THE ABDICATION OF ‘COLLATINUS’

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In Livy,¹ L. Tarquinius Collatinus, consul with L. Junius Brutus in 509 B.C., resigns his office voluntarily. Livy here agrees with Dionysius of Halicarnassus,² but differs from Cicero,³ who says that Collatinus’ imperium was abrogated. There is another divergence in the tradition, for Dionysius has a ‘guilty’ Collatinus who is implicated in the conspiracy to restore Tarquin, while Cicero’s Collatinus is an ‘innocent’ whose only offence is his possession of the Tarquin name. In this respect Livy follows Cicero. Ogilvie⁴ believes that Livy, by introducing voluntary resignation, ‘tacitly rejects the doctrine that a magistrate’s imperium could be abrogated once it had been granted by the people’. Livy is supposed to have followed a Sullan annalist who challenged the Senate’s abrogation of Cinna’s consulship in 87 B.C. The Senate’s action is said to have been without precedent, because it was the first attempt to abrogate consular, as opposed to proconsular, imperium. The ‘earliest recoverable version’ of the Collatinus episode, as attested by Cicero, will have supplied the precedent that the Senate needed, and will therefore have been rejected by the Sullan annalist in favour of voluntary resignation. I do not think that this view can stand. I propose to argue, firstly, that there may very well have been sufficient precedent for the abrogation of consular imperium; but even if there was not, Cicero’s version could not have supplied the precedent that the Senate wanted. Secondly, the doctrine of voluntary resignation originated in the Senate, and would not have been favoured by the Populares as a line of attack on the Senate’s action against Cinna. Thirdly, there is clear evidence for the ultimate origination of Livy’s version, as far as the introduction of voluntary resignation is concerned, in the Gracchan period; but the version as we have it does not go back further than 63 B.C., and should, in view of its inconsistencies, be brought still further forward, to the period of the Second Triumvirate.

Ogilvie (l.c.) cites Mommsen⁵ in support of his assertion that the abrogation of consular imperium was without precedent. But Mommsen does not say this; the distinction that he draws is between the earlier form of abrogation, which applied to promagistracies, and the later form, which

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¹. 2.2.2 ff.
². 5.3 ff.
³. De Off. 3.40; Brut. 53; Rep. 2.53.
applied to *magistracies proper*, including the consulship and the tribunate. Be that as it may, the crucial point is that the abrogation of consular *imperium* may very well have been achieved prior to Cinna, if the case of Hortensius supports the interpretation which I propose. Hortensius was elected consul for 108 B.C., was condemned, perhaps for *ambitus*, and was replaced by M. Aurelius Scaurus as suffect. The question is whether he was condemned before or after his entry into office. If he was already consul there is no difficulty, for, in view of a magistrate's immunity from prosecution, the abrogation of his *imperium* will have been a necessary prelude to the criminal trial. But even if he was tried before taking up office abrogation is still a possible assumption, for it is probable that a *consul designate* enjoyed the same protection from prosecution as a consul or other magistrate. Two circumstances suggest this. Firstly, it is clear that a consul designate was something more than a mere *privatus*: he had already taken an oath of loyalty; his name was entered in the *fasti*; he could issue edicts, sometimes with immediate effect; and if he were in the Senate he at once voted in the class appropriate to his future office. Secondly, immunity from prosecution may have been specifically available to designati. The *lex Memmia*, which was introduced before 113 B.C., protected both those who held office and those who were about to assume it; and although the *lex* applied only to service *militiae*, there was probably a similar rule for the urban magistracy. It therefore seems possible to say that Hortensius could not have been reduced to the status of a *privatus*, nor could he have been prosecuted, without a formal act of abrogation. The possibility of consular abrogation prior to Cinna is also supported by the *lex Cassia* of 104 B.C. which, by providing for the exclusion from the Senate of those whom the *People* condemned, or whose *imperium* it abrogated, tacitly asserted that the *People's* competence to abrogate *imperium* was no longer in controversy. If this was the definitive statute, I suggest that it was so for all cases. The *lex* was admittedly prompted by the abrogation of the

6. I have elsewhere attempted to show that this distinction is unrealistic, but the point need not be pressed here. See my *The Abrogation of Imperium*, to be published shortly in *Rheinisches Museum*.


9. Münzer, *I.e.*, believes that the trial preceded the assumption of office, but does not consider the question of abrogation.

10. Mommsen, *Staatsr.* 1.590 f. Greenidge, *Roman Public Life* (London, 1911), 189, credits the *designatus* with *imperium*, although one that was 'necessarily dormant'.


12. *Ib.*

13. Ascon. 78C: *ut quem populus damnasset cuive imperium abrogasset in senatu ne esset.*

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imperium held by Q. Servilius Caepio in Gaul, but there is no good reason why cuive imperium abrogasset should be restricted to proconsular imperium.

As far as the principle of abrogation was concerned, then, the Senate did not have far to look for a precedent. If abrogation meant the withdrawal of imperium, the case of Hortensius could probably have been cited, and in any event the lex Cassia was the enabling statute. And if abrogation meant the cancellation of a magistracy, whether or not its holder possessed imperium, the case of M. Octavius was a precedent that the Populares could scarcely challenge. But none of this gave the Senate much comfort, for what was needed was a precedent for its usurpation of the People’s jurisdiction. The question was whether the Senate could cancel something that the People had granted, and indeed this was precisely Cinna’s complaint: he did not say that his removal was without precedent, but that the Senate’s action was illegal because the People had not been consulted. If this was the problem, it was surely no answer for the Optimates to put forward the Collatinus version attested by Cicero. Ogilvie (l.c.) seems to take Cicero to mean that the abrogation was carried out by Brutus personally, but if this is Cicero’s meaning he will assert a right that was never claimed; a superior magistrate could suspend, and perhaps depose, an inferior, but there is no suggestion that a similar power was available against a colleague. In fact, of course, Cicero simply attests the deposition of Collatinus under a lex proposed by Brutus. The loose attribution of the abrogation to the colleague who merely proposed the bill is frequent in the sources, and Cicero is at worst inexact if he attests abrogation by Brutus. But it is not clear that he does attest this. In one passage he attests action by nostri


15. As Mommsen, Staatsr. 1.629 f., seems to believe. The sources tend to favour imperium (or potestatem) abrogavit, although consulatus abrogatus est (Vell. 2.20; cf. Livy 21.63.2) and abrogato magistratu (Livy Per. 111) are attested.


17. Deposition by the maior dignitate, rather than suspension, is not unequivocally attested. The action taken by the dictator Cincinnatus against the consul L. Minucius in 458 was either suspension (Mommsen, Staatsr. 1.262 n. 2) or enforced abdication (Broughton, MRR 1.39). Similarly in 48 the praetor M. Caetius Rufus was either suspended (Dio 42.23.3) or compelled to abdicate (Livy Per. 111) by the consul P. Servilius Isauricus. The recognition of both remedies is probable, for when the consul M. Aemilius ordered the praetor P. Decius to cease exercising jurisdiction in 115 (De Vir. Ill. 72.6), it was necessary to explain (Vit. Marci c. 12) that this was not a case in which abdicare se praetura iussit. There is no evidence for the exercise of a power of suspension or a power of enforced abdication against a colleague of par potestas.


19. Thus Livy Per. 58 (correctly): M. Octavio collegae . . . potestatem lege lata abrogavit. Cf. Ascon. 72C; Appian B.C. 1.12; Plut. T.C. 12.4. But Vell. 2.2.3 (incorrectly): Octavioque collegae . . . imperium (sic) abrogavit. Cf. De Vir. Ill. 64.4; Oros 5.8.3; Cc. Pro Mil. 27.72. Cf. also Dio 46.49.1 with Obseq. 70.
maiores; elsewhere he says that Brutus initiated the abrogation; and even when he asserts that Brutus abrogated, he observes that this could not have been accomplished without oratory, which implies that Brutus simply urged abrogation.

The precedent that the Senate needed was to be found in its own past practice. The patres had two procedures to guide them. Of these the more firmly based was the principle of voluntary resignation in the public interest. In the earlier period there was no constitutional machinery for the removal of a magistrate, but the Senate had been able to achieve the same result by indirect means. It had long been accepted that a magistrate was bound to tender his resignation if the public interest required it, and pressure could be exerted on the reluctant in a number of ways. Thus when the augurs pronounced a magistrate vitio creatus because of defective auspices at his election, the resignation which the Senate then recommended was not often withheld, even when the fault was not noticed until well into the magisterial year. In cases of recalcitrance more direct forms of persuasion were available. Thus in 402 B.C. the Senate resolved, specifically on the grounds of the public interest, that all the military tribunes resign. The decree, which probably followed a pronouncement of vitio creati, was aimed at L. Sergius and L. Verginius, who were held responsible for the defeat at Veii. At first Sergius and Verginius refused to resign, but agreed to do so when threatened with the appointment of a dictator who would compel them to abdicate. The pressure in this case was openly described as 'coercion', and indeed the Optimates detected a close similarity between this procedure and compulsory deposition; for when an (unsuccessful) attempt was made by the Senate to persuade C. Flaminius, consul in 223 B.C., that he was vitio creatus, the procedure was specifically 'abrogation'.

22. Brut. 53.
23. M. Fabius Vibulanus abdicated in 480 because wounds received at Veii made it impossible for him to carry out his duties as consul (Dion. Hal. 9.13.4). In 33 L. Asellius gave up his praetorship because of illness (Dio 49.43.7). When a magistrate consulted the public interest of his own accord, the practice was to appoint a member of his family in his place. Vibulanus was replaced by his brother (Dion. Hal. 9.14.1), and Asellius by his son (Dio i.c.).
24. The military tribunes of 444 had already held office for three months when the defect in their election was discovered (Livy 4.7.3). The augural pronouncement by Ti. Sempronius Gracchus was equally tardy in 162, for the consuls Scipio Nasica and Marcus Figulus had already left for their provinces when Gracchus recollected a fault in the auspices.
25. Livy 5.11.1.
26. Ogilvie, o.c. 645.
27. Livy 5.8.9 ff.; 9.1 ff.
28. Ib. 5.9.7 f.
The doctrine of voluntary resignation had encouraged the Senate to believe that it was the custodian of the public interest. Therefore when the Sibyl line books 'revealed' that peace would return if Cinna were expelled, the Senate had the traditional signal for action. But Cinna's resignation was unlikely, and so resort was had to a more recent practice. The Senate proclaimed that as Cinna had left the city in danger and had offered freedom to the slaves, he was no longer a consul or a citizen. In thus declaring Cinna a hostis the Senate simply applied its own doctrine, for this decree did not differ in principle from the 'last decree' which had been employed against C. Gracchus, and, most recently, against the Marians. The significant point is that the Senate did not purport to abrogate Cinna's imperium directly. For in thus anticipating Cicero's theory that a hostis was not entitled to trial because he was no longer a citizen, the Senate simply asserted that Cinna had lost his citizenship and was therefore no longer a consul. Cicero, far from relying on the People's criminal jurisdiction as a precedent for his action against the Catilinians, circumvented the People altogether; and in like manner the Senate followed a procedure quite independent of the People's legislative jurisdiction. The validity of the Senate's action depended entirely on the validity of the hostis declaration; and the considerations which this question raised had nothing to do with the fact that the People had abrogated Collatinus' imperium.

The Senate's 'public interest' doctrine, which authorised a procedure not unlike abrogation, supplied a precedent to the Gracchans, who leaned heavily on it in justification of their action against Octavius. The doctrine is also found in Livy and the other Collatinus versions. This doctrine will have commended itself to both Popular and Optimate annalists when they adapted the Collatinus legend to the purposes of the Octavius case, and it is only in the manner of Collatinus' exit that there will have been a difference; for the Gracchans will have had him deposed by lex, while the Optimates will have had him resign voluntarily. The Popular version may have originated with M. Iunius Gracchanus, the friend of C. Gracchus, who was both an annalist and the author of de potestatibus, one of the earliest works on the magistracy. His version may have been known to Cicero. As for

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32. 'Abrogation' is attested by Livy Per. 79 and Velleius 2.20, but in contexts that give the general effect of the Senate's action, rather than its precise constitutional description.
35. Livy 2.2.5 ff. Cic. De Off. 3.40. Dion, Hal. 5.11.2.
the Optimate version which challenged the People's jurisdiction by introducing voluntary resignation, we know that it was composed by L. Calpurnius Piso, for Aulus Gellius says so. A similar version may have been produced by C. Sempronius Tuditanus, who was consulted by Livy, is known for his *libri magistratum*, and consistently took up a line in opposition to Gracchanus. Livy reflects Piso and Tuditanus, but there are traces of Gracchanus. In an archetypal account of a voluntary resignation we should expect to find senators clamorously urging a rather bewildered magistrate to subordinate his own concerns to the public interest, and this is (almost) precisely what we do find in Livy. When Brutus calls on Collatinus to resign, he is so astonished that he is unable to reply. He is surrounded by *primores civitatis* urging him to obey, is reluctant at first, but finally yields to the persuasion of Sp. Lucretius, who is *maior aetate* (2.2.7 ff.). At first glance this would fit any voluntary resignation. Sergius and Verginius were exhorted on all sides; in their bewilderment they first objected to the ignominy, then they tried to veto the decree, then they simply refused to obey (5.9.2); it was only the threat to appoint a dictator (cf. *maior dignitate*) that secured their compliance. The general similarity is clear, but something is out of focus. The proceedings against Collatinus are being conducted in the wrong place, for we are present at a *contio* summoned by Brutus (2.2.4). Livy has located an Optimate remedy in a Popular setting.

If this were all, it might be supposed that Livy had done no more than combine the Optimate and Popular traditions rather carelessly. But there is a more serious inconsistency. Thus far Collatinus, whether he is deposed or resigns, is 'innocent'. But somewhere along the line he lost his innocence, for Dionysius implicates him in the conspiracy to restore Tarquin. So does Livy, although he certainly takes some steps to preserve his man's innocence. In particular, where Dionysius introduces Tarquin's envoys and the conspiracy before Collatinus' resignation, in order to prepare the ground for Brutus' accusation of treason against Collatinus (DH 5.4 ff.; 5.10.2 ff.), Livy postpones these episodes until after Collatinus' resignation (2.3 ff.). But despite this, Livy presents a Collatinus who is by no means unequivocally 'innocent'. The proof of this is as follows: In Dionysius, when Brutus introduces a bill of abrogation against Collatinus, he also proposes that he be exiled (5.10.7). Sp. Lucretius, urging Collatinus to resign, points

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37. Gell. 15.29: verba Pisonis haec sunt: L. Tarquinium collegam suam, quia Tarquinio nomine esset, metuere; eumque orat, uti sua voluntate Roma concedat. Ogilvie, o.c. 239, cites this passage in passing, but seems to have overlooked its effect on his cardinal belief that it was the Sullan annalist who introduced voluntary resignation.
39. Livy 5.9.3.
40. *Pace* Ogilvie, o.c. 239, who believes that Livy, by not implicating C. in the conspiracy, achieves a 'self-contained' and 'carefully constructed' episode.
out that this will enable him to remove with all his property, and asks Brutus to allow him to do this, rather than to expel him with ignominy (5.11.2 f.). Brutus, agreeing to this, tells Collatinus that he is to consider his change of domicile as a sojourn abroad, not as banishment (5.12.2). The significance of these matters is this: If it had gone as far as abrogation, the trial of Collatinus for treason would have followed. Brutus, in anticipation of this, proposed a penalty against the event of Collatinus’ condemnation. The punishment was to be exile (which would involve loss of citizenship) and confiscation of property. Collatinus resigned in order to avoid these consequences. Livy tells us precisely the same thing. He says that Collatinus, after hearing Sp. Lucretius, feared that when he became a privatus the same fate (i.e. exile) would befall him, together with confiscation and other forms of ignominia. He therefore resigned and withdrew to Lavinium with his property. And when Brutus urges Collatinus to resign, he undertakes that if he does so Brutus’ proposal for the confiscation of his property will be withdrawn. Who is this ‘innocent’ Collatinus? Without even referring to Dionysius we know: (a) that Brutus has proposed abrogation and criminal penalties; and (b) that the allegation against Collatinus is treason.

It is evident that Livy hesitates between an ‘innocent’ and a ‘guilty’

41. Brutus’ proposal of exile as a specific penalty suggests that Dionysius does not go back further than 63 B.C., for it was not until Cicero’s ambitus law that year that the imposition of exile as an actual sentence was first introduced. Prior to this a capital sentence meant the actual death penalty, although from at least the second century execution could be avoided by voluntary exile. Levy, ‘Die römische Kapitalstrafe’, SB. d. Heidelb. Ak. d. Wissensch., phil.-hist. Kl., 5. Abh. (1930–31), 15, 18 ff., 22, 31. Cf. Strachan-Davidson, Problems of the Roman Criminal Law (Oxford, 1912), 2.28 ff., 52 ff. See below for Cicero’s lex as the terminus post quem for Livy’s version.

42. An exile, whether by choice or operation of law, lost his citizenship with his change of allegiance. Greenidge, The Legal Procedure of Cicero’s Time (Oxford, 1901), 513; Levy, o.c. 18 ff.

43. For publicatio bonorum as a regular consequence of condemnation in the case of offences against the State see Fuhrmann, RE 23.2.2491 ff. Cf. Waldstein, RE Supp. 10.101 ff.

44. 2.2.7: res tuas tibi . . . reddent eves uii auctore me. If all that has happened is Brutus’ ‘friendly’ request for C.’s resignation, how does there come to be a question of restoring C.’s property? The meaning is obviously not that there will be restitution of property already confiscated, for that would make the Livian Collatinus even more ‘guilty’ than the Dionysian; reddent auctore me implies that Brutus has already proposed confiscation, but will withdraw the proposal.

45. The inference is inevitable, for otherwise a penalty could not have been proposed against a magistrate. The argument perhaps goes further than this, for postmodum privato (n. 44) may mean ‘after the abrogation of his imperium’, rather than ‘when his term of office had expired in the normal course’.

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Collatinus, and at first sight there is a plausible explanation for this in terms of an assumed Gracchan origin. The Populares did not find the ‘public interest’ doctrine a sufficient justification for the deposition of Octavius, for there was substance in the Optimate complaint that there had been an unwarranted interference with a tribune’s right of intercession. The answer to this was to suggest that Octavius had not been so ‘innocent’ after all, and this change of ground is reflected by Plutarch. His Octavius is, in the main, ‘innocent’: he is of good character, and his dispute with Tiberius is little more than a friendly debate. But there is an intrusion: Octavius was himself a considerable possessor of the ager publicus—and the possessores plotted the assassination of Tiberius. Someone will have hinted that Octavius had been a party to treason. The new Popular line becomes even clearer when Plutarch reaches the immediate post-deposition period. For when public criticism forced Tiberius to put forward a justification, he unequivocally compared Octavius with Tarquin, and accused him of having wronged the People.

But despite all this, it cannot be supposed that Livy goes back further than 63 B.C., for the lex Tullia de ambitu of that year was known to his source. It would also be better if his hesitations could be explained in terms of a more recent controversy than the ancient deposition of M. Octavius. If Livy’s co-ordinates have been plotted correctly, we are looking for a man who held consular imperium after 63 B.C.; who had done something that might be interpreted as treason, although there were serious doubts about this; whose colleague invited him to choose between resignation, followed by voluntary exile but without loss of property or status, and forcible abrogation, followed by the penalties for treason and alia ignominia; and who agreed to resign. I believe that these requirements are met by M. Aemilius Lepidus, a member of the Second Triumvirate. The

47. Not even Dionysius is certain that his Collatinus is ‘guilty’: he assisted in the overthrow of the tyrants (5.11.3); he upheld justice against expediency (5.5.3 f.; 6.1 f.); Sp. Lucretius, ‘the man in good standing with the People’, was not convinced of his guilt (5.11.2); and C. himself felt that an innocent man was being punished (5.12.1).
48. The point here made was suggested by Mänzer’s summary of the conflicting traditions in regard to Octavius. See RE 17.2.1820 ff.
49. Plut. T.G. 10.1 f., 4; 11.3; 12.3.
50. Ib. 10.5 ff.
51. There is a trace of this in Dionysius: Brutus, throughout his indictment of C., has confined his allegations of treason to two matters: C.’s support of the proposal for the restoration of Tarquin’s property, and his vetoing of the execution of the Aquilii (5.10.2 ff.). But at the very end there is a postscript; for Dionysius, without any prior notice, has Brutus suddenly accuse C. of trying to kill him (5.10.7).
52. Cf. n. 41 and the demonstration in the text that Livy attests the same proceedings as Dionysius.
withdrawal of Lepidus from the Triumvirate is usually treated in cursory fashion. It seems to be assumed that Octavian simply 'expelled' him without ceremony, and without regard for constitutional propriety. But I do not think that Octavian 'expelled' Lepidus, any more than Brutus 'abrogated' Collatinus' imperium.

In 36 B.C. Lepidus accepted the surrender of Messana without awaiting Octavian's arrival, and incorporated its Pompeian garrison in his army. When Octavian arrived Lepidus demanded the restoration of his triumviral rights and the allocation of Sicily to his provincia. Octavian, who was greatly outnumbered, set about detaching Lepidus' troops from their allegiance. The first to desert were the Pompeians, who doubted the validity of the amnesty granted by Lepidus. Disaffection spread to Lepidus' own men and in the end he found himself without an army. At this point something happened to Lepidus, and at first glance the sources seem to attest the following: Lepidus ran to Octavian's camp, threw himself at Octavian's feet, was told to stand up, and heard his sentence pronounced; Octavian stripped him of his triumviral authority and banished him to Circeii, but spared his life and allowed him to retain his property and his office as pontifex maximus. The nucleus of the Collatinus episode is already here: Lepidus, at the instance of a colleague, lost his magistracy (by virtue of which he held consular imperium) and his domicile, but was spared other consequences, namely confiscation, loss of citizenship and alia ignominia. There is also something of particular significance in the light of Livy's hesitations. For Lepidus was demonstrably both 'guilty' and 'innocent'. Octavian considered him a hostis, and a supplicatio was decreed to mark the surrender of his army to Octavian. But Antony, who had no part in the proceedings, complained that Lepidus was a colleague and had committed no crime. The criticism was not without substance, for it was by no means certain that Lepidus had assailed the populus Romanus when he

56. Thus Charlesworth, CAH 10.65: 'Octavian's treatment of Lepidus . . . could not be defended on any constitutional grounds'.
57. Appian B.C. 5.122 ff.; Dio 49.11 f.; Zon. 10.25; Livy Per. 129; Vell. 2.80.1 ff.; Oros. 6.18.30 ff.
58. Appian B.C. 5.126; Dio 49.12.3 f.; Zon. i.e.; Livy i.e.; Vell. 2.80.4; Suet. Aug. 16.3, 31.1; Oros. 6.18.28; Tac. Ann. 1.2.1.
59. Appian B.C. 4.2.
60. On Lepidus' retention of his seat in the Senate, see below.
62. CIL 10.8375.
had gone against Octavian at Messana. But whatever the position in strict theory, the important point here is that Octavian said that Lepidus was guilty and Antony said he was not. The dispute was a major talking-point, for Antony was still making capital out of it three years later.

The equation is nearly complete, except for the crucial fact that everything seems to have been done at Messana, and by Octavian himself, without reference to the People. If so, arbitrary action by Octavian could not be denied. Relying on his complete mastery of the situation, he will have dismissed Lepidus out of hand under some sort of 'Kriegsrecht'. It is clear that this should not have happened, for if a magistrate could not depose a colleague of *par potestas* when the office was held by two, he could *a fortiori* not do so when three were involved. It is also clear that it need not have happened, for Lepidus had already ceased to be a commander *de facto*, and was Octavian's prisoner. Impulsive action by Octavian is in any event out of character, nor will his position, strong as it was, have authorised him to dismiss one colleague, to brush aside the other, and to tear up the *lex* to which all three owed their office. But none of this need be pressed, for it did not happen. The evidence clearly shows that when Lepidus surrendered, Octavian simply sent him to Rome; and when Octavian returned from Sicily, proceedings were initiated for the abrogation of Lepidus' *imperium* and for his condemnation for treason. But it suited Octavian to drop the bill of abrogation and the criminal charges, in return

64. Was it treason when one member of the constituent authority attacked another? The answer would be clear if the effect of the attack had been to diminish *maiestas populi Romani*, e.g. if Lepidus had moved against Octavian at a time when Sex. Pompeius was still contending with the Roman People for control of Sicily. And even this needs qualifying, for after Philippi, when Lepidus was suspected of treasonable correspondence with Sextus, the allocation to him of Africa was held over (Appian *B.C.* 5.3; 5.12), but no other action was taken. But in 36 the dispute was simply whether Sicily should be held for the Roman People by Octavian or Lepidus. If Appian *B.C.* 4.2 means that the allocation of Sicily to Octavian was originally made by the *lex Titia* itself, and not merely by agreement among the triumvirs, Octavian may have contended that Lepidus had acted *adversus legem*. But the cards had been shuffled and dealt often enough since Bononia, and if the *lex* needed an amendment it was made tacitly in 39 at the latest, when Sicily was allocated to Sextus at Misenum. An official *hostis* declaration against Lepidus is also difficult. For even after the *coniuratio* of 32 it is probable that Antony was only the personal *immicus* of Octavian. Cf. Syme, *RR* 288, 291 f. If Octavian, with a *clientela* embracing *sita Italia*, was not able to make his *inimicus a hostis populi Romani* (or at any rate did not think it wise to do so), he will scarcely have done so in 36. And even if Lepidus was the *hostis* of Octavian and the Roman People in the West, what was he vis-à-vis Antony and the rest of the State?

65. Dio 50.1.3.


67. For a practical solution to the problem of the extension of the *lex Titia* see Charlesworth, *CAH* 10.59 n. 1. For a detailed discussion see Rice Holmes, *o.c.* 231 ff. If the *Rechtsfrage* has done nothing else, it has at least underlined Octavian's scrupulous regard for the legal niceties of his position.

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for Lepidus' voluntary resignation. For abrogation would expose Lepidus to *alia ignominia*, and in particular his exclusion from the Senate, which would simply expand the area of Antony's criticism without giving Octavian a corresponding advantage, for Lepidus was in any case a spent force. It will also have been desirable, even if a rescinding *lex* could be carried with ostensible propriety, to take some of the sting out of Antony's attack by securing what was, at least in theory, the act of Lepidus himself. As for the criminal charges, to abandon them was simply to save embarrassment.

The first indication of the true nature of the proceedings is the fact that before Lepidus went to Octavian's camp he *changed his garments* and *put on the garb of mourning*, which was precisely the costume of those whose *imperium* it was sought to abrogate. When Lepidus appeared before Octavian, the first thing that happened was that Octavian sent him to Rome, *dressed as he was.* The journey to Rome immediately makes two things clear: the question of abrogation was still pending, and the banishment to Circeii had not yet been imposed. On Octavian's return from Sicily two proposals were submitted to the People: that the office of pontifex maximus be transferred from Lepidus to Octavian; and that Lepidus be put to death as a *hostis*. Octavian rejected both these proposals, and this rejection covers nearly everything that is supposed to have been done at Messana. For when Appian, who consistently misunderstood the Republican death sentence, attests a proposal for the execution of Lepidus, he in fact means either that a sentence of exile was proposed or that there was to be a death sentence followed by voluntary exile. In either case the concomitants would have been confiscation and loss of citizenship. It was therefore by not pressing the criminal charges that Octavian 'spared Lepidus' life' and 'allowed' him to retain his property and citizenship. It was also by foregoing the prosecution that Octavian 'allowed' Lepidus to keep his priesthood. For although Octavian's refusal of this office is said to have been due to a rule forbidding the removal of the pontifex maximus during his lifetime, 68

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68. Appian B.C. 5.126.
69. Dio 12.3.
70. When a bill of abrogation was proposed against Lentulus Spinther in 56, his son 'changed his garments'. Cic. *ad Q. f.* 2.3.1; cf. *Pro Sest.* 144. The same change of costume was made by those facing criminal charges (Mommsen, *Staatsrecht* 352 ff.), but this stage had not yet been reached in Lepidus' case. See below.
71. Appian B.C. 5.126. Appian is clearly anticipating when he goes on to say that Lepidus made the journey to Rome as a *privatus*, deprived of his command and no longer holding any office except his priesthood. For there was no reason for Lepidus to retain his *interim attire* if his fate was already signed and sealed. And at this stage he did not 'retain his priesthood' in the sense that a decision in this regard had already been taken, for the matter only came up for consideration in Rome. See below.
72. Appian B.C. 5.131; Dio 15.3.
73. Cf. B.C. 2.2.12; 3.14; 5.7.
it is not conceivable that Lepidus could have retained his office after losing his citizenship as the result of condemnation and exile. It remains to show that the deposition of Lepidus was brought about by his voluntary resignation, tendered when faced with a bill of abrogation. This is already probable, for Octavian will not have made the postulated concessions without securing a corresponding advantage, nor is he likely to have consulted the People only on the consequential measures, and not on the first and most drastic step of all. In any event the participation of the People in the abrogation proceedings is directly attested; for Anthony’s complaint was that ‘they’ had deposed Lepidus.\textsuperscript{75} This should not, however, be taken to imply more than the proposal of a bill of abrogation. It cannot have gone as far as a lex, for Lepidus remained in the Senate and continued, despite the banishment to Circeii, to attend its meetings.\textsuperscript{76} And in 18 B.C., when Antistius Labeo included the name of Lepidus in the \textit{lectio senatus}, Augustus (who was not well disposed towards Lepidus\textsuperscript{77}) was only able to ask \textit{an essent alii digniores}, to which Labeo replied that this was a matter of opinion.\textsuperscript{78} If an objection had been available under the \textit{lex Cassia},\textsuperscript{79} Augustus would not have failed to raise it.

The name of the consul who proposed the bill of abrogation against Collatinus is admittedly difficult, for it will have taken courage to see Octavian as Iunius Brutus. But there are mitigating circumstances, of which perhaps the most important is the fact that this particular Brutus, having executed his sons for their part in the conspiracy,\textsuperscript{80} (conveniently) left no issue. It can also be asserted with some confidence that Augustus, in the light of his pronounced tolerance of criticism,\textsuperscript{81} would not have reacted

\textsuperscript{75}. Dio 50.20.3.
\textsuperscript{76}. Dio 54.15.4 ff. The hostile tradition was not consistent, for if Augustus allowed Lepidus to attend the Senate (even though he subjected him to indignities there—\textit{Dio l.c.}), he cannot (\textit{pace} Dio 50.20.3; 49.12.4) have kept him at Circeii ‘like a prisoner of war’.
\textsuperscript{77}. Dio 54.15.4 ff.
\textsuperscript{78}. Suet. \textit{Aug.} 54, where \textit{hostrem olim eius et tune exsulatem} refutes the possibility that when Lepidus attended the Senate under the circumstances attested by Dio (n. 76), he was no longer in banishment. In any event, Dio 54.15.5 says that Lepidus used to ‘return from the country’ in order to attend the Senate.
\textsuperscript{79}. Cf. n. 13.
\textsuperscript{80}. Livy 2.5.5 ff.
\textsuperscript{81}. I have elsewhere attempted to show that there was no significant inhibition of freedom of speech until the very last years of the Augustan Principate. See my \textit{The Crimen Maiestatis in the Roman Republic and Augustan Principate} (in the course of publication by the Witwatersrand University Press, and at present available in the library of the University of the Witwatersrand), Ch. XII. Thus, Augustus listened with approval to a recital of Cremutius Cordus’ \textit{Annales}, in which Brutus was praised and Cassius was described as the last of the Romans (\textit{o.c.} Ch. XIII). See also Syme, \textit{RR} 317 f., for the view that Augustus encouraged a Pompeian rather than a Caesarian tone in the literature of his age. Cf. Carcopino, \textit{Cicero: The Secrets of his Correspondence} (London, 1951), pass.
adversely to Livy's version. In any event, if this version originated after 63 B.C., and if contemporary relevance is a reasonable supposition, there is no one except Lepidus. As for Livy's source, Q. Aelius Tubero seems likely. As an annalist whom Livy is known to have consulted, and a constitutional lawyer with a strong antiquarian bent, Tubero will have found the Collatinus episode an admirable archetype for the drama that he himself had witnessed. The inconsistencies in his Gracchan sources, far from troubling him, will have served his purpose well. As a former Pompeian, with Optimate sympathies in constitutional matters, he will have readily followed Piso and Tuditanus in attesting voluntary resignation, particularly as this agreed with contemporary reality. The later Popular version will also have commended itself to him, for there was at least some suspicion of 'guilt' on the part of the Collatinus with whom he was concerned. But the whole point about his selection of elements from conflicting versions is that it was done in anything but a random manner. For Tubero, as a master of ambiguity, will have skilfully hinted at the nuances of the Lepidus affair when he presented an 'innocent and guilty' Collatinus who consulted the public interest but in so doing escaped the consequences of his crime.

82. In 63 P. Lentulus abdicated under pressure from the Senate so that Cicero might execute him without offending religious scruples. Cic. Cat. 4.3.5; 3.4. Sall. Cat. 47.3. Dio. 37.34.2. The bill of abrogation against Lentulus Spinther (n. 70) seems to have been dropped. For M. Caelius Rufus see n. 17. The case of the tribunes L. Caesetius Flavus and C. Epidius Marullus in 44 will undoubtedly have been a cause célèbre, but neither of them was 'Collatinus', for they were excluded from the Senate. For the references see Broughton, MRR 2.323. The proceedings against Q. Gallius (Appian B.C. 3.95; cf. Mommsen, Staatsr. 1.630 a. 4) and P. Servilius Casca (Dio 46.49.1) resulted in actual abrogation.

83. Ogilvie, o.c. 16 ff.; Weissenborn-Müller, o.c. (Berlin, 1908), 29.
84. Pomponius Dig. 1.2.2.46.
85. Cic. Pro. Lig. 3.9; 5.10; 9.27.
86. One of Tubero's works was On the Senate, although the exact title is not known. Schulz, o.c. 90.
87. On Tubero's regard for accuracy see Weissenborn-Müller, l.c.
88. I have attempted to show (o.c. Ch. VIII) that when Tubero prosecuted Q. Ligarius in 46 he (deliberately) framed the indictment in such ambiguous terms that two entirely different versions of it were transmitted.
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