsdon (1951) 8-9 and Flower (2015a) 305-307 for discussions of Sulla's consultation of Delphi. Balsdon favors a date of 87, before he began to take Greek treasure, whereas Flower places the consultation between Sulla's victories in Greece and his move to Asia Minor, implying (p. 308) that his apparent lack of interest in talking about his consultation at Delphi may have been due to a "cool reception" there.

[333] Krysiniel-Józefowicz (1951) 146 similarly claims that Scipio's confidence in his own relationship with the gods may have justified his actions at Locri. Toynbee (1965) 620 also entertains briefly that Scipio could have thought that he was the chosen one of the gods and for that reason had robbed the treasury of Proserpina. Toynbee rejects this reading, claiming that Scipio "had imbibed enough of the skepticism that was at its peak in the Hellenic World in the third century BC to allow him with equanimity to contemplate robbing the Locrian Persephone." The belief that one enjoys unique divine favor does not need to be mutually exclusive of pragmatic use of sacred treasure, however, as the example of Sulla and Delphi demonstrates nicely.

of a middle ground between sacrilege and full *evocatio*, remaining at Delphi but, according to Sulla, allowing the removal of his dedications.

Though Sulla's action was variously reviewed by posterity, he does seem to have successfully convinced himself and his troops of the legitimacy of the appropriation of the Delphic treasure. The statuette of Apollo, alluded to above, had been taken from Delphi, probably during the ransacking of treasures in 86.[334] The object went on to play a key part in inspiring his troops to readiness in battle.[335] Sulla made a point of embracing and praying to the statue in *conspectu exercitus*.[336] It could not have had a positive effect if the troops were concerned that it had been sacrilegiously snatched away from the god, nor would Sulla have implored Apollo to uphold his promises in such a situation (*orabat petebatque, promissam victoriam maturaret*).[337] All parties would instead have been filled with the dread that was said to have confronted Pleminius' or Hannibal's troops. Sulla did succeed in branding his act as positive at least among his own army, though his embezzlement of divine property was not universally met with acclaim. Sulla's later ill health, involving the putrefaction and infestation of the flesh in one version, was a result of a tradition that liked to see bad people, including sacrilegious people, suffer. Plutarch does not explicitly draw this connection, blaming Sulla's lifestyle for his condition, but it is not so different from the insanity that beset Fulvius Flaccus or Caepio.[338]

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[334] Front. *Strat*. 1.11.11 uses the term *sustulerat* of Sulla's taking of the statue. The term in context implies that in the later tradition at least, it was seen as a theft. Balsdon (1951) 7 thinks it was stolen. Flower (2015a) 305 suggests the possibility that he acquired it on the occasion that he consulted the oracle.
[335] Val. Max. 1.2.3; Front. *Strat*. 1.11.11; Plut. *Sull*. 29.6-7
[336] Front. *Strat*. 1.11.11. Val. Max. 1.2.3 has *in conspectu militum*.
[337] Front. *Strat*. 1.11.11: "prayed and begged that they bring to pass the promised victory." The other versions contain similar sentiments.
[338] Plut. *Sull*. 36. See also Plin. *HN* 7.134, 137.

When Sulla appropriated Apollo's treasure and made an image of the god into his personal mascot, he was asserting that he could personally know what the god would allow him to do with divine property. Romans typically understood themselves as being able to judge correct behavior towards the gods.[339] This was apparent when the senate entrusted the pontiffs with the power to judge which Capuan spoils were sacred. They were similarly no strangers to wholesale importation of gods, who were imagined to have been able to communicate their willingness to move to Rome. Propertius' Vertumnus was imagined to say that he was pleased enough to have abandoned his old seat because *Romanum satis est posse uidere Forum*.[340] Juno of Veii's statue is supposed to have nodded her agreement, or otherwise signaled her assent.[341] *Evocatio* was not the only way of co-opting a god, and it was not always desirable. Sulla needed only Apollo's goods, preferring to leave his seat at Delphi. He enacted a partial cooptation that was predicated on his personal authority and on the agreement of the Amphictyons that proved effective. A formal prayer of *evocatio* was not the same thing as the snatching of a statue and later justification of it, but both depended upon the assumption that the will of the gods was knowable for the Romans.[342] It makes sense that the gods might even have favored

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[339] Miles (2008) 94: "What the gods thought about Roman plundering seemed knowable to ancient observers."
[340] Prop. 4.2.7: "It is enough to be able to see the Roman forum."
[341] Livy 5.22.3-7.
[342] Gustafsson (2010) argues that, while *evocatio* may have existed as a historical ritual (p. 15), it cannot be reconstructed as a specific historical practice. Neither was a single rite of *evocatio* the only means by which a new god came to Rome. My view is compatible with the idea that *evocatio* cannot be defined as a single rite. I suggest instead that there were a variety of rites, all making assumptions about the will of gods from elsewhere in relation to Rome, of which both *evocatio* and outright divine revenge formed ends of a spectrum. She also mentions (pp. 132-134), though does not subscribe to, the theory that *evocatio* of a tutelary deity may have been necessary in order to avoid

Roman looting, even of their own items. Sometimes deities stood to gain materially from Roman conquest, either through a vowed temple or vowed spoils.[343] Acts of divine disfavor are simply the opposite of instances in which the gods were supposed to have agreed to favor the Roman cause – and to have allowed the movement of their property. Fabius Maximus' command against the plundering of statues of gods upon his recapture of Tarentum in 209 is instructive: ... *deos iratos Tarentinis relinqui iussit*.[344] The gods left at Tarentum were angry with the Tarentines, not the Romans, or they would not have allowed Rome to capture Tarentum.

But Fabius Maximus' remark raises a question: was it dangerous for Rome to import angry gods? By displaying anger, the gods conveyed their disapproval of humans' actions. Taking divine property was a real test of divine will. If there was no response, approval was granted. Retribution, whether solely by a god or through accepted human agents, was proof that consent had not been given. It is interesting to note that the Greeks were left in a position very much like the Locrians or the Capuans after Rome's conquest. The key differences between them were that Sulla managed clever moves like justifying some of his co-optations as "loans," and the Roman audience's acceptance of Sulla's actions was not disturbed by accusations from the wronged parties. It is also noteworthy that, though Sulla is presented by scholars as the first Roman to take sacred objects, the

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the sacrilege associated with conquering a city with its deity intact. Part of that risk may come from the danger a sacking poses to sacred places and items.

[343] E.g. Livy 21.2: Camillus is supposed to have offered Apollo a tenth of the Veiiantine spoils. Even in defeat, the gods were supposed to have been willing to make sacrifices to support Rome. After Cannae, Rome used spoils from temples to equip troops (Livy 22.57.10). See Humm (2009) for discussion.

[344] Livy 27.16.8: "He ordered the angry gods be left to the Tarentines." It should be noted, however, that Fabius did in fact take statues from Tarentum. See Plu. *Fab*. 22.5; Plin. *HN* 34.40 for a statue of Hercules. Gruen (1991) 101-102 discusses this incident.

previous examples in this chapter have shown that the practice was in place earlier in the second century.[345]

V. Sacrilege on a Local Level

The above discussion has focused on the evaluation of sacrilege on an international scale, dealing primarily with the theft by Roman agents of items originating in other cities. However, this emphasis falsely presents the theft of dedicated objects as solely an elite and state issue, ignoring the fact that all communities had dedicated objects, and that there were sacred items even at the level of a single household. Much of the above discussion has focused on the role of the senate in adjudicating and remediating acts of sacrilege by magistrates and their armies, either on their own or when prompted by a complaint. There is evidence that sacrilege was evaluated in a parallel manner on a local level. The *lex a vicanis Furfensibus templo Iovis dicta* from 58 BCE explains how dedicated items could be sold for profit, with the consent of the civic authorities of the town of Furfo, near modern L'Aquila:

> Sei quod ad eam aedem donum datum donatum dedicatum/que erit, utei liceat oeti venum dare. Ubei venum datum erit, id profanum esto. Venditio / locatio aedilis esto quem quomque veicus Furfens(is) fecerint, quod se sentiat eam rem / sine scelere sine piaculo, alis ne potesto. … Quod emptum erit aere aut argento / ea pequnia, quae pequnia ad id templum data erit, quod emptum erit, eis rebus eadem / lex esto, quasei sei dedicatum sit. Sei qui heic sacrum surupuerit aedilis multatio

[345] E.g. Habicht (1997) 304-311. See the dissertation by Kleinman (2018) for a discussion of Roman responses to cooptation of sacred and non-sacred property in the mid-Republic.

esto / quanti volet, idque veicus Furf(ensis) mai(or) (p)ars fifeltares sei apsolvere volent sive condemnare, / liceto.[346]

In this *lex*, as Adamik concisely explains, "… intention and aim are clear and unambiguous: every activity can be done in the interests of the temple, that is, in order that the temple may be profitable."[347] It is a strikingly liberal attitude towards temple property, but with care taken over the stipulation that profit remain with the temple. The decision to deconsecrate a dedication was dependent upon the perceived need of the community, not the perceived need of the god.[348] At Furfo, the aedile was the highest magistrate elected by the people.[349] He decided how to sell property and determined the fine in case of incorrect conduct. That is, assessment of correct behavior with temple goods was done by a civic authority.

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[346] *ILLRP* 508. Adamik's 2003 text is now the standard. "If something shall be given, donated, or dedicated as a gift at this temple, let it be permitted to use or sell [that thing]; when it shall have been sold, let it be profane. The sale or leasing shall be up to the aedile, whomsoever the village of Furfo shall create, so far as they feel that they are willing, without impiety or guilt; … What shall be bought with bronze or silver, for that money, which money shall have been given to this temple, what will have been bought, to those things the same regulation is to apply as if they had been dedicated. If anyone here steals a sacred object, the aedile has to punish him, in what degree he will, and it shall be permitted to the village of Furfo, to the more important part, to the fiduciaries, if they want to acquit or condemn him." (Translation adapted from Ando (2015) 71-72, who himself adapted from Adamik, as well as from Adamik (2003).) For discussion, see also and Adamik (2003) and Watson (1968) 9-10.

[347] Adamik (2003) 78.

[348] Granio Cecere (2009) suggests that epigraphic evidence can be used productively to estimate the property of Italian sanctuaries.

[349] Laffi (1978) 136. Laffi considers the administration of Furfo to be similar to that of other Roman towns. The consular dating in the first two lines of the inscription indicate a Roman cultural context. Adamik (2003) 79 also explains that Jupiter Liber may have been associated with Jupiter Libertas, who had an Aventine temple dedicated on April 13, the same month and day that has been submitted by Radke as that meant by the "month of the flowers" in this inscription. The town likely revolted during the Social War due to its proximity to Corfinum.

The determination of whether the culprit was guilty or not was left to the Fifeltares.[350] The Fifeltares have been interpreted variously as (an elite) subset of the community of Furfo, the entirety of the community, or as elected officials.[351] It is safe in any case to interpret them as being representatives of the *vicus Furfensis*, as VEICUS FURF is juxtaposed with the Fifeltares and can be restored securely. It is not important to my interpretation exactly who the Fifeltares were, only that a combination of the elected aedile and other citizens held the power to determine the extent of and penalty for sacrilege.[352] Community consensus operated in Furfo as it did in the Roman senate when it was faced with a claim that a Roman agent had committed sacrilege. The human agents were the ones who determined whether or not it was appropriate to use a dedicated object for any purpose other than that for which it was dedicated. This is partially why it was so essential that sacred property not be secreted away in private homes. There, the community would have lost the ability to control that wealth should the need have arisen.

This document, as a normative legal text, presents the ideal, correct means by which sacrilege could be avoided. Less clear, though negatively defined by the procedure outlined here, is a prohibition against use of dedicated objects that had not been desacralized. The law implicitly condemns theft by private individuals in addition to providing a mechanism for avoiding the incorrect use of dedicated objects. It is implied

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[350] Lines 14-16: *Sei qui heic sacrum surupuerit aedilis multatio esto* / *quanti volet, idque veicus Furf(ensis) mai(or) (p)ars fifeltares sei apsolvere volent sive condemnare*, / *liceto*. I follow Huschke and, more recently, Adamik (2003) 80 and Gordon (1983) 140-142 in interpreting the Fifeltares as being civic authorities. Alternate opinions include that of Laffi (1978) 140, who read the text instead as FIF ET TARES, referring to two separate peoples, the Fificulani and the Taresuni.

[351] Laffi (1978) 142 argues for community jurisdiction.

[352] Compare to the role played by the "magistrate" in the Lex Lucerina (*CIL* I^2 401 = *CIL* IX 782 = *ILS* 4912 = *ILLRP* 504); the assembly in the Velletri inscription (*Ve*. 222); the dicator in the *lex luci Spoletina*. These are all discussed fully in the following chapter.

that a *piaculum* was required if someone took objects without the approval of the aedile, because it is stated that a *piaculum* was not required if done with approval.[353] The law from Furfo also proves that there were fears that misconduct would display itself within communities, and had to be regulated against. In this law there is no clear statement of the nature of divine retribution that could be expected in a case of sacrilege, but the need for a *piaculum* suggests that it was feared. The law does state for certain that there was a civil punishment, though, which apparently could vary in nature and severity depending upon the judgment of the Fifeltares.

Tertullian has the following to say about people who repurposed statuettes, though he speaks of personal votives rather than those displayed in sanctuaries:

> Domesticos deos, quos Lares dicitis, domestica potestate tractatis pignerando venditando demutando aliquando in caccabulum de Saturno, aliquando in trullam de Minerva, ut quisque contritus atque contusus est, dum diu colitur, ut quisque dominus sanctiorem expertus est domesticam necessitatem.[354]

Tertullian's invective cannot be used as straightforward evidence for actual practice surrounding divine images and may have more to do with early Christian fears surrounding Roman religious practice than with said practice. However, since, as the *lex a vicanis Furfensibus templo Iovis* demonstrates, there did arise scenarios in which it would be desirable to melt down statues and other gifts to the temple; otherwise there

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[353] Line 10.

[354] Tert. *Apol*. 13.4: "The domestic gods, whom you call Lares, you treat with a domestic authority, pledging, selling, transforming them, sometimes a pot from a Saturn, sometimes a ladle from a Minerva, when each is worn and punctured from having been long used in cult, as each master experienced a 'more sacred' necessity of the household."

would have been no need to have a law. The same impulses (financial need being chief among these) would have affected private individuals.

These examples of local sacrileges, coming from within the Roman cultural sphere, raise the same issues of danger to the community as those occurring during international conflict. Romans disapproved of transgression against sacred items, even if they were only dedicated in the home, and they conveyed this with both social norms and laws. A taboo against theft of sacred items caused soldiers in the midst of plunder to hesitate and provoked generals to leave behind valuable treasures. The contours of the regulations from Furfo parallel, or perhaps were modeled on, practices of the Roman senate in identifying and remedying transgression. In all cases, the incident had to come to the attention of representative civic authorities, who would judge the validity of the grievance and prescribe restitution for the gods and punishment for the culprit. Interest in reprimanding a responsible individual is demonstrated at all scales.

Conclusions

The inscription from Furfo was meant to prevent religious transgression by spelling out permissible and forbidden ways of treating property, and by explaining how to rectify any damages that might occur. This text offers a précis on the scale of a single community of attitudes towards the protection of sacred property in the Roman world. In general, the Romans preferred to avoid transgression by making sure that their actions were technically allowable. A person trying to take up temple property could solidify claims that a looting act was not sacrilege at all, as Sulla did by claiming that the property

he took from Delphi was a loan. This tactic was not always successful. In the examples discussed above, this careful equilibrium could be disturbed by earthly factors such as a complaint against Rome from a politically relevant polity. The gods could also signal that an outrage had occurred by sending bad omens, by allowing a Roman army to be defeated, or by driving a culprit of transgression mad.

In those cases, Roman institutions asserted their abilities to assess and repair transgressions. The senate was the most important of these bodies. The examples marshaled in this chapter illuminate the senate's role as a religious body. The senate was not only competent to decide what to do when omens were reported. The examples in this chapter have shown that they were also the body that could address other religious crises such as how to address the looting of consecrated items. In smaller communities like Furfo, civic assemblies and magistrates fulfilled similar roles. This trend will be observable in the following chapter on the violation of sacred space as well. Magistrates were also sources of religious authority. In the previous chapter I noted the sometimes controversial duty of the military commander in accepting or rejecting omens in the field. In military operations, generals again had the power of deciding how the looting would proceed, though they also usually bore the brunt of the blame and divine punishment if transgression did occur. The role of the praetor in investigating the two instances of theft from the temple of the Locrian Persephone is also noteworthy. A praetor had the authority to make a judgment on Scipio Africanus' complicity in Pleminius' sacrilege and was also sent to find the culprits of the 200 incident. Rome's method of assessing religious propriety means that religious crises were addressed by assemblies and individuals that were also deeply embroiled in the political dramas of the day.

While thefts could be a matter of life or death, Rome was confident in the ability of its institutions to assess and ameliorate cases of sacrilege. The senate or local body directed both expiatory and punitory efforts. Expiation and placation were the most important elements and usually took the form of the return of the stolen property and additional offerings. The most common form of punishment was forcing the thieves to return the property to the god. Restitution appears to have been the key step to repairing the relationship between Rome and gods, and indeed between Rome and the city that it had looted; the wronged cities came to Rome to ask that their things not be taken. The expiatory gestures were sometimes, but not always, accompanied by further punishments for the guilty parties. Death was not a common punishment because it seemed to have been preferable to allow the gods to kill the culprit themselves. This is perhaps surprising, insofar as charges of sacrilege tended to cluster around famous, powerful, or particularly independent generals: the likes of Marcellus, Sulla, or Pleminius. Part of the story of stolen sacred objects is the story of how the senate controlled, or failed to control, Rome's commanders.

This chapter surveyed looting incidents from the 3rd to 1st centuries but focused on the Second Punic War as a moment of innovation in Rome's practices relative to Italian and Hellenistic powers. During the Second Punic War, Roman commanders and the senate were learning to adjust the ways that they treated Italian and Hellenistic goods and sanctuaries. Difficulties at places such as Locri and Capua show that Rome's relationship with sanctuaries was renegotiated in this period.[355] Hannibal's invasion of Italy provided the central context. The particularities of the political situation between Rome and the

[355] For a framing of the problems of Italian sanctuary property, see Scheid (2009).

relevant city heavily influenced whether or not raiding a sanctuary would be considered transgressive and whether Rome would make restitution. Some of Rome's treatments of communities in Italy resembled those they used on larger Hellenistic cities, as the parallels between Locri and Syracuse show. However, the concern that figures like Marcellus and later Sulla showed in casting themselves not only as not thieves, but even as patrons in the communities that they took booty from has no clear echo in Italy. The closest parallel is Rome's continued surveillance of the temple of Locrian Persephone after Pleminius' punishment in 204, but that was undertaken partially as a pretext for subduing the Bruttii. The next chapter turns to violation of sacred space and retreads some of the same problems of how Romans thought about Italian sanctuary spaces and their property and the efforts made by both groups to avoid transgressions in the first place.

Chapter 3:

Violations of Sacred Space

While the dramas surrounding incidents of theft involved only the removal of items from sanctuaries, a complementary problem arose from the fact that sanctuaries themselves could also suffer damage. In this chapter, I analyze the nature of the religious threat posed by violations of sanctuaries, specifically temples and groves, and ask how those damages were rectified.[356] Sanctuaries were the habitations of the gods, so dirtying them, whether by bloodshed, filth, or the introduction of some forbidden object, made a god's home inhospitable. I argue that the Romans had a concept of religious pollution concerned specifically with damage to spaces. When a space was polluted, not only were ritual activities disrupted, but the god could even go so far as to abandon the community. I ask how a community could rectify pollution and how concrete restoration efforts worked alongside propitiation to appease the god. This chapter places two types of evidence into conversation: narrative accounts of sanctuary violation and actual epigraphic documents that record laws governing conduct in Italian sacred groves. The literary evidence is discussed first in order to establish how spaces could be polluted and how they could be fixed. I then turn the same set of questions to the epigraphic evidence.

Literary sources often present a retrospective and crisis-oriented perspective, and therefore paint a limited picture of how Romans conceptualized transgression, as has been observed in the previous two chapters. The grove laws can provide access to cultural norms surrounding the treatment of sacred spaces. They make it possible to see

[356] On the inviolability of Roman sanctuaries, see Varro *LL* 7.10. Lennon (2014) 44 gives some bibliography on sacred space and also on consecration in a Roman context.

the ways in which communities explained and responded to their ideas of transgression. Grove laws can fill in the gaps left by the narrative sources about what sorts of situations communities anticipated as arising in their sacred sites and how they sought to avoid them. The combination of grove laws and narrative accounts provides a picture of transgression that remains patchy but sheds light upon conceptions of transgression both within and without the crucible of politics in the city center. Grove laws demonstrate the workings of violation outside of the immediate political context of Rome and also attest to the existence of normative rules against religious transgression. They portray transgression against sacred space outside of the context of a specific incident memorialized in a literary anecdote. They can therefore be used to establish a specific community's formulation of transgression, a corrective to the primarily Rome-centric model of the previous chapter. Rome's relation to these Italian communities is also of interest, however, as the surviving grove laws date from shortly after the expansion Roman control to encompass these settlements.

The epigraphically-attested grove laws and the literary descriptions of property violation have apparently contradictory attitudes towards punishing transgressors, and specifically towards how the gods were imagined as enacting vengeance. Despite that instructive contrast, the gods remained at the center of propitiatory efforts in both media. Propitiation could be a multi-step process that encompassed both punishments traditionally seen as civic as well as more obviously divinely oriented expiations and purifications. In this chapter I refine the discussion of the different elements and aims of propitiation that I began to establish in the previous chapters by studying specific rituals more closely. A desecrated space was uninhabitable for a god and had to be fixed,

materially and supernaturally. This chapter explores how Roman and Italian communities communicated to the gods that they were realigning themselves with the god's preferences.

I. Putting the Damage On: Pollution and How to Fix It

Purification and expiation signaled that pollution had taken place; it is possible to identify cases in which a Roman sacred space had been violated by taking cues from the propitiatory and cleansing activities that were performed in order to restore it. Though multiple substances, particularly bodily fluids, could dirty Roman temples, human blood was the most commonly recorded and troubling material that provoked purification efforts. The Romans forbade human bloodshed in their sanctuaries, so authors used it as a motif to signal deep unrest. Lucan, painting a horrific scene of the civil war between Caesar and Pompey, included the image, *stat cruor in templis*.[357] Similarly, Cicero asks rhetorically whether Sestius was on trial because he, as tribune of the plebs*, templum cruentavit* when he was stabbed on the steps of the temple of Castor in 57.[358] In the Second Punic War, when Hannibal slaughtered Italians in the temple of Juno Lacinia, Livy claimed that they were *in templo ipso foede interfectis*.[359] The flamen Dialis Cornelius Merula caused intense distress when he performed a bloody suicide in the

[357] Luc. *BC* 2.103: "gore stood in the temples." Tobin (2016) notes that in this passage (Luc. *BC* 2.126), it is not the gory spaces that were polluted (*pollutae*), though, but the *dextrae* of those who had committed the murders. There could be slippage between pollution that clung to the space and that which attached to a person, especially with blood. The former was the aftermath of the latter. See n. 367.
[358] Cic. *Sest*. 80: "bloodied the temple."
[359] Livy 30.20.5-6: "foully killed in the temple itself."

sanctuary of Capitoline Jupiter and on the cult statue.[360] These examples point to an established cultural norm that dictated that human bloodshed in sacred spaces was to be avoided.[361] Bloodshed represents a particularly troubling example of the more generalized phenomenon of dirtied sacred spaces. I contend that the concept of pollution is the best way to understand such sullying of sacred spaces and argue that pollution had cultural import throughout the Republic.[362]

Understanding the violation of Roman ritual spaces as pollution is useful for discerning both the nature of the damage done to these places and why it was repaired in the manner that it was. Scholarship on Roman religion has generally avoided the topic of pollution because there is no clear Roman equivalent to the more precisely definable Greek concept of *miasma*.[363] The Romans were aware of *miasma* and *asylia*, as their exploits in the Hellenistic world demonstrate, but had a distinct concept of pollution with regards to their own sanctuaries.[364] Recently, Jack Lennon has attempted to rehabilitate the category of pollution at Rome. He operates under the definition of pollution as a

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[360] Discussed at length in chapter four.
[361] Warde Fowler (1911) 33 explains that blood was not a polluting substance in Rome, and was in fact more often purifying. I submit that human blood was an exception to this general principle, especially in temples.
[362] In contrast to Lennon (2014) 100, who separates pollution as an intellectual concept from pollution as recognized by legal and religious authorities and subscribes to the idea that first-century Romans were "sophisticated" to the degree that they could not believe in a concept like pollution.
[363] Lennon (2014) 16-20 outlines the history of scholarship on Roman pollution. Greek *miasma* was most influentially studied by Parker (1983).
[364] Suppliants were killed in the temple of Artemis at Ephesus during Mithridates VI's slaughter of the Italians in 88. The Ephesians grabbed them, "clinging on to the cult statues", and killed them (App. *Mith*. 4.23). Appian's report is of Hellenistic people slaying Italians in a Greek sanctuary, so it is not clear whether the episode would respond to Roman or to Greek conventions. It does, however, demonstrate awareness on the part of the Italians in Asia Minor of the safety that temples could offer there. These examples show that the Romans had a category of sacred place in which there were special rules of conduct.

complex of situations under which the *pax deorum* was "polluted."[365] I wish here to apply the concept of pollution narrowly, confining my inquiry to a class of misfortunes that could befall Roman sacred spaces.[366] I do not focus upon a human agent as the one being polluted, though human agents could carry pollution.[367] Instead, I argue that the Roman concept of religious pollution often attached to mistreated divine property. This is a separate but related manifestation of pollution as something communicative and borne by humans, as is documented in other cultures and occasionally in Rome. For the purposes of this chapter, I am defining pollution as damage done to a sacred space that was thought to result in divine displeasure, a narrow application of Parker's concept of pollution as a disruption in the relationship between a society and its gods. The category of pollution is useful as an analytical concept because the damage to Roman sacred spaces was alleviated through ritualized responses intended to ameliorate the relationship with the gods who safeguarded those spaces. Roman pollution was a sense of ill ease that could

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[365] Lennon (2014) 53. He engages in an extensive review of the myriad terms that denoted Roman forms of pollution from pp. 30-53. Fantham (2012) 60 explains that the Latin term *polluere* can in some cases denote sacrilege, but it does not do so in every case and does not therefore offer a shortcut for identifying pollution. Fantham uses the example from Sallust *BC* 11.6-7: *delubra spoliare, sacra profanaque omnia polluere*. Here, it is clear that *polluere* refers to incorrect religious behavior, in this case the looting of sanctuaries, but not specifically to ritual pollution.

[366] Lennon (2014) 44-47 briefly discusses sacred space.

[367] Parker (1983) 144-145, or Bendlin (2007), who largely follows Parker's model, both primarily study pollution carried and transmitted by people. Warde Fowler (1911) 178-179 discusses pollution attached to a Roman body. Douglas (1966) and Girard (1972) 29ff. both also locate pollution primarily in the individual. Douglas pp. 60-61 discusses blood as polluting sanctuaries, but with emphasis on the human agents. The Greek case of a polluted suppliant seeking purification does not seem to have a parallel in the Roman world. The example of Catiline, p. 145 below, does show pollution clinging to his body after slaying Marcus Marius. Compare to a bloody Aeneas (Verg. *Aen*. 2.717-720) washing before touching his household gods with discussion in Lennon (2014) 3. I do not discuss here whether people who were ritually ineligible (slaves, *insani*, people of the wrong gender, people otherwise not qualified for certain jobs) were ritually polluting.

affect a sacred space as a result of bodily fluids, including blood, or of physical violence against the space (cutting, damage). These violations had to be physically rectified (repair, clean-up) and propitiary actions had to be taken for angered gods (expiation, *supplicatio*, lustration).

Livy tells us that in 460, a group of political exiles seized the Capitol. The other Romans seized the hilltop back and slaughtered the exiles. The aftermath of that bloodshed provides the most striking surviving example of Rome responding to ritual pollution in its temples.

> multi exsulum caede sua foedavere templum, multi vivi capti, Herdonius interfectus. ita Capitolium reciperatum. de captivis, ut quisque liber aut servus esset, suae fortunae a quoque sumptum supplicium est. Tusculanis gratiae actae, Capitolium purgatum atque lustratum.[368]

The exiles, as the subjects of *foedavere*, were the sources of pollution because they dirtied the temple with their blood. Once the bloodshed was over, the Capitoline, and surely also the interior of the temple of Jupiter Optimus Maximus, had to be lustrated and purged. The purification efforts demonstrate that some pollution clung to the place after the deaths there.[369]

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[368] Livy 3.18.10: "Many of the exiles befouled the temple with their gore, and many were taken alive. Herdonius was slain. Thus was the Capitol regained. Regarding the captives, according to whether each one was free or a slave, thus did he take his punishment. Thanks were rendered to the Tusculans, and the Capitol was cleansed and lustrated."

[369] On the distinction between the rites of *purgatio* and *lustratio*, see Tromp (1912) 19, 35-37, with examples, as well as the extended discussion on the distinction between lustration and *piacula* from pp. 135-142. Tromp concedes that the Romans slipped with their use of terminology, though the rites themselves differed. Functionally, these rituals were frequently performed jointly, as in Tib. 2.1.1, 17: *fruges lustramus et agros … di patrii, purgamus agros, purgamus agrestes*. "We lustrate the fruits and fields… paternal

The concept of pollution in sacred spaces did not only pertain to cases of bloodshed. Granius Licinianus writes that in 105 BCE, a woman *mente commota* sat in the seat of Jupiter, as a result of which the temple of Jupiter was again lustrated.[370] Much later, in 55 CE, Nero purified the city because the *aedes* of Jupiter and Minerva had been struck by lightning, rendering it ritually problematic.[371] The Capitoline temple was the only temple that had *aedes* for both Jupiter and Minerva. This imperial notice is therefore evidence that negative omens observed on the Capitoline could warrant lustration, in this case of the entire city as opposed to only the hill. Formal processes of purification, instigated by state actors, were carried out in response to a variety of types of religiously problematic stimuli, from bodily fluids to contact with distressed humans to bad omens. These examples speak to a broad phenomenon of purifying spaces after a variety of forms of trouble. The implication is that the space could not fulfill its normal ritual purpose until it was purified.

The best argument for the existence of a formalized purification process for contaminated sacred spaces through the late Republic is Caecilia Metella's dream of the

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gods, we cleanse fields, we cleanse rural people." The acts of lustration and purgation, though not the same, were frequently part of the same process.

[370] Gran. Lic. 33.18-19: *Matrona quaedam qua<si> mente commota sedit <i>n s<o>lio Iovis. itaque lustratum est denuo Capitolium*. "A certain matron, as if disturbed of mind, sat in the throne of Jupiter. The Capitolium was again lustrated." Granius Licinianus' account probably dates from the Hadrianic period.

[371] Tac. *Ann*. 13.24: *urbem princeps lustravit ex responso haruspicum, quod Iovis ac Minervae aedes de caelo tactae erant.* "The *princeps* lustrated the city in accordance with a reply of the haruspices, because the sanctuaries of Jupiter and Minerva had been struck by lightning." Though none is mentioned, prodigies could signal that a transgression had occurred. See also Tac. *Hist*. 1.86-87 for lustration and the appointment of a *curator* for the *area Capitolina*. Palmer (1969) 19 connects these two events.

temple of Juno Sospita and the subsequent senatorial response.[372] This episode also provides valuable insight into the nature of the problem posed by religious pollution. In 90 BCE, the matron Caecilia Metella dreamed that Juno Sospita was fleeing her sanctuary in Rome because dogs and matrons had defiled it.[373] Her dream was reported to the senate. The senate ordered the temple of Juno Sospita to be restored on the basis of the reported dream.[374] In *De Diviniatione*, Marcus stresses the seriousness of the dream to which the senate responded: *nec vero somnia graviora, si quae ad rem publicam pertinere visa sunt, a summo consilio neglecta sunt*.[375] The consul himself, Lucius Julius Caesar, was personally involved.[376]

The process of ameliorating the damage done to the temple was twofold. Cicero does not make it clear whether fixing of the temple was a practical project or a ritual process of purification. He uses the words *refecit* and *restitutum* to describe what was done to the temple.[377] These are words of repair rather than of purification. The nature of the problem in the temple included one of literal dirtiness: *aedem matronarum sordidis obscenisque corporis coinquinatum ministriis, in qua etiam sub simulacro deae cubile*

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[372] Schultz (2006) argues compellingly that Juno Sospita's withdrawal and Rome's propitiation was an expression of anxiety surrounding the Social War.
[373] Obseq. 55.
[374] It is important to note that, according to Julius Obsequens, Caecilia Metella had already successfully pleaded with the goddess to stay, though with difficulty. See Flower (2015a) 313. The process of fully placating Juno Sospita was even more involved than the senate's rituals suggest.
[375] Cic. *Div*. 1.4: "Nor indeed were more serious dreams, if they seemed to pertain to the republic, neglected by the highest council." Note also that while there were no prodigies about temples being robbed, temples being befouled counted as prodigies.
[376] Schultz (2014) *ad loc*. notes that this is the first occasion on which such an intercession on the part of the senate is recorded as having occurred as the result of a dream. The other consul, Publius Rutilius Lupus, was killed after beginning a battle after a sacrifice's liver was found not to have had a head (Obseq. 55). Was a contrast set up between Caesar as the pious consul and Rutilius Lupus as the impious one?
[377] Cic. *Div*. 1.4; 1.99.

canis cum fetu erat.[378] It is not clear what the ministrations of the matrons involved, but theories include that they may have worked as prostitutes there, treated the temple as a latrine, or even simply cleansed themselves improperly before ritual activity.[379] I am inclined toward the sexual interpretation, especially due to its collocation with the whelping dog.[380] The act of cleaning literal filth from Roman temples could take on ritual import. Two festivals, the Parilia and the Vestalia, involved acts of ritual sweeping.[381] It is possible that the act of re-making and restoring Juno's temple that Cicero describes was both practical and ritual.

Julius Obsequens also claims that the temple was *commundatam supplicationibus habitis pristino splendore*.[382] Cicero does not mention the *supplicationes*, but this does not mean that they did not occur. His omission instead provides further evidence that purification of polluted spaces may have occurred without comment after scenes of violence in temples. It is clear from Caecilia Metella's dream that, whatever transgression

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[378] Obseq. 55: "The sanctuary was polluted by the dirty and obscene bodily ablutions of matrons, and in which a dog had even been prostrate in birth below the statue of the goddess."

[379] Schultz (2006) 208-209. She notes that *obscenus* is typical of religious contexts, especially in notes on ill omens. Albanese (1988) 173 explains that the original definition of *obscenus* was a "bad augural omen," based on Fest. 218L: … *cum, apud antiquos omnis fere, obscena dicta sint, quae mali ominis habebantur*. "among almost all ancients, things are said to be obscene which were considered to be a bad omen."

[380] Pliny's *HN* 33.50 reported slander of Antony by Mesalla uses *obscenus* in a sexual context. It provides a useful parallel for *obscenus* as referring to sexually deviant conduct. ... *Antonium triumvirum aureis usum vasis in omnibus obscenis desideriis, pudendo crimine etiam Cleopatrae*. "… Antony the triumvir used golden vases in all obscene desires, with even Cleopatra feeling shame at the crime."

[381] On ritual sweeping, see Montero Herrero (2017), especially 72. More unusually, Roman matrons also famously swept temples with their hair during a plague in 463 and after the defeats at Trasimene and Cannae in 211. In neither of those cases were the temples physically dirty, showing that ritual sweeping was useful in a variety of situations. In 211 the process was even combined with a *supplicatio*. See discussion in Montero Herrero (2017) 80-86.

[382] Obseq. 55: "cleaned by *supplicationes*, [returned] to pristine splendor."

had occurred, the goddess no longer found the temple to be a hospitable place, and ritual activities were put in jeopardy. The *supplicationes* for Juno Sospita appear to have had the goal of recalling the goddess from abandoning her temple rather than of cleaning the space. *Supplicationes* had a propitiatory function, often occurring in the face of reported prodigies.[383] Because the primary negative outcome at stake in this episode was the loss of Juno Sospita, it is logical that the process by which her temple was righted would have involved placation and cultivation of the goddess. Placating the god and repairing the temple were part of the same process.

On the surface, Juno's *supplicationes* appear distinct from the examples of temple lustration discussed above. However, lustration, while associated with group definition and purification, could similarly be propitiatory.[384] Lustration was also an acceptable

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[383] *OLD* s.v. *supplicatio*: "The offering of propitiation to a deity or an instance of it; (esp.) b. (decreed as a thanksgiving after a military victory or *sim*.)" Freyburger (1977) 287-288 maintains the narrow distinction between the thanksgiving *supplicatio* and the expiatory *supplicatio* put forth by Wissowa in *RE* s.v. *supplicationes* 945-951, though Freyburger identifies both varieties of *supplicatio* as having a propitiatory function (p. 298; 313-314).

[384] Lennon (2014) 13 rejected claims that that lustration was propitiary rather than purificatory. I am not convinced that there was a firm distinction between the two purposes. Tromp (1912) remains the most complete discussion of lustration. For Tromp (particularly chapter 3), expiation and lustration were fundamentally different rites. I argue that both directed themselves towards enduring good relations between Romans and the gods. See Baudy (1998) 107-109 for the possible etymology of *lustrare*: 1) *leu- = lösen (untangle, resolve), as in soluere and Greek λύω, and relatedly l*leu- = leuchten, as in luceo, or 2) *leu- = wash, related to *lou- as in λούω. She does not favor any one etymology and cautions against circular arguments based upon the eventual nature of the rite of lustration. For Warde Fowler (1911) 209-218, lustration "never in pagan Italy developed and ethical meaning as catharsis did in Greece," and became an empty procession by the late Republic. Because of the two etymologies, Scheid (2016b) and Versnel (1975) claim that lustrations carried out over an army or citizenry did not primarily serve to purify but rather to constitute the group, and that this in fact was the more typical function of lustration. Scheid (2016b) 206-207 goes on to claim that the language of *purgatum atque lustratum*, used in the discussion of the cleansing of the temple of Jupiter after the slaughter of the exiles there in 460, indicates that lustration in

response to the reporting of prodigies, just as supplication was.[385] While they were two distinct rites, both were capable of placating disturbed gods. In both of the above examples, a temple that had been damaged by inappropriate actions and (likely) dirtying substances was put to rights, but through slightly different processes of cleansing and placation. In the example from the slaughter of the exiles in 460, the lustration was even paired with a separate rite of purgation, indicating that alone neither ritual was sufficient. Nor were these the only options for repairing a sanctuary. After winning Rome back from the Gauls, *fana omnia, quoad ea hostis possedisset, restituerentur terminarentur expiarenturque, expiatioque eorum in libris per duumviros quaereretur*.[386] In that case, expiation and a formal process of demarcating the sanctuaries were the essential means by which to undo any wrongs wrought by the Gallic occupation. The above examples show that the process of repairing religious damage could involve both directly purifying acts as well as rites that served primarily to placate the god, or that combined both processes. A full study of propitiatory, expiatory, and purificatory rites is beyond the scope of this project, but it is important to convey that there were a variety of means by which normal relations with an angry god could be restored. It is likely also that in

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that case also did not purify, that role being performed by the *purgatio*. I disagree that lustration when used in the context of a temple cleaning did not have a purificatory function and suggest instead that processeσ like *purgatio* and *lustratio* were used in concert and complemented each other. Saladino in *ThesCRA* II.3.a.63 also sees lustration as a purifying act functioning similarly to expiation.

[385] *OLD* s.v. *supplicatio*. E.g. Livy 10.23.1: *prodigia multa fuerunt… supplicationes biduum senatus decrevit*. "There were many prodigies. The senate declared *supplicationes* for two days." *OLD* s.v. *lustro* 1a, c. See for example Livy 3.29.9: *ob id prodigium lustratum Capitolium est*. "On account of this prodigy the Capitoline was lustrated."

[386] Livy 5.50.2: "All of the sanctuaries, because the enemies had possessed them, were restored, their limits defined, and were expiated, and the expiation was sought in the books by the *duoviri*."

surviving accounts, one or all elements of this process have not been recorded, just as Cicero did not record the *supplicationes* for Juno Sospita.

II. Blame and Civil Conflict in Literary Sources

In the case of Juno Sospita, the goddess herself made the appeal to the Romans to restore her temple. Rome's response served both to right the immediate wrong, which involved some cleaning and/or some structural repairs, and also to propitiate the deity. Juno Sospita did not promise the destruction of Rome or of the responsible parties as a penalty for their neglect, but she was seen physically withdrawing, which would have amounted to the revocation of her protection of the city. At stake was losing the goddess. We can infer that this was a risk in other circumstances as well. The concrete fears of the departure of the gods or loss of favor may be productive alternatives to the idea of *pax deorum*, which has been criticized as being a modern analytical concept more than it was a Roman one.[387] The threat of the god's abandonment clarifies exactly what impact transgressions were thought to have had for the rest of the community.

Transgression occurred most often within a civil war context, a moment at which the possibility of defection by the gods was especially immediate. The nexus of circumstances is somewhat circular: unrest created situations in which temples were befouled, but befoulment could also foment unrest. A similar logic was at work with omens. Ignoring omens caused defeats in the discussion of ritual transgression, and yet the omens themselves were also symptoms of general anxiety. This unrest could occur as

[387] Santangelo (2011) 161-168. Satterfield (2016) explains the rarity of the term in Livy while defending its utility as a scholarly concept.

a direct result of violence such as civil war, for example, or it could occur as a prodigy in an environment of religious unrest surrounding a seemingly unrelated conflict, such as the Social War that provided the setting for Juno Sospita's volatility. Many of these cases are historical: we know that Gaius Gracchus was killed in the grove of the Furies, that Tiberius Gracchus was killed within the consecrated space on the Capitoline, and that Caesar was killed in the curia at the theatre of Pompey. It seems clear that Gaius and his slave Philocrates died in the sacred grove of the Furies because the locations of Gaius and Tiberius' deaths became cult sites, apparently shortly following their deaths (ὀλίγῳ δ' ὕστερον).[388] In all of these episodes, violation of sacred space was symptomatic of civil violence. Lucan uses grove violation as a trope in the *Pharsalia* because disruption of proper religious conduct was associated with instances of civil unrest or warfare. He gives an extended account of Caesar cutting a sacred grove at Massilia with his own hand in 49 as his soldiers shrank from the act.[389] On the one hand, we know that instances of violation of sacred space did occur in the context of civil unrest. At the same time, the violations presented convenient opportunities for contemporaries to charge a political enemy with acting in yet another objectionable way.

In accounts of these events, the sacred setting is remarked upon but pollution is not emphasized, so it is tempting to assume that pollution did not occur. For example, in

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[388] Plut. *G. Gracch*. 18.2.

[389] Luc. *BC* 3.399-453. Lucan provides the clearest statement of the working of blame in grove violation, admittedly within a poetic context. Caesar claims (3.436-437) that he wounded the tree first, so the guilt would be his. However, Lucan immediately undermines Caesar's claims. His Caesar is of course such a malignant figure that I will not argue from this evidence. On this episode, see Leigh (2010), who explains that the gods' failure to take vengeance on Caesar established a new paradigm of divine disinterest in Lucan and those who followed him. For Jenkyns (2013) 233, the soldiers' fear of the gods is used to create a foreboding atmosphere.

the fullest version of Gaius Gracchus' death, that of Plutarch, there are no direct statements that the sacred grove was intended to protect Gaius. Plutarch does, however, heavily imply that Gaius and Philocrates had fled to the grove intentionally, and he emphasizes the grove's sacrality: ὁ δὲ φθάνει μικρὸν εἰς ἱερὸν ἄλσος Ἐρινύων καταφυγών.[390] Gaius and Philocrates are supposed to have engineered their own deaths, Philocrates slaying first Gaius and then himself. That would have been extremely convenient for Gaius' opponents, because they would not have had to take an active part in killing Gaius. Philocrates would have incurred the responsibility for bloodshed within a grove, and he was already dead. No one left living had to take on the blame for violating the grove. We do not know whether an expiation was required for the bloodshed in the grove. On the basis of all regulations that we know regarding groves, though none specifically mention murder in groves, an expiation should have been performed.[391] Appeasing the gods would have been an even more compelling proposition when one considers that the Furies had tutelage over that grove. The Furies were, of course, connected to vengeance, and, as discussed in the previous chapter, the pedigree and nature of the offended gods could impact the severity of their anger.[392] Plutarch also reports an alternative tradition that Gaius was not actually slain in the grove, but had been protected by the slave Philocrates. It seems unlikely that Gaius' pursuers would have

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[390] Plut. *G. Gracch*. 17.2: "He barely escaped, fleeing to the sacred grove of the Furies."
[391] See discussion of grove laws, below.
[392] On the Furies and the *lucus Furinae*, see Cic. *ND* 3.46. Compare to Obseq. 56, on the fate of Mithridates after he set fire to the grove. Hannibal also violated the *lucus Furinae* (Livy 26.11.8-9), though his offence was largely in that he took from the grove, an episode discussed in the previous chapter. Palmer (1969) 27 discusses groves as places of refuge in the Roman world and provides citations for ancient mentions of Furrina.

hesitated to kill Philocrates if he had come between them and Gaius, but if they had hesitated, it would have been out of reverence for the sacred setting.

The example of Gaius Gracchus has illuminated one way in which responsibility for a violation could be deflected. Was Gaius or Philocrates or the pursuers at fault? A similar dispersion of guilt recurs in a number of the attested literary cases of temple violations. In the case of Juno Sospita, as far as we can tell, the efforts to make the temple hospitable for the goddess took no interest in pursuing the matrons (who were culpable) or the dog (who was not). There is also no mention of blame being directed at whoever allowed the temple to fall into the disrepair that necessitated the rebuilding (though this was likely not the act of a single individual). The imprecision as to who was responsible for dirtying temples is evident in a number cases, and this could be true whether the defilement came from an aggressive act like murder or a less dramatic one like the matrons' behavior in the temple of Juno.

Unlike theft from temples, the befouling of temples often took place not in the contexts of international conflict, but during civil wars or times of internal strife.[393] The unsettled political settings may have made the ascription of guilt less relevant. Maybe the guilty parties were all dead, or it was simply more convenient to say that they were. For example, when the exiles were killed on the Capitoline in 460, Livy ignored their killers when he described the staining of the sanctuary: *multi exsulum caede sua foedavere templum.* The exiles are the sentence's subject, and Livy emphasizes their involvement again with *sua caede*. Cicero suggests in his defense of Sestius that his opponents were similarly trying to elide the actual agents of violence. In 57, Lentidius spilled Sestius'

[393] On responses to grove violations that more closely adhered to the model of temple theft, see below, pp. 164-165.

blood on the temple of Castor while Sestius was serving as tribune of the plebs – a double transgression, because tribunes were sacrosanct. Cicero asks, did Sestius commit violence *quod tribunus plebis templum cruentavit?*[394] Ironically, of course, Sestius *was* the tribune whose blood was shed. The implication is that Sestius was being blamed by his adversaries for having polluted a temple when they themselves had been the ones to strike the blows.

On the other hand, the *Commentariolum* placed blame and agency squarely upon Catiline for the murder of Marcus Marius Gratidianus.[395] Plutarch also reports that after Catiline had killed Gratidianus, he walked through the city to present the head to Sulla, and finally τῷ δὲ περιρραντηρίῳ τοῦ Ἀπόλλωνος ἐγγὺς ὄντι προσελθὼν ἀπενίψατο τὰς χεῖρας.[396] This passage from Plutarch tells us that Catiline, polluted from murder, went to a sacred fountain in order to clean himself. But Catiline's action could have been interpreted in several ways. He could have been acting correctly in removing the blood from himself. Lustral waters may have provided a purification analogous to the official lustration performed by the Roman censors. Or, more likely, considering the personality involved and the brutality of the political climate and of Gratidianus' particular death, Catiline could have dirtied and damaged these sacred waters, usually used for cleaning, by washing the blood off his hands in them.[397] The examples of Catiline and Sestius show that Roman authors could ascribe blame, but that they frequently did so on the basis of

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[394] Cic. *Sest*. 80: "because the tribune of the plebs bloodied the temple?"
[395] Q. Cic. *Com. Pet*. 10. The description is especially graphic, fully illustrating Catiline's act as a perverse ritual.
[396] Plut. *Sull*. 32.2: "Going to the lustral waters of Apollo, which were nearby, he washed his hands." Tobin (2016) alerted me to the semi-sacrificial nature of Gratidianus' murder.
[397] On human blood being polluting, compare to Hor. *Od*. 2.1.4: *arma nondum expiatis uncta cruoribus*; "weapons oiled with as yet unexpiated gore."

their own convictions rather than on community consensus. This did not happen without controversy or difficulty.

It is clear that damaging a temple or other sacred site was condemned by the Romans, but there is little evidence in literary accounts of punitive actions by civic authorities. Firm conclusions are hampered by the paucity of source material, but the available evidence suggests that when dealing with a violated sanctuary, agency was often contested or of limited interest. The dramatic descriptions of transgressors coming to bad ends familiar from the cases of theft described in the previous chapter are also absent for the most part.[398] Senatorial concern centered around expiatory activities instead. The literary evidence is somewhat muddled because of the clustering of episodes around moments of civil discord, some of which were certainly historical (Gaius Gracchus, the death of Caesar) but which nonetheless have become a literary motif. We must look elsewhere to understand how a normally functioning government responded to this form of property violation.

III. Grove Laws

Contemporary evidence is sparse for all varieties of religious transgression, but several inscriptions fortunately survive that provide context for how ancient Italian communities imagined the violation specifically of sacred groves. Grove laws present a more systematic means by which to look at the ways in which guilt for violation was evaluated and how penalties for violations were exacted. Unlike narrative examples,

[398] For the exceptions to this, see pp. 164-165.

which describe moments of crisis, grove laws anticipate and aim to prevent potential transgressions. Most of the harm forbidden in groves consisted in harming the trees that comprised the grove and were held sacred.[399] The type of damage guarded against in groves was distinct in nature to the pollution that was discussed in the previous section. I have unified the topics here because in both cases, sacred space is the site of incorrect human behavior. The benefit of juxtaposing cases of pollution with cases of grove violation is that grove laws are explicit about policies for punishing and rectifying violations because they are forward-looking texts rather than reactionary.

Grove laws present a challenge because there are few examples of the genre, and they originate from a variety of smaller communities with varying relationships with Rome. The surviving examples are two copies on stone of a text dating from the late third century from Spoletium, a bronze tablet from Velitrae in Latium also from the third century, the *lex Lucerina* from Apulia sometime after 314 BCE, and the imperial *acta* of the Arval Brethren from Rome.[400] The last of these is significantly later then the others and from a very particular cultic context so is therefore employed here only as comparative evidence. The law from Furfo discussed in the previous chapter, while not a grove law, is also part of the conversation about Italian restrictions over correct treatment of objects in sacred space. The physicality of places of worship may have something to do with why there are inscriptions that delineate correct conduct in sacred spaces but no parallels for ritual transgression, for example. In order to display guidelines in any sort of

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[399] On the sacrality of trees, see Hunt (2016), especially 78-98, where she discusses the trees as sacred but not as objects of direct worship.

[400] Spoletium law: *CIL* XI 14766 = I^2 366 = *ILS* 4911; Velitrae tablet: *Ve* 223; Lex Lucerina: *CIL* I^2 401 = *CIL* IX 782 = *ILS* 4912 = *ILLRP* 504; Arval *Acta*: for complete texts, see Scheid (1998). For the texts of only those inscriptions relating to the trees, see the appendix of Hunt (2016).

public context, one needs a place in which to put them.[401] The texts that survive are very local in that they describe rules for one place and do not generalize. However, the surviving texts also come from places that were Roman colonies or had citizenship.[402] The laws themselves have some striking similarities and express attitudes that are for the most part consonant with those conveyed by the Roman literary tradition. The norms expressed in them are at once highly particular and symptomatic of cultural trends that prevailed throughout Roman Italy.

The *lex luci Spoletina*, a grove law dating from after 241 from Spoletium (modern Spoleto) in Umbria, is the most complete grove law that has survived to the present.[403] The law was discovered in a hilltop grove sanctuary on a hill (modern Monteluco) overlooking the city of Spoleto from a distance of about three miles. The wood has retained its sacred quality to the present day and is now attached to a monastery. The law was inscribed in two nearly identical copies. It likely dates from shortly after Spoletium became a Roman colony.[404] While comparative evidence shows that the law conforms to Roman norms, the text is also a product of existing trends in local cult practice. It provides a statement against violation of the grove as well as an outline of penalties for doing so.

The text of the *lex luci Spoletina*, as represented on Stone A, is as follows. The texts of the two copies are nearly identical, though Stone B boasts better economy in the spacing of the letters and a few orthographic variations.

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[401] Though see n. 413 for a more sinister explanation for the existence of grove laws.
[402] van der Meer (2015) 100 explains that grove regulation often accompanied the granting of Roman citizenship, as in the example of Lanuvium in Livy 8.14.2-3.
[403] *CIL* XI 4766 = I² 366 = *ILS* 4911. Panciera (2006) is the best discussion of the law from Spoleto. See also Scheid (2006).
[404] Panciera (2006) 306.

Stone A: [405]

Obverse:

1 Honce loucom
2 nequ<i>s violatod,
3 neque exvehito, neq//ue
4 exferto quod louc//i
5 siet, neque cedito
6 nesei quo die res de//ina
7 anua fiet; eod die,
8 quod rei dinai cau//[s]a
9 fiat, sine dolo ced//re
10 [l]icetod. Seiqui

Reverse:

11 violasit, Iove bov//id
12 piaclum datod;
13 seiquis scies
14 violasid dolo mâl//o,
15 Iovei bovid piaclu//m
16 datod et a(sses) ((trecenti))
17 moltai suntod;
18 eius piacli
19 moltaique dicator//[ei].
20 ẹx ạċṭịọ ẹṣṭ[od].

The law prohibits violation of the grove in general, and then details several forms that violation could take: removing items from the grove or cutting the grove. Note that this law classes both theft and damage as violations, which creates a natural linkage between these two types of property violation. The exception to the rule against cutting the grove

[405] Text: Panciera (2006). Translation: Scheid (2006), with modifications:
"Nobody shall violate this grove, export or take away what belongs to the grove. Nobody shall cut [wood] except for the requirements of annual divine service; on that day it shall be allowed to cut wood without malice for the requirements of divine service. If someone violates [this rule], he shall offer an expiatory sacrifice of an ox to Jupiter; if someone violates [it] intentionally with malice, an expiatory sacrifice of an ox shall be offered to Jupiter, and three hundred asses shall be received as a fine. The offering of the expiatory sacrifice and the collection of the fine shall be the responsibility of the *dicator*."

was when such action was necessary for annual rites.[406] Transgressors are split into two categories, knowing transgressors and unknowing ones. Scaevola describes the same typology in his law from the late Republic against work in the presence of priests on festal days.[407] In the case of an unwitting transgression, a cow should be sacrificed to Jupiter. In the case of an intentional wrongdoing, the *dicator* was to oversee the sacrifice of a cow and exact a fine of 300 *asses*. The law describes the bovine sacrifices as *piacula*, and Jupiter is specified as the recipient. The sacrifice was clearly propitiatory in nature and directed towards the offended god. The recipient of the fine is not listed, but the *dicator* is the figure who exacts both fine and sacrifice.

Of the other surviving grove laws, the tablet from Velitrae is the most similar to the law from Spoleto. The tablet is written in Volscian but is parallel to the Spoleto law in content.[408] In this Volscian law, nothing could be carried out of a precinct sacred to Declona except with the approval of the popular assembly. If one did so, they had to perform a bovine sacrifice and donate coins for wine and jars. The similarities to the Spoleto inscription are striking. However, there is danger of circularity in arguments that

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[406] Evidence from the Arval Acta indicates that cutting of the trees was a regular component of the annual rites in the grove of the dea Dia. See Hunt (2016) 147-152 for the argument that pruning at this time of the spring was not healthy for the trees and therefore must have served a ritual purpose beyond grove maintenance.

[407] Macr. *Sat*. 1.16.9-11.

[408] I have used Baldi (1999) 142 for text and translation:
deue : declune : statom : sepis : atahus : pis : uelestrom
façia : esaristrom : se : bim : asif : uesclis : uinu : arpatitu
sepis : toticu : couehriu : sepu : ferom : pihom : estu
ec : se : cosuties : ma : ca : tafanies : medix : sistiatiens
"To the goddess Declona this is decreed. If anyone will have snatched [some foliage or firewood] for himself, even if it were [for] a sacrifice, it will be a violation. Let [the guilty one] place in arrangement an ox and coins for the jars and for the wine. If anyone (will have taken the foliage or firewood) with the approval of the public assembly, the carrying away will be without violation. Egnatus Cossutius, son of Seppius, and Marcus Tafanius, son of Gavius, magistrates, established [this]."

try to connect the Velitrae tablet to the Spoleto ones because the former has been largely interpreted in relation to the latter.[409] Because of this, I hesitate to read the Velitrae tablet as anything more specific than a law against doing something forbidden in some area sacred to Declona, on pain of performing an expiation. Even this cautious reading demonstrates the community's interest in not offending a god. The specified space is assumed to be a grove on analogy with the *lex luci Spoletina*. Like the Spoleto inscriptions, the Velitrae tablet sketches a world in which such values played an active cultural force outside the physical city of Rome and beyond the scope of high-ranking Roman magistrates.

The *lex Lucerina* is written on a stone found in Apulia that is currently being used as a foundation block in a palazzo.[410] The text was long thought to have been a grove law like the one from Spoleto, written after the colony of Luceria was founded. It has been more recently proposed by John Bodel, however, that the law is instead a regulation on burials, specifically a rule requiring that land previously used for burials no longer be used as such.[411] The text prohibits the carrying out of funerary rituals and the deposition of dung in a designated space, as well as outlining the procedure by which a violator could be punished.[412] Though the *lex Lucerina* differs from the *lex luci Spoletina* and the

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[409] Rix (1992) 42f. interprets the Velitrae tablet largely along the lines of the Spoleto text. Baldi (1999) 140-142 and Woodard (2013) 197 similarly interpret the Volscian document as a grove law. Smith (2013) 39-40 is more conservative, seeing the text only as indicating some sort of prohibition against taking things from temples or committing some sort of sacrilege.

[410] For an overview of the discovery and transcription of the text, see Bodel (1994) 1-2.

[411] Bodel (1994). He argues (pp. 6-14) that the word *loucarid* does not connect to grove income but instead to burial costs. I think that is likely that it does in fact refer to a grove, also on the basis of the word *loucarid*. It is treated as such by Scheid (2006).

[412] Text and translation Scheid (2006): In honce loucarid stircus ne [qu]is fundatid, neue cadauer proiecitad neue parentatid. Sei quis aruorsu hac faxit, [in] ium quis volet pro

Velitrae tablet in that it does not mention wood specifically, the inscription is nevertheless a text regulating sacred space. It is difficult to assess whether a given inscription belongs to the category of "grove laws" or not when that category only contains two other Republican texts. The *lex Lucerina* comes from a period of increasing Roman influence in the administration of sacred space in the wake of colonization, like the other two texts. It can be productively compared with them in general terms if not perhaps in specifics.

Though these grove laws conform to Roman conventions, they are probably the product of a combination of local and Roman cultural forces.[413] There is evidence of cultic activity in the hills outside modern Spoleto dating from the Middle Bronze Age, although the grove law itself postdates the foundation of the Roman colony of Spoletium in 241. The Velitrae law was found in an intentional deposit beside a piece of *aes signatum* labeled ROMANOM, confirming that there was Roman cultural influence at Velitrae at the moment of deposition.[414] Velitrae had had a long and vexed relationship with Rome by the time the grove law was written in the second century. The town had been a Roman colony since the 490s, though the town revolted from Rome several times

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ioudicatod n(ummum) I manum inect[i]o estod. Seive mac[i]steratus volet multare, moltare [li]cetod.
"Nobody shall put dung, abandon a corpse, or celebrate a funeral service in this grove. If someone violates this (rule), whoever wants shall put hand on him as if he had been condemned, and he shall set a fine of fifty *sestertii*. If the magistrate wants to impose a fine, he can do it."

[413] The wall text at the Museo Archeologico Nazionale di Spoleto suggests that the inscription of grove laws in the wake of the colonial foundation indicates that the grove regulation was part of a Roman effort at land management. See van der Meer (2015) for a discussion of Italian grove culture. He observes that groves were regulated by the Romans partially because they were used as locations for resistance against Romans.

[414] Rix (1992) 39. Velitrae received Roman citizenship in 332. See Cornell (1995) 395.

before being punished and finally becoming a *municipium* after the Latin War.[415] The contents of the Volscian and Umbrian laws are similar, but they do not belong to the same genre. The texts from Spoleto are carved on monumental blocks of local limestone. The law from Velitrae is a tiny 23 cm by 3.5 cm strip of bronze and has to have been affixed to another surface.[416] The difference in scale means that the two laws cannot have had the same practical purpose, even if their content is parallel. The similarities between laws from Italian communities, despite differences in physical appearance and language, and nature of their relationship with Rome, indicates that there is likely to have been a widely held understanding of how to treat sacred spaces.

On a practical level, however, Italian grove laws were administered by local authorities rather than by the Roman senate. A religious or civic official was in charge of groves in various communities. At Spoleto, the *dicator* had authority. The *dicator* appears to have been some sort of local office holder with religious competence. He is not likely to have been the chief magistrate because the title often occurs alongside others.[417] He was responsible for carrying out expiations and fine payments.[418] While it is

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[415] *Brill's New Pauly* s.v. Velitrae. See Livy 2.31.4, 2.34.6 for early colonization and 8.14.5 for punishment after the Latin War.

[416] Rix (1992) 40 supposes that it as affixed to a piece of wood by hooks because of the absence of nail holes.

[417] Mazzarino (1967) maintains that the spelling *dicator* is distinct from *dictator*. Panciera (2006) 911-912 understands the *dicator* as a civic magistrate and interprets the Spoleto law as a civic law rather than as a *lex sacra*, although he sees the *dicator*'s chief role as administering the grove. Degrassi contends that the praetor was the chief magistrate at Spoleto, based upon *ILLRP* 669 = *CIL* 12.3376 = 11.4822. The wall text at the Museo archeologico nazionale di Spoleto suggests that the praetor may have served as a *dicator*. The chief magistrates at Spoleto were praetors. For Palmer (1969) 50 *dicator* is "a religious title of a grove's superintendant," following Cato *Orig*. *FRHist* 36a. Tromp (1912) 85 considered the *dicator* to be a priest of the grove. I think that this is the most likely identification.

not clear whether the *dicator* from Spoleto also had civil duties, the parallel text from Velitrae does clearly connect civic officials with maintenance of sacred space. The *meddices* of the final line of that text have been identified as the chief magistrates of the Volsci.[419] Similarly, the *couehriu* has been understood as a Volscian variant of the Latin *curia* and is thought to refer to some sort of state body, possibly a popular assembly.[420] At Furfo, as already discussed, a popular assembly similarly had control over the use of religious objects.[421] In the *lex Lucerina*, an unspecified *magistratus* exacts the fine. While the *magistratus* is often understood as a political official, it could refer to another grove superintendant. A later parallel is offered by the Arval Brethren, among whom expiation was carried out by either a *magister* or a *calator*, both sometimes acting along with *publici.*[422] The *magister* was a priest.[423] The *calator* was an attendant to a priest.[424] The *publici* were public slaves who participated in sacrifice.[425] The *publici* appear to have been solely tied to the grove, as opposed to having other roles in the area and taking part in dea Dia ceremonies only during specific festal periods, because in 118 and 155 CE

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[418] Panciera (2006) 913. The *dicator*'s ability to expiate is crucial for a Trompian/Scheidian reading because the culprit must be inexpiable. See Tromp (1912) 85 and Scheid (2006) 21, but especially Scheid (1999). See Marc. *Sat*. 1.16.9-11 for the clearest formulation of the relationship between intention and expiability in Roman religion.
[419] Smith (2013) 39.
[420] Baldi (1999) 142; Smith (2013) 39-40.
[421] See pp. 122-125, above.
[422] For the *magister*, see, for example Scheid (1998) 64 I (where he is helped by *publici*), 64 II, 68 I, 69, 74, 78, 80 (again explicitly with *publici*), 94 I-II, 100a, 101b, 114 I. For the *calator* and the *publici*, see 48, 49, 55 II, 57, 62b frag. I. The *magistri* seem to supplant the *calatores* in the mid-later Empire. *Publici* have a role throughout the epigraphic record.
[423] *OLD* s.v. *magister* 4. *CIL* VI.2060 describes a sacrifice taken up *per magistrum et ceteros sacerdotes*, indicating that the *magister* was himself a priest.
[424] *OLD* s.v. *calator* b.
[425] See Scheid (1990) 539, 648 for involvement of *publici* in the festival to dea Dia as well as other sacrifices.

they are listed as the *publicos arvalium* or *fratrum arvalium*.[426] Among the Arvals, then, expiation and punishment fell to leadership figures or to public slaves who had roles within the cult rather than to a general magistrate.

The composite picture is of an Italy in which jurisdiction of sacred spaces was split between religious and civic officials. In either case, civic officials or even popular bodies did have control over religious issues in certain places. It is therefore inappropriate to speak of a firm division between civic and religious in administration of the grove. Instead, each grove existed in its own local context, though the laws governing it were articulated under coercive Roman influence. Within a given community, the divisions between civic and religious could be configured variously. Civic and religious personnel overlap to such an extent that to speak of them as separate categories is meaningless. Religious matters were important enough to communities that magistrates and assemblies had control over them. As each community organized its officials slightly differently, it is impossible to generalize for all based on the example of one, but the inconsistency in itself is revealing.

At least by the late Republic, it was common for Roman laws for new colonies to regulate sacred spaces, as when *lex Coloniae Juliae Genetivae* regulated burial spaces.[427] In the third and fourth centuries, when most of the surviving grove laws originated, a colony like Spoletium seems to have been required to record how to administer its groves, but there was not a standardized means by which it had to do so. Despite Roman influences, each community regulated its grove through its own mechanisms, and these

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[426] Scheid (1998) 68 I and 80.
[427] In addition to colonial foundations, Bispham (2007) 213-215 discusses the usual provisions for religious matters also in municipal charters and the varying ways in which communities maintained local customs.

differed between settlements. Each locale was still able to decide individually how to make things right with its gods. It is possible that the problem of administering each individual sanctuary was evaluated on a smaller scale, within the sanctuary itself. Both the Volscian law and the law from Spoleto discussed only the one sanctuary at hand and are not part of a larger charter, as far as we know. If the community *was* subject to a general charter that regulated religious space, the individual grove still had its own document. The Arval Brethren continued to largely self-regulate within the college itself throughout the imperial period despite the close links between the Arvals and the imperial cult, so this sphere may have continued to be largely under the discretion of each sanctuary for centuries.

In each of these laws, the prescribed methods for addressing transgressions focused more on the grove and its deity than on the community. At Spoleto, the expiatory sacrifice demonstrates that the process of redress was directed first and foremost towards a divine audience.[428] The text specifies a bovine sacrifice to Jupiter, with *Iovei* in the dative. The divinity involved was not always communicated so clearly. The *lex Lucerina* shows a similar interest in protecting a grove, though it does not specifically censure against removal of goods nor prescribe an expiation to a specific god (only a fine).[429] In the dea Dia grove near Rome, for example, the goddess was not specified as the recipient of the piacular pigs and/or sheep. While some argue that the lack of goddess in the dative indicates that she was not closely connected with the sacrifice, the goddess was in fact

[428] Hunt (2016) 140-141 observes that *piacula* are sacrifices whose purpose is primarily communication with the divine. This is as opposed to a primarily social ritual.
[429] While the *lex Lucerina* (*CIL* I^2 401 = *CIL* IX 782 = *ILS* 4912 = *ILLRP* 504) discusses the protection of space and demands payment of a fine in the case of transgression, its relationship with a divine power is not clear.

present even if not specified as a dative recipient of sacrifice.[430] In many of the Arval texts, *in luco deae Diae* is used formulaically in a large proportion of the entries that describe expiations.[431] Of course the formula served to denote location, but location and the concerned divinity were also closely linked. In Cato's famous prayer for thinning groves, a piacular pig is sacrificed and then a prayer is uttered: *si deus, si dea es, quoium illud sacrum est…*[432] In the prayer formula the identity of the god is unknowable, but that (indefinite) identity depends upon *which* grove is involved. Some of the Arval texts also specify that the sacrifice was made at the altar, which was also dedicated to the goddess.[433] While one could naturally make sacrifices to multiple gods at the same altar, as the Arvals did in the third century CE, or make a sacrifice to an unspecified recipient, it is obvious that dea Dia was the standard recipient in the case of the Arvals.[434] While sacrifice fulfilled a variety of social roles, it was also an inherently communicative act. For expiation's propitiatory qualities to be properly appreciated, it needs to be understood as a moment of communication between humans and gods.[435]

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[430] Hunt (2016) 146-147 argues that dea Dia was not closely related to the Arval sacrifices because she is not directly listed as the recipient; I disagree.

[431] E.g. Numbers 2, 12c, 42, 48, 49, 55 II, 62a, 64 I, 64 II, 68I, 69, 74, 78, 80, 94 I-II, 94 II, 100a, 105b, 114 I in Scheid (1998). Hunt (2016)'s appendix offers a helpful catalog of only those texts specifically relating to trees. Specific divine recipients are specified in the elaborate *lustra* of 105b (224 CE) and 114 I (240 CE), but these formulae are a late development and should not be projected backwards onto Italian Republican practices.

[432] Cato *Agr*. 139: "Whether you are a god or a goddess, to whom that (place) is sacred…"

[433] The standard formula is *ante lucum in aram* (see numbers 55 II, 57 in Scheid (1998)) or simply *ad aram*, with the grove's location having already been specified (68 I, 69, 74 (likely), 78, 80, 94 II, 100a). *ad aedem deae Diae* is occasionally used (94 I and II).

[434] For sacrifices in the dea Dia grove to a variety of deities, see numbers 105b and 114 I in Scheid (1998).

[435] For the relationship between expiation and propitiation, see the examples in Tromp (1912) 11-15. Most useful is Serv. ad *Ecl*. 8.82: *quid enim est pium nisi castum? Quoniam piare est propitiare, quod accidere non potest, nisi caste inservitum erit rebus*

Scholars since Tromp have sought to separate Spoleto's bovine sacrifice from the fine payment, claiming that the sacrifice was the "religious" penalty and the fine was a civic penalty. I do not think that this partition is necessary or helpful. While it is not clear to which treasury the wrongdoer paid the 300 *asses*, it is likely that they were given to a temple or grove treasury. This practice would have been analogous to Rome's treatment of the confiscated goods of a *sacer* man, which were given to the treasuries of Ceres, Liber, and Libera.[436] In both cases the transfer of monetary goods was a consequence of religious wrongdoing. The *lex Lucerina*, if we understand it as referring to a grove (as I wish to), describes a procedure of fine payment to the grove. Similarly, the mysterious term *lucar* was defined in antiquity as grove revenue.[437] Palmer's understanding of the Forum inscription, in which the violator of a grove became *sacer* and paid a fine, also offers another parallel. However, considering that that part of Palmer's restoration was constructed from the Spoletine law, the logic is circular.[438]

Regardless of where the fine from the *lucus* at Spoleto was paid, I think that it is salutary to consider that there was not a firm division between temple property and the

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sacris. "For what is pious unless it is chaste? Since to expiate is to propitiate, which cannot happen unless one chastely serves sacred things." While Tromp (p. 35-36) believes firmly that *piacula* originally derived its meaning from *pius* and later developed a purificatory and placatory sense, *piacula* certainly did come to have those connotations in later periods.

[436] Livy 3.55. See discussion in chapter five.

[437] Plut. *Quaest. Rom*. 88 suggests that *lucar* is so called because it is grove revenue that was used to fund public spectacle. See also Paul ex. Fest. 106L s.v. *lucaris pecunia*: *quae in luco erat data*, and s.v. *lucar*: *apellatur aes, quod ex lucis captatur*. Bodel (1994) 10-14 sees the grammarians' definitions of *lucar* as fanciful. He argues that grove revenue could not have been plentiful enough to fund games, in which he is certainly correct, though he does not discuss the possibility of income from fines.

[438] This is the primary argument leveled against Palmer (1969) in Dumézil (1970).

income of the state.[439] The *lex Furfensis* from near L'Aquila dating from the year 58 describes a process by which gifts could be taken from the temple treasury. Dedications given in the temple could be sold and the money used to improve the temple, at the discretion of the aedile.[440] In Furfo, a civic magistrate, the aedile, had discretion over the use of temple dedications and the funds resulting from their sale. The money resulting from these funds was not sacred, but the temple funds were used for the improvement of the temple. It is entirely reasonable to think that the money collected for violating a grove would have been added to the grove treasury and become available for spending on the grove. In Furfo, money spent on temple improvements became profane, but any item bought with that money for the temple became sacred. The money itself occupied a liminal space between sacred and profane. It could be spent to buy sacred things, but was not itself sacred, and would lose its association with the sacred as soon as it was spent. It is similarly reasonable to assume, on analogy with the *lex Furfensis*, that a grove's income would have itself been *profanus*.[441]

While temple dedications presented a special case, paying out money to temples was a normal procedure. Rome's main treasury was located in the temple of Saturn and could be used to fund both non-religious and religious activities. Romans were supposed to donate a coin to Juno Lacinia at birth, Venus Libitina at death (a grove-associated

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[439] Panciera (2006) 911 explains that groves were state property, classed as *ager publicus* according to Frontinus *Contr*. p. 56L.

[440] *CIL* I^2 756 = IX 3513 = *ILLRP* 508, text and translation from Adamik (2003), 7-8, 10-11: *Sei quod ad eam aedem donum datum donatum dedicatum* / *-que erit, utei liceat oeti venum dare … Quae pequnia recepta erit, ea pequnia emere* / *conducere locare dare, quo id templum melius honestius seit, liceto*. "If any gift for this temple is given, donated, and dedicated, / that it shall be permited to use, sell… What money is received, with that money / it shall be allowed to buy, hire, lease, make a gift in order that this temple may be better, more beautiful."

[441] *CIL* I^2 756 = IX 3513 = *ILLRP* 508.11-14.

goddess herself), and Iuventas at attaining manhood.[442] A limestone inscription from the late 2nd or early 1st century in Caserta records the use of funds from the temple of Diana to build a wall and purchase statues and "private places."[443] Even if the fine in the *lex luci Spoletina* did not go to a grove treasury, the money could still have been ultimately used to support cult practice. For example, Claudia, sister of the disgraced commanded P. Claudius Pulcher, who caused the defeat at Drepana, paid 25,000 *asses* for *maiestas* in 246. From these funds, the Aventine temple of Libertas was built.[444] Because of the flexibility of public funds, it is not appropriate to identify a sharp distinction between the religious and civic purposes of fines.[445] Moreover, there are parallels for the exacting of a fine in cases of religious misdeed. A praetor who worked on a festal day had to pay a fine in punishment, in addition to offering a pig as a *piaculum* in the case of an unintentional transgression.[446]

While the bovine sacrifice at Spoleto served a directly propitiatory role, the money may ultimately have done something similar. Recall that part of the process of placating Juno Sospita in 90 was the repair and improvement of her temple. That example demonstrated that temple improvements could have a direct impact upon a deity's satisfaction with a society. Similarly, the prohibitions in the *lex Lucerina* were against

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[442] Dion. Hal. *Ant. Rom.* 4.15.5 cites Lucius Calpurnius Piso Frugi (*FRHist* F16), who explains that the donation was instituted (legendarily by Servius Tullius) in order to get an accurate count of the population, but it would have had some financial value as well. The value of the coin is not specified; he uses only νόμισμα. Bodel (1994) 13-14 discusses the phenomenon but doe not speculate on the level of income provided.
[443] *CIL* I^2.680 = X.3781.
[444] On the temple of Libertas, see Livy 24.16.19. For the incident involving Claudia, see Gell. 10.6.2; Suet. *Tib*. 2. See also Val. Max. 8.1 damn. 4 and Livy *Per*. 19. Bauman (1996) 13, and, more completely, (1967) 28-29 offers modern discussion.
[445] A view put forward by Tromp and followed by Bodel (1994) 27.
[446] Macr. *Sat*. 1.16.9-11. See also Varro *LL* 6.30, who does not mention the fine. Scheid (2006) 21-22 discusses this episode but emphasizes only the expiability of the crime.

leaving dung or dead bodies in the grove.[447] Though the text does not specify, the process of reversing the damage must have involved removing any excrement or cadavers.[448] The purpose of repair can be analogized to the process of vowing and building temples in the first place. Both were communicative acts meant to influence the god positively towards the Roman people, though one rectified a wrong and the other offered a new incentive to the god.

The Arval *acta*, exceptional though they are, provide an opportunity both to look into the future of grove regulation and to see the role that transgression could play in a cult over an extended period of centuries. There, certain transgressions, like the cutting of the trees, were ritualized and repeated every year. Their expiations were similarly repeated. The example raises the question: was some form of transgression in the grove an expected element of a healthy cult? Did it provide a valuable opportunity to pay cult to the deity? The drafters of the grove laws at Spoleto and Velitrae do not seem to have imagined a similarly ritualized pattern of transgression. They present transgression as something to be discouraged and punished. The prohibitions in the laws do seem to have anticipated transgressions, however, and the punishments were designed to benefit both the grove and the gods. It is possible that grove laws hint at a productive aspect of transgression.

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[447] Lex Lucerina: *stircus ne* [*qu*]*is fundatid, neve cadaver proiecitad*. "Nobody shall put dung, abandon a corpse…" Text and translation are from Scheid (2006).

[448] Here I disagree with Bodel's (1994) 27-28 contention that the *lex Lucerina* contains no provision for correcting mistreatment and therefore that "… the absence of any mention in its text of piacular obligations implies that transgressions against the regulations posted involved no religious pollution." The process of cleaning the grove would have been much the same as that of repairing the temple of Juno Sospita.

IV. Literary and Epigraphic Vengeance

Turning from propitiation to punishment, it is worth noting that no one, including the transgressor, had to die according to the law from Spoleto. No one was declared *sacer*. Instead, all of the recorded responses to transgression focused upon righting the wrong that had been done to the space. While the fine was punitive, it was significantly milder than a *consecratio capitis* and *bonorum*. Was the law from Spoleto typical in that it appears to have allowed the transgressor to be rehabilitated?[449] In contrast the Forum inscription did render a transgressor *sacer*, if understood according to Palmer's interpretation.[450] However, the fragmentary nature of that inscription, and the degree to which Palmer's restoration of Forum text depends upon the law from Spoleto, means that it is dangerous to use the Forum inscription to draw conclusions about the punishments attending grove laws. Still, a fine of 300 *asses*, though very substantial, appears to have been intended to be milder than one involving the confiscation of the culprit's entire fortune, and therefore it is unlikely that they were deemed *sacer*.

300 *asses* in the mid-Republic was a large sum. After the battle of Drepana in 249, in which Publius Claudius Pulcher lost 120 ships, he was fined 120,000 *asses*, or 1,000 per ship.[451] The roughly contemporary fine at Spoletium would then value at about

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[449] Tromp (1912), especially 82ff., and Scheid (2006) 24-28 believe that the culprit of intentional transgression could not in fact be rehabilitated, but rather remained inexpiable and was surrendered to the gods. While I agree that the concept of inexpiability did exist in Roman thought, the relative mildness of the Spoleto punishment does not suggest that the culprit in this case was *sacer*.

[450] Palmer (1969). Palmer also contends (p. 45) that the *comitium* itself was a grove at the time of inscription. A new interpretation of the Forum inscription lies outside the purview of this chapter.

[451] Cic. *ND* 2.3.7.

a third of the penalty attached to a warship, a nontrivial amount. But there is nothing to suggest that the specific penalty of 300 *asses* was necessarily supposed to have been someone's entire fortune because the precision of the fine suggests an expectation that the culprit would have been able to pay. Much would, of course, have depended upon the economic status of the transgressor. The 300 *asses* would be on the order of a hundred days' income for many workers.[452] A third of a year's savings would have been a very tall order for a normal worker. The size of the fine indicates that transgressors were expected to come from a wealthier subsection of the population. Maybe they were the very people involved in maintaining the cult, which would make sense considering the physical distance of the grove from the city. If so, this would offer an early parallel to the transgressions committed by the Arval brethren. One does not simply walk up a hill six miles there and back from town and accidentally cut down a tree.

In the *lex Lucerina*, it is stated clearly that anyone could lay hands on a culprit to forcefully bring him before a magistrate: [*in*] *ium quis volet pro ioudicatod n*(*ummum*) *I manum inect*[*i*]*o estod*.[453] That is, a formal judicial process could be initiated over a violation of space. This seems to have remained true in first-century Rome as well. Cicero says that one of the charges against Rabirius was of violating groves and holy places.[454] In comparison to punishments of *sacer esto*, all of these laws demonstrate a

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[452] Crawford (1985) 147, 149 says that a day's wage in the second century was about 3 *asses*. The Spoleto text is from a century earlier, however.

[453] "… whoever wants shall put hand on him as if he had been condemned, and he shall set a fine of fifty *sestertii*." Here, unusually, the fine seems to be paid out to the person arresting the condemned person. Text and translation are from Scheid (2006). Compare also to Fest. 57L, where violating a grove bears a capital punishment: *capitalis lucus, ubi, si quid violatum est, caput violatoris expiatur*. See Dowden (2000) 108.

[454] Cic. *Rab. Perd*. 7.

milder treatment of the culprit.[455] In each of these cases, after the successful payment of a fine and possible expiation, the culprit appears to have been able to reenter society. In fact, I am not convinced that the transgressors themselves did not offer the expiatory sacrifice at Spoletium, rather than being required to operate by proxy.[456] The sacrifices are described with the third person imperative *dato*(*d*), and the fine to be paid with *sunto*(*d*). The culprit was surely the one who paid the fine, so logically he could also have been the one who carried out the *piaculum*, with the oversight of the *dicator*.

The comparative levity (i.e. no one dies) of the official punishments in the grove laws contrasts with the punishments attested in some of the fates suffered by transgressors in the literary examples discussed so far in this study. The element of divine vengeance is notably absent. It was noted above in section II that the question of agency and divine retribution the level of the individual was less at issue in most literary depictions of violated sacred spaces than it was in the episodes of theft described in the previous chapter. However, these grove laws can profitably be put into conversation with the broader set of literary examples of transgression. The laws describe specific applications of the whole system of propitiation and punishment operative in all cases of transgression and therefore provide a rare perspective on the entire phenomenon. Moreover, there are a few literary descriptions of vengeance taken by gods in response to violated groves. At Gabii in 291, the troops of Lucius Postumius Megellus cut a sacred

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[455] ter Beek (2012) 24-25 understands that the relative mildness of the Spoletium punishment compared to the Forum inscription indicates that religious law became less rigorous after the archaic period (*mildere Praxis*). He considers the *lex Lucerina* to be an instance of milder punishment also.

[456] Against the view of Scheid and Tromp, see n. 449, above.

grove and were killed by a divine illness.[457] In 32/31, Antony's prefect Terullius cut a sacred grove to harvest lumber for ships, and was cut down by Octavian's soldiers in that same grove.[458] These deaths both resembled those inflicted by the gods in the cases of temple theft discussed in the previous chapter. In all of these cases, the responsible individuals ended up dead, whether though death in a battle lost due to their impiety or a god-sent infirmity. There is a disconnect between the punishments described as resulting from divine action and those prescribed by the *lex luci Spoletina*.

There are several possible explanations for this difference. One is that the literary sources inflated the stakes of transgression. This is certainly at least partially true. The literary objectives of our sources demanded that people who made bad religious choices were punished, a trend especially observed in cases of object theft. The contrast between literary and epigraphic transgressions also brings up the issue of who was thought to have gained and who was harmed in cases of violation of sacred space. Grove violation in the literary sources does appear to have been for personal gain and therefore more closely resembles cases of theft than of, say, blood in temples. Turullius cut the grove of Aesclepius in order to build ships for his commander. Megellus set the troops to cut the grove at Gabii in order to enjoy free labor on his estates. In these examples, it was stated that grove violation was motivated by greed. Grove violation more closely resembled temple theft than may have been apparent from only the epigraphic texts. It is important to remember that timber had economic and practical utility, and that people could have

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[457] Livy *Per.* 11; Dion. Hal. *Ant. Rom.* 17/18.4-5; Cass. Dio fr. 8.36.32. On this episode, see Palmer (1990). His identification of this grove with the one near Gabii is based upon the fragment of Livy published by Bravo and Griffin in *Athenaeum* (1988).

[458] It was apparently not a problem for Terullius to shed blood in the grove. For Val. Max. 1.1.19 it is a poetic justice that Terullius died in the same place he committed his crime.

chosen to cut groves out of self-interest. Maybe that is why the gods are more present in stories of grove cutting. This can go some way to possibly explaining the distinction observed between grove and temple violation; it is difficult to turn a profit by bleeding in a temple, or by allowing a dog to give birth inside one.

The central problem in studying religious transgression broadly is the question of whether divine action was actually feared by historical Romans or whether it was purely a convenient *post hoc* invention. Ultimately, grove laws provide a solution to this apparent disjoint in Roman thought. I argue that while the most straightforward grove laws do not directly threaten divine vengeance, they do anticipate it. The propitiatory actions taken in cases of wrongdoing existed in order to placate a potentially displeased god and to encourage their continued support of the community. It is clear that these actions were taken to limit negative divine response. The grove laws could not legislate divine response, however, so it is natural that that element would be missing. There is nothing in the laws to say that it was not thought that a god could take action against a community or individual, following Tiberius' principle that the gods took care of themselves.[459] But it was not useful to record this within a law, whose purpose was to regulate human activity, since it lay outside the scope of human action.

This problem gets to the heart of the issue of what sorts of actions were construed as transgressions. While the literary examples discussed in this chapter and elsewhere in the dissertation were all to a greater or lesser extent post-factum representations of

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[459] Tac. *Ann*. 1.73: *deorum iniurias dis curae*. See also Cic. *Leg*. 2.19. Compare also to the punishment of those who move boundary stones in the prophecy of the nymph Vegoia: *damnabitur a diis*. "They will be damned by the gods." Heurgon (1959) dates the prophecy to the early 1st century BCE; Santangelo (2013) 92-93 suggests that it might have been an imperial forgery. In any case, the prevailing attitude of this prophecy is in line with that expressed in other rules about sacred property.

incidents that either needed to be condemned or demanded an explanation to account for Roman failure, the grove laws lay out a formula for correct and incorrect behavior right off the bat. I see the grove laws as definite statements of actions that were not considered correct. This conduct was narrowly defined and locally determined. In Spoletium, the best example, it consisted in removing items from the grove, introducing unwelcome items to the grove, or harming the grove. In response to any issues, an expiation was demanded. In the law from Spoletium, there is no indication of divine vengeance, but a god is specifically mentioned as the recipient of the sacrifice and is also the likely recipient of the fine in the case of an intentional violation of one of the law's stipulations. In these laws, transgression is not a generalized phenomenon, but rather one that is grounded in a certain place and defined by several punishable offences. While the grove laws do not include the colorful discussions of divinely inflicted illnesses and defeats, the interest in appeasing the gods indicates that there was an Italic concern for rectifying wrongs. Though wrongdoing was frequently identified only post-factum and for political ends, this does not mean that such charges were not based upon norms current in, though not evenly applied across, the Roman world. When I speak of transgression in the Roman Republic, I mean transgressions of these socially defined norms, regardless of whether this deviance was condemned or not.

The crux of the comparison between inscriptions and literary texts is whether the propitiatory acts described in the grove laws prevented divine vengeance of the type described by the literary sources. I cannot say with certainty that every community envisioned ruin of the scale represented in literature in response to grove violation, though I do think that the care taken in propitiating the deity shows that the stakes in

grove violation were thought to be similar in real life. A better indication is the interest shown in Spoleto in identifying not only the culprit, but also their motive. The community viewed intentional transgression as more dangerous. Why? It shows a general lack of respect for divine property and for the god's regard for the community. This is why a fine, which could be channeled back in to the maintenance of the damaged grove, was an appropriate response for such an impious and antisocial act.

Extending the principles reflected in grove laws to a broader category of religious transgression requires locating similarities between the phenomena sketched by the laws and the episodes detailed in literary case studies. The grove laws present a picture of transgression beyond the direct adjudication of Rome (though influenced by Roman cultural norms). Transgression in the grove laws was political insofar as they were at their hearts civic documents, adjudicated by civic authorities. However, the centralized powers in Rome (usually senatorial, as in the previous chapter) who adjudicated transgression were absent, or at least did not exert direct pressure on every assessment. What we see instead is a community outlining the conduct that it wished to condemn, prior to a review process like the ones that the senate conducted, whereby it was decided whether a transgression had taken place or not. The grove laws were not free from political influences, but they were free from retrospective review.

Conclusions

Propitiation was the key element in Roman responses to crises in sacred spaces. The importance of rectifying the community's relationship with the divine eclipses that of

accounting for the gods' vengeance in most literary accounts of and all epigraphic laws against transgression in sacred spaces. Nevertheless, the prospect of divine retribution lingers behind all attempts to repair relations with the gods. Juno Sospita's threat of leaving Rome was a motivating menace. Juno's departure can be considered a response to ritual pollution. Polluted spaces could not be used normally for ritual activity because damage to spaces sacred to the gods was thought to have distressed them, and those spaces had to be repaired in order to placate them. The repair could be literal physical restoration, or it could be a ritual purification, or, more likely, a combination of the two. Punishment of the culprit, as portrayed by the grove laws, was part of the process of repair. The culprit contributed funds that could be used for sanctuary upkeep. They also sacrificed (or had sacrificed on their behalf) an expiatory victim.

Grove laws have illuminated centralized versus localized responses to transgression. The local texts operated on the same model as Roman ones but indicate that norms about space violation existed beyond the direct influence of the Roman senate. The inscriptions offer a counterpoint to the senate-mediated cases of theft studied in the previous chapter. They indicate that transgression existed in the Roman world beyond the political dramas of the city. There were local variations on how violated space was dealt with. In some communities, public assemblies held power, while in others transgression was assessed and expiated by priests. In Rome, issues within the Arval grove were addressed by priestly figures associated with the grove, while larger problems like the dirtying of the temple of Juno Sospita were administered through the senate. The process of repairing transgressions could occur on multiple levels, the unsurprising complement to the conclusion that doing so often required multiple rites. Transgression was not only a

phenomenon of elite Romans, but was a concern of communities throughout the Italian world.

Very few laws that describe any form of religious transgression survive, but from texts like the grove laws it is possible think about how norms might have established expectations for all sorts of different forms of transgression. The concerns that they describe can reasonably be inferred in other cases. For example, grove laws prohibit removal of objects from the grove. This transgression is a lot more like the crimes encountered in the previous chapter than like those characterized in the narratives of dirtying substances in temples. This raises the possibility that those thefts themselves also occasioned elements of ritual damage that were not remarked upon in the literary accounts. This may be especially true for situations like Fulvius Flaccus' tile robbery from the temple of Juno Lacinia, because the physical integrity of the sanctuary was harmed even though the main problem appeared to be his stealing. (This fact makes it even more odd that Rome did not repair that temple.) Both damage to objects and damage to spaces occasioned extensive propitiatory efforts. While propitiation was an important component of recovery from most varieties of religious transgression, in cases of property violation it was specifically necessary in order to make up for harming something that belonged to the gods.

Chapter 4:

Transgressions by and against Religious Officials

Thus far, this study has discussed transgressions against external objects, or, in the case of rites, ideas. How does the picture change when the thing being protected is a person who is themself capable of independent action, including violating their own sacrality? In this chapter, I take up two types of religious specialists who themselves could either be victims of religious transgression or commit it themselves: the flamen and flaminica Dialis and the Vestal Virgins. In both cases, these figures' priestly duties required maintaining physical integrity. A variety of bodily protections together rendered the priests eligible to perform rituals on behalf of the state. I have chosen the Vestals and the flamen/flaminica Dialis in order to understand how personal sacrality occasioned episodes of transgression. Both the Vestals and the flamines were subject to an unusual number of conduct restrictions because of their religious offices, and both had an important role in perpetuating the integrity of state rituals. These priests were also often the purported agents of religious transgressions.

The Vestals and flamines Diales cannot stand in for all religious specialists in Rome, nor can they be collapsed together into a single category themselves. Here I only intend to demonstrate the ways in which breaches of personal sacrality could interact with rituals, not to develop an encompassing theory of priestly transgression.[460] The state of the evidence is very different for the Vestals and flamines. For the Vestals, there are a

[460] "Priests" themselves do not form a coherent category in Roman religion. I use the term here (interchangeably with Rüpke's "religious specialists") only for its explanatory power in modern English to refer to those individuals who held a recognized position associated primarily with regular ritual activity in Rome.

number of recorded cases of unchastity and an infamous procedure for punishment, whereas there is only one known occasion on which a flamen transgressed. The nature of the conclusions that I can draw regarding each priesthood is different, but the overarching concern about maintaining Rome's ritual practice is the same for both. The Vestals and the major flamines held old and conservative offices. These positions visibly retained features into the historical period that were hidden in other priesthoods such as the pontificate. I have selected the Vestals and flamines as case studies here not because they were the only priests against whom religious transgression could be committed, but because the special set of strictures binding upon them puts a fine point on the issue. The Vestals and flamen Dialis could use their bodies in ways that scared the rest of the Romans. By simply allowing one of the protections that surrounded their bodies to lapse, they could jeopardize Rome's cultic practice.

I. Characterizing the Sacrality of Vestals and Flamines

There was not a single, well-defined concept of priestly sacrality, nor was there a consistent vocabulary in use when discussing holders of these offices. Priestly sacrality was not defined legally, but rather by the very specific powers and ritual qualifications that the priests possessed. Unlike tribunician sacrosanctity, which will be discussed in the next chapter, the sacrality of the Vestals or the flamines was not legalistically precise. Clearest among these prohibitions were the flamen Dialis' strict conduct requirements and the Vestals' enforced chastity. These were both, however, part of a larger constellation of duties and characteristics that together qualified these people to represent

the Romans at large in their interactions with the gods, as well as to participate directly in specific rites for the welfare of the community. An understanding of the exact ways in which priests were marked as sacred, or qualified to perform a certain program of rituals, is essential for an understanding of threats to their sacrality.

The flamines and Vestals were both separated from the normal social contracts that bound other Romans. Vestals were freed from *patria potestas* and *tutela* upon *captio*, and fell under the jurisdiction of the pontifex maximus.[461] They gained the ability to make wills, and if they died intestate, their property fell to the public treasury rather than to their families.[462] The flamen similarly was freed from *patria potestas* upon inauguration.[463] He and the flaminica were bound to each other by *confarreatio*, just as the Vestals had to be born from parents married via *confarreatio*. Each had to be patrician, a qualification deriving from the patrician monopoly on religious functions in

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[461] *Patria potestas*: Gai. *Inst*. 1.130; Gell. *NA* 1.12.9; *tutela*: 1.144-145. Lovisi (1998) 710 subscribes to the view that Vestals suffered "social death" when they underwent *captio.* This probably derives from the Christian idea that marriage constitutes social death for the female party. Bätz (2012) 24-27 argues for a looser relationship between the pontifices and the Vestals.

[462] Cic. *Rep*. 3.10: … *cur virgini Vestali sit heres, non sit matri suae*? "Why can a Vestal Virgin have an heir but her mother cannot?" On the right to make wills: Gell *NA* 1.12.9. C.f. Gell. *NA* 1.12.18: *Praeterea in commentariis Labeonis, quae ad duodecim tabulas composuit, ita scriptum est: "Virgo Vestalis neque heres est cuiquam intestato, neque intestatae quisquam, sed bona eius in publicum redigi aiunt."* "Moreover, in the commentaries of Labeo, which he wrote on the XII Tables, it was written: a Vestal Virgin is not heir to anyone intestate, nor is anyone her heir if she is intestate, but they say that her goods revert to public property."

[463] Gai. *Inst*. 1.130; 3.114. The flaminica would have been under the *potestas* of the flamen due to marriage via *confarreatio*, so as a unit the two would have been self-contained. See DiLuzio (2016) 20 for the flaminica joining her husband's *sacra familiaria*.

the early republic.[464] The flamen and flaminica could not retain their posts if either died, so their offices were connected to their familial/legal status just as the Vestals' were.[465] Both parties were free from being coerced into swearing an oath by a praetor.[466] The flamines were more generally prohibited from swearing oaths.[467] Neither flamen nor Vestal could be beholden to any authority other than Rome itself, or the pontifex maximus. These prohibitions forged necessary links between Rome and its religious specialists and removed those that would interfere with ritual duties.[468] They were both freeing and binding. The prohibitions made the priests eligible to be sacred agents of Rome. Transgressions compromised that eligibility and threatened Rome's whole religious apparatus.

Turning first to the Vestals, we see that a variety of terms were used to describe the Vestals as sacred. They were not sacrosanct.[469] On the contrary, the Vestals possessed a more generalized form of sacrality, which was referred to by a range of terms rather than by a single religio-judicial designation. Their virginity often stood rhetorically for their sacrality. The most common concepts chosen to communicate the Vestals' status

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[464] Mitchell (1990) 71, 88-89 argues that throughout the republic, priesthoods were inherited through several qualified families. Initially the patriciate was a key qualification.
[465] Guizzi (1968), especially pp. 29-66.
[466] Gell. *NA* 10.15.31: *Verba praetoris ex edicto perpetuo de flamine Diali et de sacerdote Vestae adscripsi: Sacerdotem Vestalem et flaminem Dialem in omni mea iurisdictione iurare non cogam*: "I have added the words of the praetor from his standing edict on the flamen Dialis and the priestess of Vesta: in all my legal authority, I will not compel the priestess of Vesta or the flamen Dialis to swear an oath."
[467] Gell. *NA* 10.15.5; Livy 31.50.7; Plut. *Quaest. Rom*. 44; Fest. 226L.
[468] Plut. *Quaest. Rom*. 44 suggests that the prohibition on taking oaths might have been to avoid the risk of an ἐπίορκος man praying and presiding over the ἱερά of Rome.
[469] *Pace* DiLuzio (2016) 228. See also Bauman (1992) 183 and 242 n. 12 on grants of sacrosanctity or sanctity to the imperial family, which puts into relief the more expansive protections offered by sacrosanctity.

were *sanctitas*, *puritas*, and *castitas* in Latin.[470] In Greek ἄχραντος, ἅγιος, and ἱερός were commonly used.[471] The 3rd- and 4th-century CE inscriptions from the statue bases inside the *aedes Vestae* occasionally used only *virgo Vestalis*, but often modified it with a superlative of *sanctus* and/or *religiosus*.[472] This late evidence has little bearing on Republican conventions but indicates that a standard vocabulary of sanctity had emerged for the Vestals by the High/Later Empire. When discussing Vestals in legal contexts, it seems to have been sufficient to refer to them as *virgines*.[473] They had to fulfill physical and familial purity requirements, which required that both parents were still living and neither engaged in a *sordidum negotium*.[474] Once they were inaugurated, physical chastity was the most famous and chief among the injunctions on their conduct, but it was not the only aspect of their sacrality.[475] Analogy between the Vestals and the flamen and

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[470] Plin. *Ep*. 4.11.9 says that the Vestal Cornelia, maintaining her chastity, rejected the hand of the carnifex *casto puroque corpore novissima sanctitate*. Livy 1.20.3 calls them *sancta*.

[471] Cass. Dio 26.87, Plut. *Num*. 9.5 introduces them as ἱεραί παρθένοι.

[472] For *sanctus*, see *CIL* 6.2131, 2132, 2133, 2134, 2135, 2136, 2137, 2140, 2141, 32412, 32414, 32415, 32416, 32417, 32418, 32419, 32420, 32421, 32425 and 2145 (from the Esquiline). For *religiosus*, see *CIL* 6.2134, 2137, 2138, 2141, 32415, 32416, 32417, 32419, 32420, 32421. For a convenient table of statues of Vestals, some with inscriptions, see Nock (1972) 267-270. For a catalog of inscriptions, including images, see Mekacher (2006) 199-213.

[473] Gell. *NA* 1.12.11-13, quoting a *lex Papia*. See also similar language from Labeo at Gell. *NA* 1.12.18. Gell. *NA* 1.12.14 quotes Fabius Pictor (Fr. 4 Huschke; Fr. 1 Bremer), again using only *virgo* and *sacerdos Vestalis*. See also Gaius *Inst*. 1.130, 145.

[474] Wildfang (2006) 43. There do seem to have been types of dirtiness that rendered one unfit for specifically religious service. Wildfang sees this as primarily a practical measure to ensure that they were able to correctly pronounce prayers, carry water, etc. Gell. *NA* 1.12.3 and Fronto *Amic*. 149M state that Vestals could not have bodily imperfections or speech/hearing problems.

[475] Beard (1980) and her (1995) partial rescension describe the relationship between the Vestals' ambiguous sexual status and their religious role, in readings conditioned especially by Douglas (1966). Beard also acknowledges the relationship between their religious duties and sacrality (e.g. (1980) 26, refined in (1995)).

flaminica Dialis, as religious figures whose sacred status was related to but transcended their sexual status, is not misplaced.[476]

There was similarly no consistent vocabulary of sacrality surrounding the flamen or flaminica Dialis. As with the Vestals, the name of the flamen, or, in Greek, ἱερέυς τοῦ Διός, alone evoked the associated sacred status.[477] For example, when discussing the suicide of Cornelius Merula, Velleius Paterculus states that he *saepe pro salute rei publicae flamen dialis precatus erat*.[478] The invocation of his title, alongside his ritual duties, was sufficient to suggest the magnitude of Merula's act. In Aulus Gellius' extended discussion of the flaminate, no concept such as *sacer* or *sanctus* appears.[479] Those terms do not in fact appear in any literary account of any flaminate with the exception of Ovid's *Fasti*, referring to the flaminica Dialis, and a metaphor in Plutarch.[480] The flamen and the flaminica could be called sacred, but it was not a concept consistently applied to them, possibly because it was taken for granted. More usually, their titles were used and their involvement in a specific rite or rituals more generally was mentioned. The

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[476] Gell. *NA* 10.15 links the two.

[477] Orelli *ILS* 2225-2252 for the flaminicae and 2207-2224 for the flamines, of imperial date and of diverse geographic origin, demonstrate no tendency to use adjectives to suggest the sacrality of the flamen/flaminica. These use only the terms flamen/flaminica, or occasionally *sacerdos*, and the name of the god in question. However, the late evidence, much of it relating to flamines of the imperial cult, is of limited relevance to the Republican flamen Dialis.

[478] Vell. Pat. 2.22.2: "as flamen Dialis he had often prayed on behalf of the safety of the Republic."

[479] Gell. *NA* 10.15. Compare to, e.g., Gaius *Inst*. 2.2-9 or Ulp. *Dig*. 1.8.9. For a thorough discussion and collection of ancient jurists on the question of *sacer*, *sanctus*, and *religiosus*, see Fiori (1996) chapter 2.1.

[480] Ov. *Fast*. 6.226: *sic coniunx sancta Dialis ait*. "Thus speaks the sacred wife of the flamen Dialis." Plut. *Quaest. Rom*. 111, in the context of explaining prohibition against priests touching or naming a dog or goat, says of the flamen Dialis: εἰκὸς μὲν οὖν ἐστι καὶ τὸν ἱερέα τοῦ Διὸς ὥσπερ ἔμφυχον καὶ ἱερὸν ἄγαλμα… "Therefore it is fitting that the priest of Jupiter, like a living, holy statue…"

powers of the flamen and flaminica were determined by their actual religious activities, and by the prohibitions that qualified them to take part, rather than by a more abstract concept of sacrality. These prohibitions dictated the ways in which the flamen could harm his sacred status at the same time as they defined his sacrality. Like the Vestal, the flamen was not himself independently sacred, but became so via the set of restrictions in his conduct.[481]

The flamen Dialis was bound by a complicated and extensive set of strictures, but the ones most prevalent were those relating to his body.[482] His hair could only be cut by a free person; his nails and hair had to be buried beneath an *arbor felix*.[483] He could neither remove his hat nor his clothing while outdoors, *tamquam sub oculis Iovis*.[484] He was not permitted to touch dead bodies nor to be in a place where a bier was.[485] Some restrictions were contingent upon specific ritual circumstances, indicating that the flamen's prohibitions were designed to make the individual eligible for certain types of religious service. The flamen Dialis was *cotidie feriatus*, meaning that he alone occupied a marked religious position at all times.[486] The flaminica was subject to more specific restrictions. For example, during the Vestalia, she was not permitted to comb her hair, clip her nails,

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[481] See Scheid (1986) 217.
[482] The most complete catalog of these is Gell. *NA* 10.15.
[483] Gell. *NA* 10.15.11, 15. For an interpretation of the treatment of the flamen's hair and fingernails in an Indo-European tradition, see Lincoln (1977).
[484] Gell. *NA* 10.15.17, 20: "as if under the eyes of Jupiter."
[485] Gell. *NA* 10.15.24; Plin. *HN* 18.119; Fest. 82L; Serv. *in Aen.* 11.76. DiLuzio (2016) 34 points out that prohibitions against contact with death were connected to the fact that a *funestus* person could not participate in rituals.
[486] Gell. *NA* 10.15.16. Scheid (1986) 215 maintains that, despite all of these restrictions, the flamen and flaminica were able to live almost normal lives.

or have sex with her husband, the flamen.[487] The flaminica's behavior was confined in a manner generally similar to the flamen's, but with alterations because of her specific ritual repertoire.[488]

The restrictions were enduring: during the Imperial period, limitations on the flamen Dialis were not lifted and he was not permitted to take up a province, which would have caused him to be absent from Rome for longer than the permissible span of time.[489] Violating one of these rules, even accidentally, caused the priest to be removed from the priesthood.[490] The flamen Dialis himself was seen to be a potential threat to his station because the flamen could pose a risk to the integrity of his ritual activities. As with the Vestals, other people could threaten his status, hence the stipulation that enslaved people not cut his hair, and surely adultery by either the flamen or flaminica would have been disastrous for the other spouse as well. Interestingly, however, no reports of another person harming a flamen survive. In large part it fell on the flamen to protect his own bodily integrity.

The nature of the limits placed on the priests' conduct relates to the type of religious activity they were supposed to perform. The flamines and Vestals were bound by a higher number of strictures because of their roles in representing the entire state. Cicero claims that a Vestal was *pro vobis liberisque vestris tot annos in dis immortalibus*

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[487] Ov. *Fast*. 6.226-234. Note the parallels between the flaminica's Vestalia restrictions and those to which the flamen, *cotidie feriatus*, was subject at all times.
[488] Gell. *NA* 10.15.26-30, Fest. 277L.
[489] See Tac. *Ann*. 3.58, cf. 3.71 for Servius Maluginensis' argument that as flamen Dialis he should be allowed to become a provincial governor.
[490] As, for example, befell Quintus Sulpicius, who, as a minor flamen during the 200s, allowed his apex to fall from his head. See Val. Max. 1.1.4 and Plut. *Marc*. 5.4.

placandis occupata est.[491] To that end, both priesthoods were characterized by the prohibitions put upon their holders. Restrictions on conduct, arcane though some of them may seem, were at their core measures tailored to the ritual duties of the religious specialists.[492] Sacrality defined by prohibitions left open opportunity for transgression, which would have had the immediate consequence of compromising the integrity of religious actions. Perhaps because of the precision of the limitations binding those priests, their faults could be met with uniquely precise processes of punishments and redress. That is, of course, by far the clearest in the case of the Vestals. In the sections that follow, I will discuss specific instances in which transgression occurred or was at risk of occurring either by or towards the flamen/flaminica Dialis and the Vestals. These occasions provide concrete examples of human responses to transgression, on an individual and state level, as well as the anticipated reactions of the gods to these cases.

II. The Flamen Dialis and Religious Transgression: Cornelius Merula

Despite the quantity and specificity of the restrictions placed on the flamen Dialis, there survives only one instance of intentional religious transgression involving the flamen, and none involving the flaminica. The suicide of Cornelius Merula, flamen Dialis in 87 BCE, brings into relief a number of the issues that will be noted in the next chapter

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[491] Cic. *Font*. 21: "She was occupied for so many years in praying to the immortal gods on your behalf and that of your children."

[492] Gell. *NA* 10.15.26-27 makes this clear when he explains that the flaminica Dialis observed the same ceremonies as the flamen, but also others, which bore additional behavioral guidelines: *eaedem ferme caerimoniae sunt flaminicae Dialis; alias seorsum aiunt observitare*… "The flaminica Dialis has nearly the same ceremonies (as the flamen). They say she also observes others of her own…"

in the context of the tribunician deaths, particularly the interplay between status and location of death. Merula killed himself while serving as flamen Dialis within the temple of Jupiter Optimus Maximus itself in a ritual that capitalized on his priestly office. His death was innovative and unique. A notoriously observant flamen Dialis, Merula displayed a great degree of self-awareness and control over his transgression. He introduced an as-yet unencountered element: as he died he cursed his political enemy, Cinna. His act highlights the confluence of priestly status, sacred space, and politics. The anxiety expressed surrounding his death demonstrates the ways in which religious transgression was dependent upon politics, but also the point at which an act was so egregious as to cause distress across political lines.

The political situation leading up to Merula's suicide was the primary factor influencing the choices he made at his death, and it is from this perspective that Merula is typically discussed.[493] While I will offer instead a religious reading of Merula's death, it is first necessary to include an overview of the political landscape of Rome in 87. Cinna had been elected to the consulship for 87, but his election was controversial because of his support for integrating the newly enfranchised Italians into all of the voting tribes. Rather than allowing Cinna to take up his magistracy, his rivals declared him a public enemy and Cornelius Merula was selected to serve as consul in his stead.[494] Merula was supposed to have been a particularly pious flamen Dialis; Appian claims that unlike earlier priests of Jupiter, he never removed his apex.[495] Moreover, Merula was the first known flamen Dialis to hold the consulship, it being very uncommon for any flamen to

[493] E.g. Katz (1979); Gruen (1968) 231-233.
[494] App. *B. Civ.*1.65.
[495] App. *B. Civ.* 1.65. The apex is his hat of office.

hold a magistracy due to their inability to leave Rome for extended periods, to ride a horse, or to see troops in ranked order.

Merula and his fellow consul, Octavius, fortified Rome against Cinna, who occupied himself by winning over troops in Capua. Marius joined with Cinna after recruiting a number of Etruscans. Cinna and Marius blockaded the city, cutting off the grain supply and forcing the senate to sue for peace. Cinna demanded that the senate recognize him as consul, which they did reluctantly, not wishing to depose Merula.[496] Merula stepped down, apparently willingly.[497] Once Cinna and Marius reentered Rome, the bloodshed began. Marius and Cinna proceeded to loot and execute members of the opposing party. In the fullest accounts of this episode (those of Appian and Velleius Paterculus) there follows a catalog of the prominent deaths that resulted.[498] Most notably, Merula's consular colleague, Octavius, died a carefully staged and public death, just as Merula would soon thereafter. Octavius retreated to the Janiculum and sat in the curule chair in his consular robes, surrounded by lictors – the image of a consul – intentionally drawing attention to his office.[499] He let himself be killed rather than defend himself, placing the blame for his death on Cinna's hands.[500] Merula would subsequently die in a similarly deliberate way in order to protest against Cinna.

Cinna also pursued Merula, the man who had usurped his consulship. Cornelius Merula was accused on false charges, likely of *perduellio*, and Appian strongly implies

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[496] App. *B. Civ.* 1.69-70.
[497] Diod. Sic. 38.3.
[498] App. *B. Civ.* 1.71-73; Vell. Pat. 2.22. For a reading of the arrival of Cinna and Marius that emphasizes the extent of the bloodshed, see Gruen (1968) 231-233.
[499] Compare Octavius' death with the episode in 390 in which the Roman magistrates all allowed Gauls to kill them after the defeat at Allia, dressed in their robes of office and sitting in curule chairs (Livy 5.41).
[500] App. *B. Civ.* 1.71.

that he would have faced execution.[501] Rather than appear at trial, Merula went to the temple of Jupiter Optimus Maximus and killed himself by cutting his veins. Velleius Paterculus' telling is the most detailed:

> Merula autem, qui se sub adventum Cinnae consulatu abdicaverat, incisis venis superfusoque altaribus sanguine, quos saepe pro salute rei publicae flamen dialis precatus erat deos, eos in execrationem Cinnae partiumque eius tum precatus optime de re publica meritum spiritum reddidit.[502]

Merula died honorably, as flamen Dialis, calling down the wrath of the gods upon Cinna and his party aiming to defend the Republic. Velleius Paterculus is the only source to mention Merula's prayers against Cinna. All accounts, however, emphasize bloodshed in the temple of Jupiter during Merula's death. The choreographed nature of his death leaves no ambiguity as to the fact that Merula died in a ritual designed to reproach Cinna.

I argue that Velleius Paterculus is correct when he identifies Merula's bloody rite as an *execratio*, a type of curse often involving bloodletting, because it is consistent with other Roman representations of *execrationes*, as discussed below. I dwell upon the nature of Merula's ritual because it has implications for his intentions; Merula died with the aim of harming Cinna. The *execratio* was not a rite performed by mainstream Romans. It was characteristic instead of non-Roman enemies, or of dangerous factions within the state. If Merula did choose the *execratio*, that decision was itself transgressive. Even if that

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[501] App. *B. Civ.* 74. Appian does not indicate what the charges were. For a discussion of the charge and trial, see Gruen (1968) 233.

[502] Vell. Pat. 2.22: "Merula, however, who had abdicated from the consulship at the time of Cinna's arrival, cut his veins and let his blood pour over the altars, and those gods to whom he had often prayed for the safety of the republic as flamen Dialis, he now implored in a curse against Cinna and his party and gave up his life, which had served the republic very well."

identification is erroneous, however, the pseudo-sacrificial manner of his death, the prohibition against dying while flamen Dialis, and the shedding of blood in temples all indicate a deliberate anti-Cinnan element to Merula's ritualized death.

Before exploring the *execratio* more fully, it is important to dispel the tempting but specious similarities between Merula's death and two other rites: sacrifice and the *devotio*. The sacrificial imagery in the description of blood cascading over the altars is clear, but Merula's death only superficially resembles a sacrifice.[503] It was in fact not one. First of all, Merula did not offer his blood to the gods when he spilled it upon the altars. He was instead violating and dirtying things sacred to the gods, especially their cult statues.[504] The Romans did not approve of human sacrifice, so Merula actually made his ritual *more* transgressive by making it resemble the blood sacrifice of an animal.[505] Moreover, in a sacrifice, something is consecrated to a god. Cinna, the object of the curse, was neither vowed nor consecrated. Merula made a request of the gods instead of fulfilling a contract already made. The gods were not given Cinna; they were asked to take him. Merula had not made a vow because there was no reciprocal arrangement.[506]

Similarly, while on the surface Merula's death in exchange for the destruction of Cinna's party resembled the rite of *devotio*, by which a Roman commander died in exchange for the death of his enemies, this similarity is specious. Merula's death did not bear a number of the characteristic qualities of the *devotio ducis*, such as the battlefield

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[503] Aug. *Civ. D.* 3.27 tendentiously interprets his action as a proper sacrifice, claiming *Merula flamen Dialis praecisis venis Iovi etiam suo sanguine litaret*. "Merula, flamen Dialis, having cut his veins, made an offering to Jupiter with his own blood."
[504] See chapter three for human blood as a polluting agent in Roman thought.
[505] Livy 22.57.6
[506] Merula did not coerce the gods. It was possible for *execrationes* to fail, as occurred in Crassus' case as presented in Vell. Pat. 2.46.3, discussed below.

context, or the *cinctus Gabinus* with a covered head.[507] Merula's curse resembles more closely the *devotio hostium*, by which an enemy was vowed to the gods, but again the reciprocal element is missing, as are many key ritual components.[508] The object of the *execratio* was only Cinna, not Merula himself.[509] Merula's death was a complementary component of the rite but not its object. The *devotio* was also uniquely practiced by the family of the Decii, and never after the third century.[510] It was not a prominent or common religious activity.

It is best instead to understand Merula's action as what Velleius Paterculus calls it: an *execratio*.[511] *Execratio* means something akin to "damnation" or "curse" and renders forfeit the victim's life and property in a manner similar to the *consecratio capitis*

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[507] Sacco (2004) argues convincingly that in order to be considered a true *devotio* an event must follow the ritual form of a *devotio*. Merula was not a warrior in specific dress (covered head, *cinctus Gabinus*) in battle plunging himself arms upraised into a line of enemies in order to save his army and damn theirs, as occurred in the *devotiones* of the Decii.

[508] Merula's act was distinct from a *devotio hostium* in that in the *devotio hostium* three black pigs were given in exchange for the destruction of one's enemies, while nothing was given in exchange in Merula's curse. See Macr. *Sat*. 3.9.9ff. for the *devotio hostium* formula. Note also that this *devotio* needed to take place in a military context. Moreover, the object of the *execratio* was only Cinna, not Merula himself. Merula did not pronounce a formula such as *legiones auxiliaque hostium mecum Deis Manibus Tellurique devoveo*. "I devote the legions and auxiliaries of my enemies, along with myself, to the infernal gods and to Earth" (Livy 8.9.8).

[509] Versnel (1976) 399.

[510] The three known *devotiones* are: Publius Decius Mus against the Latins in 340; his son at Sentium against Gauls and Samnites in 295; his grandson at Ausculum against Pyrrhus in 279. I do not presume to weigh in on the historical veracity of any of these instances.

[511] Várhelyi (2011) 131-32 offers the following as a definition of *execratio*: "While a *consecratio* dedicates someone or something to the god, thus removing him or it from the human order of life, the *execratio* places a bind on a person or thing, with the threat that regular divine protection will be withdrawn, rendering the person outside the rules of normal order."

and *consecratio bonorum*.[512] The earliest surviving mention of an *execratio* is in a fragment of Cato that connects it with legal procedure: *duo exules lege publica <condemnati> et execrati*.[513] If Mommsen's supplement to the text is correct it can also be associated with *damnatio*. But the *execratio* could, and usually did, occur outside of legal contexts. The most thorough account of an *execratio* is that performed by the Samnites in 393 before the battle of Aquilonia:

> quippe in oculis erat omnis ille occulti apparatus sacri et armati sacerdotes et promiscua hominum pecudumque strages et respersae fando nefandoque sanguine arae et dira execratio ac furiale carmen detestandae familiae stirpique conpositum: iis vinculis fugae obstricti stabant, civem magis quam hostem timentes.[514]

The Samnite rite had several elements that prefigured Merula's suicide. Here, as in Merula's case, a rite involving the shedding of human blood rendered the objects of that rite (in this case, the Samnites themselves, as well as their families) forfeit to the gods. The Samnite case differs from Merula's in that it was self-reflexive and conditional upon their failure to stand in battle.

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[512] Livy 5.11.14, reporting the words of the tribunes of the plebs about the consular tribunes after defeat at Veii: *pro certo se habere neminem in contione stare, qui illo die non caput, domum fortunasque L. Vergini ac M. Sergi sit execratus detestatusque*. "[The tribunes said that] certainly there was no one on that day standing in the *contio* who did not curse and hate the head, house, and fortune of Lucius Verginius and Manius Sergius." Note that the *caput* and *domus* (=*bona*) are specified as objects of calumny. On the *consecratio capitis bonorumque*, see chapter five.

[513] *FRHist* Cato F86: "Two exiles were condemned by public law and cursed."

[514] Livy 10.41: "Before their eyes was all the ceremony of the secret ritual: armed priests and the mixed slaughter of men and beats and altars splashed with permissible and forbidden blood and awful *execratio* and the dread prayer levied against their accursed family and line. Bound against flight by these chains they stood firm, fearing fellow citizens more than the enemy." See also 10.38-39 for the same oath.

In the first century BCE, Sallust described the Catilinarians performing a grisly *execratio* in similar terms:

> fuere ea tempestate qui dicerent Catilinam oratione habita, quom ad ius iurandum popularis sceleris sui adigeret, humani corporis sanguinem vino permixtum in pateris circumtulisse: inde quom post execrationem omnes degustavissent, sicuti in sollemnibus sacris fieri consuevit, aperuisse consilium suom, atque eo dicationem fecisse, quo inter se fidi magis forent alius alii tanti facinoris conscii.[515]

Here human blood was explicitly mixed in with a wine offering and passed around in a *patera* in a rite eerily similar to sacrifice. In his discussion of the Catilinarians pronouncing an *execratio*, Sallust equates oath-taking and *execratio*. There does seem to have been a distinction between the vengeful *execratio* levied against someone else, and the *execratio* that promised ruin if an oath was not maintained. Yet both requested something of the deity, with blood and life being given not in exchange but rather to make the request more powerful.

Ateius Capito, a tribune of 55, offers an example of *execratio* ritually unlike Merula's (lacking in blood) but similar insofar as it had an external object analogous to Merula's Cinna. In the episode also discussed in chapter one, as Crassus sought to leave Rome on his Syrian campaign, Capito and other tribunes opposed him. Velleius

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[515] Sall. *Cat*. 22.1-2: "There were at that time those who said that Catiline, in an oration, when he summoned those who were party to his crime to swear an oath, brought around human blood mixed with wine in *paterae*. Then, when everyone had tasted it after the *execratio*, just as usually happens in solemn ceremonies, he revealed his plan. He made that dedication so that there would be greater faith between them as partners in such an outrage."

Paterculus, the author of the passage that identified Merula's utterance as an *execratio*, also calls this action against Crassus an *execratio*:

> hunc (Crassus) proficiscentem in Syriam diris cum ominibus tribuni pl. frustra retinere conati; quorum execrationes si in ipsum tantummodo valuissent, vile imperatoris damnum salvo exercitu fuisset rei publicae.[516]

Like Merula, the tribunes attempted to damn Crassus in order to serve the greater good as they perceived it, in this case saving the lives of the troops and therefore Rome's military strength. While Velleius Paterculus does not include this detail, other accounts of the incident portray Capito as falsifying auspices and standing at a burning brazier.[517] These strange ritual elements emphasize the transgressive nature of the tribunes' curse.

The uttering of words in the *execratio* did not render its victim formally *sacer*, or forfeit, as the formula *sacer esto* did. The *execratio* was instead an appeal to the gods, in the same way that prayer was. Dido's death in the *Aeneid* bears a striking similarity to Merula's. Like him, she used the moment preceding her death to wish ill upon Aeneas, who had wronged her. Blood and prayer both played a role: *haec precor, hanc vocem extremam cum sanguine fundo*.[518] Arguably, the rite's presence in poetry indicates that *execratio* had a sufficiently strong cultural presence to make an impact in Vergil's epic. It

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[516] Vell. Pat. 2.46.3: "The tribunes of the plebs tried in vain to restrain Crassus with dire omens as he was departing for Syria. If their curses against him had prevailed, the cost of the general's life would have been a cheap price for the republic to pay if the army had been saved." Cass. Dio 39.39.6 similarly presents the curses as actions by a group of tribunes, not Capito alone. Plut. *Crass.* 16.5 has Capito operate alone.

[517] For the brazier: Plut. *Crass.* 16.5. For the auspices: Cic. *Div*. 1.29-30; Cass. Dio 39.39.6. For only *dirae*, combined with a *devotio* prayer form, see Flor. 1.46.3. Bayet (1960) interprets the curses as an extra layer of offense to complement the *obnuntiatio* of the *dirae*. Pease (1963) 137 suggests combining all of the rites mentioned in the various accounts for a full understanding of Ateius Capito's actions.

[518] Ver. *Aen*. 4.621: "These things I pray, and I spill forth this final word with my blood."

may also have highlighted Dido as non-Roman, and therefore more suited to use this problematic rite. Ritually, the role of human blood in *execrationes* marked the prayer as sinister and tinged with elements of human sacrifice, a rite with which the Romans claimed they were uncomfortable. In all of the above examples, *execratio* is identified as a practice favored by enemies, conspirators, and rogue actors. Even without all of the other trappings of Merula's suicide, the ritual itself was viewed as deviant.

Even more distressing to a Roman audience was that Merula had befouled the temple of Jupiter Optimus Maximus *while serving as flamen Dialis*. It was priestly blood that stained the altar of Jupiter. As discussed in the introductory section, the special status of the flamen Dialis' body allowed him to properly perform his duties. The restriction most directly relevant to Merula at the time of his death was that against contact with death. Merula shows that he was aware of this rule when he killed himself because he took action to protect the priesthood itself from damage, while still cursing Cinna; Appian states that … Μερόλας μὲν τὰς φλέβας ἐνέτεμεν ἑαυτοῦ, καὶ πινάκιον αὐτῷ παρακείμενον ἐδήλου, ὅτι κόπτων τὰς φλέβας τὸν πῖλον ἀποθοῖτο, οὐ γὰρ ἦν θεμιτὸν ἱερέα περικείμενον τελευτᾶν…[519] Because of the close identification between the priesthood and the apex, Appian is essentially claiming that a flamen Dialis could not die while he was flamen Dialis.[520] Appian's Merula was an extremely pious flamen Dialis: he never removed his apex.[521] By removing his hat at the moment of death, Merula

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[519] App. *B. Civ.* 1.74: "Merula severed his veins, and a tablet lying beside him showed that when he cut his veins he had taken off his cap, for it was not permitted for a priest to die while wearing it."

[520] This view is in accordance with that of Vanggaard (1988) 97.

[521] Rules regarding the apex over time are difficult to pin down, as Gell. *NA* 10.15.17-18 informs us that Tiberian-era Masurius Sabinus claimed that the flamen had been only

acknowledged the incompatibility between his suicide and his priestly office and attempted to limit damage to the priesthood by abdicating.[522]

Merula made his suicide further damning to Rome by staging it within the temple of Jupiter Optimus Maximus. In chapter three it was established that human bloodshed within temples caused ritual pollution. In the case of Tiberius Gracchus' murder, status and location operated in concert to render his death worrying. In Merula's death, the situation was worsened by the fact that Merula did not only die on the Capitoline, like Tiberius Gracchus, but inside the sanctuary. Valerius Maximus describes his death as taking place in the *sacrarium Iovis*:

> Qua tempestate rei publicae L. quoque Cornelius Merula consularis et flamen Dialis, ne ludibrio insolentissimis victoribus esset, in Iovis sacrario venis incisis contumeliosae mortis denuntiationem effugit, sacerdotisque sui sanguine vetustissimi foci maduerunt.[523]

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recently permitted to stop wearing his apex indoors. The expanded rules on apex-wearing seem to have been an innovation of the revived priesthood under the emperors.

[522] Várhelyi (2011) 132 claims that by removing his cap Merula "took special care to observe the applicable religious rules, thereby leaving the ritual logic unharmed; in other words, he wanted to make sure his *execratio* would work and Marius and his bloodthirsty supporters would become *sacer*." She ignores, however, the damage that Merula was doing to the Capitoline temple by staging his death there. Marco Simón (1996) 206 similarly believes that Merula put down his office by removing his cap though he also calls Merula's death a "dramatic rupture of *ius sacrum* by someone who was its fundamental guardian."

[523] Val. Max. 9.12.5: "In that storm of the republic, Lucius Cornelius Merula also, a man of consular rank and flamen Dialis, lest he become an object of mockery for the insolent victors, fled the summons to shameful death by cutting his veins in the temple of Jupiter, and the most ancient hearths dripped with the blood of their priest."

Florus emphasizes, *Merula flamen Dialis in Capitolio Iovis ipsius oculos venarum cruore respersit*.[524] Merula not only killed himself within the Capitoline temple, but explicitly within the *cella* of Jupiter and, if Florus can be taken literally, on the cult statue of Jupiter itself. In 87 the original temple of Jupiter Optimus Maximus was still standing. Therefore, if Merula did spatter the eyes of Jupiter, he would have bled on what was thought to be the original terracotta cult statue. It should be noted also that the Capitoline temple consisted of three *cellae*, those of Juno and Minerva flanking the central sanctuary of Jupiter. Jupiter's name is often used to refer to the entire structure. Although the literary accounts connect Merula's death most strongly with Jupiter, and this relation is natural considering his status as flamen Dialis, Merula may have also polluted the other two *cellae*. Both Valerius Maximus and Velleius Paterculus use plurals to describe the objects on which Merula bled (*vetustissimi foci* and *altaribus*, respectively).[525] A literal reading of these passages raises the possibility that Merula moved between the sanctuaries, intentionally spilling his blood in all three, and befouling the entire complex.

The precision of detail that can be assumed in accounts of Merula's death brings up the question of where the story of his ritual suicide originated. It is unlikely that Merula was alone in the sanctuaries, as he appears to be in the literary sources. A fragment of Seneca the Elder describes *aeditui*, slaves who attended temples, attending Jupiter and washing the statue and pretending to style the hair of the statues of Minerva and Juno.[526] Regardless of whether this corps of *aeditui* worked overnight, they would

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[524] Flor. 2.9.16: "Merula, the flamen Dialis, on the Capitoline spattered the eyes of Jupiter himself with the blood of his veins."
[525] Val. Max. 9.12.5; Vell. Pat. 2.22.
[526] Sen. *de Super.* fr. 35-37 Haase = Aug. *CD* 6.10 = F 69-70 Vottero, with commentary. Estienne (2001) argues that the activities of the temple attendants were quotidian acts.

surely have been the ones tasked with cleanup and would have been the ones to discover Merula. They would therefore have had to be the original source of the stories about how he had committed his transgression.

The consecrated space on the Capitoline was the site of bloodshed in another death following the return of Marius and Cinna to Rome in 87. Appian claims that one Quintus Ancharius, another opponent of Marius and Cinna, approached Marius while he was sacrificing on the Capitoline. Ancharius hoped that the location would make Marius more propitious. Instead, Marius ordered the guards to kill him on the spot, so Ancharius most probably fell on consecrated ground.[527] This story tells us two things: first, that bloodshed on the Capitoline was unexpected, and second, that it had shock value that could be manipulated by political factions. Merula's death can be read as an offensive attack using similar tactics to those employed by Marius and Cinna's camp. Political murder on the Capitoline did occur; Tiberius Gracchus had died in the same space 45 years earlier. Merula's death was within the temple itself, not merely within the consecrated *area Capitolina*, and therefore even more impactful. As discussed in the previous chapter, earlier examples of bloodshed in the Capitoline temple were addressed with lustration, such as the slaughter of the exiles in the temple in 460.[528] The same can likely be said of the Merula case. We do not know if lustration followed his temple suicide, but it is likely that it did.

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[527] App. *B. Civ.* 1.73.

[528] Livy 3.18.10: "Many of the exiles befouled the temple with their gore, and many were taken alive. Herdonius was slain. Thus was the Capitol regained. Regarding the captives, according to whether each one was free or a slave, thus did he take his punishment. Thanks were rendered to the Tusculans, and the Capitol was cleansed and lustrated."

Cornelius Merula understood the temple's associations when he selected the location for his suicide. Like his colleague, Octavius, Cornelius Merula carefully chose the place and manner of his death in order to damage Cinna's person and reputation as much as possible. The correct location for suicide for a Roman was the *cubiculum*, or at least the home.[529] Catulus, the other man falsely charged along with Merula and forced to kill himself, behaved correctly and died by suffocation in his own household.[530] Merula selected the Capitoline temple knowing that he would pollute it with his death and surely planning to combine his suicide with the cursing of Cinna. By polluting the temple he hoped to disrupt the relationship between the gods and the state and possibly make them hostile, but hostile against a regime that Merula opposed. Just as Octavius had played the role of the wronged consul, Merula played that of the wronged priest.

In the absence of definitive notices regarding lustration or similar expiation, another possible indication of the public reception of Merula's suicide is the fact that the flaminate remained vacant from his death until the Augustan period. But it is dangerous to read too much into that vacancy. Julius Caesar was nominated (*destinatus*) as flamen Dialis, and married Cinna's daughter Cornelia. Moreover, Caesar had broken off his previous engagement in order to wed Cornelia.[531] It is worth emphasizing that by this arrangement, the new flaminica would have been the daughter of the man cursed by the previous flamen.[532] I argue that in the aftermath of Merula's *execratio*, this decision by

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[529] Riggsby (1997) 39-41.
[530] App. *B. Civ.* 1.74.
[531] Suet. *Jul*. 1. He had previously been engaged to Cossutia.
[532] Vanggaard (1988) 51-52 rejects arguments that Cornelia was to be preferred to Cossutia because she was patrician. He suggests instead that the causality went the other way: Caesar received the flaminate because he married Cornelia. Mitchell (1990) 99-100 similarly argues that Caesar's right to inherit the flaminate came from Cornelia.

Cinna seems targeted and would have reestablished his control of the flaminate had it succeeded.[533] The Cornelian connection to the flaminate was strong enough to attempt to maintain control over the priesthood despite the bad blood between Merula and Cinna. Caesar married Cornelia in 84, so a multi-year gap remains between Merula's death and the earliest point at which Caesar could have become priest.[534] Chronological difficulties make it difficult to say whether Cinna had stalled in filling the priesthood out of fear of the curse, or because he needed to wait until Cornelia was marriageable. Regardless, Cinna's attempt to make Cornelia flaminica demonstrates a concerted effort to bring the flaminate back to Cinna's branch of the Cornelii.

In the wake of Caesar's nomination to the flaminate, two events occurred that would have raised the question of whether Merula's *execratio* had worked. In 84 its main target, Cinna, was killed in a mutiny by his own troops; they stoned him to death.[535] But there is another event that could have resulted from Merula's curse and prompted discomfort with the priesthood: the temple of Jupiter Optimus Maximus burned for the first time in 83. The Capitoline temple was, according to tradition, built by the Tarquins in the final years of the monarchy and dedicated by one of the earliest consuls, Marcus

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[533] Liou-Gille (1999) 441-442 also speculates that if Caesar and Cornelia had become flamen and flaminica, they could have potentially escaped from Merula's curse, and she claims that he was chosen explicitly for that reason.

[534] According to the chronology of Suet. *Jul*. 1. Deutsch (1918) 505 dates the engagement to before Cinna's death in 84 and the marriage after. In contrast, Velleius Paterculus 2.43 claims that he was *creatus*, not only *destinatus*, flamen Dialis. He also claims that both Marius and Cinna had a role in his appointment, which would indicate a date before Marius' death in 86. Suetonius is more scrupulous about his dating of events in Caesar's life and the connection between his marriage to Cornelia and the flaminate is plausible (on which see Vanggaard (1988) 51-52), so I accept 84 as the date of Caesar's nomination.

[535] App. *B. Civ.* 87.

Horatius Pulvillus.[536] The temple apparently stood intact from the beginning of the Republic until it was destroyed by fire in 83.[537] The life of the temple was thus symbolically connected to the life of the Republic. The loss of such an important sanctuary must have brought to mind Merula's horrific act of four years earlier.

When Sulla became dictator in Rome in 82/81, one of his acts was to strip Caesar of the flaminate, either shortly after Caesar's inauguration or while he was still only nominated.[538] In later discussions of the flaminate, Merula (and not Caesar) is discussed as the most recent man to have held the office, so it is most likely that Caesar never held the priesthood at all despite the approximately two-year period during which he apparently remained *destinatus*.[539] No one replaced him until 11 CE when Augustus revived the priesthood.[540] The rites of the flamen Dialis were transferred to the pontifices.[541] The fact that Cinna had been able to propose Caesar as a new flamen Dialis indicates that Merula was not thought to have irrevocably tarnished the priesthood. Moreover, the fact that stripping Caesar of the priesthood was a punishment levied

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[536] The vow of the temple is usually presented as the act of Tarquinius Priscus, while the building was carried out by Tarquinius Superbus (Dion. Hal. *Ant. Rom.* 4.59) or Superbus and Servius Tullius (Tac. *Hist*. 3.72). Both Dion. Hal. *Ant. Rom.* 4.61, 5.35 and Tacitus state that the temple was eventually dedicated during the early Republic, on which see also Livy 2.8.

[537] See Flower (2008) for an account of the impact of the temple destruction on the Roman psyche. For a brief overview of the position of the Capitoline Temple in Roman religious and public life, see Beard, North, and Price (1998) 59-60.

[538] Dating according to Suet. *Jul*. 1.

[539] As in Tac. *Ann*. 3.58 and Cass. Dio 54.36. Liou-Gille (1999) 448 correctly emphasizes the fact that *destinatus* is distinct from *inauguratus*, and that an inauguration process was necessary to become a priest. Guizzi (1968) 55-56 points out that there are other examples of being *destinatus* to become one priest before ultimately being made another. In Suet. *Cal*. 12, Drusus was originally *destinatus* as an augur but became a pontiff instead.

[540] Cass. Dio 54.36; Suet. *Aug*. 31.

[541] Tac. *Ann*. 3.58.

against him by Sulla indicates that the office was desirable in the late 80s. However, the Sullans never appointed a new flamen Dialis to replace Caesar, and the office remained empty for 75 years. Certainly the tensions of the civil wars contributed to the length of the lapse.

But why did Sulla not replace Caesar?[542] The gap was not without precedent. Our record of the flaminate in the republican period is patchy (only six flamines Diales are known for the entirety of the Republic). However, there is at least one known gap in the flaminate, between the deposition of Caius Claudius for ritual fault in 211 and the appointment of Caius Valerius Flaccus in 209.[543] C. Claudius had lost his office for improper handling of sacrificial entrails. The gap between 211 and 209, like the one after Merula's death, occurred in the aftermath of incorrect behavior by the previous flamen and indicates that a delay in appointing a new flamen could result from a previous flamen's transgression.[544] The new flamen, Caius Valerius Flaccus, was a notorious wastrel and a reluctant priest.[545] The episode demonstrates that problems with a previous flamen could cause difficulty in finding a suitable replacement. Perhaps the priesthood was indeed less attractive to good Sullans after Merula's act. Certainly, given the burning of the temple, there could have been real concerns about the power of another flamen Dialis, or even concern for Rome's relationship with Jupiter.[546] While the Cinnans may

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[542] Sulla himself recorded in his *Rerum Gestarum* that the first Cornelius to bear the cognomen Sulla had been flamen Dialis, according to Aulus Gellius *NA* 1.12.16. He was not unaware of the importance of the priesthood.
[543] Val. Max. 1.1.4; Livy 26.23.8.
[544] Goldberg (2015) 337.
[545] Livy 27.8.4.
[546] Previously, prodigies involving the temple of Jupiter Optimus Maximus had required expiation. E.g. Obseq. 29, 44; Cic. *Div*. 1.10.6; Livy *Per*. 14.

have attempted to minimize Merula's act by appointing a successor, Sulla was not willing to take that risk.[547]

Merula's death was a remarkable and unique act, carefully planned to fulfill Merula's vendetta against Cinna. In dying, Merula asked the gods to play partisan politics. Merula acted for shock value, knowingly exploiting the sanctified space of the Capitoline temple to attack his political enemy in a deed that would stain the *cella*. He used his body as a religious weapon, defiling his highly regulated self in a way that his contemporaries found frightening enough not to replace him immediately as flamen. Merula provides a useful case study for the student of religious misdeed because he demonstrated a clear awareness of the best ways to engineer the effects of his suicide. The deed was managed in order to operate on both the social and divine levels. He implored the aid of the gods using a rite known to, but held in suspicion by the Romans, while at the same time rendering his replacement as flamen a difficulty for the new regime. Cinna's selection of his daughter as flaminica Dialis betrays an anxiety about the post and an interest in reclaiming it. Sulla's disinclination to do so might indicate that Merula's sinister act had provoked fear in his political friends as well as his enemies. Religious transgression can in this case be seen to have been an active force in Rome, and one that shook all sides in the complicated politics of 80s.

More broadly, Merula's suicide was impactful both socially and on a religious level because of the interlinked relationship between the flamen Dialis and Rome. It is therefore surprising that his case is the only surviving example of *deliberate* transgression

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[547] This is also the suggestion of Vanggaard (1988) 84. One could even posit that Caesar, an enemy of Sulla, was removed from his office to eliminate the risk of Caesar taking an action similar to Merula's against Sulla. See also Liou-Gille (1999) 440-441 for speculation on the efficacy of the curse against Marius and Cinna.

by a major flamen or flaminica, especially considering the quantity and intricacy of the restrictions placed on the flamen Dialis. It is possible to conclude that the flamen and flaminica were normally well behaved, or that their faults were not worth recording unless they were as dramatic as Merula's. However, there is a stark contrast between the Vestals, whose convictions of *incestum* make up a large percentage of known facts about them, and the sparklingly clean flamines Diales. The disparity between ancient discussion of the Vestals and flamines says more about the status and activities of the Vestals than it does about the flamines, as I will explain below.

III. The Vestal Virgins: *Incestum* and Culpability

Mary Beard has observed that mentions of Vestals in our ancient literary sources disproportionally report cases of unchastity, or *incestum*, the most serious crime that a Vestal could commit. This has the effect of turning "the discourse of and around the priesthood into a discourse of virginity lost, as much as of virginity maintained; a discourse of transgression, of rules broken, rather than rules kept."[548] Because of the obsession with *incestum*, paired with restrictions upon the Vestals' conduct, discussion of them frequently becomes discussion of religious transgression, either realized or potential. The Vestal Virgins' *incestum* provides a useful counterpoint to Merula's suicide because it also involved the ritualized death of a Roman religious figure whose body was subject to certain protections. However, while Merula capitalized upon his status by undertaking a shocking and idiosyncratic action, *incestum* by Vestals seems in

[548] Beard (1995) 172.

comparison to have been nearly regularized. *Incestum* is the only religious transgression that led to a standardized penalty. Consequently, my discussion of the Vestals is much more general than my discussion of the flaminate, and indeed than the discussions of all other types of transgression.

Much ink has been spilled over the punishment of Vestal Virgins convicted of *incestum*.[549] Here I will present only a discussion of what *incestum* can tell us about religious transgression and its implications. As was alluded to in the above treatment of the Vestals' sacred qualities, a Vestal Virgin accused of unchastity had the potential to contaminate rites and posed a threat to priestly activities.[550] She was required to abstain from the *sacra* from the point when suspicion was first cast upon her.[551] The risk to public cult was great enough to put one of the six Vestals out of commission until an investigation could be held rather than to allow her to potentially tarnish a rite.

The Vestal's virginity was one of the requirements for the priesthood. An unchaste Vestal was therefore ineligible to perform her rites because she was not a proper Vestal. It was in fact dangerous for her to act as a Vestal. However, the Vestal's body was the vehicle by which both religious power and potential for transgression was

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[549] A much-discussed topic, on which see especially Beard (1980 and 1995). For ancient theories on the role of chastity, see Plut. *Num*. 10.5. See also Cornell (1981), Staples (1998) 132ff., Wildfang (2006) 51-64, and Schultz (2012).

[550] The unchaste Vestal was not herself a prodigy, as had been thought by Wissowa (1923-4) and Nock (1972) 254. Wissowa's reading was based on Livy 22.57.2-5 in the *incestum* of 216: *clades in prodigium versum esset*, "disaster turned into a prodigy." Livy does not need to be read so literally. Cornell (1981) 31 represents the current opinion: "A sign from the gods is clearly not the same thing as a human offence or error; rather, the one is a consequence of the other."

[551] Livy 8.15.7. Dion. Hal. *Ant. Rom.* 9.40 says that in 472, the Vestal Urbinia, though unchaste, still took part in rites: Ὀρβινία, τὴν παρθενίαν ἀπολώλεκε καὶ τὰ ἱερὰ θύει τὰ τῆς πόλεως οὐκ οὖσα καθαρά. "Urbinia had lost her virginity and conducted the sacrifices of the city while unclean." This was not a good thing.

carried, and an unchaste Vestal was more dangerous than, for one, her male sexual companion, because of the power that she possessed as an inaugurated priestess. The treatment of convicted Vestals demonstrates that they were not only punished for what they had done, but regarded with deep unease for the harm they could still inflict upon their community.

Plutarch describes the procedure by which the convicted Vestal was brought (presumably) from the *atrium Vestae* to the *campus sceleratus*, where she was buried. Care was taken throughout to prevent the woman from being seen by anyone else, even though the spectacle was apparently a publicly known and attended event:

> αὐτὴν δὲ τὴν κολαζομένην εἰς φορεῖον ἐνθέμενοι καὶ καταστεγάσαντες ἔξωθεν καὶ καταλαβόντες ἱμᾶσιν, ὡς μηδὲ φωνὴν ἐξάκουστον γενέσθαι, κομίζουσι δι' ἀγορᾶς. ἐξίστανται δὲ πάντες σιωπῇ καὶ παραπέμπουσιν ἄφθογγοι μετά τινος δεινῆς κατηφείας· οὐδὲ ἐστὶν ἕτερον θέαμα φρικτότερον, οὐδ' ἡμέραν ἡ πόλις ἄλλην ἄγει στυγνοτέραν ἐκείνης.[552]

The Vestal was both physically hidden by veils and litter hangings and muffled from onlookers' hearing. Everyone was supposed to avert their eyes as her veiled figure descended into her tomb. Under normal circumstances, contact between Vestals and the public was restricted, but they were safe to look upon.[553] At the moment in which the Vestal was transported to the site of her death she no longer was engaged in cultic

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[552] Plut. *Num*. 10.6: "They put the woman being punished on a litter, and, covering the outside and binding it with ropes, so that her cry cannot be heard from within, they bear her through the forum. Everyone stands aside in silence, and they attend the litter without speaking, feeling terrible dejection. There is no sight more awful, nor any day more abhorrent for the city than that one." Plutarch continues with a description of her burial at the Colline Gate.

[553] Cass. Dio 47.19.4 describes a Vestal who was angered at *not* being recognized.

activities and could not vitiate them any longer. Her veiling from sight therefore must have served a different purpose. It implies that the audience also needed protection from the unchaste Vestal and is the strongest evidence for pollution clinging to her person.[554]

In order to neutralize her threat and punish the transgression, the Vestals were disciplined in a standard manner, under the jurisdiction of the pontifices.[555] The pontifex maximus had a pseudo-spousal relationship with the Vestals that was visible most clearly in of the similarities between a wedding and the ceremony of *captio*.[556] This relationship also conditioned the pontifex's powers of discipline over the Vestals. The involvement of the pontifices proves that *incestum* was treated as a clearly religious crime.[557] It has been claimed that the pontifex maximus acted as a legal, and even spousal, authority rather than as a religious figure in punishing the Vestals.[558] This view creates a false dichotomy between civic and religious law, and also underplays the religious aspects of the Vestals' trials and deaths.[559] Punishments for religious transgressions could be the same as those

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[554] Sen. *Contr*. 1.2.3 states, of a hypothetical unchaste Vestal, *ne reliquae virgines contaminarentur haec segregata est*. "Lest the other virgins be contaminated, she was kept apart." Contact with someone who had been herself sexually contaminated posed a threat to the remaining virgins.

[555] Cic. *Leg*. 2.22: *incestum pontifices supremo supplicio sanciunto*. "Let the pontiffs exact penalty for *incestum* with capital punishment."

[556] For an overview, see Beard (1980) 14-16.

[557] Johnson (2007) 204ff. argues compellingly for an extensive disciplinary role for the pontiffs, not only the pontifex maximus, in relation to the Vestals. Bätz (2012) 58-59 makes a similar claim.

[558] It has been argued that *incestum* was viewed as a secular crime and that the pontifex maximus exercised secular authority in convicting and punishing Vestals and men, as in Koch (1960) 1-5. The pontifex's power to put the Vestal to death may echo the husband's ability to execute his wife for adultery (e.g. Dion. Hal. *Ant. Rom.* 2.25.6; Val. Max. 6.3.9; Gell. *NA* 10.23). But the public and ritual nature of the Vestals' execution makes it distinct.

[559] The 113 retrials of the Vestals acquitted in 114 have been cited as part of a trend towards the secularization and politicization of the punishment of Vestals, most notably by Bauman (1992) 53-57. Johnson (2007) 223-227 maintains that the incident did

for secular crimes. Consider fines paid to the treasury for violation of a sacred space, as in the *lex luci Spoletina*.[560] I claim here only that a religious figure levying a religious punishment allows us to diagnose a religious crime. The pontifex maximus' role was partially a function of his power relative to the Vestals, and of his broader responsibilities in punishing them in non-legal contexts.[561] However, the pontifex maximus also directed the scourging of the male party to *incestum*, over whom he had no independent authority, which argues in favor of his role as a religious authority and is important in evaluating the nature of the male's crime, as will be discussed below.

Ultimately, the conviction and live burial of unchaste Vestals by the pontifex maximus is an example of religious transgression taken seriously. There was a clear procedure and a figure responsible for that procedure. This is a departure from the ad hoc justice, or uneven carrying out of justice, in the literary descriptions of property violation or ritual transgression. With *incestum*, we have found a refutation of the concept that *periurii poena divina exitium*, *humana dedecus*, Cicero's formulation that implied that humans could simply wait for the gods to punish wrongdoing.[562] Rather than leaving retribution to the gods, instead the Romans made a concerted effort to ensure that the

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represent a shift to non-pontifical judges that persisted into the 1st century BCE, but maintains that the pontifices retained the power to punish victims. I accept this view. There is a denarius of 55 BCE by Quintus Cassius Longinus that represents a curule chair inside the temple of Vesta (*RRC* 428.1-2), possibly a reference to the moneyer's ancestor's involvement in the trials of 113. Reference to that trial therefore still had propagandistic value in 55, which may indicate some continuation of practice. Rawson (1974) 200-201 also compellingly notes that the religious situation in 114-113 was a particular one, with a large number of unusual prodigies occurring along with a string of military defeats. This can account for the retrial of the Vestals.

[560] Chapter three, above.

[561] Dion. Hal. *Ant. Rom.* 8.89.5 comments that the pontifex maximus ripped the fillets from the head of an unchaste Vestal. This was a ritual, not legal, measure.

[562] Cic. *Leg*. 2.9.22: "The divine penalty for perjury is ruin, but the human penalty is shame."

correct ritual measures were followed in removing the unchaste Vestal and male from Rome with minimal damage to the city.

Cornelius Merula demonstrated that the flamen Dialis could use his status to launch an attack on an opposing political faction. The described treatment of unchaste Vestals indicates that it was feared that they could also visit ruin upon Rome, perhaps not as spectacularly as Merula, but still in a way that incurred blame. At this juncture it is crucial to iron out the way in which guilt was envisioned as operating in the context of Vestals. Regardless of the actual circumstances of Vestals' sexual activities, or the reality of these encounters, Roman writers depict the Vestals as blameworthy parties. Seneca the Elder's *Controversia* 1.2 expresses this most clearly. His declaimers debate whether a hypothetical woman who had been abducted by pirates and then prostituted by the pimp to whom she was sold could serve as a Vestal. One rhetorician, Porcius Latro, cried, *absint ex hoc foro lenones, absint meretrices, ne quid parum sanctum occurrat dum sacerdos legitur*.[563] According to Cornelius Hispanus, she would be unable to pray for liberty having experienced slavery, and for chastity having experienced unchastity.[564] The woman's insistence that she remained a virgin was considered irrelevant, and her request, although fictional, was treated with scorn throughout.[565] A similar tone was taken regarding the Vestals tried for unchastity in 114-113 in Dio's account. He presents them as scheming and engaged in orgies.[566] The same logic was again at work when the

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[563] Sen. *Contr*. 1.2.1: "May pimps be gone from the forum, may prostitutes be absent, lest something antithetical to the sacred should occur while the priest is chosen."
[564] Sen. *Contr*. 1.2.2.
[565] See also the doubt placed upon another hypothetical unchaste Vestal who survived a fall from the Tarpeian Rock in *Contr*. 1.3. *Contr*. 6.8, about a Vestal who had written poetry about marriage, raises also the possibility of thought-crime among the Vestals.
[566] Cass. Dio 26.87.3-5.

extinguishing of the sacred flame was thought to have occurred because a Vestal had been unchaste.[567] The fire could have gone out by accident, but instead it was correlated with what was thought to have been the willful act to become unchaste. Responsibility was taken for granted, and always was ascribed to the Vestal.

The tendency to see the Vestals as the main culprits in *incestum* can be explained as simple misogyny, but only partially. This manifested in the disproportionate allocation of blame upon the woman for her sexual activities, as is present in the attitudes put forward most strikingly in Seneca *Contr*. 1.2.[568] Yet as the holder of a priesthood, the Vestal also had a qualitatively different religious responsibility to Rome. Dio pinpoints the popular conception of the Vestals accused of unchastity neatly:

> ὅτι αἱ ἱέρειαι τὸ πλεῖστον αὐταὶ τοῦ τε ὀλέθρου καὶ τῆς αἰσχύνης ὦφλον, συχνοῖς δὲ δὴ καὶ ἄλλοις μεγάλων κακῶν αἴτιαι ἐγένοντο, ἥ τε πόλις ἅπασα ἀπ᾽ αὐτῶν ἐταράχθη. ἐκλογιζόμενοι γὰρ ὅτι τὰ ὑπὸ τοῦ νόμου ἄχραντα καὶ τὰ ὑπὸ τῆς θρησκείας ἅγια ἔκ τε τοῦ φόβου τῆς τιμωρίας κόσμια ἐλυμάνθη, οὐδὲν ὅ τι οὐχ ὑπετόπουν τῶν αἰσχίστων καὶ ἀνοσιωτάτων δύνασθαι γενέσθαι. καὶ διὰ τοῦτο καὶ τὰς κολάσεις οὐ μόνων τῶν ἐλεγχθέντων ἀλλὰ καὶ τῶν ἄλλων πάντων τῶν αἰτιαθέντων μίσει τοῦ συμβεβηκότος ἐποιήσαντο.[569]

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[567] Cornell (1981) 35.

[568] Similar logic is at work in *Contr*. 1.3 and 6.8. Beard (1995) 172f. draws attention to these often-overlooked *Controversiae* as venues where the relationship between deed and thought is blurred.

[569] Cass. Dio 26.87.1-2: "The priestesses incurred the better part of the ruin and shame, but to many others they were also responsible for great ills, and the whole city was troubled because of them. For people — reckoning that those things that were immaculate by law, and holy according to religious practice, and orderly due to fear of punishment, had been polluted — suspected that anything shameful and unholy could happen. And on account of this they visited hatred not only on those who had been convicted, but also on the others who had been accused, out of hatred of the occurrence."

Dio claims that the convicted Vestals bore the majority of the ruin and shame themselves, but their actions also put the community at such risk that ignominy fell upon even unconvicted Vestals. The level of suspicion surrounding the other two Vestals was unique to this specific situation, but the unrest in the community is an element present also in other accounts of *incestum*.[570]

The specific context of Dio's comment is important. He is referring to the occasion in 114-113 on which three Vestals were accused of unchastity, one convicted and two acquitted, and then a special trial was held the following year which led to the conviction of the other two. Dio identifies the primary source of the Vestals' misconduct as the anger of a god (ἐκ δαιμονίας τινὸς ὀργῆς) rather than female licentiousness (οὐκ ἐκ γυναικείας ἔτι ἀσελγείας).[571] But in the ensuing account of the *incestum* trials of 114-113, Dio identifies the male agents of the Vestals' corruption, though he does so in a manner that still primarily incriminates the women. Two supposedly committed *incestum* with the brother of one of the others. The punishment of the men is not discussed, though one apparently roguish figure, Manius, is charged with having been the one to uncover the entire plot and identified as a master seducer before the fragment breaks off. However, none of these men are associated, as the Vestals themselves are in the previous paragraph, with the allegations of pollution and risk to the state.[572] Dio claims that there was a popular conception of "things that were immaculate by law, and holy according to religious practice, and orderly due to fear of punishment." Dio is referring to the holy

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[570] As in Plut. *Num*. 10. Bauman (1992) 56 says that the fragment of Dio's book 26 "is basically a reliable reflection of Livy's account in the lost book 63."
[571] Cass. Dio 26.87.2.
[572] In Obseq. 37, the men are mentioned as partners in transgression, but only in a prepositional phrase, *cum aliquot equitibus Romanis*; "with some Roman knights."

rites of the Vestals, from which Vestals suspected of unchastity were supposed to abstain.[573] For the Vestal, *incestum* caused ritual pollution that threatened not only a rift in the relationship between the gods and Romans, but also posed a continuing threat to cult practice. For the male party this was not true.

This episode from Dio throws into relief the fact that the crime of *incestum* necessarily had two parties. Though the male party was also a witting participant in religious transgression, and surely in many (most) cases the instigator, he is often ignored in modern scholarship on *incestum*.[574] The treatment of the man's punishment in the ancient literary sources is also very uneven compared with the extensive discussion given to the Vestal herself. In many cases he is not even mentioned.[575] This discrepancy of course raises the question of whether the crimes that the Vestals were accused of had even occurred in the first place. Perhaps the male was often missing because nothing had happened. Nevertheless, a penalty did exist for the male. The man who committed *incestum* was whipped to death by the pontifex maximus in the *comitium*.[576] It is not clear what was done with his body. This is a very different type of punishment from that suffered by the Vestal Virgins themselves. While the Vestals convicted for *incestum* were both veiled and concealed within a litter, and then hidden in the ground, the man was

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[573] As in Livy 8.15.7.
[574] Bätz (2012) 263, 267-271 is the most complete modern discussion. Wildfang (2006) 55 mentions only that the man was beaten to death. See Lovisi (1998) 714-715 for the male being considered a culpable party in *incestum*, and in his act forming a unity with that of the Vestal.
[575] Plut. *Num*. does not mention the male party, nor do many of the individual accounts of *incestum* within Livy, e.g. 8.15.7 on Minucia in 337.
[576] Festus 277L, following Cato, claims that the beating of the male was dictated by a law displayed in the Atrium Libertatis. On the punishment of the male party, see also Livy 22.57.3; Suet. Dom. 8.5; Plin. *Ep*. 4.11.10; Dion. Hal. *Ant. Rom.* 8.89.5, 9.40.4; *Epit. de Caes.* 5.7; Oros. 4.5.6-9; Zonar. 7.8.12.

punished publicly. He did not pose the danger to the community that the unchaste Vestal did.

The corruptor's punishment was unique and varied from the punishment of other co-conspirators. Orosius mentions the death of the *corruptor* of the Vestal Capparonia, convicted of unchastity in 266, in the same breath of that of her co-conspiratorial slaves.[577] It does appear, however, that the man's punishment was considered religious, and that his death was necessary for the religious integrity of the community, though not as critical as that of the Vestal. He was not simply collateral damage. The sentence of whipping itself could be used as a general punishment.[578] However, in the context of the violation of the Vestals, it takes on an expiatory quality.[579] Whipping was also the punishment imposed upon Vestals for lesser crimes than *incestum*.[580] For the Vestals, Plutarch claimed, the whipping had to be carried out by the pontifex maximus in a dark

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[577] Oros. 4.5.6-9: *Capparonia, virgo Vestalis incesti rea suspendio periit; corruptor eius consciique servi supplicio adiecti sunt*. "Capparonia, a Vestal Virgin guilty of *incestum*, died by hanging. Her corruptor and complicit slaves were inflicted with punishment." The hanging of the Vestal was not the traditional Republican punishment, so it is unclear to what degree Orosius can be trusted on the details of punishments. Capparonia may have, of course, hanged herself. Orosius' account is all we know about Capparonia. Note also that Orosius claims that *conscii servi* were subjected to punishment. He is unique in this. We do not know who punished the slaves or how this was done. Other mentions of the Vestals' slaves indicate only that they were subjected to torture during the *incestum* trial, hence the prohibition against freeing them when a Vestal was accused (Livy 8.15.7). The freedmen of Vestals were marked, as indicated by Plin. *Ep*. 4.11.11, in which Licinianus was at risk for having employed a *liberta* of the convicted Cornelia.

[578] XII Tables 8.9, for example, stipulates scourging as the penalty for a prepubescent person who steals another's pasture or crops by night. See also 8.14 for more generic punishment by scourging of people caught stealing. On Tarquinius Superbus' supposed introduction of whipping as punishment for citizens, see Cass. Dio 2.11.6. See also discussion of whipping tribunes below at pp. 226-227.

[579] Lovisi (1998) 724 claimed that the whipping was a magical expiatory process. Bätz (2012) 270 makes a similar claim, based upon its role in other cultures.

[580] Dion. Hal. *Ant. Rom.* 67.3; Plut. *Num*. 10.4. Dionysius of Halicarnassus and Plutarch do not specify the nature of these lesser crimes. See Fest. 94L and *Obseq*. 8, which claim that whipping was incurred for allowing the sacred fire to go out.

space with a curtain placed between them. That provision owes more to the status of the Vestals' bodies, and to the fact that they were stripped for whipping, than it does to any particularity of the punishment. However, the veiling measure does highlight the degree to which punishment of Vestals, whether whipping or live burial, was hidden from view. The woman herself was made to disappear. In contrast, men convicted of *incestum* were beaten within the view of all in the center of the city. The very public nature of his execution in the *comitium* is key. It would have served to deter others.

In the case of the male transgressor, the fact that the he was whipped to death by the pontifex maximus indicates that his crime was dealt with firmly within the religious sphere. Livy describes the role of the pontifex maximus in punishing Cantilius' *incestum* with the Vestal Floronia in 215: *L. Cantilius scriba pontificius, quos nunc minores pontifices appellant, qui cum Floronia stuprum fecerat, a pontifice maximo eo usque virgis in comitio caesus erat ut inter verbera exspiraret.*[581] This is the only account of the man's punishment that includes the detail of the pontifex maximus' personal involvement. I posit that the pontifex maximus was involved in all cases, not merely this one concerning a *scriba pontificius*. Dionysius of Halicarnassus claims that the pontifex ordered a man beaten rather than beating him himself.[582] In all likelihood the pontifex's personal involvement with the whipping was similar to when a magistrate presided over a sacrifice. He authorized the sacrifice, but he did not personally kill the animal. If the pontifex maximus did not kill the male party with his own hands, it would present an

[581] Livy 22.57.3: "Lucius Cantilius, a pontifical scribe, whom the pontiffs now call '*minores*,' who had had sex with Floronia, was beaten with rods by the pontifex maximus until he died amid his beatings."
[582] Dion. Hal. *Ant. Rom.* 9.40.4.

interesting contrast with the Vestals themselves, whom the pontifex maximus appears to have whipped personally.

The veiling of the convicted Vestal, combined with the injunction that one merely charged with unchastity had to abstain from participation in ceremonies, indicates that she was ritually polluted and a danger to the community. The public nature of her male partner's flogging indicates that he did not pose an analogous threat to the community, and instead that his death might have served as a warning to other men. However it was possible for someone to be the culprit of a religious crime, and to present a risk to society by virtue of having offended against the gods, but still to be killed through a non-ritualized procedure. A *sacer* man, for example, could be killed via vigilante justice.[583] Similarly, senatorial procedures for addressing thieving generals were irregular. In contrast, the pontiffs took an active role in disposing of a man who had sex with Vestals, and a role that was traditionally prescribed. The effect of killing the man seems primarily to have been the removal of a threat from the public sphere. It was not an expiation, which would have entailed the giving of something to the gods.[584] There is no indication that the man accused of unchastity was a sacrifice, just as the Vestal was not.[585] It was really and truly a punishment. When the man who committed *incestum* with a Vestal was killed, an agent of religious unrest was removed from the community, but not an object of pollution. His punishment was not the strike of divine justice, in the way that a *sacer*

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[583] See chapter five.

[584] Wildfang (2006) 60 claims that the milk, water, bread, and oil left with convicted Vestals had an expiatory element, but it is more likely that they were meant to be the essentials of life rather than offerings.

[585] Parker (2004) argues erroneously that convicted Vestals were sacrificed, and, moreover, that their deaths functioned as *devotiones* on behalf of all of Rome. Bauman (1992) 4 similarly refers to Vestals as "sacrificial victims" and "scapegoats." See Schultz (2010) for the argument that ritualized murders were not always sacrifices.

man's was figured, or the removal of a lingering ritual threat.[586] It was, rather, the killing by a priestly agent of someone who was culpable for a religious transgression. His death was religiously required, as is apparent from the pontifex maximus' role, but it did not by itself heal the conflict between man and gods.[587] Instead, its main function may have been to warn others not to violate the Vestals. The punishment was cautionary, just like those described on grove laws.

On a social level, ignominy attended even acquitted men. Catiline and Crassus were both accused of committing *incestum* with Vestals in 73, and though both were acquitted, Cicero did dangle the charge as a reason to be suspicious of Catiline during the elections of 64.[588] Sallust implies that Catiline was guilty, claiming that he did "many unspeakable crimes" and acted "against human and divine law."[589] Crassus, on the other hand, appears to have gotten away with whatever he did relating to the Vestal Licinia, which Plutarch explains away as simply lingering around her in an attempt to induce her to sell a villa that he coveted.[590] In neither case did the accusation of *incestum* halt these men's political careers, though the stories did persist and could be weaponized by their enemies.

For both the male and female parties, the punishment of *incestum* involved the regularized and ritualized killing of both of the convicted individuals. The Vestals were

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[586] Staples (1998) 132 claims that "in no other instance that we know of was the transgression of a ritual injunction ever punishable by death." The punishment of *sacer* individuals provides a counterexample.
[587] Gell. *NA* 1.12.18, citing Labeo, claims that the goods of a Vestal who dies intestate become public, but this comment is not mentioned in the context of Vestals convicted of *incestum*.
[588] Asc. *In Tog. Cand*. 91.
[589] Sal. *Cat*. 15.1. On this affair, see also Cic. *Cat*. 3.9; Oros. 6.3.1.
[590] Plut. *Crass*. 1. He makes the same claim at *Mor*. 89E.

considered the greater threat because they had lost their bodily integrity and put Roman rituals at risk. The men did not require as elaborate killings since their actions had less dire consequences for society because they were civilians. This does not mean that their trangressions were not taken seriously, but rather indicates the distinction between individuals who had priestly responsibilities and those who did not. Punishments of both the Vestals and the men served a ritual function. They were disciplined by a religious official, the pontifex maximus, and their removals were supposed to lift a threat from society.

IV. Vestals in Normal Circumstances

Having discussed the particular religious transgression of *incestum*, in which the Vestals themselves were considered the liable parties, I turn now to the potential for transgression *against* Vestals in more normal contexts. The relationship between chastity and the duties of the Vestals rendered its compromising particularly threatening both to the duties of the Vestals and to the welfare of the state. However, the Vestals' chastity needs to be studied also in the broader context of her sacred status, which featured a more expansive concept of bodily sanctity. Too often is the Vestals' sacrality reduced only to virginity when a more expansive treatment of sacrality could illuminate both aspects of how their virginity operated as well as how they were regarded on the plentiful occasions on which *incestum* was not suspected.

Almost all Vestals went their entire careers without being accused of *incestum*. How were Vestals treated by other parties when traveling through the city under more

typical circumstances? While we have considerable evidence for Vestals appearing in public in cultic context, I focus here mostly upon the less common references to them moving informally about Rome and aim to extrapolate from this the risks that contact with non-Vestals posed to them. There are no specific recorded cases of a Vestal's ritual integrity being violated by means of anything but *incestum*. In this they were similar to the flamen Dialis. Though they were protected by many rules of conduct, no one appears to have violated any of the more general prohibitions. As far as the Vestals were concerned, transgression was only *incestum*. This section consequently studies the potential for transgression rather than actual realized transgression.

The Vestals did circulate in the city with at least some degree of freedom, and would have had relationships with some of the elite Romans, familial or social.[591] Dio recounts a story of a Vestal in the late 40s BCE not being recognized by a passerby when returning from dinner, apparently without her colleagues.[592] This anecdote is odd. If Dio is not exaggerating, his tale may be taken as evidence that Vestals were allowed to make social calls, and to return home, possibly late at night. This episode is supposed to have been what prompted the Vestals to have been given lictors, according to Dio, suggesting

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[591] Vestals participated in the Bona Dea festival at the home of an elite Roman *matrona*. A relief sculpture found near the Ara Pacis and dating from the first century similarly depicts the Vestals at a banquet. It is unclear how social these gatherings were. For recent compilations and assessments of Vestals' ritual activities throughout the year, see DiLuzio (2016) 199-214, Mekacher (2006) 53-80, and Wildfang (2001). Mekacher (2006) 55 acknowledges that in situations in which a sacrifice was made to Vesta, we cannot be sure whether the Vestals themselves were personally present for ritual activities in Rome. This issue becomes important especially in the imperial period, during which Vesta was acknowledged on imperial birthdays, according to the *Feriale Cumanum*. She posits that they were very active and present whenever *sacerdotes publici* were said to have been present.

[592] Cass. Dio 47.19.4.

that alone and *sans* lictor, a Vestal might have been mistaken for a normal Roman woman in poor light. It is odd, however, that this problem had not arisen before now.

In a cultic context, they could attend the Bona Dea rites, held in private homes, during which they may have interacted with other guests.[593] Cicero certainly appears to have acted as if the Vestals (and other high-born women) were put personally at risk by Clodius' presence in 62.[594] Festivals such as the Vestalia and the Parilia may have involved opening the temple of Vesta to members of the public.[595] The Vestals did circulate in the city, and not only in ritual capacities.[596] Vestals received special seating at games, but they could yield these seats to others.[597] Presumably the non-Vestal would have been able to sit among the other Vestals at the games. For a normal Roman, the possibility of encountering a Vestal in daily life existed. Care must have been taken to avoid acting inappropriately towards a Vestal, at the risk of polluting her ability to act religiously on behalf of Rome.

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[593] Presumably, if the ceremonies they attended were as debauched as Juv. 6.314-345 suggested, the Vestals would not have been allowed to engage. Brouwer (1989) 369 suggests that the Vestals did take part in drinking and merriment.
[594] *Schol. Bob.* 85. Note that they were also key to the repetition of the interrupted rites.
[595] Ov. *Fast*. 6 is the most complete source for the Vestalia, of which lines 395-98 discuss the possible barefoot visit of the matrons to the temple of Vesta. Wildfang (2001) 244 claims, however, that the Vestals themselves may not have participated in the Vestalia rites. Compare also to the Parilia, on which DiLuzio (2016) 202 has suggested that people went in person to collect *suffimen* from the Vestals in temple of Vesta, following Ov. *Fast*. 4.731-734.
[596] They appeared in public in semi-ritual capacities as well. Wildfang (2001) 230 suggests that Vestals may have frequently ventured out to collect water for purificatory purposes, based on Ov. *Fast*. 3.11-14, in which the Vestal Rhea Silvia collects water.
[597] Cic. *Mur*. 73: Murena's relative, a Vestal, gave him her seat. It was implied that there was bribery involved. Wildfang (2006) 32-33 claims that Vestals were given special seating in order to fulfill duties at games and also to separate them from crowds of other Romans at public spectacles, but the story of Murena argues against this view.

Dio's Vestal, walking home from a dinner out was scandalized that she was not recognized as a Vestal. Her indignation may have stemmed not only from the social status of Vestals, but also from the sacred power conferred by their offices. Perhaps the passerby was also supposed to give way and failed to do so. It is likely that one was not permitted to physically touch a Vestal. The experience of moving near a Vestal was to come into contact with a sort of religious force field.[598] A result of that force field was that Vestals could accomplish things with their presence. A convicted person being led to execution was pardoned if he met by chance with a Vestal.[599] Pliny the Elder reports a folk belief that the prayer of a Vestal could halt a runaway slave within the boundary of the city.[600] While Pliny rejects the efficacy of this prayer, its existence is an indication of the power that was thought to cling to the Vestals.

There is no surviving formal statement about the sanctity of the Vestals' bodies beyond their virginity, analogous to the statements about the sacrosanctity of tribunes or Aulus Gellius' enumeration of prohibitions relating to the flamen and flaminica Dialis. However, the Vestals' bodies were protected by lictors.[601] They were also permitted,

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[598] This is perhaps akin to Lucius Aurelius Cotta's (unsuccessful) attempt to flee debts by treating the tribunate as a figurative *sacrarium*, as described in Val. Max. 6.5.4. See n. 626 below.

[599] Plut. *Num.* 10.3. There was a provision that the meeting between a Vestal and a condemned person had to be fortuitous. This indicates that the pardon did not occur because the Vestal could not be associated with death, in a manner analogous to the flamen Dialis, because if the meeting was planned and not fortuitous the pardon was not extended. The measure did not exist to protect the Vestal. It instead provides evidence for her power. She could enact a change in the criminal's state.

[600] Plin. *HN* 28.13. This notice appears in the context of a discussion of verbal remedies, in which Pliny does not believe.

[601] However, Cass. Dio 47.19.4 claims that the Vestals were only given lictors in 42 BCE, as discussed above. Plut. *Numa* suggests that they may have possessed lictors during the Republic, but this could be an anachronism on Plutarch's part. We have no direct mention of lictors in relation to Vestals prior to 42. DiLuzio (2016) 141 acknowledges that Dio

along with the rex sacrorum and the flamines, to ride in a carriage within the city of Rome.[602] There is some indication that contact with and sight of the Vestals was in some way restricted. As discussed above, they had to be hidden behind a veil to be scourged by the pontifex maximus, though that may have been on account of their nudity during punishment. It may therefore have been a sexual prohibition rather than a broader prohibition against looking upon the flesh of a Vestal.[603] Stronger evidence for the more general protection of the Vestals' body is provided by the deference shown to Vestals. A person who passed beneath their litter was put to death.[604] They were also dressed distinctively.[605] The white, purple-bordered *suffibulum*, worn on ritual occasions, and the characteristic *vittae* would have been recognizable signals that one was looking at a Vestal, functioning similarly to a habit or priestly collar today.[606]

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claims that the Vestals did not receive lictors until 42 but suggests that they may have had them during festivals earlier. The other possible explanation is that the Republican Vestals possessed *lictores curiati*, like the pontifices, but not standard lictors. Gell. *NA* 25.27, citing Labeo via Laelius, mentions the pontifices' *lictor curiatus.* It is therefore safe to see the *lictores curiati* as a Republican phenomenon. In any case, by the imperial period, the lictors of the Vestals outranked those of magistrates. Sen. *Contr*. 6.8 states that the lictors of consuls and praetors had to lower their fasces to the Vestals' lictors. On this practice, see Cornell (1981) 33.

[602] According to the *Tabula Heracleensis*, *CIL* 1.593: *quibus diebus virgines Vestales re*[*gem*] *sacrorum flamines plostreis in urbe sacrorum publicorum p(opuli) R(omani) caussa* / *vehi oportebit*… "on which days it will be appropriate for Vestal Virgins, the rex sacrorum, and flamines to be borne by carriages." See Hudson (2016) for a general discussion of the conveyance of women in carriages within Rome.

[603] Plut. *Num*. 10.4; Dion. Hal. *Ant. Rom.* 2.64.5.

[604] Plut. *Num*. 10.3.

[605] Gallia (2014) and DiLuzio (2016) 154-184 are the most recent discussions of the Vestals' clothing. Gallia studies how Vestals' clothing established their marginal status within society, following Beard (1980), and argues that the diverse elements in their dress served to emphasize "sexual decorum." Mekacher (2006) 121-186 surveys the representations of Vestals in artistic and epigraphic media.

[606] Gallia (2014) 223-224, 227-228.

Even the Vestals' method of execution was evidence of their sacrality. While it was forbidden to bury corpses within the *pomerium*, the Vestals were interred near the Colline gate, within the boundary of the *pomerium*. This characteristic separated them from not only most people, but also in particular from those people whose execution superficially resembled that of the Vestals most closely: androgynous people. The Romans understood androgynous people and other atypical births as prodigies, and when such a birth was reported, the person would be placed in a sack and thrown in the ocean.[607] The purpose of the sack was to avoid contact between the supposedly dangerous human and the purificatory water.[608] The Vestals, on the other hand, were retained in the city rather than banished. The burial chamber subsumed them into the earth of Rome. It appears that even disgraced Vestals retained something of their sacred quality. Their bodies, though dangerous, still had to be kept within the city.

Between their privileged form of conveyance, lictor, and particular form of dress, the Vestals would have been easily identifiable figures who also clearly stood apart from other Romans. Their distinctive appearance signaled their religious potential and also the risk they posed to those who did not behave correctly in their vicinity. The resulting composite picture of the Vestals' sacrality is more concerned with bodily integrity broadly than specifically with sexual status. Any form of physical contact with the Vestals was carefully restricted, as were affronts to their dignity. The exact details of the

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[607] Another difference between intersex people and unchaste Vestals was that the former were considered prodigies, while the later were not. Though occasionally both modern and ancient authors allowed slippage such that the Vestals were portrayed as prodigies, I concur with Staples (1998) 133-134, who contends that the Vestals were not prodigies because their actions were not reviewed by the senate or addressed by decemviri or haruspices.

[608] Compare also to parricides, p. 248.

strictures surrounding life in the presence of Vestals are obscure, but the necessity of moving about the city with the Vestals means that fellow Romans would have been aware of these restrictions.[609]

There are no specific surviving episodes of non-sexual transgression against a Vestal. Instead, the rules surrounding the Vestals themselves are shadowy suggestions of possible transgressions. Moreover, there is evidence that the risk posed by the Vestals' physical presence was heeded. The Vestal Virgin Claudia was successfully able to shield her father Appius Claudius Pulcher (or her brother, according to Suetonius) from bodily interference while he conducted his controversial triumphal parade in 143.[610] A tribune of the plebs had opposed the triumph and apparently attempted to drag the *triumphator* from his chariot*: ... patrem suum triumphantem e curru violenta tribuni pl. manu detrahi*.[611] Claudia, a Vestal, interposed herself, and with her protection the triumph was completed. Of the three surviving accounts of Claudia's actions, two emphasize the virtue and bravery of the Vestal and say that this was the cause of her success.[612] The third, Suetonius', suggests an alternative explanation which is more likely: *etiam virgo Vestalis*

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[609] The description of popular policing of the Vestals' conduct in Cass. Dio 26.87 indicates that there was a developed public conception of proper behavior by and surrounding the Vestals.

[610] The triumph had been denied by the senate on the grounds that Claudius had lost many troops during his campaign against the Salassi. Cass. Dio 74 and Oros. 5.4.7 mention the incident but not Claudia's involvement.

[611] Val. Max. 5.4.6: *quae* (*Claudia*)*, cum patrem suum triumphantem e curru uiolenta tribuni pl. manu detrahi animadvertisset, mira celeritate utrisque se interponendo amplissimam potestatem inimicitiis accensam depulit*. "When Claudia realized that a tribune of the plebs was violently dragging her triumphing father from his chariot, she drove off his great power, stoked by enmity, by putting herself between them with great speed."

[612] Val. Max. 5.4.6 and Cic. *Cael*. 34. Both have reason to emphasize Claudia's actions. Valerius Maximus is writing a collection of praiseworthy deeds, and Cicero is using the story of Claudia's virtue to slander Clodia.

fratrem iniussu populi triumphantem ascenso simul curru usque in Capitolium prosecuta est, ne vetare aut intercedere fas cuiquam tribunorum esset.[613] Suetonius depicts this incident as a direct test of the nature of a prohibition against harming Vestals.[614] The tribune was religiously barred from forceful actions against the Vestals; it would not be *fas* for him to intervene by force or by veto. The Vestals must have been protected against both bodily affront and affronts to their dignity, just like the tribunes, or a veto would not specifically have been banned. Moreover, for Claudia's method of physical intercession to have worked, the tribune must already have had an understanding of his rights relative to a Vestal, or he would have pressed on with his attack.[615] While the aggressor in this case was a tribune, and he had been relying upon his own *sacrosanctitas* in his opposition, the reason that he had to stop assaulting Claudius when Claudia mounted the chariot was because his power, *like that of any Roman*, did not allow harm to a Vestal.

Vestals were used to provide protection in diplomatic efforts, a function which capitalized on their physical inviolability. They successfully interceded with Sulla on behalf of the young Julius Caesar, ensuring him safety during the Sullan dictatorship

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[613] Suet. *Tib*. 2: "A Vestal Virgin followed her brother, who was triumphing against the will of the people, all the way to the Capitolium, having mounted the chariot, so that it would not be lawful for any of the tribunes to veto or intercede."

[614] Claudia instrumentalized her sacred status in a manner not dissimilar to Merula's during his suicide.

[615] If Claudia's action had been entirely innovative, it would not have worked. In this I differ from Bauman (1992) 47, who claimed that before Claudia's action, "Sanctity had never been defended in a positive way; it only surfaced when it was violated by unchastity." Wildfang (2006) 92 adds that the Vestal may have been intentionally expanding the powers of the priesthood to include an active and possibly offensive *sanctitas*.

despite his connections to Marius and Cinna.[616] The mechanics of their intercession are unclear. Clearer, though not Republican in date, is Vitellus' use of Vestals as envoys to Vespasian in 69 CE. Vespasian had begun a coup against Vitellius, and Vitellius sent troops and Vestals to Vespasian's generals Petillius Cerialis and Antonius Primus to petition for a stay in fighting. All sources record that the delegation was unsuccessful, but Tacitus claims, *virgines cum honore dimissae* [*sunt*].[617] Tacitus records that Vespasian's troops sent back the message that they could not negotiate with the party that had burned down the Capitoline temple. Vespasian thus appears as the guardian of religious rectitude, offering respect to the Vestals when Vitellius had already performed an ultimate act of sacrilege by destroying the temple. As with the tribune of 143 BCE, all of these generals were dissuaded from mistreating the Vestals even when the priestesses came as envoys of political adversaries. Their diplomatic utility was obviously conditioned by this sacrality.

Who was put at risk by inappropriate contact with the Vestals? As in the situation in which a Vestal was unchaste, an extreme form of improper contact with the Vestals, the answer is "everyone," because of the implications of pollution for public rites, but certain types of people were particularly vulnerable or immune. The Vestals themselves were especially at risk. Those in "sordid" professions may have been somewhat immune.

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[616] Suet. *Jul*. 1. Bauman (1992) 52, 62 sees a trend towards increased involvement of Vestals in politics after Claudia's actions in 143, citing the trials of 114-113 as the next key episode. Following him, Wildfang (2006) 95-96 connects the Vestals' intercession on behalf of Caesar with an increasing politicization of their role. Regardless, if their protections had not already been in place, the Vestals would not have necessarily been safe from Sulla or chosen for that embassy.

[617] Tac. *Hist*. 3.81: "The virgins were dismissed with honor." For other mentions of this delegation, see Cass. Dio 65.18-19, who claims that the delegation was put in fear of their lives by Cerialis, and Suet. *Vit*. 16, who does not record the treatment of the envoys.

Cornelia, a Vestal put to death during Domitian's reign, who maintained her innocence, shrank from the touch of the *carnifex*. Pliny claims that *cumque ei manum carnifex daret, aversata est et resiluit foedumque contactum*.[618] Offering an exaugurated Vestal a hand does not appear to have been the problem. However, Cornelia considers herself to still be a rightful Vestal, and the *carnifex* is an agent of pollution, and himself already distanced by his status from the average Roman. It is not surprising that pollution is only expressed as going one direction, from the *carnifex* to the (apparently chaste) Vestal. A chaste Vestal was at unique personal risk and had to shrink from conduct with the wrong sorts of people just as she had to shrink from sex.[619] Cornelia may also have been asserting her right, as a Vestal, not to be touched by anyone, regardless of their profession.

In the case of more general physical contact with Vestals, here again it seems as if we have a delineation of penalty. This is expressed only in the prohibition against walking under the litter of the Vestal, so it is not necessarily generalizable, but it is clear that in at least that case it was acceptable to punish incorrect behavior towards a Vestal by death. It is possible that the lack of concrete instances in which a Vestal was actually violated through a means other than *incestum* indicates not that these violations did not occur, but that the crimes were all folded in to the specific charge of unchastity regardless of what the offense had actually been. For example, when Crassus was harassing a Vestal about her property, he was accused of *incestum*. The Vestals had a generalized sacrality, but its violation may have always been read as sexual.

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[618] Plin. *Ep. 4.11.9* on the execution of Cornelia under Domitian: "when the executioner gave her his hand, she turned away and shrank from his dirty touch."
[619] Sen. *Contr*. 1.2 similarly presents mere presence within a brothel as disqualifying for a prospective Vestal.

None of the accounts feature a clear expression of the role of the gods in punishment. Seneca the Elder is the only one who actively speculates about the involvement of the god, when his characters debate the status of a girl, potentially a Vestal, who was cast from the Tarpeian Rock and saved from death by the goddess.[620] That text is unhelpful because it is unclear whether the girl involved is supposed to be a Vestal or not, and because her situation is hypothetical and designed for a debate exercise. None of Seneca's speakers uphold the action of the goddess as substantial enough to overturn a conviction. In the texts discussing suspected unchaste Vestals, divine intercession occurs only to reject a conviction, as in the case of Claudia Quinta with Magna Mater (even though this is a later development of the story). Similarly, when the Vestal Tuccia was accused of unchastity, she prayed that Vesta prove her innocence by enabling her to carry water in a sieve with holes in it from the Tiber to the temple of Vesta.[621] The gods are not depicted as doling out punishment.[622] The implicit consequence is that the gods approved of all punishments carried out successfully by humans.

Transgressions by or against Vestal Virgins threatened the religious rites of Rome. The Vestals possessed a broader sacrality that required physical integrity that extended beyond physical virginity. The Vestal could not, except in specific disciplinary

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[620] Sen. *Contr*. 6.8.
[621] Val. Max. 8.1.5 abs.; Aug. *Civ. D*. 10.16.
[622] However, Cass. Dio 69.3 comments that Tuccia's accuser was never found living or dead after she was proven innocent. Perhaps a divine hand is supposed to be imagined behind his disappearance. For Beard (1995) 171, Claudia Quinta's transformation from matron into Vestal, whatever its date, may be due to the interstitiality of the Vestals and that of the cult of Magna Mater. But might it also owe something to the power of the Vestals' punishment in the Roman cultural imagination? One can tell a more compelling story about the Vestal who escapes public live burial than the matron, though both women had much at stake.

situations, be violently touched, and restrictions also were placed on casual contact. Responsibility for maintaining proper behavior was primarily set upon the priestesses themselves, though other members of the community could also incur blame if they violated a Vestal. The rules surrounding conduct around Vestals were broadly known, as evidenced by the tribune's reaction to Claudia's intercession on behalf of her triumphing father, and the Vestals' utility in embassies. In more general contexts, an understanding of how to behave around a Vestal would have been necessary because they could and did move about the city in non-ritual capacities. The specter of potential transgression hovered around all actions involving the Vestals.

Conclusions

As referenced at the beginning of the chapter, Cicero claimed that a Vestal was "occupied for so many years in praying to the immortal gods for you and for your children."[623] There was a fear that religious figures would be compromised, or that they would sabotage their society by intentionally violating their behavioral strictures. Because sacrality was defined by a priest's office and embodied in their physical person, the Romans feared that they would use their status to commit deliberate transgressions. The laws against grove violation at Spoleto seen in the previous chapter also hinted at possible transgressions by priests, or by those heavily involved in cult. With the Vestals and the flamines, there was a far clearer implication that the priests themselves posed threats to the religious safety of the state. Merula's death was the most dramatic

[623] Cic. *Font*. 21: *quae pro vobis liberisque vestris tot annos in dis immortalibus placandis occupata est.*

realization of that fear. I posit that the punishment of the Vestals was so unusually consistent and regulated in order to dissuade Vestals from transgressing, and also to express the dedication that Rome had to correct cult practice. Somewhat surprisingly, stories of divine anger are absent in stories of priestly transgression, though cult practice was described as being at risk. It can be assumed on analogy with the episodes of sanctuary violations that the gods might have withdrawn favor from Rome because their worship had been disrupted or miscarried.

There are no recorded instances in which someone is supposed to have transgressed against a flamen, and relatively few recorded cases for the Vestals, especially if some of the surviving convictions were false accusations. The prohibitions seem to have worked. I turn next to another variety of protected individual, the tribune of the plebs. In contrast to the priests, the tribunes were harmed with some frequency in the last century of the Republic. This disparity raises questions about the nature of different forms of sacrality. Though the religious was inherently political in Rome, religious protections were less effective in guarding politicians than they were in protecting religious figures. It is surely relevant that the Vestals and the flamen Dialis were among the least "political" of the Roman priests because their participation was restricted to a far greater extent than other priests. A different picture emerges if one investigates transgressions against priests with more vibrant political careers such as the various *pontifices maximi*, an inquiry that lies outside the scope of this study in its current form. The Vestals were unable to formally take part in governance because they were women. The flamen Dialis could not lead campaigns or swear oaths, and rarely held high office. Cornelius Merula, the most politically involved flamen Dialis, was also the only one to

intentionally transgress against the office. These priests were kept aloof and were therefore relatively safe behind their rarefied religious statuses. The flamines and Vestals provide an instructive contrast with the tribunes of the plebs, whose violation was always first and foremost a political issue.

Chapter 5:

Tribunician Sacrosanctity and Its Violation

The tribunes of the plebs were harmed at least sixteen times between the death of Tiberius Gracchus and the end of the Republic. Tribunes were the major class of non-priestly individuals whose bodies were shielded by religious protections. Sacrosanctity was meant to protect these politicians as they carried out their controversial duties, especially the veto, *intercessio*, and proposing legislation. In a sense it is not surprising that tribunes of the plebs suffered violence although they were legally sacrosanct because they had risky, antagonistic jobs.[624] While the origin of the tribunes' powers was in the early struggles between the patricians and the plebeians, it remained a feature long after the plebs ceased to represent a separate political faction. The protections of the tribunate remained necessary because the tribunes' powers were, as Bleicken explained, "negative."[625] Unlike the protections given to priests, the tribunes' privileges lasted only as long as their year in office. The tribunes' sacrosanctity was inextricably linked to the office. These measures served more to protect the magistrate as an elected official rather than as an individual.[626] The close link between the temporary, elected office of the

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[624] Bleicken (1955) 5f. argues that sacrosanctity was unlikely to have had a legal basis initially, but rather gained one later, at least by the time of the Valerio-Horatian laws.
[625] Bleicken (1981) 93.
[626] Cic. *Tull*. 49, referring to ancient laws (and therefore likely evoking the foundation of the tribunate rather than contemporary political reality) states clearly that the tribune's sacrosanct status depended upon his role in lawmaking: *qua re non iniuria, quo magistratu munitae leges sunt, eius magistratus corpus legibus vallatum esse voluerunt*. "For that reason it was not unreasonable that they desired the body of that magistrate to be protected by *leges sacratae*, by which magistrate the laws themselves were fortified." The rights were not comprehensive; Val. Max. 6.5.4 describes tribune Lucius Cotta's

tribunate and sacrosanctity ultimately proved to be the weak point in the tribunes' ritual armor. Many tribunes were killed, wounded, or dishonored during the late Republic. Sometimes their antagonists suffered for their actions, but other times the violation of sacrosanctity was not even remarked upon.

This chapter takes up the case of the tribunes of the plebs to discuss their inviolability and how it was protected and enforced when threatened – and when harm to tribunes was permitted without redress. Because of the abundance of incidents in which sacrosanctity was violated, the tribunate can be studied diachronically to understand the ways in which Rome's understanding of sacrosanctity changed over time. In the crises of the first century, the violation of sacrosanctity became normalized to the point that a viable workaround developed: the claim that the tribune was a not a proper tribune. The tribunate became a locus of development for ideas about sacrality, collegiality, and misuse of power in the late Republic. Tribunes from the Gracchan period on demonstrated a growing awareness that they could use their sacrosanctity in tandem with their veto power as a means by which to paralyze or even attack their enemies. At the same time, however, opponents of the tribunes learned to use the accusation that certain tribunes were garnering too much power, to the point that they were beginning to look like tyrants, kings, or enemies of the state. Once that accusation was leveled, sacrosanctity was no longer a barrier against offensive action.

The time in which ideas about sacrosanctity changed most rapidly was the century between the Gracchan period and the end of the Republic, so this chapter focuses upon that era. After introducing the legal particularities of sacrosanctity, I will discuss the

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failure to erase private debts by relying on his sacrosanctity. See also Lucil. 413-415 Marx.

murder of Tiberius Gracchus with the aim of illustrating the ways in which the need to preserve tribunician sacrosanctity constrained actions by both sides. I then develop the concept of the tribune who acts offensively by studying an altercation between the tribune Labeo a decade after Gracchus. These two episodes set tribunician sacrosanctity up for the transformation it would undergo in the first century, during which the concerns about overly powerful and aggressive tribunes more consistently began to undermine sacrosanctity. Sacrosanctity never ceased to be important; it was, after all, adopted as a means by which to protect the imperial family. However, in the late Republic, the broader trend towards accusing powerful individuals of *adfectatio regni* or similar compromised the effectiveness of sacrosanctity for the tribunes.

I. Defining Sacrosanctity

Before studying the violation of sacrosanctity, it is important to have an understanding of how sacrosanctity operated because it was defined more fully in a legal sense than most of the forms of protection discussed thus far. It was not only forbidden to kill a tribune, but to harm him at all, physically or verbally. Cicero explained that a tribune was supposed to be "armed not only against violence and the sword, but even against words and the contravention of the *leges sacratae*…"[627] Dionysius of Halicarnassus commented that, in addition to killing a tribune or ordering him to be

[627] Cic. *Sest*. 79: … *itaque fretus sanctitate tribunatus, cum se non modo contra vim et ferrum, sed etiam contra verba et interfactionem legibus sacratis esse armatum putaret*… "… thus he depended upon tribunician sacrosanctity, since he thought himself armed not only against violence and the sword, but even against words and the contravention of the *leges sacratae*…." Tribunician power continued to be used into the imperial period as a means of protecting the dignity of the imperial household. See Bauman (1981) 173.

killed, one also could not whip one.[628] Whipping may be standing in for a broader class physical outrages against the tribune that fell short of death, since it is known that those were prohibited from narrative accounts. Or, more likely, whipping might have carried connotations of punishment rather than attack, and was meant to shield the tribune from reprimand.[629] Dionysius of Halicarnassus says that additional rights were voted to the tribunes in a rising of the plebs in 492: one could not interrupt a tribune while one was giving an opinion, on pain of fine, or, if one refused to pay the fine, death.[630] These measures protected a tribune against coercion, blackmail, and manipulation from powerful politicians and helped to ensure that they would be able to carry out the basic functions of their office. The prohibitions are particularly interesting in light of the types of damages that the tribunes in fact suffered, and the contrast between the letter of the law and practice will be the main focus of this chapter.

Sacrosanctity is a technical concept that receives far less scholarly attention than the more general idea of *sacer*.[631] Technically, *sacrosanctus* is most usually thought to be a combination of *sacer* in the ablative and *sanctus*, that is, *sanctus* by virtue of being *sacer*.[632] That formulation is the reverse of the way in which the terms are used in ancient texts describing sacrosanctity. Livy used the phrase *sacrum sanciri*, which would

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[628] Dion. Hal. *Ant. Rom.* 6.89.2-4.
[629] In chapter four, whipping was discussed as a punishment for Vestals and for the men who assaulted them.
[630] Dion. Hal. *Ant. Rom.* 7.17.5.
[631] Rives' (2012) recent study on sacrality and law in ancient Rome does not directly address sacrosanctity, for example.
[632] Ernout and Meillet (1985) s.v. *sacer*. This is a refutation of the earlier view of Mommsen, who claimed that the long o in *sacrosanctus* meant that it could not derive from *sacer*.

translate as "sanctified as a *sacrum*."[633] Livy's formulation would be illogical if *sancire* could not do the same work as *consecrare*. Similarly, he stated that tribunes were made sacrosanct *sanciendo*. This is similar to the phrasing that Cicero uses when he claimed, *sacrosanctum nihil potest nisi quod populus plebesve sanxi*.[634] These passages indicate that *sancire* could be a means of making something sacrosanct, and even *sacer*; *consecratio* and *sanctio* overlapped. Perhaps not surprisingly, *sacrosanctus* does not appear to adhere to the later jurists' strict separation between *sacer* and *sanctus*.[635] It is also important that Cicero specified the *populus plebesve* as sources of authority.[636] That measure paralleled the stipulation that things that were made *sacer* had to be publically recognized as such.[637] There was not a very controlled vocabulary around the issue of tribunal sacrosanctity in Greek. Greek did not have a counterpart for the term *sacrosanctus*, which was technical in Latin. Ἄσυλος or ἱερός were used interchangeably instead.[638]Ancient authors and jurists disagreed about whether the tribunes themselves

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[633] Livy 3.55.9.
[634] Cic. *Balb*. 19. See also Cic. *Leg*. 3.19 for use of *sancire* with regards to the *tribunorum plebis potestatas*. While the pontifices can also be sources of authority for rendering something *sacer* (e.g. Festus 424L), in the case of tribunician sacrosanctity the plebeians are undoubtedly the source of authority.
[635] For a thorough discussion and collection of ancient jurists on the question of *sacer*, *sanctus*, and *religiosus*, see Fiori (1996) chapter 2.1. Compare to Festus 348-350L and Macr. *Sat*. 3.3.5 for ancient statements of the traditional tripartite division. Watson (1968) 2 claimed that the distinction was Republican in date, yet the example of sacrosanctity seems to argue against that view.
[636] According to both Dionysius of Halicarnassus and Livy, the initial authority behind tribunician sacrosanctity was the plebs.
[637] Gaius *Inst*. 2.5.
[638] Cassius Dio 44.5.3 says that those violating Octavian's *tribunicia potestas* became ἱερός and were held in ἄγος. The use of ἱερός in this context more closely parallels the Latin use of *sacer* when it is used to mean "accursed" and indicates that ἐξαγίστος has no special technical status nor is it used exclusively in the description of a *sacer* individual. Παναγεῖς was another term that is also not used consistently but may offer a better parallel. It nevertheless does not preserve the sacro-sanctus form.

were sacrosanct, or whether it was a characteristic of the office, a distinction that is important in comparing the priests discussed in the previous chapter, who were sacred for life, to the tribunes, who held office and were sacrosanct for only a year.

Nevertheless, ancient theoretical formulations of the penalty facing transgressors were consistent.[639] The consequence for actions against the tribunes, or for ordering such an action to be done by another, was being named *sacer* in Latin, or ἐξαγίστος in Greek, which means "devoted to evil, accursed, abominable." Ἐξαγίστος could be used generically, however, and therefore was not a true Greek equivalent of *sacer*.[640] Becoming *sacer* could be the result of a number of crimes, not only the violation of tribunes.[641] The punishment is outlined by Festus: *sacer alicui deorum †sicut† familia pecuniaque*; by Dionysius of Halicarnassus: ἐξάγιστος ἔστω, καὶ τὰ χρήματα αὐτοῦ Δήμητρος ἱερά, καὶ ὁ κτείνας τινὰ τῶν ταῦτ᾽εἰργασμένων φόνου καθαρὸς ἔστω; and by Livy: *qui tribunis plebis aedilibus iudicibus decemviris nocuisset, eius caput Iovi sacrum esset, familia ad aedem Cereris Liberi Liberaeque venum iret*.[642] These passages are consistent in their essentials. In each case the person violating a tribune became forfeit, as

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[639] The sources exhibit a lack of consistency that I think implies that functionally a person could be called sacrosanct. Augustus uses the forumula *ut sacrosanctus… essem* (*RG* 10), which provides good evidence that it could be applied to an individual. A complicating factor is that Augustus received *tribunicia potestas* and was not himself tribune. Finally, Augustus' usage could complicate the literary record, with Livy, for example, adopting the formula in use in his own day.

[640] *LSJ* s.v. ἐξαγίστος a. On ἐξαγίστος being used to mean generically "very bad," with no technical or particularly religious valence, see, for example, Dem. 25.93.

[641] For a collection of examples of crimes with the penalty of becoming *sacer*, see Fiori (1996) 50f and 101ff.

[642] Festus 422L: "(he becomes) *sacer* to one of the gods, just as his estate and money"; Dion. Hal. *Ant. Rom.* 6.89.3: "Let him be accursed, and his money sacred to Demeter and let someone killing someone who has done these things be clean of murder"; Livy 3.55: "whoever harms tribunes of the plebs, aediles, or decemviral judges, his head should become sacred to Jupiter and his estate should be brought to the temple of Ceres, Liber, and Libera."

did their property. Dionysius of Halicarnassus and Livy both specify that the person could be killed with impunity. They differed only in the precision with which they specified which gods received the goods. Dionysius included only Demeter (Ceres), while Livy specifies that Liber and Libera were also recipients of dedications at the *aedes Cereris*. Livy also adds Jupiter as the recipient of the *caput*. (This difference also provides some assurance that they are not simply copying the same source text.)

It is interesting that particular gods were specified as the recipients of the *sacer* person's head and goods when usually the divinities were only inferred, with the partial exception of cases of violated property and sanctuaries.[643] It was a logical punishment, suited to the specific nature of the crime against the tribunes. According to tradition, the tribunes had been created in order to mend a rift between the plebeians and patricians, and made sacrosanct in order to prevent that rift from reopening, along with prayers to Jupiter, so it is natural that Jupiter himself should have been an agent of vengeance against anyone who threatened the arrangement.[644] Ceres, Liber, and Libera received the *sacer* person's goods, a punishment that may have been a relic of the partisan conflict between plebeians and patricians.[645] However, the consecration of goods to Ceres was the standard punishment in cases in which someone was named *sacer*, including those not

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[643] The communal nature of the risk posed by those violating the tribunes was similar to that experienced in other episodes of transgression, such as when auspices are ignored or sacred items were stolen.

[644] Dion. Hal. *Ant. Rom.* 6.90.1 claims that after the tribunes were given sacrosanctity during the secession of the plebs in 494, an altar to Zeus Deimatius was established and sacrifices were performed.

[645] Altheim (1940) 23 accepts a similar reading of Jupiter in his capacity as a chief god paired with Ceres, Liber and Libera in their role as the plebeian triad and notes also that the *mons sacer* itself was supposed to have been consecrated to Jupiter (Festus 422L). Though I agree that the location of the *mons sacer* was meant to be evoked by the punishment, I concur with Pellam (2014), who argues against a strong connection between the Aventine Triad and the plebs.

involving a tribune. For example, consecration of goods to Ceres was a punishment for theft and fraud in the Twelve Tables.[646] The dedication to Ceres therefore cannot be solely based upon the links between Ceres and the plebs. It is just as likely that the dedication of goods to her (and *caput* to Jupiter) represented the whole state's relationship with these gods. It was deployed as the punishment for those who harmed tribunes in a fitting application of a more general punishment. The punishments emphasize the fundamental connection between the people of Rome and Ceres and Jupiter, regardless of their patrician/plebeian status.

Thus far I have traced the legal formulations of tribunician sacrosanctity, which demonstrate how transgression against tribunes was theorized. Among the notable themes that emerged were the wide scope of protections offered to tribunes by their sacrosanctity, the fact that one could harm a *sacer* person with impunity, and the direct compensation that had to be offered to Jupiter, Ceres, Liber, and Libera in the case in which sacrosanctity was violated. In practice, respect for tribunician sacrosanctity was less consistent than legal formulations suggest. This chapter traces the development of sacrosanctity diachronically, particularly its violation in the late Republic. The later Republic saw a number of well-documented cases of violated tribunician sacrosanctity. I turn first to the Gracchi because the Gracchan conflict articulated the challenges of tribunician sacrosanctity particularly clearly. Politicians during the Gracchan period had to offer an answer to the question of how the Romans should respond to a controversial politician in an obstructionist office who was also under religious protection. In an era

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[646] XII Tables 8.9, 24a for property being forfeit to Ceres in the case of theft of produce or as a result of pasturing on another's land by night. The punishment of becoming *sacer* is similarly used in the XII Tables 8.21 for a patron who defrauded his client. These laws allow for a guilty individual to be killed with impunity.

when political objectives warred with the need to respect tribunes, this question was posed under varied circumstances. An answer developed over the course of the late Republic and was used multiple times during the turbulent first century: to dodge the problem of sacrosanctity by claiming that the problematic tribune was not really a tribune.

II. Tiberius Gracchus

The year 133 was a watershed moment in the history of the tribunate, and also the most thoroughly documented case of violated sacrosanctity. Controversy about the protections of the tribunate added fuel to an already contentious debate over land reform when dissension broke out between fellow tribunes Marcus Octavius and Tiberius Gracchus. Tiberius Gracchus had put forward a bill to solve major problems of land allocation; Octavius was the tribune who most vigorously opposed the bill. The story of how the enmity began varies by author.[647] Plutarch and Appian portray their relationship as having initially been friendly, coming to loggerheads only after the proposal of the land bill when Octavius repeatedly vetoed the legislation. Cassius Dio and, according to some interpretations, Cicero, portray the two as having always been enemies.[648]

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[647] App. *B. Civ.* 1.12; Plut. *Tib. Gracch*. 10; Cass. Dio frag. 83.4-6 B are the primary accounts of the relationship between Octavius and Gracchus.

[648] Epstein (1983) believes that Cic. *Brut*. 25.85 provides evidence that Octavius' "broke" Gracchus by provoking him to depose his colleague, thus putting his own position at risk. He paints Octavius as an unstable politician who allows his personal enmities to control his policy decisions. This seems to be an over-reading of the phrase *iniuria accepta*. On this passage, see also Linderski (1982)

Regardless of the origin of their dispute, Tiberius Gracchus deposed Octavius from office, making Octavius the first tribune to meet that fate.

A debate followed: had Tiberius Gracchus violated Octavius' sacrosanctity by deposing him? If so, was Tiberius Gracchus himself still tribune? Tribunes of the plebs were in theory protected against all forms of coercion, physical and verbal. Gracchus' opponents argued that in deposing Octavius, Gracchus had coerced him, and consequently violated his sacrosanctity. The dispute between Gracchus and Octavius was a crisis point at which the actual functioning of the protections of the tribunate was tested. The question of whether Tiberius Gracchus had committed a religious transgression lingered behind the controversy over his own tribunician status for the rest of his brief time in office. Assertions that Tiberius Gracchus was no longer a real tribune motivated and justified actions against him. After Gracchus' death the drama persisted, now flipped against his killers: if Tiberius Gracchus had still been a proper tribune when he died, they were now the violators of sacrosanctity.

The mechanics of the attempt to remove Octavius from office demonstrate the de facto functioning (or failure to function) of tribunician protections. The entire debate was framed around the issue of sacrosanctity. After failing to gain sufficient support in the senate, Tiberius Gracchus called a vote of the assembly to establish whether or not Octavius should retain his magistracy.[649] Appian says that during the voting Tiberius Gracchus not only twice paused to ask Octavius to recant, but also implored the gods to recognize that he was not willingly dishonoring his colleague: θεοὺς μαρτυρόμενος ἄκων

[649] App. *B. Civ.* 1.12. Plut. *Tib. Gracch*. 11.2 claims that this measure was οὐ νόμιμον οὐδ' ἐπιεικές, "neither legal nor fitting."

ἄνδρα σύναρχον ἀτιμοῦν.[650] Plutarch presents Tiberius as scrupulously avoiding any ill words or harsh touches towards Octavius until the moment that voting had been completed and he was no longer tribune: at that time Tiberius ordered one of his freedmen to pull Octavius from the *rostrum*.[651] Tiberius Gracchus is portrayed as showing a sophisticated and precise understanding of the exigencies of tribunician sacrosanctity and as moderating his conduct accordingly. The people too began to attack Octavius only at the moment that he was no longer tribune.

Plutarch's Titus Annius instituted a formal procedure (ὁρισμόν) to investigate whether or not Tiberius Gracchus had violated Octavius' sacrosanctity. He charged that Gracchus had caused infamy for his colleague, a slight to which Octavius should have been immune as tribune: ἦ μὴν ἱερὸν ὄντα καὶ ἄσυλον ἐκ τῶν νόμων ἠτιμωκέναι τὸν συνάρχοντα.[652] This is further indication that republican tribunes were protected from damaging speech in the same way that the emperors would be.[653] It is noteworthy that Annius attempted to attack Tiberius through legal channels rather than by committing legalized murder, even though murder would technically have been allowed if Tiberius really had violated Octavius. Annius' suit is remarkable. It was a rare occasion on which there was an attempt made to seek legal restitution for a religious transgression. Plutarch records that the senate and people agreed that the dignity of the tribunate had been

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[650] App. *B. Civ.* 1.12: "calling the gods to witness, unwilling to dishonor a colleague."
[651] Plut. *Tib. Gracch*. 13.4. Appian does not mention any violence.
[652] Plut. *Tib. Gracch*. 14.4: "to have dishonored a colleague who was sacred and inviolable according to the laws."
[653] Appian only indicates that the two tribunes engaged in verbal abuse. Cassius Dio is alone in claiming that their conflict came to blows.

compromised, offering evidence that there was a broader popular conception of the ways in which it was acceptable to treat a tribune.[654]

In a speech of Plutarch, Gracchus responded to Annius' charge with his own formulation of his ideas about sacrosanctity and the tribunate. He reasoned that yes, a tribune was ἱερός and ἄσυλος, but he ceased to be so when he failed his duty to the people. Tiberius Gracchus drew an analogy between errant tribunes and failed Vestals and Kings. Though these were sacred and invulnerable by virtue of their offices, if they failed in their duty, they were removed from office and punished.[655] Tiberius Gracchus explained that the same should be true of tribunes:

> καὶ μὴν εἰ δικαίως ἔλαβε τὴν δημαρχίαν τῶν πλείστων φυλῶν ψηφισαμένων, πῶς οὐχὶ κἂν ἀφαιρεθείη δικαιότερον πασῶν ἀποψηφισαμένων; … ὅτι δ' οὐκ ἄσυλον οὐδ' ἀναφαίρετον ἡ ἀρχή, δῆλόν ἐστι τῷ πολλάκις ἔχοντας ἀρχήν τινας ἐξόμνυσθαι καὶ παραιτεῖσθαι δι' αὐτῶν.[656]

Tiberius Gracchus recognized two crucial aspects of tribunician sacrosanctity: its impermanence and its inherent political nature. He expresses an idea that will prevail in the first century: that a tribune who does not serve the people who elected him is not a tribune. The fact that Octavius' removal was controversial suggests that this view was not universally held, or rather that it was not easy to achieve consensus that a tribune had

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[654] Plut. *Tib. Gracch*. 15.1.

[655] The analogy between a tribune and a Vestal is inexact. They had very different terms of office, and they were punished differently (burial alive being scrupulously not murder). For discussion of the Vestals' sacrality, see chapter four.

[656] Plut. *Tib. Gracch*. 15.5-6: "And if one justly takes up the tribunate according to the votes of the majority of tribes, how could it not more justly be taken away with all of them voting to remove him? … That the office is not inviolable or irrevocable is clear from the many occasions on which those holding it excuse themselves by oath and themselves request leave of it."

failed. But Gracchus' is a convincing reading of the purpose and limits of sacrosanctity. This issue will be raised again in the aftermath of Tiberius Gracchus' death and the charges of tyranny that he faced. It is also important to recognize that a political problem – an undesirable veto – was resolved through a debate that focalized around the sacrosanctity of the office holder. This was different from a debate over an election being obstructed by auspices, for example, because the problem was not that the gods were supposedly signaling displeasure, but that a person protected by sacrality was accused of not carrying out their office correctly. Not respecting the veto of a rightful tribune was not an option, nor was violating one. That is, the inhibition against violating tribunician sacrosanctity was such that the only possible paths forward were to abandon the legislation (undesirable for the Gracchans), or to find a workaround by which Octavius was not a tribune.

Octavius was removed from office and the agrarian legislation was passed, but the conflict over sacrosanctity haunted the rest of Gracchus' term of office. While the drama of his murder can be understood as a political conflict over land distribution, the story can also be told in terms of the religious conflict about how and when the tribunate was protected.[657] The formulation of tribunician sacrosanctity did not have a provision for a case in which a tribune was violated by another tribune. In the tradition that developed, Gracchus' death was presaged by a number of portents that condition a religious reading of the events that preceded and followed.[658] After Octavius had been ejected and Tiberius

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[657] This is similar to the approach of Linderski (2002) but places more emphasis upon the particulars of tribunician sacrosancity.

[658] Obseq. 27a records a series of prodigies specifically relating to Tiberius Gracchus, including *dirae*, as well as generic ones. No expiations are mentioned except for the androgyne prodigy. Plut. *Tib. Gracch*. 17.1-3 records negative auspices in addition to the

pushed for reelection to the tribunate, there were signs that he understood that his life was forfeit. He claimed to fear that he would be killed in the night.[659] There would have existed a portion of the Roman population that believed that he had violated Octavius' sacrosanctity. The religious tradition agreed with them. The divine signs recorded around the time of Tiberius' death were seen in retrospect as indications that Tiberius was doomed.

On the day of Tiberius Gracchus' murder, the senate met in the temple of Fides on the Capitoline and discussed how to handle the intractable tribune as he attempted to secure reelection to the tribunate for 132.[660] The consul Mucius Scaevola's explicit refusal to use force against the tribune when urged by Nasica indicates that senatorial opinion was far from united on how it was appropriate to oppose Gracchus. Valerius Maximus explains that Scaevola *negavit se quicquam vi esse acturum.*[661] The consul proposed instead to regard any measures that were passed under pressure from Tiberius as illegitimate.[662] Scaevola's refusal to take part in a confrontation indicates that even among Tiberius' opponents, no consensus had been reached that the tribune had

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toe-stubbing omen. Val. Max. 1.4.2 censures Tiberius Gracchus for not heeding these signs.

[659] Plut. *Tib. Gracch*. 16.3.

[660] On the nature of Tiberius Gracchus' final assembly, see Earl (1965), who thought it elective, and Taylor (1963) and (1966), who thought it legislative.

[661] Val. Max. 3.2.17: "denied that he was going to do anything by force." The same sentiment is expressed in Plut. *Tib. Gracch*. 19.3, although focus is shifted from violating sacrosanctity to concern over putting a citizen to death without a trial. Earl (1963) 14-15 argues that Scaevola was pro-Gracchan. Badian (1972) 690 concurs.

[662] Plut. *Tib. Gracch*. 19.3. Scaevola was not alone in being stopped from action by Tiberius Gracchus' sacrosanctity. Appian (*B. Civ.* 1.13) claims that the opponents of his grain law threatened that Gracchus would not rejoice once he became a private citizen again.

relinquished his sacrosanctity.[663] Scipio Nasica acknowledged that Scaevola's course of action was the legal one, but nevertheless led the people in arms against Tiberius.[664] The possibility that Tiberius Gracchus was no longer a protected tribune was eclipsed by the more convenient claim that Gracchus had sought to rule as king. It is difficult to know at what moment the kingship charge began to gain traction. Was it an interpretation that was current in 133, or one adopted in retrospect? In the historical tradition, Scipio Nasica made the shift when he urged the people to follow him in order to maintain a *res publica salva*.[665]

Scipio Nasica presented himself as a *privatus* as he led the other senators from the temple of Fides against Gracchus.[666] However, in addition to being a *privatus*, Scipio Nasica had been pontifex maximus since 141. It is difficult to discern whether Scipio's followers accompanied him because he was pontifex maximus or because he was the one taking charge.[667] I do not wish to put too much argumentative weight on Scipio Nasica's

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[663] Clark (2007) 126 suggests that the interpretation that Tiberius had violated Octavius' sacrosanctity would have been popular among his opponents.
[664] Val. Max. 3.7.17: *consul, dum iuris ordinem sequitur*.... "The consul, while he follows the normal arrangement of the law…"
[665] Cic. *Tusc*. 4.51.
[666] Val. Max. 3.2.17: *egomet privatus*. Similarly in Cic. *Brut*. 212: *ex dominatu Ti. Gracchi privatus in libertatem rem publicam vindicavit*, "From the domination of Tiberius Gracchus, a private citizen set the republic free." On the language of liberty and domination, see Arena (2012) *passim*, especially 50ff.
[667] Linderski (2002) argues that Scipio Nasica's action against Tiberius Gracchus was wholly conditioned by his status as pontifex maximus and that the killing of Gracchus was an act of consecration, signaled in part by Nasica's veiling of his head. Scipio Nasica veils his head in the accounts of App. *B. Civ.* 16 and Plut. *Tib. Gracch*. 19.4. His toga is wrapped around his left hand according to Val. Max. 3.2.17 and Vell. Pat. 2.3.1, though Linderski feels that this is the result of the erroneous conflation of Nasica's followers' dress with Nasica's own. Plut. *Tib. Gracch*. 19.4 presents the senators as having covered arms while Nasica has a covered head. Clark (2007) 128 sees the progress of senators with veiled left arms from the temple of Fides as a reversal of the ritual of the flamines at the temple of Fides. Rawson (1974) 195 suggests instead that Scipio Nasica adopted the

priestly status. The office of pontifex maximus did not confer a special ability to enact the *consecratio capitis* and *bonorum*. In the early republic, when the tribunes of the plebs were first created, plebeians were not permitted into the pontifical college. It would be illogical to have made sacrosanctity dependent upon the authority of a priesthood or magistracy from which anyone serving as tribune would have been barred.[668] The consul had been the first choice to take leadership against Gracchus, not the pontiff. Moreover, any individual, and particularly a tribune, was qualified to complete the *consecratio*.[669] In the case of tyranny and of violated tribunician sacrosanctity, only the speech act is needed.[670] Nasica's toga arrangement, with the purple stripe displayed, served to emphasize his priestly office and concomitant leadership qualities. Scipio's dress was an embellishment upon his act, not a necessary element. It was required only that he veil his head when completing a *consecratio*.[671] By adding a priestly flavor to the killing, Scipio was able to present his act as a ritualized murder of a *sacer* individual. However, it is not clear how much sophistication underlay Scipio Nasica's action; the argument over

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cinctus Gabinus in an attempt to present his action against Tiberius as one between the pontifex maximus and a tribune in full knowledge of the fact that he risked violating his sacrosanctity.

[668] The pontifical college was not open to plebeians until the *lex Ogulnia* of 300.

[669] The episode in which the tribune Atinius Labeo attempted to consecrate Caecilius Metellus, discussed below, demonstrates that a tribune who was not a priest was qualified to carry out the consecration. There is no need for a supervising pontiff as in the case of the consecration of a public shrine, as in Cic. *Dom*. 117f.

[670] Treatments such as that of Linderski (2002) overemphasize Scipio Nasica's priestly office for that reason. Consider, for example, the *consecratio capitis* of the decemvir Appius Claudius by Verginius, who was at the time only a high-ranking official in the army at Algidus (Livy 3.48.5). Verginius says: *tuum caput sanguine hoc consecro.* "I consecrate your head by this blood." Ogilvie (1965) ad 3.48.5 claims that Verginius was not qualified to consecrate a person and that this phrase was a dramatic invention of Livy. Verginius' action is, however, consistent with the statement that anyone can kill a tyrant without trial.

[671] Cic. *Dom*. 124 for consecrations taking place *capite velato*.

leadership indicates that there was a degree of spontaneity behind Nasica's attack.[672] The fact that Nasica's followers killed Tiberius with improvised weapons and did not use metal could indicate that the act was ritualized, or it could indicate that the senators' involvement in the attack was unplanned.

It is also not clear what justification was used for the attack on Tiberius Gracchus at the time. Either violation of tribunician sacrosanctity or aiming at tyranny could have caused a person to be declared *sacer*.[673] After his murder, however, Tiberius Gracchus was portrayed by hostile authors as having aimed to become a tyrant.[674] Posterity selected tyranny as the grounds for the attack on Gracchus evidently because it became untenable to maintain that Gracchus had violated Octavius' sacrosanctity without incurring charges of having violated Gracchus' own in killing him. It is likely that in the case of attempted

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[672] An attack of some sort seems to have been inevitable. Appian *BC* 1.15 says that the Gracchans attacked lictors prior to any violent response from Scaevola and Nasica. Plutarch (*Tib Gracch*. 19.5) claims that the senators' attendants had brought along clubs and staves while the senators themselves used bench legs as improvised weapons. It seems likely that the senators had intended an assault on the Gracchans, or had at least entertained the possibility that one could occur, but were not intending to enter the fighting themselves. Plut. *Tib. Gracch*. 10.7 says that Tiberius had been carrying a short sword (*dolo*) on his person.

[673] Livy 2.8.1-2 records a *lex Valeria de adfectatione regni*: *latae deinde leges … ante omnes de provocatione adversus magistratus ad populum sacrandoque cum bonis capite eius qui regni occupandi consilia inisset gratae in vulgus leges fuere.* "Then laws were passed… before all the laws about appeal against magistrates to the people and about making *sacer* the head of he who entered into plots of taking up kingship, along with his goods, were pleasing to the people." See also Plut. Pub. 12. Spaeth (1990) 187-188 argues that tyranny was treated in a manner similar to the violation of sacrosanctity and that it led the perpetrator to be considered *sacer* (to Ceres). She bases this conviction on Livy 2.41's story of Spurius' aspirations to *regnum*. Badian (1972) 725 also concurs that individuals aiming at tyranny became *sacer*.

[674] Sall. *Jug*. 31.7 claims that Tiberius Gracchus had prepared *regnum*. Cic. *Lael*. 40 says he *regnum occupare conatus est vel regnavit is quidem paucos menses*. "He tried to occupy the kingship, or even reigned for a few months." Earl (1963) 105-107 offers a discussion of accusations of *regnum* against Tiberius Gracchus as well as discussion of the diminution of *libertas*.

tyranny no judicial process was needed to declare someone *sacer*. Plutarch claims that the *lex Valeria de adfectatione regni* allowed for the killing of a tyrant ἄνευ κρίσεως, Publicola's logic being that a tyrant rapidly became too powerful to be subjected to a trial.[675] Public consensus after the fact judged whether or not the tyrant-slayer was a hero or murderer.[676] Yet in the first century, charging a tribune with aiming at kingship or being a tyrant proved to be the most popular way of justifying his murder, as will be demonstrated below. Tyranny allowed the uncomfortable fact of sacrosanctity to be eclipsed and added ammunition to the argument that a tribune who did not represent the interests of Rome (specifically the plebs) was not a tribune at all.[677] There is evidence that this process of undermining sacrosanctity with charges of aiming at *regnum* began early in the case of Tiberius Gracchus. Scipio Aemilianus' quip, *si is occupandae rei publicae animum habuisset, iure caesum*, indicates that an early version of the thinking about monarchs and the tribunate that would dominate the first century was already active in the time of Gracchus.[678]

The position that a person aiming at tyranny or *regnum* should be removed from power, even by violent means, was considered deeply traditional, with roots in the early

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[675] Plut. *Publ*. 12. The law did, however, require that the slayer provide evidence of his deed in order to be considered φόνου καθαρός. Plutarch does not specifically mention the *consecratio* of the tyrant, but Livy 2.8.1-2 on the same episode says he experiences a *consecratio capitis* and *bonorum*. Cass. Dio 53.17.9 similarly claims that a violator of tribunician sacrosanctity could be killed without a trial, but this is in the context of speaking about the imperial period.

[676] Interestingly, in the early Republic Manlius Capitolinus and Spurius Cassius were executed for tyrannical behavior, but only after a trial, whereas Spurius Maelius fled from trial and was declared justly killed. See, for example, on Spurius Cassius: Livy 2.41; Manlius Capitolinus: Livy 6.14-20; Spurius Maelius: Livy 4.14.

[677] Badian (1972) 708.

[678] Vell. Pat. 2.4.4: "If he had in mind to take over the republic, he was justly killed." See Earl (1963) 107 for discussion of this quotation and the dating of the *regnum* accusation.

Republic.[679] One particularly relevant example is offered by the equestrian Spurius Maelius, who had gained popular support by selling grain at low prices during a famine in 439. He was accused of having aimed for kingship (*de regno agitare*) and Cincinnatus was named dictator in order to deal with him. Cincinnatus tried to bring Maelius for trial, but Maelius fled and was killed by Gaius Servilius Ahala, Cincinnatus' Master of Horse.[680] Spurius became one of a list of individuals who had apparently aimed at kingship in the early Republic. Cicero and Livy named him along with Spurius Cassius, Marcus Manlius Capitolinus, the decemviri, and even the Tarquins.[681] In *De Re Publica*, Cicero links these individuals with Tiberius Gracchus, indicating that a connection was drawn between all of them in the Roman consciousness.[682] Tradition held that someone who desired kingship could be removed from power, even by non-traditional means. When the logic was used on Tiberius Gracchus, it was not considered new, though the principle's specific application against a tribune was innovative. In Gracchus' case, the anti-Gracchans' cause may have been helped by the fact that becoming *sacer* was both the punishment for *adfectatio regni* according to the *lex Valeria de adfectatione regni*, and the punishment for violating sacrosanctity, as observed above. The charge of *adfectatio regni*, or of tyranny, or of being a *hostis* of the state, had traction both in general and in its application to the tribunate, as its development in the first century will demonstrate.

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[679] On the *adfectatio regni*, see Smith (2006).
[680] The story is told most completely in Livy 4.13-15. See also Cic. *Sen* 16; Dion. Hal. *Ant. Rom.* 12.1; Flor. 1.25.
[681] Livy 4.15.3-4; Cic. *Amic*. 8, *Phil*. 2.87.
[682] Cic. *Rep*. 2.49.

Finally, while the importance of location has not been overlooked in treatments of the death of Tiberius Gracchus, the degree to which bloodshed in sacred spaces posed a religious problem has not been contextualized within a broader understanding of Roman religious transgression. Location was never the sole transgressive aspect of a crime against an individual. However, as discussed in the previous chapter, transgressions could increase in severity due to having taken place in a sacred place. In the case of Tiberius Gracchus, his death took place in the *area Capitolina*, which was a consecrated space.[683] Although Tiberius Gracchus was attacked and killed *outside* of the Capitoline temple, there is a persistent interest in the temple in the sources. The text quoted in the *Rhetorica ad Herennium* portrays Scipio Nasica as emerging from the temple of Jupiter Optimus Maximus before his attack: *iste interea scelere et malis cogitationibus redundans evolvat e templo Iovis*.[684] The factuality of this detail is doubtful because Scipio Nasica is said to have come from the temple of Fides in the versions of Appian and Valerius Maximus.[685] If that is true, there is no reason for Scipio Nasica to have found himself within the Capitoline temple. Yet the *Rhetorica ad Herennium* is not alone in including this detail. Velleius Paterculus places Scipio Nasica on the top steps of Jupiter's temple, *ex superiore parte Capitolii summis gradibus*, a more plausible suggestion because the steps at least

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[683] Besides the more extensive references discussed below, Appian (*B. Civ.* 17.1) and Orosius (5.9) are explicit about Tiberius Gracchus' death on the Capitoline. See also Livy *Per*. 58.

[684] *Rhet. ad Herr*. 4.68: "Meanwhile, that man, abounding in crime and evil thoughts, rolled out of the temple of Jupiter."

[685] App. *B. Civ.* 16.1; Val. Max. 3.2.17. Clark (2007), which takes as its focus the procession from the temple of Fides, does not mention this rival Jupiter temple tradition. See Freyburger (1986) 311-312 for the argument that the senate connected their mission with Fides in an attempt to increase the legitimacy of their opposition towards Tiberius Gracchus.

would have been open and accessible.[686] Why involve the Capitoline temple at all? Why did the pro-Gracchan account from the *ad Herennium* place Nasica in the Capitoline temple at all when it is unlikely that he was inside that building in the first place?

Violating the Capitoline temple was worse than violating another sacred space, as was shown in the discussion of Merula's death. In many ways the defilement of the Capitoline temple by Rome's chief priest would have been similar to its staining by the flamen Dialis. A man charged with the preservation of Rome's religious life and relationships with the gods literally dripped polluting blood in Jupiter's most important sanctuary. The *ad Herennium* speech concludes with Scipio Nasica's reentry into the temple: *iste viri fortissimi miserando sanguine aspersus, quasi facinus praeclarissimum fecisset circum inspectans, et hilare sceleratam gratulantibus manum porrigens, in templum Iovis contulit sese*.[687] The text presents Scipio Nasica as an agent of ritual pollution. His hand was *scelerata*, one of the terms that can (but need not always) be used to denote a religious crime. His body was *aspersus sanguine*, the sanctified blood of a tribune. To Gracchus' supporters, Scipio Nasica would have been *sacer* at this moment, and he would have committed a further crime by exposing Jupiter to this pollution.

The aftermath of Tiberius Gracchus' murder shows that the incident was treated as a religious crisis. Scipio Nasica's fate is the best surviving example of someone suffering consequences for having killed a sacrosanct individual. Both pro- and anti-Gracchan accounts mention public outrage against Scipio Nasica. The clearest account is Plutarch's:

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[686] Vell. Pat. 2.3.1: "from the upper part of the Capitoline, on the highest steps."
[687] *Ad Her*. 4.68: "That man, stained with the pitiable blood of the bravest man, looks around as if he had done a most glorious deed, and, joyfully reaching his sinful hand out to those congratulating him, bears himself into the temple of Jupiter."

> ἐπεὶ δὲ χαλεπῶς μὲν ὁ δῆμος εἶχε τῷ θανάτῳ τοῦ Τιβερίου, καὶ φανερὸς ἦν ἀμύνης περιμένων καιρόν, ἤδη δὲ καὶ δίκαι τῷ Νασικᾷ προανεσείοντο, δείσασα περὶ τοῦ ἀνδρὸς ἡ βουλὴ ψηφίζεται μηδὲν δεομένη πέμπειν αὐτὸν εἰς Ἀσίαν. οὐ γὰρ ἀπεκρύπτοντο κατὰ τὰς ἀπαντήσεις οἱ ἄνθρωποι τὴν δυσμένειαν, ἀλλ' ἐξηγριαίνοντο καὶ κατεβόων ὅπου προστύχοιεν, ἐναγῆ καὶ τύραννον καὶ μεμιαγκότα φόνῳ σώματος ἀσύλου καὶ ἱεροῦ τὸ ἁγιώτατον καὶ φρικωδέστατον ἐν τῇ πόλει τῶν ἱερῶν ἀποκαλοῦντες. οὕτω μὲν ὑπεξῆλθε τῆς Ἰταλίας ὁ Νασικᾶς, καίπερ ἐνδεδεμένος ταῖς μεγίσταις ἱερουργίαις· ἦν γὰρ ὁ μέγιστος καὶ πρῶτος τῶν ἱερέων. ἔξω δ' ἀλύων καὶ πλανώμενος ἀδόξως, οὐ μετὰ πολὺν χρόνον κατέστρεψε περὶ Πέργαμον.[688]

Plutarch preserves a record of the way in which sacrosanctity was seen to have operated by the public, not only by the political elite. The politically involved populace publically shunned Scipio Nasica and expressed specific displeasure over his double crime of killing a sacrosanct person and killing him before the temple of Jupiter Optimus Maximus. Though no one in Rome seems to have taken it upon themselves to kill Nasica, the traditional response to a *sacer* person in one's midst, the senate clearly thought that his life was at risk, or that he was now a significant political liability (or both).

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[688] Plut. *Tib. Gracch*. 21.3: "The people were bearing poorly the death of Tiberius, and it was clear that they were awaiting the opportunity for revenge, and lawsuits threatened Nasica. The senate, fearing for the man, voted to send him to Asia, though there was no need. For people did not hide their hatred when they encountered him, but they were savage and shouted insults whenever he happened to be, calling him accursed and a tyrant and stained the most holy and awesome temple in the city with the slaughter of a body that was inviolable and sacred. So Nasica left Italy, although he was bound by the greatest sacred duties; for he was the greatest and most important of the priests. He roamed and wandered anonymously and after a brief time died near Pergamum."

Diodorus Siculus, in the context of the enumeration of the virtues of the family of Scipio Nasica, again claims that the people were enraged by the death of Tiberius Gracchus and that a trial of the senators was held before the remaining tribunes.[689] Valerius Maximus claims that the citizens had a most unfair estimation of Nasica's virtues, which forced him to be sent to Pergamum *sub titulo legationis*.[690] Scipio Nasica's mission to Pergamum proves that he suffered political defeat and provides external confirmation of the popular anger that Plutarch described as arising against him after Gracchus' death. A fragmentary epitaph found in Pergamum survives as evidence of this mission: [*P. Cornelius P. f. Scipio*] *Nasica l*[*egatus* … Πόπλιος Κορνήλιος] Ποπλίου Νασικᾶς πρεσβευτής, ἀρ[χιερεὺς.[691]

Another manifestation of the lack of esteem in which the public held Scipio Nasica is his nickname Serapio, which derives alternatively from his resemblance to a certain *victimarius* or to a certain pig salesman.[692] While the ancient sources claim that physical features lay behind this name, and that he had acquired it years earlier, following Tiberius Gracchus' death the name would have taken on sacral undertones. Gaius

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[689] Diod. Sic. 34-35 fr. 33. The truth of this is unclear as Gracchus appears to have lost the favor of many tribunes. See Badian (1972) 711.
[690] Val. Max. 5.3.2e.
[691] *AE* 1911.54 = *ILS* 8886 = *CIL* I^2 2502 = *ILLRP* 333: "Publius Cornelius Scipio Nasica, son of Publius, legate… Publius Cornelius Nasica, son of Publius, legate, pontifex maximus…" This text comes from fragments of a marble epistyle found at Pergamum.
[692] *Victimarius*: Val. Max. 9.14.3; *negotiator*: Plin. *HN* 7.54; 21.10. See also Quint. *Inst. Or.* 6.3.57 for more on insulting *cognomina*. Livy *Per.* 55 claims that Scipio Nasica acquired the nickname first during his consulship in 138 from the tribune of the plebs Curiatius. Plin. *HN* 21.10 claims that Publius Cornelius Scipio Nasica Serapio, cos. 111, son of the killer of Tiberius Gracchus, resembled the negotiator, but this cannot be correct because his father also bore the name. Pliny also incorrectly states that this Scipio died in the tribunate when he in fact died during his consulate. The son likely used his father's cognomen as well. The connections between Scipio Nasica, killer of Tiberius Gracchus, and a pig salesman make him a better candidate for being the originator of this name.

Gracchus, in a speech delivered after Tiberius' death, claimed that Scipio Nasica had killed Tiberius Gracchus like a pig: *qui sapientem †cum faciet, qui et vobis et rei puplicae et sibi communiter prospiciat, non qui pro †sylla humanum trucidet*.[693] This passage gives Serapio a pointed meaning. Implied is that Scipio Nasica, pontifex maximus, acted the part of a *victimarius* (a slave) and offered Tiberius Gracchus as a human sacrifice (a sacrilege).

There is some indication that the other men involved in Gracchus' death also suffered for their actions, though their fates are less certain than Scipio's. Publius Satureius was said to have struck the first blow, and a certain Lucius Rufus claimed the second. Satureius was Tiberius' colleague in the tribunate, again demonstrating that tribunes had a special relationship with each other and also that the conflict over the land laws had never been only between Gracchus and Octavius.[694] It is not known what happened to him. Lucius Rufus is similarly not mentioned again.[695] With the exception of Scipio Nasica, there is no evidence that the other known parties involved in the death of Tiberius Gracchus suffered a negative fate, but their apparent lack of political career following this incident could indicate that they did.[696] A rude name was also given to the aedile Lucretius, who was responsible for throwing Tiberius' body into the river rather than returning it to his family. He was given the name Vespillo, which means

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[693] *ORF* p. 179 frag. 18. The text is difficult surrounding the essential words *sylla* and *humanum*. See Linderski (2002) and especially Badian (2004) for a discussion of the correct version and translation of this text. While dissent remains surrounding the correct form of humanum/-am and "pig," scholars agree that this passage is a criticism of the way in which Scipio Nasica killed Tiberius Gracchus.
[694] Plut. *Tib. Gracch*. 19.6 is the only attestation of Publius Satureius.
[695] Plut. *Tib. Gracch*. 19.6 is again our only attestation, though it has been thought by Thomman (1989) 187f. that Lucilius 7 Marx was about him.
[696] Gaughan (2010) 111 claims the lack of evidence for a trial of these men as proof that there was little accountability for the killers of Gracchus.

"undertaker."[697] This could be evidence that Lucretius suffered an eclipse in the public eye like Nasica's.

The Gracchans themselves were also subject to religiously-tinged fall-out from Tiberius' actions. The disposal of Tiberius Gracchus' body in the Tiber, along with those of his supporters, served a dual purpose.[698] Its aim was undeniably to shame the Gracchans by denying them a proper burial. On a religious level, however, disposing of undesirable people in bodies of water was also a means of averting pollution. Most commonly this category consisted of androgynous children and parricides.[699] Parricides were put into a sack before being thrown into the ocean or Tiber in order to avoid polluting the water.[700] Water was a cleansing and expiatory substance, but it too could be threatened by individuals considered to be polluting. By disposing of the bodies in the

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[697] Festus 506L. See also Servius *ad Aen*. 11.143. For an analysis of this term, see Beness (2000) 1. Lucretius Vespillo's family persists in using the name. The consul of 19, for example, bears the same name. Like Serapio, the continued use of the cognomen does not indicate that the name's original bearer did not suffer politically.

[698] Plut. *G. Gracch*. 17.5 claims that the supporters of Gaius were similarly cast into the Tiber.

[699] Tiberius and his followers do not seem to have been regarded as prodigies. Their disposal was overseen by the aedile Lucretius Vespillo, not by the haruspices or the decemviri.

[700] Cic. *Rosc*. 70-2: *non sic nudos in flumen deicere ne, cum delati essent in mare, ipsum polluerent quo cetera quae violata sunt expiari putantur*. "… neither to throw them naked into the river, nor, when they are bourne into the sea, they would pollute that by which other things, when violated, are thought to be expiated." Cornell (1981) 36 argues that the *culleus* into which a parricide was placed removed the threat of *miasma*. He analogizes this with the chamber in which an incestuous Vestal was enclosed. The parallels between Vestals and androgynous people was discussed in chapter four. For executions of parricides, see Justin. *Inst*. 4.18.6;; Cic. *ad Her*. 1.23; Cic *de Invent*. 2.149; *Rosc*. 30, 70, 71-2. The most famous formulation of the death of a parricide inside a sack with animals is from *Dig*. 48.9.9. Beness (2000) 10 does not believe that parricide existed prior to 101, though she posits a separate sack punishment prior to this period. It is safest not to equate Villius' punishment with that associated with any particular crime but rather to see it as a ritualized execution in the wake of the death of Tiberius Gracchus.

river, Scipio Nasica was not giving them to Jupiter.[701] Casting their bodies into water, especially in a sack, instead implies that they were viewed as dirty (in this case ritually so) and needed to be taken away. However, we do not know whether Gracchus or his supporters were shut into sacks when they were thrown into the Tiber, and it is important to recognize that they were already dead at the time. The supporters who were executed by trial after his death were not killed in this manner, indicating that this was not a policy that was consistently imposed.[702]

Of the supporters of Gracchus, we only know explicitly that one man, Caius Villius, was killed by being shut in a container with snakes. Plutarch provides our only notice of him: Γάιον δέ τινα Βίλλιον εἰς ἀγγεῖον καθείρξαντες καὶ συνεμβαλόντες ἐχίδνας καὶ δράκοντας οὕτω διέφθειραν.[703] Plutarch explains only that he was shut into a case with snakes. The snakes could have been poisonous vipers native to Italy, so Villius could plausibly have been killed simply by being shut in the container with them. From Plutarch's description it is not certain that his body was dumped in the Tiber, though it seems likely, given the fates of the other Gracchans.[704] It is undoubtedly true that the punishment that Villius' resembles most closely is that of parricide, though there are crucial differences. Perhaps this was a new ritual killing prescribed by the Sibylline books along the same lines as the burials of the Gauls and Greeks. Villius shares with the

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[701] Lassen (1992) 150 sees the watery death of the parricide as protecting Roman land from pollution.
[702] They were either crucified (Mommsen's opinion, though now less popular), scourged (both based on readings of Val. Max. 4.7.1), or thrown from the Tullianum (Val. Max. 6.3.1). For a modern analysis of the various deaths of the Gracchan supporters, see Beness (2000) 3-8.
[703] Plut. *Tib. Gracch*. 20: "Shutting a certain Caius Villius into a container and throwing vipers and serpents in with him, they killed him."
[704] Beness (2000) 14-15.

deaths of parricides, the Vestals, and the Gauls and Greeks the fact that he was not directly killed by human hands. He would have died by snakebite or by drowning, and therefore a divine agent could be imagined as being directly responsible for his death. As in the case of the androgynous child or the convicted Vestal, the death of Villius could be understood as a ritual solution to the religious unrest in Rome. He himself was likely considered to be ritually impure by the anti-Gracchans, and by his death a threat was removed from the community. Both Gracchan and anti-Gracchan responses to Tiberius' murder respond to the religious malaise stemming from the tribune's death. It seems as if there were warring interpretations of what had gone wrong and who was guilty, as had been the case when the senate debated what action to take against Gracchus on the day of his murder. Both sides attempted to brand the other as religiously transgressive.

Further constructive religious responses to the crisis accompanied the slander, shaming, and murder. The aftermath of the violence on the Capitol demonstrates that religious measures were seen as potential solutions to the political and religious controversy that arose from the death of Gracchus.[705] There were a number of negative prodigies reported, from an infant's voice calling from within the temple of Juno Regina to earth falling from the sky in Ardea, provoking worry over further disasters.[706] In response to these signs, a delegation was sent to the temple of Ceres at Henna by the

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[705] This is not to discount legal measures taken against Gracchans described in Cic. *Amic*. 37; Sal. Jug. 31.7; Val. Max. 4.7.1; Vel. Pat. 2.7.3-4; Plut. *Tib. Gracch.* 20. See Flower (2006) 71 n. 13 on the trials of Gracchus' followers.

[706] Obseq. 27a does not indicate what time of year the prodigies were reported but does report a large number and associate them with Gracchus' political strife and death. Cic. *Verr*. 2.4.108 places a number of startling prodigies after his death.

orders of the Sibylline books.[707] The consultation of the Sibylline books and the embassy to Sicily, far from the strife in the city, provided a solution to the evident problem between the Romans and their gods. The ongoing slave revolt in Sicily also surely motivated the selection of Henna as the destination for the embassy, and could easily be seen as yet another indication of divine displeasure. The delegation had multiple motivations and purposes. Something had gone wrong regardless of what one's politics were: sacrosanctity had been challenged and blood had been spilled before the eyes of Jupiter.[708] Ceres, as the traditional recipient of a *sacer* individual's *consecratio bonorum*, was owed her due. As previously in Roman history, religious innovation was called upon as a legitimate means by which to address broad societal problems.[709]

While Cicero explicitly connects the embassy to Henna with the death of Gracchus, other, not overtly political events such as the eating of a sacred fish in Sicily and the birth of an androgynous infant in the *ager Ferentinus* could similarly have caused negative outcomes for the Romans. These conveniently allowed blame to be deflected

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[707] Cic. *Verr*. 2.4.108 presents the fullest account. See also Val. Max. 1.1.1 and Lact. Inst. 2.4.29. Diod. Sic. 24-25 frag. 10 presents the delegation as being sent to establish altars of Aetnaean Zeus. Spaeth (1990) and (1996) provide a lucid and convincing interpretation of the embassy as an attempt by the senate to discredit Tiberius Gracchus as well as to avert religious crisis. She is one of few modern commentators to claim that the senate was still attempting to capitalize on the accusation that Tiberius had violated Octavius' sacrosanctity after his death. She points out, however ((1990) 187-189), that Ceres also received the *consecratio bonorum* in the case of a prospective tyrant. Flower (2006) 72-73 suggests the cult site at Henna may have been chosen because it had been desecrated by the rebelling slave army and only recently recaptured by Roman forces.

[708] Dillon (2013) expresses skepticism that an embassy to a Sicilian (overseas) sanctuary of Ceres was a response to the death of Tiberius Gracchus. I suggest that the complex of religious crises and omens in 133 and 132 would have been understood as related and that any activity involving Ceres would have carried associations with the slain tribune even if expiating his death or dedicating his property were not the express purposes of the mission.

[709] E.g. the importation of the Magna Mater cult during the Second Punic War.

from the magistrates, senate, and urban *populus*.[710] These prodigies could be expiated, as we know occurred in the case of the androgynous child. The fuzzy causation that these religious solutions allowed for was a great asset. A problem could be identified and addressed without placing blame on any faction. Moreover, rites such as lustration, the means by which the city was traditionally cleansed after an androgynous person was identified, could also have the effect of uniting Rome by treating the Romans as a single entity being cleansed of pollution together. Expiating prodigies offered a direct means of counteracting a divine threat, sometimes by victimizing less privileged bystanders, but one that did not involve alienating political factions.

This type of religious problem solving was clearly effective because it was repeated more systematically in the aftermath of the death of Gaius Gracchus a decade later. While Gaius' death was not a violation of tribunician sacrosanctity, since he was not in office at the time, it nevertheless marked a deep rift in Roman society. The consul Opimius began the double task of healing Rome and ensuring that his narrative of Gaius' misdeeds reigned supreme by holding a lustration of the entire city.[711] Opimius also rebuilt the temple of Concordia.[712] Through these actions it is apparent that Opimius had

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[710] For the eating of the sacred fish: Diod. Sic. 24-25 frag. 9. While fragmentary, this notice is preceded by one recording Scipio's reaction to the death of Gracchus and one mentioning the slave revolt and followed by one describing the embassy to Sicily at the recommendation of the Sibylline Books, so its dating is secure.

[711] App. *B. Civ.* 1.26.

[712] Plut. *G. Gracch*. 17.6 claims that Opimius was not altogether successful because he seemed to be boasting about slaying the Gracchans as if he were celebrating a triumph, temple dedications being a popular act of *triumphatores*. Aug. *Civ. D.* 3.5 snidely remarks *sed hoc quid aliud fuit quam irrisio deorum, illi deae templum construere, quae si esset in civitate, non tantis dissensionibus dilacerata corrueret*. "But what else was this but the mockery of the gods, to construct a temple to that deity who, if she were in the city, would not have stood to be cut by such dissension!" D'Arco (1998) 97-101 discusses the tension between political discord and the Concordia foundation in 121.

admitted that something had gone wrong religiously and had taken steps to address the conflict between Rome and its gods. His attempts to repair the religious situation at Rome were intended to enhance his personal reputation by presenting himself as the agent behind the rehabilitation of order and divine favor in Rome. While Opimius was only partially successful (angry graffiti on the Concordia temple indicates that his propaganda was not universally acclaimed), the fact that an attempt was made is a testament to the importance of religious damage control.

A similar impulse can be seen from the other side of the political spectrum in the offerings placed at the sites of Tiberius and Gaius' deaths, perhaps in a post-mortem commemoration of the sacrality of the body of a tribune.[713] The death of Tiberius Gracchus demonstrates that the Roman magistrates and the politically-involved portion of the *populus* had a sophisticated and flexible understanding of the privileges and limits of tribunician sacrosanctity. They experimented with methods of ejecting undesirable tribunes from power, and explored ideas about the tribunate as a representative office, before ultimately using an accusation of attempted *regnum* in order to justify Tiberius' murder. The relationship between aiming at kingship and the tribunate continued to develop in the last century of the republic. In Tiberius' case, the claim that he was a king was not altogether successful, however, and Scipio Nasica himself was forced out of Rome under the accusation of having violated Tiberius' sacrosanctity. Both sides attempted religious solutions in response to the violence on the Capitoline, a practice that the consul Opimius would repeat in the following decade after the death of Gaius Gracchus. The question of who had really transgressed was kept in play.

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[713] Plut. *G. Gracch*. 18.2. Plutarch cannot be correct that the locations of their deaths were consecrated, however, since both places had already been consecrated.

III. The Aggressive Tribunate: Weaponizing and Respecting Tribunician Sacrosanctity

The period following the death of the Gracchi saw the further elaboration of possible responses to the problem of how to oppose a sacrosanct tribune. Most late-second and first century episodes mirrored those in which the Gracchi died, though with more precise articulation of the anti-Gracchans' key innovation: claiming that an enemy tribune was not behaving as a proper tribune. A general trend emerged such that when a person was accused by one political faction of aiming at kingship or tyranny or otherwise acting as an enemy of the state, he could be dealt with in an unconventional manner. The specific application of this more generalized rhetorical strategy that interests me here was violence against a tribune of plebs and the concomitant trend away from taking retribution against those who harmed a tribune. Accusations of improper conduct eased the anxieties about maiming a sacrosanct individual sufficiently to render the risk of being made *sacer* negligible.

At the same time, while claims that a tribune aiming at state dominance developed as a viable method for working around sacrosanctity, there were also attempts by post-Gracchan tribunes to assert their political and personal rights, including their sacrosanctity. While the post-Sullan period was a key moment for the re-articulation of the role of the tribune, there also survives one episode of violation of a tribune in the immediate aftermath of Tiberius Gracchus' death that provides a contrasting perspective on how sacrosanctity might in fact impede action against a tribune. Pliny records that in

131 BCE, the tribune Caius Atinius Labeo Macerio attempted to push censor Quintus Caecilius Metellus Macedonicus off the Tarpeian Rock as retribution for ejecting him from the senate.[714]

> in ipso tamen flore dignationis suae a C. Atinio Labeone, cui cognomen fuit Macerioni, tribuno plebis, quem e senatu censor eiecerat, revertens e campo meridiano tempore, vacuo foro et Capitoli, ad Tarpaium raptus ut praecipitaretur, convolante quidem tam numerosa illa cohorte quae patrem eum appellabat, sed, ut necesse erat in subito, tarde et tamquam in exsequias, cum resistendi sacroquesanctum repellendi ius non esset, virtutis suae opera et censurae periturus, aegre tribuno qui intercederet reperto a limine ipso mortis revocatus…[715]

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[714] Livy *Per*. 59 places this incident in 129. *MRR* places it in 131, the year of Caecilius Metellus' censorship. This was not the only incident between tribunes and censors. In 97 tribune Marcus Duronius was similarly expelled from the senate for promulgating sumptuary legislation with no known violent retaliation, nor do the censors seem to have been charged with violating tribunician dignity, though Duronius did accuse censor Antonius of *ambitus*. See Val. Max. 2.9.5 and Cic. *Or*. 2.274. Similar enmities arose between censors and tribune Ti. Claudius Asellus of 140 (see collection of sources at *ORF* 21.5) and the censor Cnaeus Lentulus of 70 (Cic. *Dom*. 124). The first known instance of the *consecratio bonorum* by a tribune is that conducted by tribune Publius Rutilius on the goods of censor Tiberius Gracchus in 169 for failing to recognize the tribune's right of *intercessio*. See Livy 43.16.10. Nisbet (1979) 173 suggests that there were likely instances that predated this episode. The trend of antagonism between censors and tribunes, and the fact that this antagonism sometimes took the form of claims about violated sacrosanctity, is one manifestation of the difficulty in disagreeing with an office holder who was inviolable by the laws of gods and men. The tribune was able to use his status as leverage.

[715] Plin. *HN* 7.143: "At the height of his powers, he was seized by C. Atinius Labeo, whose cognomen was Macerio, a tribune of the plebs whom as censor he had ejected from the senate. While returning from the campus at midday when the forum and Capitoline were empty, he was borne by the tribune to the Tarpeian Rock, so that he could be thrown over it. That numerous band of followers of his, who called him father, protested, but, as happens in emergencies, they responded slowly and as if they were already at his funeral, since they did not have the right to resist and repel the sancrosanct

The incident is a dramatic illustration of how tribunician sacrosanctity could function on the ground. Pliny's story portrays Caecilius Metellus' life as being put at risk in order to avoid violating the sacrosanctity of the tribune Labeo. Labeo acted in spite over a personal issue, while the followers of Caecilius Metellus were able to take the moral high ground in their refusal to fight back against the tribune. Only another tribune was able to intercede against Labeo on Meteullus' behalf. In Pliny's account this story is one of an enumeration of ten fortunate occurrences in the life of Metellus.[716] The account therefore favors Metellus and is largely removed from its historical context.

Alternatively, Labeo could also be seen as a tribune who asserted his own rights as a sacrosanct politician just after one of his own, Tiberius Gracchus, had been killed in office. Labeo responded to a slight to his dignity by taking active, personal retribution. The incident provides a perspective on the tribunes' own ability to decide who should be *sacer* and what constituted an offense against them. It also demonstrates again the special rights that tribunes had relative to other tribunes, because it ultimately became an altercation between tribunes. The tribune who interceded can be seen as also claiming his right as a tribune to respond to his colleague. In the *Periochae* of Livy, the "other tribunes" in the plural (*ceteri tribuni*) interfere, which implies that the conflict may have become one that involved the entire college.[717] The episode is a violent echo of the altercation between Tiberius Gracchus and Octavius. Whereas those two were careful not

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tribune. Metellus was about to die for the fruits of his virtue and of his censorship, when a tribune was found at the last moment who interceded and Metellus was called back from death's door." Livy *Per*. 59.10 also includes a notice of this episode.

[716] Quintus Metellus is given a similar catalog of his virtues in Val. Max. 7.1.1, though Valerius Maximus omits his altercation with Labeo.

[717] Livy *Per*. 59.

to come to blows, in this story Labeo's colleague(s) behaved as if he (they) uniquely could act against Labeo.

Atinius Labeo independently determined that the *consecratio capitis* was the appropriate punishment for Metellus' compromising of his dignity. This was in accordance with Dionysius of Halicarnassus, Livy, and Festus' formulations of the consequences of transgressing against tribunician sacrosanctity.[718] Atinius Labeo likely selected the Tarpeian Rock as the location of his attempt on the life of Metellus deliberately. The Tarpeian Rock, in addition to its associations with criminals and treason, was also connected to Jupiter, the god specified as the recipient of the *consecratio capitis* in Livy (and not elsewhere).[719] Atinius Labeo's choice provides greater assurance of the authenticity of Livy's statement that Jupiter received the *consecratio capitis*. The choice of the Tarpeian Rock should not be over-emphasized, however, because Atinius Labeo attacked Metellus again at a later date by twisting a rope around his neck until blood came out his ears.[720]

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[718] While, as Fiori (1996) 55 argues, *capitalis* punishments could be a diminution of free citizen status rather than deprivation of life, this example, as well as Dion. Hal. *Ant. Rom.* 6.89.3, 7.17.5, Festus 422L indicate that death was a preferred method of punishing known transgressors of tribunician sacrosancitity.

[719] Thommen (1989) 187f, 254 sees the use of the Tarpeian Rock as a radical protection of the tribunate in the late Republic. I agree with this stance though I contend that the Tarpeian Rock was not indispensible to the rite of *consecratio capitis* in any period. On being thrown off the Tarpeian Rock as a punishment for *incestum* and treason, see Cornell (1981) 33, Quint. *Inst*. 7.8.3 and Tac. *Ann*. 6.19. Spaeth (1990) 189-190 connects the Tarpeian Rock to Jupiter (on the basis of Sil. 3.623; 10.360; Prop. 4.1.7; Firm. Mat. 1.10.7; Varro *Ling*. 5.41) and claims on the grounds of Plin. *HN* 7.143 that being thrown from it was the standard punishment for violating a tribune. Dion. Hal. *Ant. Rom.* 10.31 also describes the tribune Icilius attempting to throw a disrespectful lictor from the Tarpeian Rock.

[720] Plin. *HN* 7.144. Moreover, according to the sacrosanctity laws, anyone could kill a *sacer* individual, which would make it unlikely that the punishment was required to take place on the Tarpeian Rock.

Despite his failure to kill Metellus, Atinius Labeo proceeded with the next step required in the punishment of the violator of a tribune: the *consecratio bonorum*. Labeo appears to have been very dedicated to completing the punishment despite setbacks. The *consecratio bonorum* was carried out on the sole authority of the tribune himself.[721] Both Pliny and Cicero were clear that a rite of *consecratio* of Metellus' goods did take place: both used a form of the verb *consecrare*. No divine recipient was mentioned. However, it is unclear whether anyone actually confiscated Metellus' goods. This raises the question of who was supposed to enforce a *consecratio bonorum* and suggests that it may not have been the tribune himself, because the Labeo of the historical tradition was nothing if not persistent. Perhaps Labeo's colleague interfered again. Pliny maintains that the *consecratio* was upheld and that Metellus became a pauper. Cicero, on the other hand, likens it to sham *consecrationes bonorum* later performed by Clodius and his colleague Ninnius and implies heavily that the *consecratio* was not upheld.[722]

Cicero's claim is more plausible. In Cicero's argument for the invalidity of the consecration of his own house, he warns that if all *consecrationes* were upheld as legitimate, everyone's private possessions would be at risk. He recalls the *consecratio* of the *bona* of Caecilius Metellus as a historical parallel to his own situation:

> atqui C. Atinius patrum memoria bona Q. Metelli, qui eum ex senatu censor eiecerat, avi tui, Q. Metelle, et tui, P. Servili, et proavi tui, P. Scipio, consecravit foculo posito in rostris adhibitoque tibicine. quid tum? num ille furor tribuni

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[721] Cic. *Dom*. 123 indicates that a tribune could consecrate personal property on his own authority. A pontiff was not required, as was the case for the consecration of shrines such as that of Libertas, the subject of Cicero's larger argument.

[722] Cic. *Dom*. 124-125. It is possible to read Cicero's statement as claiming that the Metelli's dignity suffered no harm. It was certainly in Cicero's interest to claim that the *consecratio* could be reversed.

plebis ductus ex non nullis perveterum temporum exemplis fraudi Metello fuit, summo illi et clarissimo viro?[723]

Cicero calls three pontifices by name, all grandsons of the wronged Metellus, and claims that a *consecratio* had taken place, and that the dignity of the family had not been compromised. That is, the family may have kept its wealth. Surely these priests would have known the fate of their family's wealth, so it is likely that Cicero's account is broadly factual. Atinius Labeo's actions are portrayed as insane, akin to Clodius', and Metellus is glorified. While this is in accordance with Cicero's immediate goal and the leanings of his audience, it is also similar to the characterization of Atinius Labeo in Pliny, who did not share Cicero's personal motives for vilifying the tribune. The tradition that grew around Labeo presented him, and indeed all tribunes, as dangerous to good Romans. Yet, in a sense, all that Labeo had done was assert that his tribunate protected him from slights against his reputation, which was technically true. He had attempted to carry out highly traditional punishments. The altercation between Labeo and his tribunician colleague, as well as Labeo's reception by later writers, shows that the powers of the tribunes were being tested and renegotiated in the post-Gracchan period.

The post-Gracchan context is essential to an understanding of the conflict between Metellus and Labeo. Metellus' life was connected closely with the story of the Gracchi. Quintus Caecilius Metellus' daughter, Caecilia Metella, married the son of Scipio Nasica, the architect of the murder of Tiberius Gracchus. Metellus' opposition to

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[723] Cic. *Dom.* 123: "And within the memory of our fathers, Caius Atinius consecrated the goods of Quintus Metellus (your grandfather, Quintus Metellus, and yours, Publius Servillius, and your great grandfather, Publius Scipio) who as censor had ejected him from the senate, with an altar set on the rostra and a flute player summoned. What then? For what did that fury of a tribune of the plebs, taken from the many similar examples of ancient times, do to diminish Metellus, that most noble and illustrious man?"

the Gracchi led him so far as to carry weapons against Gaius alongside Opimius.[724] It is possible, therefore, that this tradition of his attack by a crazed tribune of the plebs was a later intervention designed to rehabilitate the family of the younger Scipio Nasica Serapio and his political allies. It is, at the least, a stark presentation of piety towards a popular magistrate by the followers of Caecilius Metellus, who had not proven popular among the people throughout his career and who had been a staunch conservative and opponent of Tiberius Gracchus.[725]

The reaction of Metellus to Atinius Labeo's attack should not be taken as historical truth given the positive nature of the surviving sources towards him. Pliny's account can be taken only as portraying what Metellus and his followers' reactions *should* have been. Metellus' supporters were present and did not intervene, indicating a strong reluctance among them to avoid harming the tribune. There was reason to avoid religious transgression even at the cost of someone's life. The fact that Pliny uses this episode as an illustration not only of Metellus' good fortune, though that is its primary role, but as an illustration of his virtue, demonstrates that religious transgression was anathema. The injunction against harming even a narcissistic and poorly behaved tribune was strong enough to motivate at least Pliny's depiction of Metellus, and possibly Metellus himself.

While Metellus could not save himself, he was saved by another tribune (or multiple tribunes, according to the *Periochae* of Livy). The tribunes had special privileges vis à vis their colleagues. It was an essential aspect of their power that they

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[724] Cic. *Phil*. 8.14.
[725] *RE* Caecilius 94. His most famous interaction with Tiberius Gracchus was his opposition to the use of Attalus' legacy to fund land reform (Plut. *Tib. Gracch*. 14.2-3). See also Cic. *de Rep*. 1.31; *Brut*. 81.

could exercise vetoes that went against the wishes of the other tribunes. There were limits to the freedom with which tribunes could oppose each other, as the aftermath of Tiberius Gracchus' altercation with Octavius demonstrated, but apparently restraining an errant tribune from committing murder was permissible.[726] The decision to kill someone who had violated a tribune therefore could not be taken unilaterally, a controversy that also arose in the aftermath of Tiberius Gracchus' expulsion of Octavius. Violated sacrosanctity needed to be decided by consensus among tribunes, either formally or informally. There is no evidence that a formal process was involved, but if consensus was not achieved, the person killing the supposed culprit would be cast as a murderer by his own colleagues.

There are two ways to look at this episode. The first is as a spurious story invented after the death of Tiberius Gracchus about an insane tribune and a virtuous conservative censor. Cicero's use of this episode as a common reference point before the family of this censor argues against reading the tale as spurious, however much like stock characters the tribune and censor are made to behave in Pliny.[727] I argue instead that the passage from Cicero appealing to the descendents of Metellus, who would have known of the event and its outcome, can be taken as confirmation that in the mid-first century, traditions about harming tribunes and the consequences thereof were current and enforced. Whether or not the *consecratio* of Metellus' goods was actually upheld does not matter for my purposes. More important is the fact that Cicero and Pliny (and Livy)

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[726] They could also refuse to help their colleagues. See Val. Max. 6.1.7 for the other tribunes refusing to go to the aid of their colleague Caius Scantinius Capitolinus against the curule aedile.

[727] It is unfortunate that Livy's presentation of their characters does not survive in detail.

record this instance of a tribune attempting to defend his sacrosanctity within the historical period, including an attempted adherence to traditional methods of punishment.

IV. Not a Tame Tribune: Violated Sacrosanctity in the Late Republic

Rarely was anxiety over tribunician sacrosanctity in the late republic expressed as clearly as it was in Atinius Labeo's case, though a number of incidents did occur. For example, in 86, the tribune Publius Popilius Laenas was ordered by Marius to cast Sextus Lucilius, a tribune of the previous year and an enemy of Marius, from the Tarpeian Rock.[728] Marius was making use of the tribune's ability to coerce and punish others, just as Labeo had done. There were essentially two lines of thought on the tribunate in the years after the Gracchi: One was Labeo and Laenas' view of the tribunate as an offensive office to be piously respected. The second trend was the reversion to tactics familiar from the murder of Tiberius Gracchus. Tribunes' political opponents reframed the tribune as a potential tyrant and, in some cases, as a formal enemy of the state. There were multiple strategies, but the goal was the same for each: if the charges were successful, harming the tribune was not a violation of sacrosanctity at all. The story of tribunician sacrosanctity in the first century is one of the constant negotiation between these two trends, with the trend towards discrediting sacrosanctity being generally more successful.

There is little indication that the killers of tribunes in the late Republic were considered *sacer*, both because of lack of consensus about their guilt, but also because that archaic punishment seems to have fallen out of favor. The question in this section is

[728] Vel. Pat. 2.24.2; Plut. *Mar*. 45.1; Cass. Dio frag. 102.12; Livy *Per*. 80.

why the shift towards the model of discrediting tribunes occurred, and why behavior like Labeo and Metellus' largely ceased.[729] However, sacrosanctity was not stripped from the tribunes in the Sullan reorganization of the tribunate, and it survived into the imperial period to become a privilege of the emperors. I argue that the first century did not show a trend towards disregarding sacrosanctity. While the tactic of claiming tyranny or kingship often allowed for the successful removal of the tribune, his supporters did at times claim sacrosanctity as reason to condemn his killers. Rather, the tendency was to render the protection irrelevant. It was better to claim that someone was not a good tribune, and therefore that they were not sacrosanct, than it was to say that it was acceptable to harm a tribune. A large number of tribunes suffered harm in the last century of the Republic (see Table 1). The nature of the evidence for this type of religious transgression is therefore different in quantity than that of any other variety. This comparative wealth of evidence, so much of it late and therefore contemporary with or closer in date to the main commentators (chiefly Cicero), allows me to look at the changes in the tribune's status on a granular level. In the remainder of this chapter I will survey key cases of tribunician violation chronologically and trace the development of viable methods of working around sacrosanctity.

Table 1: Harmed Tribunes, 132-44 BCE

Year (BCE)	Incident
131	Tribune Caius Atinius Labeo Macerion attempts to push censor Caecilius Metellus off Tarpeian Rock for expelling him from senate.

[729] Not entirely, however, see the case of Publius Popilius Laenas, acting on behalf of Marius, and Sextus Lucilius.

103	Tribune Marcus Baebius Tamphilus is forced violently from the forum while his colleague Lucius Appuleius Saturninus attempts to pass a land law. Tribunes L. Aurelius Cotta and Titus Didius are dissuaded by force from vetoing prosecution of Caepio.
100	Plebian tribune Lucius Appuleius Saturninus is murdered in riots over setting up laws for citizen colonies for discharged Marian soldiers. Another tribune, the Gracchus-pretender Lucius Equitius, dies the same day (Dec. 10, 100, first day in office).
91	Marcus Drusus is assassinated in the aftermath of the repeal of his legislation by the senate after an attempt to enfranchise the Italians.
88	Publius Sulpicius Rufus is killed by Sullan supporters after aiding Marius' attempts to gain command in war against Mithridates VI.
86	Sextus Lucilius, tribune of the previous year, thrown off the Tarpeian Rock by Publius Popilius Laenas, current tribune, according to wishes of Marius.
? 82	Quintus Valerius Soranus announces secret name of Rome and either dies or is killed.
76	Cnaeus Sicinius attempts to restore power of tribunate and is killed in some way by the consul Curio.
70	? Unknown tribune attempts to consecrate the goods of censor Cnaeus Cornelius Lentulus.
67	Lucius Trebellius attempts to veto the Lex Gabinia. Gabinius attempts to depose him.
60	Tribune Lucius Flavius imprisons consul Quintus Caecilius Metellus Celer for opposing his agrarian law.

59	Publius Vatinius blocks colleague's veto of Caesar's land law by force of arms.
57	Clodius bloodies the temple of Castor with Publius Sestius' (tribune of plebs) blood while blocking him from announcement of auspices.
49	Antony and Cassius are tribunes and attempt to impose *intercessio* on attempt by senate to replace Caesar in Gaul but are opposed by the senate and flee to Caesar.
44	On Caesar's wishes, a bill of Caius Helvius Cinna strips fellow tribunes L. Caesetius Flavus and C. Epidius Marullus of tribunician power because they had spoken against those calling Caesar "king."

In December of 100 BCE, Saturninus, along with his puppet Gracchan-pretender colleague Lucius Equitius, were the next tribunes after Tiberius Gracchus to be murdered.[730] Saturninus had been elected to his third tribunate for the year 99 and attempted to pass an agrarian law. However, he was betrayed by Marius and opposed by a number of senators and equestrians. Attacked by a mob, Saturninus was forced to retreat to the Capitoline, where Marius compelled him to surrender by cutting off the water supply to the Capitoline. Rather than giving Saturninus peace terms or safe passage into exile, as expected, his opponents stoned him and his allies to death in the senate house.[731] Marius and his allies were regarded as having saved the republic from Saturninus' oppression.[732]

[730] On Equitius, see Benness and Hillard (1990).
[731] App. *B. Civ.* 1.32; Plut. *Mar*. 30; Flor. 2.4.1-6; Oros. 5.17.6-10; *Vir. Ill*. 73.9-12.
[732] Cic. *Rab. Perd*.; Val. Max. 3.2.18; 8.6.2; Vell. 2.12.6.

Saturninus' death was, like Tiberius Gracchus', excused by leveling the charge that he was a danger to the state. Saturninus' death provides further evidence that Tiberius Gracchus' murder was justified by his enemies as a state-preserving measure and situates Tiberius in a developing trend of malignant tribunes.[733] The argument implicit in these murders is that a tribune who threatens the safety of the state is not a tribune at all. This argument was familiar from the fight between Tiberius Gracchus and Octavius. In his description of the incident, Cicero was careful to distance Saturninus from the other tribunes in a move that resembled the claim made against Tiberius Gracchus after the ejection of Octavius. Saturninus and his ally Glaucia were isolated from their colleagues: *omnis tribunos pl. praeter Saturninum, praetores praeter Glauciam; qui rem publicam salvam esse vellent, arma capere et se sequi iubent. parent omnes.*[734] The repeated use of *omnis* emphasizes the degree to which the rest of Rome was united against Saturninus. Not only did he pose a threat to the state, but his own colleagues openly rose against him. He was not a proper tribune at all. The pitting of a tribune against his colleagues is reminiscent not only of Tiberius Gracchus and Octavius, but also of the inter-tribune conflict that arose between Labeo and the other tribunes.

A similar discrediting of Saturninus' office appears in the epitome of Livy: *L. Apuleius Saturninus, adiuvante C. Mario et per milites occiso A. Nunnio competitore*

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[733] See, for example, the argument put forward in Cic. *Leg*. 3.20. Saturninus and the Gracchi are often grouped and mentioned by name e.g. Cic. *Cat*. 1.4; *Leg*. 3.20; *Mil*. 8, 14; Caes. *BC* 1.7

[734] Cic. *Rab. Perd.* 7.20: "… all the tribunes of the plebs except Saturninus, all the praetors except Glaucia; they order all who desire the republic to be safe to take up arms and to follow them." The reference to the phrase used by Scipio Nasica in ordering the attack on Tiberius Gracchus must be intentional. Fiori (1996) 417-418 explains that according to Serv. Aen. 7.614, the formula *qui rem publicam salvam esse vult, me sequatur* ("He who wishes the Republic to be safe, follow me.") is associated with *evocatio*, but Fiori himself rejects this association in the case of Gracchus.

tribunus plebis per vim creatus, non minus violenter tribunatum, quam petierat, gessit.[735] Livy brings into disrepute not only Saturninus' actions as tribune, but also the very process by which he was elected, thus invalidating his office. More extremely, Cicero calls Saturninus a *hostis* of the Roman people.[736] It is this version of Saturninus, as a *hostis* rather than as a slain tribune, that is the dominant interpretation in posterity.[737] The elogium of Marius claims proudly that *Marius rem p(ublicam) turbatam /* [*seditionibus tribuni plebei et praetoris*] */* [*quei armati Capitolium occupaverant sextum*] */* [*co(n)s(ul) vindicavit*.[738] It is difficult to draw any firm conclusions from this text because the most important aspects of the inscription are restored. If the restoration were correct, it would be possible to conclude that no care was taken to disguise the fact that Saturninus was a tribune. Attention was instead deflected towards the risk he posed to the republic. Such a reading would be in line with the Saturninus described by Livy and Cicero. To Cicero, Saturninus was the type of person whom the republic was unable to cast out *sine ferro*.[739]

Saturninus is the most universally condemned of the murdered tribunes recorded in surviving sources, yet even in his case there are hints of underlying religious concern:

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[735] Livy *Per*. 69: "Lucius Apuleius Saturninus, with Caius Marius offering aid and his competitor Aulus Nunnius killed by soldiers, was made tribune of the plebs by force and conducted himself in the office no less violently than he had sought it." See also App. *B. Civ.* 1.32.

[736] Cic. *Rab. Perd*. 7.18: *L. Saturninum, hostem populi Romani.* An SCU was issued against Saturninus, as had been done against Gaius Gracchus (though the latter was not formally declared a *hostis*). Compare to Cicero's treatment of Catiline as a *hostis*.

[737] Cic. *Har. resp.* 41 characterizes Saturninus as *demens*. Since insanity was a common divine punishment for transgression, it is possible to see Saturninus himself as the transgressive figure.

[738] *CIL* 6.41024 = *CIL* 6.31598 = *CIL* 1^2.1 p 195. See also *CIL* 11.1831, a more complete version found at Arretium. "Marius, as consul, avenged a republic troubled by the sedition of a tribune of the plebs and a praetor who occupied the Capitoline while armed."

[739] Cic. *Leg*. 3.20, speaking as Quintus.

Cicero claims, *si interfici Saturninum nefas fuit, arma sumpta esse contra Saturninum sine scelere non possunt; si arma iure sumpta concedis, interfectum iure concedas necesse est*.[740] The potential that it may have been *nefas* to kill Saturninus is directly stated, though promptly rejected. To avert this charge, Cicero must set up a dichotomy between *ius* and *fas*, legality and religious correctness. He has to redefine *ius* to make it distinct from *lex* and *religio*.[741] *Ius* was now defined by a different criterion, namely the protection of the state from a *hostis*.

Gaius Rabirius was eventually accused in 63 by Titus Labienus, another tribune of the plebs, of killing Saturninus. Labienus brought him up on a charge of perduellio, and Rabirius narrowly escaped conviction.[742] Labienus is then another one of the tribunes who interceded offensively to protect the dignity of his office, in the tradition of Laenas and Labeo. Labienus acted on the encouragement of Julius Caesar, who was seeking to protect popular movements from the *senatus consultum ultimum* in the context of the Catilinarian conspiracy.[743] The trial of Gaius Rabirius, contrived and over thirty years later though it may have been, proves that it was possible to bring charges against someone involved in his death. The fact that there was a trial at all indicates that there was ongoing negotiation of the justifiability of political (and tribunician) murders, though the trial probably says more about the 60s than it does about 100. In the story of Rabirius,

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[740] Cic. *Rab. Perd*. 7.19: "If it was a crime to kill Saturninus, arms cannot have been taken up against Saturninus without blame; if you admit that arms were taken up justly, it is necessary that you admit that he was killed justly."
[741] On the perceived dichotomy between *ius* and *fas*, see ter Beek (2012).
[742] For an account of the trial, see Cass. Dio 27.26-27 and Cic. *Rab. Perd*.
[743] For the assertion that Caesar fabricated the case against Rabirius, see Suet. *Iul*. 12.1. Caesar, oddly, refers to the crimes of earlier ages as having been "expiated by" the fates of Saturninus and the Gracchi (*BC* 1.7). Caesar's opinion on Saturninus appears to have been inconsistent. It is also interesting to note that it was possible to refer to the murder of tribunes as itself expiatory rather than in need of expiation.

it is possible to detect hints of a counter-narrative, according to which killing a tribune was a horrific act; Rabirius was rumored to have even carried Saturninus' head around to dinner parties.[744]

Besides the trial of Rabirius, however, no known interest was taken in trying the killers of Saturninus. Marius is said to have experienced a brief political eclipse due to anger on both sides because of his handling of the affair, and he did not stand for the censorship.[745] It appears to have taken time to rebrand the murder of Saturninus and his supporters as tyrannicide. In later authors, Saturninus' opponents are most often portrayed as an anonymous group of people, apparently mostly members of a series of well-known families, or a group of *equites*.[746] Cicero portrays those opposed to Saturninus as a veritable honor role of the era, most of whom went on to illustrious careers.[747] The man who actually killed Saturninus, a slave named Scaeva, was awarded with his freedom.[748] There is no mention of punishing any of the involved people, though the trial of Gaius Rabirius, contrived and over thirty years later though it may have been, proves that it was possible to bring charges against someone involved in his death.[749] In Saturninus' case, his opponents largely succeeded in excusing his murder and appear to have suffered less infamy than, for example, Scipio Nasica. The surviving tradition almost entirely disfavors Saturninus. Even in this "successful" disregard for tribunician

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[744] *Vir. Ill*. 73.12.
[745] Plut. *Mar*. 30.
[746] e.g. Appian *BC* 1.32; Flor. 2.4.6; *Auct Vir. Ill*. 73.9-12; Cic. *Phil*. 8.15; Oros. 5.17.9.
[747] Cic. *Rab. Perd*. 7.21: Marcus Aemilius, Quintus Scaevola, Lucius Metellus, Sergius Galba, Caius Serranus, Publius Rutilius, Caius Fimbria, Quintus Catulus, Cnaeus and Lucius Domitius, Lucius Crassus, Quintus Mucius, Caius Claudius, Marcus Drusus, the Octavii, Metelli, Julii, Cassii, Catos, Pompeii, and so on.
[748] Cic. *Rab. Perd*. 7.31.
[749] For the assertion that Caesar fabricated the case against Rabirius, see Suet. *Iul*. 12.1.

sacrosanctity, however, an undercurrent of malaise can still be detected. Certain authors dwell upon his tribunate, emphasizing that an office-holder who should have been immune had been killed. Rabirius was cast as a monster, though with some delay and without ultimate success.

Drusus, the next tribune to be murdered, in 91, provides an instructive contrast to Saturninus. Drusus was assassinated by an unknown agent for encouraging the Latins to revolt with promises of citizenship. There was never a *quaestio* held to investigate Drusus' death, and it was later suspected of being a suicide.[750] Stories also varied as to whether he was killed by a blade or by poison.[751] Yet, he received a friendlier post-mortem reception from later authors than Saturninus did.[752] Because of the more sympathetic view our sources had towards Drusus, they exhibited correspondingly more anger over his death compared to Saturninus'. While the latter's office as tribune was consistently mentioned in accounts of his death, by which it is possible to detect traces of discomfort associated with the violation of sacrosanctity, it was not treated with discernable outrage. In contrast, Drusus, whom the sources present as a legitimate tribune, received an honorary inscription that seems to play up the injustice of his murder while serving as tribune:

> M LIVIUS M F C N DRVSVS PONTIFEX
> TR MIL X VIR STLIT IVDIC
> TR PL XVIR A D A LEGE SVA
> ET EODEM ANNO V VIR A D LEGE SAVFEIA

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[750] On the lack of a *quaestio*: Cic. *Mil*. 16. On the potential that he died at his own hand, see Sen. *Brev. Vit*. 6.1-2.
[751] Blade: App. *B. Civ.* 1.36; Vell. Pat. 2.14.1-2; Sen. *ad Marc*. 16.4; Poison: Plin. *HN* 28.148. Reports both: *Vir ill*. 66.11-13.
[752] Livy *Per*. 71; Oros. 5.18.

IN MAGISTRATV OCCISUS EST[753]

The magistracy was given its own line in the inscription, strikingly juxtaposed with *occisus est*. Appealing to Drusus' tribunate was one of the key rhetorical strategies authors used to incite outrage over his murder, which is interesting because it shows that the tribunate was still seen as something that should have been inviolable.

Drusus' death could be discussed alongside other religious crimes to positive rhetorical effect, as Cicero's Cotta does: *cur sodalis meus interfectus domi suae Drusus, cur temperantiae prudentiaeque specimen ante simulacrum Vestae pontifex maximus est Q. Scaevola trucidatus…?*[754] By pairing Drusus with Scaevola, Cotta suggests implicitly that, just as the pontifex maximus was not supposed to die in a sanctuary, the tribune of the plebs should not have been killed in office. Similarly, the sympathetic account of the *Rhetorica ad Herennium* cried, *Tuus, o Druse, sanguis domesticos parietes et vultum parentis aspersit.*[755] The image is reminiscent of the mentions of Cornelius Merula's blood covering the hearths of Jupiter. The passage emphasizes Drusus' tribunician sacrosanctity by naming him alongside Tiberius and Gaius Gracchus, Saturninus, and Sulpicius Rufus, all murdered tribunes, and stresses that he was murdered inside his own

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[753] *Inscr. Ital.* 13.3.74 = *CIL* 1^2.1 p. 199: "Marcus Livius, son of Marcus, grandson of Caius Drusus, pontiff, military tribune, decimvir for judging civil cases, tribune of the plebs, decimvir for giving and assigning lands according to his own law, and in the same year a quinquevir for giving and assigning lands by the lex Saufeia, was killed in office." The text comes from the 16th century codex Redianus fr. 26. The stone, found in Rome, no longer survives.

[754] Cic. *ND* 3.80-1: "Why was my companion Drusus killed in his home, why was the pontifex maximus Quintus Scaevola butchered before the statue of Vesta, the token of temperance and prudence…?"

[755] *Rhet. ad Her*. 4.31: "Your blood, oh Drusus, spattered the walls of your home and the face of your father." He mentions Drusus in the same paragraph as Tiberius Gracchus and Sulpicius, both tribunes, so while Drusus' office is not mentioned, it is the clear principle behind the grouping of those three.

home.[756] Orosius and Julius Obsequens (and therefore likely Livy) connect Drusus' legislation with a series of portents.[757] It is impossible to separate the portents warning of the death of Drusus from those warning of the Social War, but it is apparent that apprehension over divine displeasure hung over Rome.

Together, Saturninus and Drusus established a binary into which later murdered tribunes were placed. They were either presented as dangerous enemies of the state, fortunately disposed of, or they were tribunes killed unjustly. Of course, no tribune (including Saturninus and Drusus) fell neatly into either model. The outcome depended primarily on whether authors of surviving accounts were positively or negatively inclined toward a given tribune. In most cases, even in hostile accounts, there can still be found some hints of discomfort over a tribune's murder. When the prevailing tradition was opposed to the tribune in question, the reasoning was almost always that the tribune was a *hostis* of the state and an aspiring monarch.

For example, Publius Sulpicius Rufus was treated in a manner more similar to Saturninus. Sulpicius was killed in 88 after supporting Marius' efforts to gain command against Mithridates. Like Saturninus, Sulpicius was styled an enemy of the state by his opponents, which similarly functioned to render him not quite a tribune any longer, nor even a Roman citizen.[758] There are only a few hints that there was any concern over having killed the tribune. The *Rhetorica ad Herennium* suggests that if anyone had been accused of killing Sulpicius, they could have defended themselves by claiming that they

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[756] On the sanctity of the home, see Cic. *Dom*. 109.
[757] Obseq. 54; Oros. 5.18.
[758] App. *B. Civ.* 1.60: πολεμίους Ῥωμαίων ἐψήφιστο εἶναι. Sulpicius was proscribed so could be killed with impunity.

had done so on the order of the consuls, endorsement not present in the Gracchan case.[759] Again, the assurance that such an act was necessary for the welfare of the state was sufficient. A hostile government could delegitimize the citizenship of its adversaries and thereby compromise tribunes' sacrosanctity. There was some lamentation over Sulpicius' death, in the same passage from the *ad Herennium* in which the above-mentioned death of Drusus was lamented. The *ad Herennium* is the only surviving text in which Sulpicius' status as tribune was specifically problematized, though his office is not identified directly in the text but rather implied by the context of the list of tribunes in which he appears.[760] The man who betrayed Sulpicius, a slave who revealed his location having been promised his freedom in return by Sulla, was cast from the Tarpeian Rock, but he allegedly received that punishment not for having killed a tribune, but for having informed on his master.[761]

Publius Sestius' case epitomizes the ambivalence with which harmed tribunes could be treated. He was received more favorably by the later tradition (especially Cicero), though his attackers ultimately went unpunished. Sestius was attacked during his tribunate in 57 BCE in the temple of Castor after attempting by means of *obnuntiatio* to help Cicero return from exile to Rome.[762] Cicero was naturally a partisan of Sestius. Friendly accounts that indicate outrage at the harming of a tribune provide evidence that sacrosanctity still had power in the mid-first century. Cicero did take advantage of Sestius' status as tribune to cast aspersion upon those who harmed him.

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[759] *Rhet. ad Her*. 1.25.
[760] *Ad Her.* 4.31.
[761] Livy *Per*. 77; Val. Max. 6.5.7; Plut. *Sull*. 10.1, Oros. 5.19.6.
[762] This incident was also discussed in chapter three.

> cumque auspiciis religionique parens obnuntiaret quod senserat, luce palam a nefariis pestibus in deorum hominumque conspectu esset occisus sanctissimo in templo, sanctissima in causa, sanctissimo in magistratu. eius igitur vitam quisquam spoliandam ornamentis esse dicet, cuius mortem ornandam monumento sempiterno putaretis?[763]

Cicero has two concerns. The first is the status of Sestius as tribune, about which he is very clear, calling it the *sanctissimus magistratus*. The second is that Sestius was harmed in a holy place. Like Merula, and like Tiberius Gracchus, therefore, Sestius' office was only one aspect of the complex of issues surrounding religiously improper bloodshed. It is unproductive to try to decouple these issues. Merula, Gracchus, and Sestius can be seen instead as following a sort of formula: a prominent public figure who should have been rightfully immune from harm was hurt in a sacred space that should be immune from bloodshed.

One troubling feature of Sestius' assault is that his attackers, though initially apprehended by the tribune Milo, were ultimately set free by yet another tribune, Serranus.[764] This detail provides further proof that the tribunes had power over the well-being of their fellow tribunes, as the colleagues of Atinius Labeo demonstrated when they blocked his attempt on Caecilius Metellus' life. While Serranus' intervention was made through the formal legal system, it still belongs to the series of antagonistic actions

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[763] Cic. *Sest*. 83: "And when, obeying the auspices and *religio*, he announced what he had observed, he was killed in broad daylight by nefarious villains in the sight of gods and men, while in the most sacred temple, championing the most sacred cause, and holding the most sacred magistracy. Therefore, will anyone say that his life deserves to be deprived of his honors, whose death you would think was worthy of being honored with an eternal monument?" See also *Sest*. 80, 85 (in which Milo, also tribune in 57, is called a *tribunus plebis, divinus homo*) for similar emphasis on the tribunal office.
[764] Cic. *Sest*. 85.

between colleagues in the tribunate. There is no mention of any of Sestius' attackers receiving capital punishment or of their property being confiscated. Clodius, one of the architects of the incident, was elected aedile for 56, indicating that his involvement in religiously questionable acts yet again had not hampered his political career. This was not a particularly promising sign for the viability of tribunician sacrosanctity as a protective force, but the ambivalence – outrage with no real political consequences – indicates the existence of political factions who would have had varying opinions about the degree of wrongdoing exhibited by the killers of tribunes.

In each of the previous examples, the biases of individual authors or their sources dictated whether or not there was evidence of outrage at the harming of tribunes. It is possible in a few cases to also detect popular opinions on the killing of tribunes. Any popular response is interesting because it can provide evidence for the prevailing general conceptions of the tribunate as well as offering a counterpoint to the often distinctly *not* populist surviving narrative account. In the post-Gracchan period there are a few indications of popular outrage at the killing of tribunes on the scale of that which dogged Scipio Nasica after Tiberius Gracchus' death. As part of Caius Licinius Macer's speech on the need to restore powers to the tribunes during his tribunate in 73, he alluded to the tribune Cnaeus (or Lucius) Sicinius' death, supposedly at the hands of the consul Caius Curio in 76.[765] Insufficient detail survives regarding this incident. Sallust has Macer say only: *et quamquam L. Sicinius, primus de potestate tribunicia loqui ausus, mussantibus vobis circumventus erat, tamen prius illi invidiam metuere, quam vos iniuriae pertaesum*

[765] Cic. *Brut*. 216 calls him Cnaeus but Sall. *Hist*. 3.48.8, Lucius.

est.[766] Macer was disappointed by the lack of response from the people and went on to lament their patience. Nevertheless, his comment indicates that those harming tribunes did still fear popular retribution, even if the people did not deliver. There was a cultural norm, even in the tribunate's weakened, post-Sullan state, that tribunes were supposed to be respected. Sulla had left tribunician sacrosanctity intact, of course.

There is indication that there was public outcry following a later incident in 44. The tribunes L. Caesetius Flavus and C. Epidius Marullus were stripped of tribunician power and banished because they had spoken against those calling Caesar "king." Appian claims that ἥ τε τῶν δημάρχων ἀρχὴ ἱερὰ καὶ ἄσυλος ἦν ἐκ νόμου καὶ ὅρκου παλαιοῦ: τήν τε ὀργὴν ὀξεῖαν ἐποίει τὸ μηδ᾽ ἀναμεῖναι τῆς ἀρχῆς τὸ ὑπόλοιπον.[767] According to Appian, people were generally aware of the history of their tribunes' sacrosanctity, conferred by the ancient νόμος and ὅρκος. They reacted with anger because Caesar acted against the tribunes without waiting for their terms to expire. These mentions of popular responses taken from literary sources are not externally confirmed in the way that Scipio Nasica's Pergamum mission was. However, they provide confirmation that the people retained a conception of what their tribunes were supposed to do for them and how they

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[766] Sall. *Hist*. 3.48M: "… and although Lucius Sicinius, the first who dared to speak about the tribunician power, was overthrown while you grumbled, nevertheless those men [his killers] feared anger first, before the outrage rankled you."

[767] App. *B. Civ.* 2.108: "the office of tribunes was holy and inviolable according to the ancient law and oath. He caused sharp indignation by not waiting out the rest of the term of office." Other sources speak of the deposition of these tribunes: Livy *Per*. 116; Nic. Dam. *Vit. Caes*. 20.9, 22.1 = *FGrH* 2A.405, 406; Cass. Dio 46.49.2; Obseq. 70. None of these sources mention popular outrage at the removal of the tribunes from office. Dio and Julius Obsequens claim that Caius Helvius Cinna did not live long after deposing his colleagues. Dio and Julius Obsequens appear to be relying on the same source material. Obsequens declares, *constat neminem qui magistratum collegae abstulerat annum vixisse*. "It was agreed that no one who took a magistracy away from a colleague lived out the year."

should be protected, and that this conception squares with the indignation sometimes expressed by the likes of Cicero when a tribune that he favored was harmed.

It is clear that into the late Republic, there persisted a sense that one could not harm a tribune. However, in post-Gracchan Rome, it was possible to discredit an undesirable tribune by claiming that he was not worthy of the office. That was usually accomplished by claiming that the tribune was an enemy of the state or an aspiring king or tyrant. Because the tribunes's sacrosanctity depended solely upon his office, action against him could be excused by disassociating him from that office. The fact that a tribune was harmed could be mentioned in order to provoke outrage, but there are no first-century passages in which someone expressed fear over harming a tribune as a reason for not doing so, as occurred in the attacks on Metellus, for example. Evidence from Cicero demonstrates also that outrage could be omitted, or deflected (with the claim that someone was not a proper tribune at all) when political sympathies did not lie with the wronged tribune. Dissent over whether a retribution for a perceived breach of sacrosanctity should be allowed to stand indicates that a way of checking this powerful and religiously-backed office had been found, though it was not foolproof. A tribune's offensive measures, like consecrations, could be disregarded, but so could claims that a tribune was not a good tribune.

In many ways, the late Republic did see the unraveling of tribunician sacrosanctity, following the major shift in the nature of sacrosanctity that occurred with Tiberius Gracchus' death. However, the retrospective tradition surrounding the tribunate maintained that tribunes had been at constant risk of violation since the beginning, that having been the justification for making tribunes sacrosanct in the first place.

Sacrosanctity was depicted as having always existed cheek by jowl with violation.[768] The first recorded instance of violence against the tribunes was in 473.[769] According to Livy, the conflict arose when the tribunes of the plebs promised the plebeians a land law. The consuls of 474 BCE opposed the measure and were brought to trial after the end of their term. Tensions grew between the former consuls and the tribunes, and the conflict was cast as one between consular and tribunician power. On the day of the consulars' trial, tribune Gnaeus Genucius did not appear and was found dead in his house. The consuls subsequently forced an unpopular levy and all of the remaining tribunes were too fearful to object. Livy hints that Genucius' death was the result of foul play and says that the tribunes reacted in fear: *Praecipuus pavor tribunos invaserat, quam nihil auxilii sacratae leges haberent morte collegae monitos*.[770] The surviving tribunes were concerned that the very measure that was invented in order to protect tribunes from the consuls was of no avail.

Dionysius of Halicarnassus ascribes Genucius' death to natural causes, which has been taken as evidence that Livy's murder was fabricated, but his protestation against any foul play is more likely to be an indication that Dionysius of Halicarnassus too was familiar with the version of the story that had Genucius murdered and had simply opted

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[768] Though see Dion. Hal. *Ant. Rom.* 11.55 and Livy 4.6.7 for a characterization of the mid-5th century as a time of great respect for the tribunes.

[769] I disregard Publius Mucius' burning of all nine of his colleagues in 486, reported in Val. Max. 6.3.2, as ahistorical. There were not ten tribunes at this date. (Diod. Sic. 11.68.7 reports that the number was increased from two in 471.) See *MRR* 1.21 and Badian (1996) 191 for discussion of this episode and Cornell (1995) 260 for the futility of discerning how and when the number of tribunes increased.

[770] Livy 2.54: "Extraordinary fear seized the tribunes, realizing from the death of their colleague how the sacred laws had offered no help."

to reject it.[771] Genucius' fate does closely parallel the death of Tiberius Gracchus (and Scipio Aemilianus) and may have been invented.[772] If so, the later, well-founded fears over violence to tribunes were projected back onto earlier episodes, with the effect that the history of the tribunate became a history of transgressions averted or suffered. The difference was that, while tribunes were ancestrally supposed to have had to fear angry patricians, by the late Republic they had just as much to fear from their own colleagues. The contrast is instructive for understanding the way that the magistracy was thought to have evolved and the way in which the origin of threats to it shifted.

Conclusions

While all of the varieties of transgression surveyed in this study have been political in some sense, violated tribunician sacrosanctity represents the ultimate integration of politics and religious transgression. The ways in which the Romans respected or failed to respect it lay bare the moments when objectives of religious propriety and political progress opposed each other. It is clear from stories like Metellus' that sacrosanctity could cause people to stop resisting a tribune. However, it did not always offer sufficient protection, as the first-century examples have demonstrated. The Romans did show a clearer respect for the technical aspects of sacrosanctity than many

[771] Dion. Hal. *Ant. Rom.* 9.38.
[772] Ogilvie (1965) 372 uses Dionysius of Halicarnassus' version as partial grounds to suggest that the murder of Genucius was invented after the death of Scipio Aemilianus in 129, whose inopportune death at home it resembles. Ogilvie is surely correct that the Genucius story is specious and has a post-Gracchan origin. However, Dionysius of Halicarnassus protests too much against foul play for claims that he did not know of those stories to carry weight.

other forms of religious transgression, excepting that against the Vestals. This was why there could be a debate over whether Tiberius Gracchus had or had not violated Octavius. The irony is that this understanding of how sacrosanctity operated in practice, and how closely it was linked to the office of the tribune, transmuted into an effective means by which to disregard it. Once a person lost their claim on the office of tribune, sacrosanctity could not save them.

Priestly sacrality and tribunician sacrosanctity operated in different ways because of the fact that a person experienced tribunician sacrosanctity for only a year. However, the tribunes used their sacrosanctity offensively just as the priests in the previous chapter did. Tiberius Gracchus showed that he was aware of the powers and limitations of his sacrosanctity in how he handled his conflict with Octavius. Cornelius Merula demonstrated the same quality about his own sacrality when he orchestrated his death so carefully. The Vestal Virgin Claudia also knowingly used her status as a tool when she shielded her triumphing family member. Both she and the tribune who attacked her knew exactly what they were doing and exactly what was at stake when they opposed each other. It is interesting that the altercation played out in Claudia's favor. The tribune decided that it was not worth attacking a Vestal, even though he desperately wanted to halt the triumph, and even though he was otherwise protected by his sacrosanctity. Both Valerius Maximus and Suetonius used vocabulary associated with the tribunate to describe the conflict (*potestas*; *veto*; *intercessio*).[773] They seem to encourage a technical reading of the standoff. In Claudia's episode of defiance, we see a dialogue between the different forms of bodily sacrality. Priestly sacrality won. Does this suggest that the

[773] Val. Max. 5.4.6; Suet. *Tib*. 2.

Vestals' status as the guardians of Rome's relationship with the gods was somehow more inviolable and fundamental that the tribunes' sacrosanctity? Additionally, Claudia's act took place a decade before Tiberius Gracchus' death. Is it possible to detect a conversation about the nature of sacred bodies that transcended the categories of Vestal, tribune, and flamen? Did Merula consciously strive to weaponize his status on analogy with the tribunes? Did priests realize, observing the tribunes, that they could use their protections offensively?

Throughout this dissertation, it has been observed that religious violation was inherently political. It was assessed by the state, it was committed by magistrates, and it could be used as a weapon against one's rivals. Even the priests, whose statuses were designed in order to keep them *out* of politics, knew how to use their sacrality in order to achieve worldly goals. The tribunes of the late Republic represent the extreme case. Their sacrality depended upon their office, which allowed them to obstruct measures with which they disagreed. Yet the tribunes employed their sacrosanctity not only as physical and political protection, but as a tool by means of which to undermine enemies. The stakes of violating a tribune were also somewhat different than the stakes of violating other protected people and objects. There were no outward statements of fear over divine vengeance. Instead, human vengeance was a concrete threat. The tribunes may have been protected by oaths and sacred laws, but their protection was in practice done by humans. None of the discussions of violated tribunes mentioned fear that the gods would abandon the Romans or doom the state. In fact, it was the people who attacked the tribunes who made statements about the need to save the state, not from religious transgression, but from an enemy of the republic.

Conclusion

This project has aimed to understand how and when the Romans perceived that a religious transgression had occurred, and the efforts that they took to rectify the wrongs that had been done. Transgressions caused crises between the gods and men that were dangerous to the wellbeing of the Roman state, so it was most ideal to prevent transgressions in the first place. The development of a workaround for opposing sacrosanct tribunes shows that the need to avoid religious transgression could drive religious change. It does appear that the means by which religious crises were managed was altered in the late Republic. The story of religious transgression is one of crisis avoidance and crisis management, so it is to be expected that innovations would occur in order to prevent troubling events from being classified as crises in the first place. I do not adhere to a strong narrative of religious decline during the late Republic like Wissowa, but there were key occasions of contention around religious issues in the late Republic that were addressed through innovative methods.[774]

For example, a religious drama played out in Roman political life when one of the consuls of 59, Marcus Calpurnius Bibulus, declared that he was watching the heavens for signs for months on end, and announced negative omens in order to block the legislation of his colleague, Caius Julius Caesar. No public business could be conducted while someone was watching the sky. However, Bibulus' act of *spectio* was not entirely usual; he apparently watched the skies and observed omens from within his home, where an

[774] Wissowa (1912) 393.

angry Caesar had driven him by force of arms.[775] Caesar's legislative program went forward, as did other key public events, the most important being Clodius' adoption into a plebeian family so that he could serve as tribune of the plebs.[776] Who was transgressive in this situation? Was it Bibulus, who sounds very much as if he was reporting signs that he never actually saw while hiding at home? Or was the transgressor Caesar, who passed legislation while his colleague was observing the skies, something that the pontifical college said was not allowed? There does not seem to have been a consensus. Cicero encapsulates this state of confusion when he tries to call into question Clodius' adoption but shows no interest in implicating the laws of Caesar: *quo die de te lex curiata lata esse dicatur, audes negare de caelo esse servatum?* Cicero imagines Clodius responding, *'infirmas igitur tu acta C. Caesaris, viri fortissimi?'*, to which he responds, *minime*.[777] Cicero contradicts himself. He is a religious stickler on the issue of Clodius' adoption, but is open about ignoring Caesar's legislation although it was passed under the same circumstances.

While most evidence for religious transgression comes either from packaged post factum assessments or from normative legal statements, comments like Cicero's show how contentious the incidents could be at the time, and the ways in which special interests could influence viewpoints. Undoubtedly, the particular politics of this period influenced the reception of Bibulus' *spectio*. However, looking at events like Bibulus' observation of the heavens in the context of a larger study of religious transgression

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[775] Suet. *Jul*. 20.1.
[776] Cic. *Dom*. 39-40.
[777] Cic. *Dom*. 39: "On the day when the *lex curiata* about you is said to have been carried, you dare to deny that the sky was watched? … 'Do you then annul the acts of Caius Caesar, that most steadfast man?' Not at all."

brings up elements that would be obscured if the primary angle of inquiry was the unrest of the 50s. For example, the incident provoked a known religious innovation when Clodius repealed the *lex Aelia et Fufia* in 58 in order to prevent more blockages. It is telling that the solution to the problem of the misuse of *spectio* was to regulate it rather than to simply continue to ignore it.

When episodes like this one are viewed in the context of religious transgression, it is easier to understand why a religiously acceptable solution was needed. The example of Bibulus shows that the Romans did not *want* actions to be transgressive. This dissertation has presented a number of other instances in which it was necessary to renegotiate what it meant to transgress in order to avoid having to reckon with a religious crisis. The transformation of the status of tribunes after the Gracchan period mentioned above is a clear example. Tribunes were being hurt when they were not supposed to have been, so the work-around developed of claiming that those tribunes were simply not really tribunes. At no point did transgression become acceptable. Actions were instead recast so that they were no longer transgressive. Trangression became a force for religious change.

A similar impulse to avoid misdeed can be observed in the transgressive individuals themselves on the occasions when they took care to avoid committing transgressions in the first place, or mitigating the transgressions they did commit. For example, Scipio Nasica's mob used legs from benches rather than metal against the tribune Tiberius Gracchus, and Cornelius Merula removed his apex before dying so that he would not technically violate the flaminate. The laws against transgression functioned similarly. By explaining which actions were not allowed in a grove complex, for example, the hope was that they could be avoided. Managing religious transgression

revolved first around prevention, and failing that, controlling and remedying the situation. For example, the Arvals developed a regularized procedure for fixing those transgressions in their grove that were unavoidable because they were part of their cult practice. On a larger scale, purification and expiation rituals were organized on a state level. Roman institutions – the senate being a key one, but also the priesthoods and magistracies – led the initiatives to rectify transgressions and in doing so they exercised some form of control over rogue actors.

The idea that transgression could be prevented or controlled implies something central about Rome's relationship with the gods: the views of the gods were fundamentally knowable, and they could be assessed accurately by state authorities like the Roman senate, or by civic bodies in smaller communities. The senate and magistrates had other religious competencies, the most prominent being the ability to assess the validity of omens and the possession of the auspices. I have argued that these same people additionally had the ability to determine whether something had gone wrong religiously. As I have observed throughout this dissertation, it was rare that transgressions were subject to a formal and regularized review process, unchaste Vestals being an exception to this. The cause of this irregularity, I argue, was not that Rome was not bothered about transgression. Instead, they had faith in their magistrates and institutions to behave correctly, and confidence that they enjoyed divine favor. They believed that transgressions usually did not occur. If it appeared that one had, the gods could signal it by mistreating the Romans as a whole or only the guilty individual. Rome could then begin an expiation process.

The relative priority given to propitiation over punishment is instructive for understanding the way in which the Romans viewed transgressions. Clodius' trial for attending the Bona Dea festival is the perfect example of the difference between determining that a transgression needed to be fixed and concluding that a culprit needed to be punished. It was relatively easy to decide that the ritual needed to be repeated. The Vestals immediately repeated the rite, and by late January, the senate had already referred the issue to the pontifices and the Vestal Virgins for further investigation.[778] The decision of what to do about Clodius was much more contentious.[779] Clodius himself was not punished, though Caesar's wife was divorced and the slave Habra, who had helped Clodius enter Caesar's home where the ritual was being performed, was tortured.[780] Importantly, however, instead of defending his actions, Clodius maintained that he had not committed the transgression at all, having been out of town that evening. His act had probably been indefensible, so a front of innocence may have been his only option.

It has been observed repeatedly throughout this dissertation that the Romans put a higher value on repairing the damage done to the gods than exercising justice against the culprit. Restoration efforts were consequently more consistently regulated by government apparatuses than punitive measures were. The senate could order that stolen property be returned to its city of origin, for example, or it could organize expiatory efforts in a befouled temple. Even punishments were frequently aimed at pleasing the gods; they were part of the process of propitiation. In most laws against property violation, the punishment for violation was paying a fine to the sanctuary and performing and expiatory

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[778] Cic. *Att*. 1.13.
[779] Cic. *Att*. 1.16 and Schol. Bob. 85-91 give the most detailed accounts of the trial.
[780] Plut. *Caes*. 10.8; *Cic*. 28.4; App. *B. Civ.* 2.14; Cass. Dio 37.45.2; Schol. Bob. 90-91.

sacrifice, both gestures that served to placate the god. Similarly, executing an unchaste Vestal actually served to ensure that state rituals in service of the gods would continue correctly. Punishments were actually opportunities for Rome to show the gods that their actions and interests were aligned.

The Romans believed that the gods could and did seek their own vengeance upon people who did not respect them, individually and as a collective. The concern over the attitude of the gods is why transgression was used as an analytical tool to cope with crises. Transgression had explanatory power because the Romans believed that it was truly dangerous to offend the gods. Major battle losses like Drepana, Trasimene, and Arausio, or the difficulties of relations with allies or former allies in the Hannibalic War, or the sudden insanity of a magistrate were all traumatic and baffling, but they could be understood as the results of divine anger that had been sparked by a transgression. Transgression and military activities were linked because a commander who transgressed was not fit to lead Roman troops due to the connection between transgression and defeat. This idea that religious transgression could cause bad outcomes led logically to the development of transgression as a tool in rhetoric. Cicero represents the apex of this invective strategy, most notably in his speeches against Verres and Clodius. Though Cicero is the best surviving example of invective that used transgression as a charge against individuals, the historical tradition surrounding figures like Marcellus or Sulla after their deaths shows that the method had a long and influential past.

Religious transgressions caused crises and were consequently themselves crises. However, many transgressions were convenient or embedded within the framework of Roman life, particularly the problems with looting without violating the gods, or the

temptation to falsify bad omens. Considering this, it is worth asking why more tales of transgression do not survive. Bibulus' story offers one answer: transgressions did occur constantly, but when they become too common, religious change resulted instead because it was preferable to constantly transgressing. That phenomenon in itself alludes to something more fundamental. A deep religious fear surrounded transgression because the things that the Romans thought that transgression explained – and therefore caused – were terrifying. They developed coping mechanisms, relying upon their institutions to avoid transgressions when they could and to fix them when they arose. On some level, transgressing made no sense when weighed against the possible consequences. This is why the transgressions that are recorded are mostly logical: they offered significant tactical, political, of financial advantages. Clodius at the Bona Dea rites was an outlier; his transgression was irrational, especially since he could have carried on his affair with Pompeia in some other circumstance. It is noteworthy that Clodius does not appear to have inspired imitators. Transgression was something that Rome could look for when situations got so bleak that the only explanation was that they had disrupted the normally abundant favor of the gods. It was not undertaken lightly.

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This dissertation uses the standard abbreviations for reference works used in the *Oxford Classical Dictionary*.