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Antiquae sunt istae leges et mortuae : the *plebiscitum Claudianum* and associated laws*

Abstract :
This paper examines the evidence for four laws which restricted the activities of senators. Two of these, the *plebiscitum Claudianum* of 218 BC, restricting senatorial ship-owning, and the undated prohibition on senators undertaking public contracts are positively attested and widely accepted, even if their purpose and date (in the latter case) are debated. The other two, which prohibited senators from travelling outside of Italy and from owning land outside Italy, are only alluded to indirectly. This paper argues firstly that these two measures deserve much more serious consideration, on the basis both of the negative evidence in their favour and the later legislative tradition ; and secondly that all four laws should be imagined not within the later traditions of sumptuary legislation, but as part of the development of imperial rule (and senatorial identity) in the later third century BC.

Keywords :
Senate, imperialism, Italy, Roman Republic, provincial government, *lex repetundarum*, *plebiscitum Claudianum*.

Résumé :
Cette contribution examine la documentation concernant quatre lois qui visaient à restreindre les activités des sénateurs. Deux d'entre elles sont attestées et reconnues, même leur objectif et leur date (pour la seconde) sont discutés : le *plebiscitum Claudianum* de 218 av. J.-C. limitant leur possession de navires, et la disposition non datée prohibant leur participation aux contrats publics. Les deux autres, qui interdisaient aux sénateurs de voyager hors d'Italie et d'y posséder des terres, ne sont attestées que de façon indirecte. Cette contribution se propose de réévaluer l'importance de ces deux dispositions, sur la base d'arguments négatifs en leur faveur, et de la législation postérieure. Elle suggère aussi de considérer ces quatre dispositions non pas dans le cadre de la législation somptuaire postérieure, mais dans celui de l'émergence, à la fin du III^{e} siècle, de la domination provinciale de Rome et de la définition de l'identité sociale des sénateurs.

Mots-clés :
République romaine, sénateur, impérialisme, gouvernement provincial, *plebiscitum Claudianum*, *lex repetundarum*, Italie.

> *Deinde quis umquam hoc senator recusauit, ne quo altiorem gradum dignitatis beneficio populi Romani esset consecutus, eo se putaret durioribus legum condicionibus uti oportere ? Quam multa sunt commoda, quibus caremus, quam multa molesta et difficilia, quae subimus ! atque haec omnia tantum honoris et amplitudinis commodo compensantur. Conuerte nunc ad equestrem ordinem atque in ceteros ordines easdem uitae condiciones : non perferent : putant enim minus multos sibi laqueos legum et condicionum ac iudiciorum propositos esse oportere, qui summum locum ciuitatis aut non potuerunt ascendere aut non petiuerunt.*[1]

1. Introduction

The *plebiscitum Claudianum* of c. 218 BC, restricting the ownership of ships by senators, is a familiar piece of legislation, commonly viewed as a precursor to the sumptuary legislation of the Second Punic War and the second century BC. However, the precise purpose and motivation of the law has long been debated, and it is far from clear that it should be treated primarily as a piece of moralising or sumptuary legislation. The aim of this paper is not to debate this particular law in detail, but rather to consider it as one of four possible laws that belong in the loose historical context of the later third century BC (specifically c. 241-218 BC). All four of these laws can be argued to have as their focus the formation of Roman imperial government, and to contribute indirectly to the formation of the governing senatorial *ordo* (in line with the principles enunciated by Cicero in the quotation at the head of this paper). As has several times been observed of the *plebiscitum Claudianum*, instead of being seen as part of the sumptuary tradition these laws find their later expression, sometimes explicitly, in the *leges de repetundis* and *maiestate* of the later Republic and Empire. The first two of these laws (the *plebiscitum Claudianum* and the prohibition on public contracting by senators) are widely recognised in the modern literature ; the second two (restricting senators to Italy in both their movement and their owning of land) are variously ignored, denied, or even occasionally unquestioningly accepted, and deserve to be given much more serious consideration. However, before proceeding a health warning is necessary : this paper has one regrettable but undeniable methodological weakness, which bedevils much work on the middle Republic - at its heart lie several arguments from silence, an inevitable consequence of the state of our evidence.

2. The *plebisicitum Claudianum*

The *plebiscitum Claudianum* is principally recorded in a passage of Livy :

> *[...] inuisus etiam patribus ob nouam legem, quam Q. Claudius tribunus plebis aduersus senatum atque uno patrum adiuuante C. Flaminio tulerat, ne quis senator cuiue senator pater fuisset maritimam nauem, quae plus quam trecentarum amphorarum esset, haberet. Id satis habitum ad fructus ex agris uectandos ; quaestus omnis patribus indecorus uisus. Res per summam contentionem acta inuidiam apud nobilitatem suasori legis Flaminio, fauorem apud plebem alterumque inde consulatum peperit.*[2]

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* I am most grateful to Marianne Coudry and Jean Andreau for their patience in the production of this piece, as well as for the original invitation to participate at the colloquium at the École Française de Rome in 2010. This paper has had an unjustifiably long gestation, first presented at the 'LOxBridge' (now AMPAH) meeting in London in 2002, and subsequently at the invitation of Antonino Pinzone in Messina in 2008, and at the 'The Italians on the Land' colloquium at the University of Kent, also in 2008. I am grateful to all those who commented on those various occasions, and in particular to the late Carlo Venturini, whom I had the privilege to meet at the Rome meeting and who was particularly generous and constructive in his criticism – I offer this, such as it is, to his memory.

[1] Cic. *Clu.* 150 : « What senator ever refused to consider himself bound to submit to a greater strictness in the laws' demands upon him, proportionate to the greater dignity of the position to which he had been raised by the favour of the Roman people ? How many are the advantages which we forgo, how many the inconveniences and difficulties to which we submit ! And the compensation for all these is the great honour and dignity of our position. Now apply the same conditions of life to the order of knights, and to the other orders : they will not put up with them ; for they hold that they should be less exposed to the entanglements of laws, stipulations and the courts, inasmuch as they have either been unable to reach the highest position in the state, or have not tried to reach it. » (Loeb transl. with minor corrections ; translations are my own unless indicated otherwise.)

[2] Livy 21.63.3-4: « [...] Flaminius was also unpopular with the senators on account of a new law, which the tribune Q. Claudius had introduced against the interest of the senate and with C. Flaminius alone of the senators in support. The law stated that no senator, nor senator's son, should have a sea-going ship of more than 300 amphorae capacity. That

It is the notorious phrase *quaestus omnis patribus indecorus uisus* that encourages a reading of the law which views it as primarily moralising and ideological in its intent.[3] Scholars are divided as to whether to reject the phrase as a Livian addition, reflecting the ideological developments of the ensuing two centuries. As has been noted, contemporary texts such as the *elogium* of L. Metellus (cos. 251, cos. II 247 BC), which upholds the ideal of *pecuniam magnam bono modo inuenire*, warn against overprivileging such a statement ; on the other hand, the word *quaestus* also appears in a later reprise of the law in a fragment of Paul's *Sententiae* (quoted below, n. 12).[4] The Livian account offers further grounds for caution with its emphasis upon the implausible isolation of the figure of Gaius Flaminius.[5] A comprehensive analysis of the law is now offered by André Tchernia, grounded in the realities of ship-owning, Tyrrhenian wine-production, and the developing issues of the grain supply.[6] The discussion which follows aligns itself broadly with those analyses that have tended to place the emphasis upon the historical and imperial context, and with the functional role of the senate in governing an emerging empire, whether that emphasis is more or less economic.[7]

For the purposes of this paper, I turn to the less frequently cited passage of Cicero, from the *Verrine Orations* of 70 BC, that provides the other main evidence for the measure, and which deserves to be quoted in full :

> *Noli metuere, Hortensi, ne quaeram qui licuerit aedificare nauem senatori ; antiquae sunt istae leges et mortuae, quem ad modum tu soles dicere, quae uetant. Fuit ista res publica quondam, fuit ista seueritas in iudiciis, ut istam rem accusator in magnis criminibus obiciendam putaret. Quid enim tibi naui ? qui si quo publice proficisceris, praesidi et uecturae causa sumptu publico nauigia praebentur ; priuatim autem nec proficisci quoquam potes nec arcessere res transmarinas ex iis locis in quibus te habere nihil licet. Deinde cur quicquam contra leges parasti ? Valeret hoc crimen in illa uetere seueritate ac dignitate rei publicae ; nunc non modo te hoc crimine non arguo, sed ne illa quidem communi uituperatione reprehendo : Tu tibi hoc numquam turpe, numquam criminosum, numquam inuidiosum fore putasti, celeberrimo loco palam tibi aedificari onerariam nauem in prouincia quam tu cum imperio obtinebas ? Quid eos loqui qui uidebant, quid existimare eos qui audiebant arbitrabare? inanem te nauem esse illam in Italiam adducturum ? nauicularium, cum Romam uenisses, esse facturum ? Ne illud quidem quisquam poterat suspicari, te in Italia maritimum habere fundum et ad fructus deportandos onerariam nauem comparare*.[8]

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size was considered sufficient for the transport of produce from an estate ; all profit was seen as ill-befitting senators. The proposal was carried in the face of heated dispute, and created for Flaminius, as the law's backer, ill will among the *nobiles*, but popularity with the *plebs*, with the result that he obtained a second consulship. »

[3] So, e.g. Guarino 1982, p. 14, « Il motivo e la funzione della *lex Claudia* del 218 a.C. diventano, insomma, storicamente plausibili solo se si inquadra la legge tra le misure, di ordine religioso e di ordine pratico, che furono prese allo scopo do far tornare la *respublica* ed il suo ceto di governo alla severa religiosità, probità, parsimonia dei tempi [...] » ; cf. Baltrusch 1989, p. 30-40, Roman 1994, and El Beheiri 2001.

[4] Plin. *NH* 7.139-140 ; compare, e.g., Gabba 1988 [1981] and Clemente 1983 rejecting the Livian phrase (and cf. Clemente 1990, p. 52) with Nicolet 2000 [1980] and Tchernia 2011 [2007], p. 214-222 accepting it but seeking a nuanced interpretation.

[5] A full analysis of the hostile source tradition on Gaius Flaminius in Feig Vishnia 2012 (p. 40 on this passage).

[6] Tchernia 2011 [2007] with overviews of earlier bibliography and interpretations ; see also Venturini 2009 and Coudry 2007.

[7] So for instance, with variations and divergence of emphasis as to whether it is primarily about the economic or political separation of the senatorial *ordo*: Nicolet 2000 [1980], Gabba 1988 [1981], Clemente 1983 (cf. 1990, p. 49-54), Feig Vishnia 1996, p. 34-43, Bringmann 2003, Beck 2005, p. 263-265, Kay 2014, p. 13-14. For completeness' sake, it should be noted that some have taken the reference to popular legislation directed against the senate in Polyb. 6.16.3 as an allusion to the activities of Flaminius and especially the *plebiscitum Claudianum* (see Walbank 1957, p. 691).

[8] Cic. II *Verr.* 5.45-46 : « Never fear, Hortensius, I shall not ask what right a senator had to build a ship ; the laws forbidding it are ancient, and dead, as you are fond of putting it. Once the state was such, the severity of the law courts such, that a prosecutor could think the matter worth presenting amongst his principal charges. What need had you of a ship ? If you were going anywhere on public business, shipping for both transport and protection are provided at public expense ; but as a private citizen neither are you able to travel out to, nor bring back, transmarine property from locations where you are not permitted to own anything. Why then, in the next place, did you break the law by acquiring any such property ? This would have been a powerful charge in the face of the old moral severity of the state. Today I

Commentators concentrate on the opening sentence and cite the passage for two reasons : firstly, because of the implication of desuetude in the phrase *antiquae sunt istae leges et mortuae* ; and secondly, because the text attests to a prohibition on ships for senators, which looks like a clear reference to the *plebiscitum Claudianum* described by Livy. Cicero does not say that the law was abrogated, only that it is now ignored, together with several others.[9] Several reasons have been offered for that desuetude, including the likelihood that the size-limit of 300 *amphorae* became anachronistically small, that the measure was too readily circumvented by developing financial instruments, or that the law was itself a *lex imperfecta* (since references to any penalty are missing in our evidence) only pursued by censorial sanction or by means of a *sponsio*.[10] Nonetheless, we should not ignore the rhetoric of the situation : the law's obsolesence is presented by Cicero as a possible defence of Verres, which is likely to be offered by Hortensius ; but precisely by mentioning it Cicero is in fact adding it to the list of things of which Verres is guilty, while also pre-empting Hortensius' (imaginary) defence. In other words, transgressing such *leges antiquae et mortuae* is still something that Cicero expected that Hortensius would feel it necessary to defend.

Cicero's phrasing suggests that at the time of the prosecution of Verres (70 BC) the measure was not itself part of the existing *repetundae* legislation. However, the measure clearly reappears in two later texts, an extract of Scaevola in the *Digest* and a fragment of Paul's *Sententiae*, both of which show that some version of it was included in the *lex Iulia de repetundis* of 59 BC, and remained in force long afterwards :

> *Scaeuola libro tertio regularum. His, qui naues marinas fabricauerunt et ad annonam populi Romani praefuerint non minores quinquaginta milium modiorum aut plures singulas non minores decem milium modiorum, donec hae naues nauigant aut aliae in earum locum, muneris publici uacatio praestatur ob nauem. senatores autem hanc uacationem habere non possunt, quod nec habere illis nauem ex lege Iulia repetundarum licet.*[11]
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> *Senatores parentesue eorum, in quorum potestate sunt, uectigalia publica conducere, nauem in quaestum habere, equosue curules praebendos suscipere prohibentur : idque factum repetundarum lege uindicatur*.[12]

As Tchernia notes, one element which is omitted in these later reiterations of the law is precisely the limitation on the size of the ship, suggesting that this had indeed become anachronistic.[13] The core prohibition that remained was the ownership of a sea-going ship (for commercial profit).

3. The prohibition on senatorial participation in public contracts

The Leiden fragment of Paul brings us to the second of the *leges antiquae* to be considered, the prohibition on senators engaging in public contracting (*uectigalia publica conducere* in Paul). Curiously, this measure is less well-attested than the *plebiscitum Claudianum*, but has generally been accepted by scholars without question.[14] Until the fragment of Paul was discovered, which explicitly refers to the prohibition on senators

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do not put forward this as a charge against you ; I do not even express the general feeling against you by attacking you thus : « Did you never think of the discredit, the danger, the dislike, you must incur by having a merchant vessel openly built for you at a populous centre in the province that you were governing ? » What did you suppose those who saw it would say, or those who heard of it think ? That you were going to take the ship to Italy empty ? That you were going into the shipping business when you reached Rome ? No-one could even suppose that you had an estate on the Italian coast, and were providing yourself with a merchant vessel for the export of your produce. »

[9] Cf. Cic. *Leg.* 3.20 (*namque ut C. Flaminium atque ea, quae iam prisca uidentur propter uetustatem, relinquam, quid iuris bonis uiris Ti. Gracchi tribunatus reliquit ?*) for an implied consensus that events of the time of Flaminius are too remote to carry weight.

[10] For this last point, see Venturini 2009, p. 1469-1471.

[11] *Digest* 50.5.3 : « Scaevola, *Rules*, *book 3* : Exemption from any public *munus* is granted by reason of their ship to anyone who has built a sea-going ship and provided it for the transport of the corn supply of the Roman people, provided it is of not less than fifty thousand *modii* capacity, or five or more of not less than ten thousand *modii* capacity, as long as the ship is in use or another in its place. Senators, however, cannot enjoy this exemption since they cannot ever own a ship under the *lex Iulia* on extortion. » (trans. Watson).

[12] Paul, *Sententiae*, V.28.3 (Serrao 1956, p. 19-23 ; Fossati Vanzetti 1995, p. 141) : « Senators or their parents, if they are under their parents' authority, are not allowed to collect public taxes, or to own ships for making profits, or to undertake to provide chariot horses at the festivals ; and if that is done it is punished under the *lex repetundarum*. »

[13] Tchernia 2011 [2007], p. 208.

[14] E.g. Badian 1972, p. 16 with n. 16, but already in Mommsen 1889-1895, VI, 2, p. 110, etc.

and senators' parents from contracting for *uectigalia publica* or *equi curules*, this restriction was in fact only supported by inference from allusive passages in Asconius and Dio :

> *Praeterea Antonius redemptas habebat ab aerario uectigales quadrigas, quam redemptionem senatori habere licet per legem.*[15]
>
> [...] καὶ τήν τε παράσχεσιν τῶν ἵππων τῶν ἐς τὴν ἱπποδρομίαν ἀγωνιουμένων καὶ τὴν ναοῦ φυλακὴν καὶ βουλευταῖς ἐργολαβεῖν ἐξεῖναι, καθάπερ ἐπί τε τοῦ Ἀπόλλωνος καὶ ἐπὶ τοῦ Διὸς τοῦ Καπιτωλίου ἐνενομοθέτητο.[16]

These texts are backed up with what is the first of our arguments from silence, namely the complete absence from our sources of examples of senatorial *publicani*.[17] The possible date of this measure has been much debated, and the choice of date is usually bound up with the question of whether the restriction is considered to be fundamentally concerned with the economic behaviour of the senatorial class (in which case it is regularly associated with the *plebiscitum Claudianum*, if that is read in such a vein), or whether it is conceived primarily as an administrative measure intended to avoid conflict of interest in the management of empire. Dates offered range from some point prior to the *plebiscitum Claudianum* down to the time of the Gracchan legislation and the institution of taxation in Asia in the 120s BC. Mommsen (without the fragment of Paul) argued that the measure was, like the *plebiscitum Claudianum*, intended to prevent speculation by senators, and that it must be pre-218 BC on the basis that it presumes the existence of *publicani* (attested during the Hannibalic War) and that it is inconceivable that it was not mentioned by Livy and so must have fallen within Livy's second decade.[18] Nicolet originally denied a link between what he called the *lex Claudia de quaestu senatorum* of 218 and the exclusion of senators from public contracts, and suggested that the latter might be speculatively associated with the actions of Gaius Gracchus regarding the Asian taxes ; although in later writing he seems to have brought the two into closer association.[19] Gabba took this view of Nicolet even further in his insistence on the fundamentally different and inherently administrative intent of the prohibition on public contracting (to avoid collusion between governor and tax farmer), and went as far as to suggest that it post-dated the Gracchan period (although this seems rather to miss the force then of the Gracchan jury legislation).[20] What is clear from the fragment of Paul is that at some point, most likely the *lex Iulia de repetundis* of 59 BC, the two measures were brought together, whether they had been directly associated previously or not.[21]

4. Restrictions on Senatorial travel and land-owning *extra Italiam*

The two measures briefly considered above are widely acknowledged and extensively discussed. Rather than debate them further, it will be more useful to consider an additional pair of measures which are much less frequently considered in the modern literature, and almost always omitted from discussion of the *plebiscitum Claudianum* in particular. Both measures are, however, implied by the passage of Cicero that alludes to the *plebiscitum Claudianum* (II *Verr*. 5.45, above n. 8), and they find further support both in arguments from silence and the later legislative tradition. Elizabeth Rawson is the only scholar who confronted the problem in any detail.[22] She speculated that the reason for this omission in the modern literature is that the prohibition

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[15] Ascon. 93C : « In addition Antonius had contracted with the treasury to supply four-hourse chariots for a fee – a contract which is legally available to senators. » (trans. Lewis).

[16] Dio Cass. 55.10.5 : « [...] and that senators should be permited to contract for both the provision of the horses to compete in the Circus and the care of the temple [*sc.* of Mars Ultor], just as had been permitted by law for the temples of Apollo and Jupiter Capitolinus. »

[17] See in general Nicolet 1966-1974, I, p. 317-355.

[18] Mommsen 1889-1895, VI, ii, p. 110 n. 3 ; cf. Harris 1979, p. 80, n. 2.

[19] Nicolet 1966-1974, I, p. 329-330 and 336 ; cf. 2000 [1980], p. 38-39.

[20] Gabba 1988 [1981], p. 33.

[21] Badian 1972, p. 103-105 dates the apparent breakdown of a previously imposed separation between the *ordines* to the observable activities of the *publicani* in the 70s BC, and one could of course speculate that the reprisal of the measure in the *lex Iulia* was a direct response to such a situation.

[22] Rawson 1976, p. 90-91, cf. 1977, p. 355 ; as she noted, Badian (1972, p. 88) takes both measures for granted, but without offering any support. Both Crawford (1990, p. 95 with n. 16) and Hopkins (1978, p. 47, n. 65) followed Rawson on the question of land-owning, but it is rarely noted otherwise (D'Arms 1981, p. 68, n. 75 is sceptical ; Fraschetti 1981, p. 64, n. 81 negative ; Berry 2006, p. 46 with note on p. 283 takes it as a given).

was not discussed by Mommsen.[23] This is correct, but with one very important reservation : Mommsen in fact changed his mind regarding the significance of the *libera legatio* (see below), and in doing so concluded that there probably was a law of the Republican period restricting travel by senators outside Italy. Crucially, however, the necessary forward cross-reference from the original discussion of the *libera legatio* in volume II of *Staatsrecht* could only be inserted into the later French translation, so the revision is frequently not observed.[24] These two measures also, I suggest, belong equally well in the context of the period between 241 and 218 BC, for which, of course, we lack any detailed sources about Roman political or legislative activity.

4.1. That no senator may travel *extra Italiam*

Within the passage quoted earlier (II *Verr.* 5.45), Cicero writes :

> *Quid enim tibi naui ? qui si quo publice proficisceris, praesidi et uecturae causa sumptu publico nauigia praebentur ; priuatim autem nec proficisci quoquam potes nec arcessere res transmarinas ex iis locis in quibus te habere nihil licet.*
>
> « What need had you of a ship ? If you were going anywhere on public business, shipping for both transport and protection are provided at public expense ; but as a private citizen neither are you able to travel out to, nor bring back, transmarine property from locations where you are not permitted to own anything. »

It is my reading of this passage that senators, as *priuati*, cannot (according to these *leges antiquae et mortuae*) travel or own property overseas. It is of course possible that the distinction here between *publice* and *priuatim* is intended to refer solely to Verres' activities while a *magistratus* in his province, rather than a broader contrast between his existence as magistrate and as a member of the senatorial *ordo*, and it was in this narrower sense that Willems understood it.[25] This restricted reading does not however seem to me to be sustainable. In the first place, the implied distinction between public and private behaviour while holding a magistracy is not a distinction the Romans themselves would have recognised : this point is borne out both by the normal usage of *priuatim* and *priuatus* to distinguish, *inter alia*, between a magistrate and a non-magistrate ;[26] and by the distinct existence of legislation specifically restricting the behaviour of magistrates in their provinces precisely in activities such as the purchase of goods. These laws were recent, some at least clearly reiterated in the legislation of Sulla (and subsequently in the *lex Iulia de repetundis*), and so scarcely *antiquae et mortuae* ; furthermore, land is in fact a rather striking omission in the list of such restrictions mentioned by Cicero in the later letter to his brother on the governorship of Asia.[27] Secondly, the group of laws being posited in this paper seems to be principally concerned with senators, rather than magistrates : the *plebiscitum Claudianum* is directed at senators and their sons, not magistrates ; senators and their parents (if

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[23] The original *index locorum* to *Staatsrecht* failed to pick up any reference to Cic. II *Verr.* 5.45-46 ; the more recent index of Malitz 1979 picks up three separate discussions, none of which, however, raise these possibilities (Mommsen 1889-1895, VII, p. 75, specifically on the *pleb. Claudianum* ; I, p. 336 n. 6, on a magistrate's right to a ship when on public service ; VI, 2, p. 110 n. 3, on the desuetude of the *pleb. Claudianum* and relationship to the prohibition on public contracting).

[24] Mommsen 1889-1895, VII, p. 90-91 with n. 2 and cf. p. 72-3 ; the inserted cross-reference is at 1889-1895, IV, p. 412 n. 8 (in the German edition, 1887-1888, III.ii, p. 912-913 with n. 1 and II.i, p. 690-691). Mommsen made his argument on a back-formation from the measure of Julius Caesar which banned senators' sons from travelling outside Italy, so the only piece of ancient evidence cited in support is Suet. *Iul.* 42 (and Paul, *Dig.* 50.1.22.6 on the *libera legatio* generally).

[25] Willems 1883-1885, I, p. 204 « il entend dire que le gouverneur de province ne peut faire des acquisitions dans sa province pendant la durée de son gouvernement » ; this belongs within the context of Willems' view that land-owning in the provinces was acceptable, indeed widespread, and an assertion that the *plebiscitum Claudianum* did not prevent this (p. 203, « Aussi la loi [*sc.* the *pleb. Claudianum*] ne défendait-elle aucunement aux sènateurs d'avoir des propriétés foncières hors de l'Italie. Les sénateurs avaient des possessions en province et ils les exploitaient comme ils l'entendaient »). See further below, § 4.2.

[26] *s.u.* « *priuatim* » and « *priuatus* » (ed. Kruse), in *TLL*, X, 2, ix, 1996, col. 1383-87 and 1388-98.

[27] These include the second-century BC *lex Porcia* limiting the movement of governors, referenced in the *lex de prouinciis praetoriis* (Crawford 1996, no. 12, Cnidos Copy, Col. III, lines 4-5) and the *lex Antonia de Termessibus* (Crawford 1996, no. 19, col. II, line 16) ; the second-century BC(?) measure prohibiting the purchase of slaves by governors (Crawford 1990, p. 102) ; and the measures of the *lex Cornelia de maiestate* restricting the movements and actions of governors (e.g. Cic. *Pis.* 50). Most of these measures were clearly reprised in the *lex Iulia de repetundis* of 59 BC (cf. Crawford 1996, II, p. 770). Rawson 1976, p. 184 n. 27 notes land's absence in Cic. *Q.fr.* 1.1.8 (« It is a glorious thought that you should have been three years in Asia in supreme command, and not been tempted by the offer of any statue, picture, plate, garment, or slave, by any fascination of human beauty, or any pecuniary proposals »).

in potestate eorum) are the object of the fragment of Paul referring to both the *lex Claudia* and the public contracting restriction ; Julius Caesar subsequently banned senators' sons from travel outside Italy. Lastly, my reading is also that adopted by commentators on the Ciceronian text.[28]

Cicero's first assertion, therefore, is that Verres as a *priuatus* cannot go to places *transmarinae*. Translated into a law, I assume this to be a rule that senators cannot travel to transmarine locations (without permission), i.e. senators, as *priuati*, when not holding an office of state, cannot travel outside of Italy. The clear counterpart of this law is the *libera legatio*, the increasing abuse of which is well documented, above all by Cicero's own attempt to restrict its use.[29] The suggestion is sometimes offered that the *libera legatio* was simply « very useful » to senators travelling abroad, because of the added status which it provided, and indeed that it was an abusive honour created by the Senate to its own advantage.[30] This misses the point, because it implies that the *legatio* was optional or desirable, rather than necessary. Even the fullest treatments of the subject do not make this point explicit or draw the obvious conclusion.[31] Cicero's oft-quoted letter to the provincial governor Cornificius in Africa requesting lictors for Anicius in fact illustrates precisely this point – the purpose of the *legatio* was not itself to provide status for the travelling senator, but to permit the senator to travel ; on the other hand, lictors, for instance, were indeed a useful addition for the status they provided, whence Cicero's request.[32] It is my second argument from silence, but I cannot find a

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[28] E.g. Long 1862, p. 557-558 (« A senator by the old law might have been forbidden to have (*habere*) lands out of Italy. To forbid him *mercari*, to be a *mercator*, would hardly be necessary. It had long been settled that a senator could not be a trader. Graevius affirms that senators had and were allowed to have land in the provinces ; but he gives no evidence. ») ; Levens 1946, p. 99-100 (concluding on this phrase that the idea is a prohibition of a general character, such that it is not as an individual but as a senator « that Verres was, or would have been in the past, debarred from owning property abroad ») ; Berry 2006, p. 46 and note *ad loc.* on p. 283.

[29] Cic. *Leg.* 3.18 : *Iam illud apertum est profecto, nihil esse turpius quam est quemquam legari nisi rei publicae causa. Omitto quem ad modum isti se gerant atque gesserint, qui legatione hereditatis aut syngraphas suas persequuntur; in hominibus est hoc fortasse uitium ; sed quaero, quid reapse sit turpius quam sine procuratione senator legatus, since mandatis, sine ullo rei publicae munere. Quod quidem genus legationis ego consul, quamquam ad commodum senaturs pertinere uidebatur, tamen adprobante senatu frequentissimo, nisi mihi leuis tribunus plebis tum intercessisset, sustulissem. Minui tamen tempus et, quod erat infinitum, annum feci. Ita turpitudo manet diuturnitate sublata. Sed iam, si placet, de prouinciis decedatur in urbemque redeatur.*

« Also it is obvious at once that nothing can be more disgraceful than the appointment of an ambassador for any other than a public purpose. I will say nothing of the behaviour, either at present or in the past, of those who go out as ambassadors to claim legacies or enforce contracts, for perhaps that is due to a weakness of human nature. But I ask only this: what could be more disgraceful than the mere fact of a senator's holding an appointment as an ambassador without official duties, without instructions, without any public business whatever to attend to? In fact, when I was consul I should have been able to abolish embassies of this kind with the approbation of a full meeting of the Senate, in spite of the fact that the custom gave the Senate valuable privileges, if it had not been for the intercession of an irresponsible plebeian tribune; but I did limit the duration of such appointments, which had previously been unrestricted, to one year. And so the disgrace still persists, but with the allowance of time limited. » (trans. Keyes, Loeb edn.) Cf. Cic. *Att.* 15.11.4 for the subsequent revision by Caesar.

[30] E.g. Shatzman 1975, p. 69, and fundamentally Mommsen 1889-1895, IV, p. 412, « Cette « mission libre », comme on l'appelait, n'était pas seulement un des abus les plus nuisibles et les plus criants de l'oligarchie qui exploitait l'État comme un domain privé [...] » (but as noted above n. 24, see VII, p. 90-91 with n. 2).

[31] Willems 1883-1885, I, p. 149-150 and cf. 203 (ultimately in the same spirit as Shatzman, a benefit) ; Suolahti 1970, p. 118-119 views it entirely in reverse from the perspective of the Imperial period and the question of compulsory attendance of the Senate, merely observing of the Republican period that « As the senators were still entirely Italians and mostly members of the Roman aristocracy, they usually did not wish to stay away from the capital for longer periods. But as the number of the men from provinces in the Senate increased, it was found necessary to take steps to keep them in Rome. » Bonnefond-Coudry 1989, p. 370-371 likewise considers the *libera legatio* merely within the context of legitimate grounds for absence from the Senate, without pursuing the further implications (or this text) ; similarly Lintott 1999, p. 73 and Moatti 2000, p. 939.

[32] Cic. *Fam.* 12.21 (to Q. Cornificius, governor of *Africa Vetus*, spring 44 BC) : *Gaius Anicius, familiaris meus, uir omnibus rebus ornatus, negotiorum suorum causa legatus est in Africam legatione libera. Eum uelim rebus omnibus adiuues, operamque des, ut quam commodissime sua negotia conficiat ; in primisque, quod ei carissimum est, dignitatem eius tibi commendo; idque a te peto, quod ipse in prouincia facere sum solitus non rogatus, ut omnibus senatoribus lictores darem; quod idem acceperam et cognoueram a summis uiris factitatum* [...]. Both Willems 1883-1885, I, p. 149 and Mommsen 1889-1895, IV, p. 412 cite the letter misleadingly for this point. Cf. Cic. II *Verr.* 4.25.

clear example of a Republican senator overseas who was not either on official business, or attached to a magistrate's *cohors*, or else holding a *libera legatio*.

In additional support of this hypothetical restriction, several later measures make better sense if set against the existence of such a pre-existing restriction - particularly a restriction which, by the late Republic, was increasingly open to abuse, if Cicero is to be believed, not least through the opportunities presented by the *legatio libera*. Cicero refers to a prohibition on visiting kingdoms without a decree of the Senate, which itself derived from *plurimae leges ueteres*, before being reiterated in the *lex Iulia de repetundis*.[33] Carlo Venturini has suggested that this measure applied to senators and not simply to provincial governors.[34] Julius Caesar's measure of 45/44 BC, that « no senator's son should go abroad except as the companion of a magistrate or on his staff », looks like an extension of my hypothetical measure, in line with the extension of many regulations to include senators' sons and, on later reflection, Theodor Mommsen concluded that « En présence de la disposition de César relative aux fils de sénateurs, on ne peut douter que les sénateurs n'eussent déjà auparavant besoin d'une permission pour quitter l'Italie ; et la libre légation fournit pur cela la forme nécessaire ».[35] I suggest that when Augustus in 29/28 BC imposed a ban on senators traveling abroad without permission, with an exemption for Sicily, he was in turn simply recreating the earlier measure. This exemption was subsequently extended to Gallia Narbonensis by Claudius, who is also noted for having taken the unusual step of actually prosecuting individuals in AD 48 for leaving Italy without his permission.[36]

Much earlier wartime measures of 191 and 170 BC can also be read with reference to a pre-existing general restriction : in 191 an edict was issued to the effect that « no one should be so far away from the city of Rome than he could not return the same day, and that five senators should not be absent from the city of Rome at the same time » ; and in 170 the praetor was ordered to issue an edict to recall « all senators from the whole of Italy, unless they were absent on state business ».[37] In the former case, we would then have a temporary tightening of the existing restriction ; in the latter case the existing limit of Italy would then be serving as the edict's baseline. The appearance of *terra Italia* as a defining and legal element in Roman institutional thought towards the end of the third century BC – and so, perhaps unsurprisingly, approximately contemporaneous with the formation of the first transmarine *prouinciae* in Sicily and Sardinia/Corsica – has been observed repeatedly.[38]

A specific institutional context for such a measure is presumably a general concern for ensuring senatorial attendance. Such concern is evidenced by the second-century emergency measures already noted, by the existence of fines for non-attendance, and later on by Augustus' repeated increasing of fines for non-attendance.[39] The gradual development of quorum requirements for certain senatorial votes suggests similar considerations, and quorum requirements can be traced back to at least the early second century (as e.g. in the *SC de Bacchanalibus* of 186 BC).[40]

4.2. That no senator may own land *extra Italiam*

My final law may be the most controversial : that a senator cannot own property overseas. The suggestion that this is the implication of the Ciceronian passage already cited gains further support from a remark which Cicero makes a few lines later (II. *Verr.* 5.46) :

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[33] Cic. *Pis.* 50, *Vat.* 12.

[34] Venturini 1979, p. 473 §h.

[35] Suet. *Iul.* 42 ; Mommsen 1889-1895, VII, p. 91 n. 2.

[36] Dio Cass. 52.42.6 ; Tac. *Ann*. 12.23.1 ; Suet. *Claud*. 16.2.

[37] Livy 36.3.2-4 ; Livy 43.11.4.

[38] See esp. Crawford 1990, p. 95 (and cf. p. 120), « Certo è che alla fine del III secolo a.C. esisteva a Roma tutta una serie di norme e consuetudini che presupponevano non soltanto un'idea di Italia, ma anche una preoccupazione per cosa fosse Italia e per cosa non lo fosse. » Full discussion in Bispham 2007, p. 53-73 ; on the *formula togatorum* in relation to *terra Italia*, Prag 2011, p. 19-20. Livy records several episodes of relevance during the Second Punic War, e.g. 25.7.4, 27.5.15, 28.38.12.

[39] Varro *ap.* Gell., *NA* 14.7.10 ; Cic. *Phil.* 1.12 ; Dio Cass. 54.18.3, 55.3.3.

[40] On senatorial attendance and the issue of quorum see esp. Ryan 1998, p. 13-51 (concluding that some quorum requirements go back to the mid-Republic, but that quorum was selectively prescribed ; the question of restriction to Italy is not discussed) ; see also Bonnefond-Coudry 1989, p. 401-413.

> *Quid eos loqui qui uidebant, quid existimare eos qui audiebant arbitrabare ? inanem te nauem esse illam in Italiam adducturam ? [...] Ne illud quidem quisquam poterat suspicari, te in Italia maritimum habere fundum et ad fructus deportandos onerariam nauem comparare*.
> « What did you suppose those who saw it would say, or those who heard of it think ? That you were going to take the ship to Italy empty ? [...] No-one could even suppose that you had an estate on the Italian coast, and were providing yourself with a merchant vessel for the export of your produce. »

The linkage with the *plebiscitum Claudianum* looks obvious, but why the explicit reference to *Italia* ? I infer that Verres can own an estate in Italy, which could, all else being equal, have been offered as a partial defence for his owning of a ship (as per the original *plebiscitum Claudianum*) ; but an estate outside Italy will not stand as a justification, and this must be because it is not a legal option. However, the case for the existence of this measure is otherwise entirely an argument from silence.

Most have taken the existence of senatorial estates overseas as a given.[41] However, as Rawson already noted, the evidence for senatorial estates overseas collected by Shatzman (and often repeated) collapses when subjected to careful scrutiny.[42] Most obviously, Shatzman's only pre-Sullan example was the poet Lucilius, whom Nicolet has shown to be an *eques*, and whose Sicilian and Sardinian estates are, in any case, a matter of extreme conjecture.[43] Cicero's *Verrines* are usually taken to provide the best evidence, attesting to senatorial land-owning in Sicily – but in reality the only senator mentioned as farming Sicilian land, the obscure C. Annaeus Brocchus, must have been renting.[44] Cicero follows the specific mention of Brocchus (II *Verr.* 3.93) with an extended digression on the subject of Verres and senators (3.94-98), which moves from the *Siculi* to *senatores* (96), is then capped by Verres' abuse of the estate of the wife of the consul of 73 BC (97), and concludes with an appeal to the shared burdens and rights of the senatorial *ordo* (98), before prosaically returning to the case of the Thermitani (99).[45] In the speech as a whole, individual Sicilian cases (53-59) are followed by those of Roman *equites* (59-66), but Cicero then moves on to a long list of Sicilian civic cases (67-117), and senators appear out of sequence in the midst of these. The passage falls at approximately the mid-point both of this speech and indeed of the whole *actio secunda*. Cicero perhaps

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[41] E.g. Willems 1883-1885, I, p. 203 « [...] la loi [*sc.* the *plebiscitum Claudianum*] ne défendait-elle aucunement aux sénateurs d'avoir des propriétés foncières hors de l'Italie. Les sénateurs avaient des possessions en province et ils les exploitaient comme ils l'entendaient; ils les administraient par leurs affranchis et leurs hommes d'affaires » (the examples cited belong to the 40s BC) ; Shatzman 1975 is at once cautious in the conclusions that he draws and simultaneously consistent in assuming the existence of such estates, as e.g. p. 34, « Our information regarding senatorial property in the provinces is disappointing. We would expect to find many senators owning property in Sicily, the oldest province. Actually only three are known [...]. To sum up, the paucity of evidence is no proof that there was little senatorial property in the provinces ; on the other hand, because we know that 23 senators owned property in the provinces we cannot conclude that such ownership was very common. » Wiseman 1971, p. 81, n. 6 makes passing reference to provincial estates, the existence of which appears to be assumed, but there is no other mention of this or evidence produced (Appendix III lists senators' estates in Italy only).

[42] On Shatzman 1975, table VII, Rawson (1976, p. 184, n. 25) comments « all uncertain or erroneous, except *Schol. Bub.* 90 ». Nicolet 2000 [1980], p. 35 flagged the need for caution while accepting the general idea of such landowning : « Admettons la fréquence (qu'il faudrait vérfier en reprenant de près les listes de Shatzman) d'un phénomène de ce type. »

[43] Shatzman 1975, p. 19 and 45 and no. 60 ; cf. Nicolet 1966-1974, II, p. 926-929, no. 204. The « evidence » consists of a fragment of Lucilius (fr. 287-8 (Warmington) = Porphyrio *ad* Hor. *Sat.* I.3.1), which simply reads : *Lucilius « Sardiniensem » dixit in sexto satyrarum sic « e Sicula Lucilius Sardiniensem terram »*.

[44] Cic. II *Verr.* 3.93. Annaeus, a senator by 71 BC, is of uncertain origin and identification (Klebs *RE*, 1, 1894, col. 2225, *s. u.* « Annaeus » no. 3 is a rigorous summary ; cf. Fraschetti 1981, p. 66, no. 1 ; most recently Ryan 1995, p. 306-307). There is nothing to support a Sicilian origin, rightly rejected, e.g., by Wiseman 1971, p. 212, no. 26 and Manganaro 1982, p. 369-370). Brocchus does not appear to own the land, since Cicero is explicit that at Segesta *commercium in eo agro nemini est*, if one is not a Segestan citizen.

[45] Cicero refers to property of the unknown wife of the consul of 73 BC, C. Cassius L. f. Pom. Longinus (Münzer, *RE*, 3-2, 1899, col. 1727, *s. u.* « Cassius » no. 58) : *eius uxor, femina primaria, paternas haberet arationes in Leontino*. The *ager Leontinus* was one of the main locations of *ager publicus* in Sicily, farmed mostly by non-locals (II *Verr.* 3.109). *Paternus* (*OLD*, p. 1308, *s. u.* « paternus ») primarily signifies « of or connected with a father », including « of inherited property », although (§3) it can also signify « of or connected with one's birthplace ».

wished to reawaken the interest of his senatorial jurors.[46] Commentators have often puzzled over the absence of senatorial victims of Verres in Cicero's account. The standard explanation is that Verres carefully avoided offending senators.[47] But the choice of an obscure, perhaps Campanian, senator and a senator's wife by Cicero in a key passage at the centre of the *de frumento* would seem rather to support the idea that such material was rare and potentially problematic for other reasons.

Other frequently cited examples of senators owning land abroad are no less fragile. Typical is the case of L. Domitius Ahenobarbus, said to own land in Spain, but all that Caesar says is that Domitius sent an agent there to collect an inheritance.[48] In fact it is virtually impossible to find an explicit reference to actual ownership of land.[49] Furthermore, it should be noted that all these speculative examples belong after 70 BC, and the vast majority after 49 BC. Cicero had, in any case already accepted in 70 BC that the measure was *antiqua et mortua*. As Rawson herself concluded, « the argument *ex silentio* is surely, when one comes to think of it, overwhelming ; the most avid and extortionate governors [...] did not use the means that must have been open to them to gain land in the provinces. »[50]

The indications of a later life for this particular measure are weaker than the others. Caesar was responsible for an obscure *lex de modo credendi possidendique intra Italiam*, which Tacitus describes, in language not wholly dissimilar to Cicero's, as being « a measure dropped long ago, since the public good ranks second to private utility ».[51] Although this measure is linked specifically to those engaged in money-lending, and may have a more direct link with the requirement for *publicani* to have security in land, the very existence of a regulation about land-owning being confined to Italy at least suggests the existence and survival of the concept. Later still, Trajan and Marcus Aurelius required senators to ensure that a proportion of their fortune was in Italian land.[52]

5. Conclusion

In summary, this paper argues that the insinuations of Cicero, placed alongside the evidence for later, often tralatician, legislation, and the several arguments from silence that can be adduced from the significant absences of evidence to the contrary, offer a convincing case for the existence in the middle Republic of a sequence of restrictive measures concerning the behaviour of senators :

1. that senators may not travel out of Italy without formal permission ;
2. that senators may not own land outside of Italy ;
3. that senators may not engage in public contracts ;
4. that senators may not own large sea-going ships for commercial activities.

I reverse the order from that of the discussion, since it seems to me that it is more plausible to suggest that the first three measures preceded the *plebiscitum Claudianum*. The period between the First and Second Punic War, for which we are very poorly served in our sources, was undoubtedly a significant one for the

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[46] See Steel 2007, p. 38-40 for an overview of the speech's structure and 42-43 on this passage.

[47] So, e.g. Holm 1898, p. 160 ; cf. Genovese 1999, p. 382-39.

[48] Caes. *BCiv.* 2.18 : [...] *Gaium Gallonium, equitem Romanum, familiarem Domitii, qui eo procurandae hereditatis causa uenerat missus a Domitio* [...]. Curiously, cited by Nicolet 2000 [1980], p. 35, Whittaker 1985, p. 57, Crawford 1990, p. 96 n. 16, but not in fact by Shatzman (1975, no. 139).

[49] Shatzman 1975 gathers what he claims to be 23 instances of senators owning land overseas, in his Tables II and III (cf. Table VII and p. 31, 34). Of the 23, only 4 fall before 49 BC and have any plausibility to them : L. Aelius Lamia (his no. 77, a senator no earlier than 54 BC, probably with land in Africa, *CIL* VIII.25943, Cic. *Fam.* 12.29) ; T. Annius Milo (no. 86, Cic. *Att.* 6.5.2 clearly implies property of some sort in the Thracian Chersonese prior to his exile in 52 BC) ; P. Clodius Pulcher (no. 118, *Schol. Bob.* 90-91 records simply that 5 slaves were sent to Clodius' *uilicus* Diogenes in Transalpine Gaul in 61 BC, incidentally the earliest year he could have entered the Senate) ; M. Licinius Crassus, cos. 70 BC (no. 159, Plut. *Crass.* 2.5 records ownership of silver mines, unlikely to have been in Italy). The rest turn out to be wholly unfounded or very weak inference and/or to date to the late 40s BC or later.

[50] Rawson 1976, p. 91.

[51] Tac. *Ann.* 6.16.1 (AD 33) : *Interea magna uis accusatorum in eos inrupit, qui pecunias faenore auctitabant aduersum legem dictatoris Caesaris, qua de modo credendi possidendique intra Italiam cauetur, omissam olim, quia priuato usui bonum publicum postponitur* ; cf. Suet. *Tib*. 48.

[52] Plin. *Ep.* 6.19.4 ; SHA, *Marcus* 11.8 ; Mommsen, 1889-1895, VII, p. 75-76 ; Nicolet 2000 [1980], p. 33 insists that such a measure cannot pre-date Caesar.

early development of Roman imperial government. In particular the date of c. 227 BC stands out, with the creation of two additional praetors principally for the oversight of Sicily and Sardinia, and the beginnings of provincial taxation. The significance of this period has been well emphasised by Michael Crawford and others, for both the development of provincial government, and other developments emphasising the juridical concept of Italy.[53] André Tchernia and Fausto Zevi have both argued persuasively that the *plebiscitum Claudianum* can best be understood in the context of the development of the bulk transportation of grain, particularly from Sicily and Sardinia, in the period of the Punic Wars, and especially in relation to the development of the Sicilian grain tithe.[54] Seen in such a light, a series of measures restricting senators within *Italia* except when on public business would mark the first in a familiar series of measures concerned with regulating the behaviour of Roman magistrates and officials beyond Italy. The evolution of the *lex repetundarum* from 149 BC onwards is the most obvious further development of this, and the echoes of earlier legislation to be found in these later laws have been highlighted above and frequently noted in past study.[55] There is something of a reluctance to allow any degree of sophistication to Roman imperial rule before the second century ; we should perhaps be a little more willing to allow for such developments at the very period when the empire was expanding and, as the additional praetors and quaestors of the third century illustrate, the Romans were innovating.[56] It is perhaps worth noting as a final observation that if this period saw a significant number of *onera ordinis* imposed upon senators (see the opening quotation from Cicero), it is also the period when additional *ornamenta* were being created, such as the *locus senatorius* at the games, in 194 BC.[57]

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[53] Crawford 1990.
[54] Zevi 1994, p. 64 ; Zevi 2002, p. 43-46 , Tchernia 2011 [2007] ; similar perspective also in Feig Vishnia 1996, p. 34-43 ; cf. Pinzone 2000, p. 861, highlighting the coincidence of Flaminius as the first praetor in Sicily, 227 BC.
[55] See especially Venturini 1979, p. 471-482 but also 2009 ; cf. Crawford 1996, II, no.55.
[56] On praetors, see esp. Brennan 2000, I, p. 79-97 ; on the quaestorship at this period, now Prag 2014.
[57] Liv. 34.44.5, 34.54.4-8 ; Ascon. 69-70 C = Valerius Antias, *FRHist* 25 F.41 with commentary ; Cic. *Har. Resp.* 24 ; Val. Max. 2.4.3, cf. 4.5.1.

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