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## *Decem Legati: A Flexible Institution, Rigidly Perceived*

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The use of ten commissioners in the settlement of conquered territory is a Roman institution often portrayed as stable and functioning down through the mid-second century and then declining in usage and potency in the late Republic.<sup>1</sup> However, the more we learn of the (admittedly limited) evidence, the more clearly we can see that any rules defining the *decem legati* in their gloried past were never as stable or certain as later writers imagined, and conversely even in later, less 'traditional', applications of the institution, the boards of ten continued to exert a considerable authority. The authority of such commissions seems to derive in part from their collective identity, in contrast with the power that might be given to a single individual. This authority was upheld and affirmed through the invoking of past exempla, just as its supposed decline was lamented through invoking that same history. Thus, the *decem legati* provides an example of the ongoing construction of an earlier, idyllic, and stable practice, which justifies the later usage of the institution, while at the same time providing a contrasting point of critique for those same actions.

The last systematic investigation of the *decem legati* was part of a slender monograph by Schleussner, which surveyed two types of

legates, those who served under a commander with *imperium* during a conflict and those sent out in groups of ten at the end of a conflict.<sup>2</sup> The book was not well received. In one of the most hostile reviews of the time, the primary criticism was that Schleussner was 'overly concerned with legalistic questions of "rights" and "powers"' and that 'his concentration on the issue of senatorial control'... 'led him... seriously astray'.<sup>3</sup> The work was also criticized for portraying *decem legati* as 'Fachleute' (specialists) and 'Sachkenner' (experts).<sup>4</sup> The one positively received aspect of Schleussner's work was the correction of Mommsen's vision of the boards of ten *legati* as ad hoc magistrates. The commissions appear to have been consistently chosen by the senate, not elected.<sup>5</sup> While Schleussner's precise interpretations have not been widely endorsed, most scholars have been happy to assume that these boards of ten are in some way part of the negotiated power balance between individual members of the elite and the elite as whole.<sup>6</sup>

The continuing trend in Anglophone scholarship is to reject the application of rigid structuralist frameworks to Roman constitutional issues.<sup>7</sup> Procedures, and attitudes towards procedures, were demonstrably flexible and adaptive, regardless of any Roman rhetoric of conservatism. This is not necessarily a new concept, or one originating in

<sup>2</sup> Schleussner (1978).

<sup>3</sup> Briscoe (1980).

<sup>4</sup> Gruen (1984) 238 n. 158.

<sup>5</sup> As a caveat, Gargola (1995) 34 points out a certain fluidity in the delegation of tasks, especially within Italy: very similar assignments could be given to magistrates, promagistrates or legates. And sometimes, it is hard to distinguish between the two in our sources: see *ibid.* 168 n. 49 for his disputing Broughton's assumption that the *quinque viri* of Livy 45.13.10–11 are magistrates based on the description of them being 'sent' by the senate, rather than elected.

<sup>6</sup> Gruen (1984) *passim*, but esp. 224, also 523 where he refers to it as an indispensable institution; Carawan (1988) 'A commission of ten was decreed *more maiorum* to advise Flamininus in the settlement of Greek affairs; among the ten were named Sulpicius and Villius, Flamininus' predecessors in the Macedonian command. The continued involvement of these consules should probably be seen as a *gesture of solidarity within the senate leadership*, rather than a sign of party rivalry as is sometimes assumed' (229; the emphasis is my own). Even Eckstein, who argues strongly that the general had greater authority and leadership than the commissions in shaping the settlements, still suggests that *decem legati* 'ease the attainment of unity' and provide a 'method of preserving *concordia*' ((1987) 264–6, esp. 265; 294–303).

<sup>7</sup> See esp. Lintott (1981) 59 and Brennan (2000) *passim*; for a single illustrative example see the discussion of discretionary prorogation (*ibid.* 145). This has also become a dominant mode of interpretation for studying Roman religious practice, e.g. Scheid (2003) 32.

<sup>1</sup> The first tutorial essay that I wrote for Peter was on Sulla, after which he suggested we had better go back a little and read some Polybius in order to understand what was happening in the later period; in the spirit of that first lesson, this chapter tries to read the evidence across periods. I am grateful to T. Pollard, C. Smith, J. Quinn, D. Kellogg, and many more for their comments and feedback on earlier versions of this paper.

Anglophone scholarship. Pierre Willems's analysis of the use of legates in his landmark treatise on the Roman senate treats the *decem legati* dispatched at the end of a conflict as not significantly different than other types of ambassadorial delegations sent out with a senatorial mandate.<sup>8</sup> Unfortunately, Willems, one of the few contemporary scholars cited by Mommsen, still has had his contributions largely overshadowed by Mommsen's own legacy. He surveyed all the known legations from the Second Punic War to 166 and observed that most matters were delegated to groups of three, but that five or ten were preferred for matters of greater importance: religious affairs, peace treaties, and provincial organization. Because he made no assumption that the use of *decem legati* was a separate institution, he found no need to explain instances that seem to deviate from an assumed norm.

The lack of more recent focused discussion on boards of ten may also be explained in large part by our common periodization of Roman history.<sup>9</sup> In what we might term the Polybian period, the period of overseas conquest down to 146, boards of ten appear regularly in ancient sources; Schleussner's own work on the *decem legati* is largely confined to this earlier period because of the availability of evidence. The delegations in this period seem to follow a relatively well-defined pattern. Usually after a vote for peace by both the people and senate the ten commissioners were dispatched to the theatre of action.<sup>10</sup> Once on-site, the *decem legati* often seem to have acted in small groups, dividing the tasks at hand.<sup>11</sup> They appear at times to be following instructions, at other times to be acting on personal initiative.<sup>12</sup> Sometimes they were decisive, other matters they deferred to the senate. However, the senate might also refer a

<sup>8</sup> Willems (1883) 2.506–10.

<sup>9</sup> Flower (2010) convincingly argues for a radical re-periodization of the Roman history for the period usually discussed as the Republic. She argues for six distinct republics bracketed by a pre-republican period after the monarchy and a proto-republic down to the creation of the Twelve Tables and the two triumphal periods and Caesar's dictatorship. She also acknowledges two key transitional periods, 88–81 and 53–49. In her schema, the changes in the use (or disuse) of *decem legati* across periods could support her theory of different republics.

<sup>10</sup> Baronowski (1983) 223 who reconstructs the chronology of 196 BC using the testimony of Livy 30.42.11–43.4 (201 BC) and Polyb. 21.24.1–9 (189 BC) as comparative evidence.

<sup>11</sup> e.g. Polyb. 18.48 and Livy 45.31.

<sup>12</sup> Livy 37.55: the basic outline of the settlement of Asia is decided at Rome before the appointment of the commission which will handle specific details on the ground.

matter to them.<sup>13</sup> They delivered orders to foreign kings, re-arranged territory, and shaped foreign policy through their reports to the senate.<sup>14</sup> Yet, for all the available testimony on *decem legati* during this period, there is a good deal of speculation regarding their actions and influence: modern scholars have wanted to credit them with everything from land surveys to the cultivation of lasting networks foreign clientele.<sup>15</sup> There is also a tendency to assume the existence of such commissions even where no evidence exists.<sup>16</sup>

On the other hand, discussion of the *decem legati* in the post-Polybian period is meagre both in the primary evidence and in the scholarship. The paucity of sources may be an accident of survival. Morstein-Marx is one of the few to consider the institution in the wider context of the late Republic; he implies that the failure to issue a commission to Sulla at the end of the First Mithridatic War makes a demonstrable break from past practice and further speculates that Sulla may have sought such a commission in order to add legitimacy to his Eastern settlement.<sup>17</sup> And, he offers the suggestion that 'Lucullus's ostentatiously traditional procedure [sc. employing *decem legati*] here [in c.68 BC] contrasted sharply with that employed by Sulla in 85–84 and advertised symbolically... the dominant position of the senate in the post-Sullan regime'.<sup>18</sup> Whether Sulla sought (but failed) to obtain a legation, or whether he chose to dispense the formality, the nature of settlement remained his to determine. His actions in the East were unsanctioned by those in control at Rome and the settlement was largely formulated to support Sulla's hostile

<sup>13</sup> Polyb. 18.42.6–7 with Gruen (1973) 125 for discussion.

<sup>14</sup> Polyb. 18.47: ordering Antiochus to keep his hands off the Greek cities of Asia Minor; Livy 45.31.12: Leucas detached from Acarnania and Diodorus 31.8.6: Amphilochoia removed from Aetolian control; Livy 33.44.6–9: shaping Roman foreign policy in the run up to Antiochene Conflict and engagement with Nabis.

<sup>15</sup> Romano (2003) 279–80: 'Certainly detailed maps would have been made for the use of the commissioners'; Rawson (1973) 226–7: 'We see that the *amplissimae clientelae* stretched over various of Asia Minor; on present evidence one would suspect that they had been largely established the Ap. Nero who was one of Manlius Vulso's ten *legati*.'

<sup>16</sup> See Morstein-Marx (1996) 12–13 esp. n. 6 for a critique of scholarship which assumes without evidence that a decemviral commission was sent to Macedonia in 148 to assist Q. Metellus or that Mummius' commission also settled affairs in Macedonia; see also *ibid.* appendix B (345–6).

<sup>17</sup> (1996) 267–8.

<sup>18</sup> (1996) 304.

return to Rome and resulting violence.<sup>19</sup> He provided a clear model in which the institution of the *decem legati* could be irrelevant to the organization of conquered territory. The question then remains why the institution survived at all in the post-Sullan era.

A closer look at the institution of *decem legati*—not just in the post-Sullan period, but throughout its use—provides an illustration of the historian's interpretative choice. When writing the history of this institution, choosing a fixed structural interpretation leads to a narrow representation of the phenomenon and supports a familiar narrative of change, even decline in the later Roman Republic.<sup>20</sup> The Roman, particularly Ciceronian, rhetoric of decline and political conservatism, can skew our interpretations of the events themselves. Yet, there is substantial evidence to suggest that the institution over a wide period can be more productively read as a fluid practice, contingent on the context of each individual instantiation.<sup>21</sup> As will be illustrated in the following discussion, the survival of the institution in the post-Sullan Republic ought to be attributed to this well-established flexibility and contemporary perceptions of the historic efficacy of the institution. What follows is a detailed look at Lucullus' commission of ten, how it is presented in our source materials and how it can be contextualized in terms of earlier precedents and events which follow.

Not far off the 100th anniversary of the settlement of Achaea by Lucius Mummius, Cicero decided to compose a political treatise in the form of philosophical dialogue. In May of 45 Cicero was still deep in mourning for his dead daughter. At the beginning of the month the letters to Atticus are filled with practical issues arising from his desire to build a shrine (*fanum*) for her.<sup>22</sup> As the month progresses he throws himself into writing, seeking solace in intellectual endeavours, but becomes frustrated at the need to censor his options on Caesar and contemporary politics.<sup>23</sup> The abrupt announcement of this new project seems to be another attempt at philosophic self-soothing with

<sup>19</sup> For the nature of Sulla's settlement, see Memnon (*FGrH* 434) 25.2 and App. *Mith.* 55 with discussion by Yarrow (2006a) 249–50.

<sup>20</sup> Lintott (1972), Levick (1982), Yarrow (2006a) 203–4.

<sup>21</sup> See above n. 6 with corresponding in-text discussion.

<sup>22</sup> The first mention of this plan in the letters is *Att.* 12.18.1 = SB 254.1, 11 March 45; by May the question was which *horti* might be available for purchase and appropriate for the shrine, as well as provide an exurban residence for Cicero (Shackleton Bailey (1966) appendix 3).

<sup>23</sup> See esp. *Att.* 13.27 = SB 297, 25 May 45.

fewer potential political pitfalls. He had been reading a good deal of Dicaearchus and wished to write something in a similar vein.<sup>24</sup>

Cicero's initial instinct is to set the dialogue at Olympia and to select his interlocutors from amongst Mummius' *decem legati*. This presents him with a problem. Even in Cicero's presumably complete copy of the *Histories*, Polybius doesn't report the names of the ten.<sup>25</sup> Cicero, like us, took Polybius to be the most obvious and trustworthy source on the aftermath of 146 BC. In extant fragments from the final book of the *Histories*, Polybius emphasizes his special relationship with the commissioners, particularly their decision to deputize Polybius himself to resolve legal disputes after they left Greece (39.4–5).<sup>26</sup> It is unclear to me why he would have omitted their individual identities.

Having failed to find answers in Polybius, Cicero tries to puzzle out the names of Mummius' *decem legati* and enlists Atticus and his team of slaves and freedmen in the prosopographical efforts over the course of the next ten days or so. Most of their arguments are based upon whether certain likely individuals were old enough at the time to have been selected to serve, based on when they had held other magistracies.<sup>27</sup> In the end, Cicero convinces Atticus to just send a slave to check the public records of *senatus consulta* from the year of Mummius' consulship.<sup>28</sup> This produces the desired results and Atticus apparently did send Cicero the names of all ten.<sup>29</sup> Unfortunately for us, the full list only appeared in the unpublished half of their correspondence.

Watching Cicero engage in his own research provides invaluable insight into the types of available records and what near contemporaries thought to be obvious means of conserving the past. Besides Polybius' *Histories*, the *Annales* of Libo, and the book of senatorial records, Cicero and Atticus also draw upon memories of honorific statues, family narratives, and even poetic compositions preserved by some of the personages in question.

<sup>24</sup> It appears from *Att.* 13.31.2 = SB 302.2, 28 May 45 that Atticus had recommended certain works by Dicaearchus to Cicero.

<sup>25</sup> *Att.* 13.30.2 = SB 303.2, 28 May 45.

<sup>26</sup> The most thorough discussion of the activities of the commissioners and Mummius, as well as their relationship to Polybius is Morstein-Marx (1996) 57–96.

<sup>27</sup> *Att.* 13.32.3 = SB 305.3, 29 May 45.

<sup>28</sup> *Att.* 13.33.3 = SB 309.3, 2 June 45.

<sup>29</sup> *Att.* 13.4.1 = SB 311.1, 4 June 45.

In the midst of this historical autopsy, after Cicero has requested the records of the senatorial decrees be checked, but before he has received the definitive list from Atticus, he happens to draw a contrast between historical and contemporary practices regarding boards of ten:

I consider it certain that [Spurius] Mummius was at Corinth. Indeed, the Spurius who recently died often used to recite to me letters written in verse sent to his friends from Corinth. However, I do not doubt that he was legate for his brother, not amongst the ten. And, besides, I admit that it was not the custom of our ancestors to select for the ten men those who were closely connected [*necessarii*] to the imperators, just as we—being ignorant of the most noble principles [*pulcherrimorum institutorum*] or else being negligent—sent to Lucius Lucullus Marcus Lucullus and Lucius Murena and others most closely connected [to him]. Moreover, it makes *bon sens* that his brother had him amongst his principal legates.<sup>30</sup>

The origin of Cicero's confusion is in part attributable to the imprecision of the term, *legatus*. Spurius Mummius was a legate, but what kind of legate was he? Broughton categorizes legates in his *Magistrates of the Roman Republic* as 'Legates, ambassadors' or 'Legates, lieutenants' or 'Legates, envoys'. For him *decem legati* were 'legates, ambassadors'. The Latin is never so precise: Broughton, like Cicero before him, must deduce the function of particular legates from context; no official terminology existed to make such distinctions.<sup>31</sup> The amorphous role of the legate in all its guises allows the role of the *decem legati* to be equally amorphous.

Here Cicero directly refers to a shift in patterns of behaviour and picks out one particular instance as exemplary of the whole trend. For Cicero the events in Asia during the middle of the Third Mithridatic War mark a definitive break from the practices previously in place. Cicero is talking about events that took place more than twenty years before the composition of this letter and at the time of writing he has his eye well fixed upon the character of Caesar's dictatorship. Nevertheless, this is a private letter to a close friend on a relatively uncontroversial topic. Here we are perhaps as close as we can come to Cicero's rhetorically unfiltered historical opinion. The desire to construct a philosophic dialogue using Mummius' *decem legati* as interlocutors suggests an idealization of the institution, and particularly a lost form of the institution. Cicero chose his interlocutors as exemplary figures and

<sup>30</sup> *Att.* 13.6.4 = SB 310.4, 3 June 45. The translation is my own.

<sup>31</sup> Note how different Broughton's approach is from Willems (see above n. 7 and corresponding discussion).

appropriate mouth-pieces for the idea espoused in his dialogues.<sup>32</sup> In this case he did not know the individuals in question, only their participation in a political institution, thus it must be their role, not their individual identity, which Cicero considered exemplary. His off-hand comparison of the potential interlocutors with more recently appointed commissions implies the perceived need to correct present 'misbehaviour' by reference to the exemplary past.

But was he justified to point to Lucullus' *decem legati* as a breaking with past practice and if so how? Thanks to Plutarch's *Life of Lucullus* we have some idea of why Cicero might have come to this judgement.<sup>33</sup> It describes how the *deka presbeis* had been sent out to settle the affairs of Pontus after the senate received an official communication from Lucullus that Tigranes and Mithridates had been wholly subdued. Upon their arrival, Plutarch says that these commissioners witnessed the mutinous behaviour of Lucullus' soldiers. In fact Plutarch implies that these men were sought out as an audience by the soldiers wishing to express their dissatisfaction. Plutarch goes on to align the disgruntled soldiers with the partisanship of the people and demagogues for Pompey; this is then contrasted with the views of the senate and nobility who thought Pompey was stealing Lucullus' triumph. Plutarch breaks this strict dichotomy by focusing on the perspective on those on ground with the commanders. These judged that Lucullus was most wronged by how Pompey isolated him, and not only ignored the decrees and edicts that were issued by Lucullus and the ten commissioners, but in fact overrode these decisions both with counter-edicts and with the threat of force. After this analytic interlude, Plutarch returns to his narration of events by describing how the friends of the commanders arranged a face-to-face meeting between the two.

A few points are of immediate relevance. First, Plutarch makes no direct comment about the partisanship of the *deka presbeis* and he fails to report their identities. This suppression of their potential bias in favour of Lucullus fits with Plutarch's moralizing narrative objectives at the end of chapter 35. The ten could not serve as ironic witnesses to Lucullus' failure to control his own troops, let alone the territory he claimed to conquer, if their personal connections to him were made explicit. Yet in chapter 36 there are twice ambiguous

<sup>32</sup> van der Blom (2010) 171–4.

<sup>33</sup> 35.5–36.2; Broughton (1946) offers one of the only modern discussions of this episode.

references to members of the Roman elite who are on location in Asia Minor. The first such reference has those individuals indignant at Pompey's disregard for the settlement of the territory begun by the Lucullus and the ten. The second such reference refers to friends of the commanders who act to facilitate a compromise. These ambiguous references may well describe the behaviour and identity of the *deka presbeis*. Who would be more indignant at the overturning of edicts than the ten themselves? Who better placed to convince Lucullus to meet with Pompey? And vice versa?

That there was room to take artistic liberties with the narration of these events is well illustrated by contrasting Plutarch's report of the meeting between Lucullus and Pompey as an amiable stalemate orchestrated by their friends, and Dio's report that Lucullus sought out Pompey to convince him that there was no need for his presence because of the war's completion:

When [Pompey] was now in Galatia, Lucullus met him and declared the whole conflict over, claiming there was no further need of an expedition, and that for this reason, in fact, the men sent by the senate to arrange for the government of the districts had arrived. Failing to persuade him to retire, Lucullus turned to abuse, stigmatizing him as officious, greedy for war, greedy for office, and so on. Pompey, paying him but slight attention, forbade anybody longer to obey his commands and pressed on against Mithridates, being eager to join issue with him as quickly as possible.<sup>34</sup>

We ought to note two features of this passage. First, part of Lucullus' argument rests on the presence of men sent by the senate to organize the territory. Second, Dio's Lucullus holds up the *decem legati* as representatives of the senate,<sup>35</sup> not as an extension of his own authority.<sup>36</sup>

Setting aside the literary crafting of these narratives, taken together the passages present us with the raw fact that Pompey felt empowered

<sup>34</sup> 36.46; translation by E. Cary.

<sup>35</sup> Schleussner (1978) 153ff. points out legates need not be senators. The key example is Diodorus 37.8.1, a panegyric passage on the Sicilian governorship of a Lucius Asyllius (= L. Sempronius Asellio? Gov. 96) including a reference to his picking Publius, an esteemed member of the equestrian order resident in Syracuse, as his legate. Also see Nepos, *Atticus* 6.4 with discussion by Millar (1988) 43–4. I am not aware of any cases of members of a board of ten not being senators, though the record is far from complete.

<sup>36</sup> Oddly, three chapters earlier (36.43.2) Dio says that the People had been the ones to dispatch the *decem legati*. Twyman (1972) 868 gives such weight to this assertion that he uses it to support his argument that 'political allies of Lucullus at Rome thought the *comitia* more sympathetic to Lucullus' interests than the senate'.

to disregard the actions of the *decem legati* while they were still on the ground in the process of fulfilling their senatorial charge. Plutarch suggests that his ability to do so rested on his military strength: 'nor would Pompey even suffer any one to visit [Lucullus], or to pay any heed to the edicts and regulations which he made in concert with the ten commissioners, but prevented it by issuing counter-edicts, and by the terror which his presence with a larger force inspired.'<sup>37</sup> The situation on the ground, including the territorial gains of Tigranes and the unrest amongst Lucullus' troops, allowed Pompey to justify his alienation of not only Lucullus but also the board of ten. We can reasonably infer from the testimony of Cicero that Pompey also felt he would not be held accountable in Rome for these actions against the board of ten because the board would be seen by the rest of the senatorial elite as an extension of Lucullus, not an independent body safeguarding the senatorial interests. Or, perhaps Dio and Plutarch are right that Pompey was willing to disregard the perspective of the senatorial elite, as long as his actions were in line with the perspective of *populus*.

In order to contextualize this incident, we need some means of accessing how serious a transgression it was for a commander to disregard the decisions taken by a board of ten. Polybius gives a dispassionate report of two disagreements between Flamininus and the ten commissioners, one over the so-called 'fetters' of Greece (18.25.12) and the other over who should have possession of Corinth, Triphylia, Heraea, Oreum, and Eretria after the Second Macedonian War (18.47.10). Polybius does not imply any antagonism, but simply says that in the former case the commissioners prevailed after offering a partial compromise to Flamininus and in the latter case the matter was referred to the senate for a final decision. We can infer from these incidents that even as independent a commander as Flamininus was hesitant to override the decisions of *decem legati*, although he was not above triangulating his relationship with them so as to obtain his desires via another avenue.<sup>38</sup>

Yet, 196 BC is 130 years before the meeting of Pompey and Lucullus in Galatia. How robust was the authority of the *decem legati* in this

<sup>37</sup> 36.1; translation by B. Perrin.

<sup>38</sup> Carawan (1988) 229 points out that Plutarch (*Flam.* 10) assumes that the commander, not the commissioners won the power struggle over the fate of the fetters! Also see Walsh (1996) 354 and Eckstein (1987) 294–303.

later period? Perhaps by accident, or perhaps not so accidentally, the same theme emerges shortly beforehand in Cicero's *Verrine Orations*, particularly in the second oration of the second act, i.e. in one of the undelivered speeches published after the case had already been successfully settled. Four times in the second oration Cicero emphasizes the origins of the so-called Rupilian law.<sup>39</sup> This was not a Roman *lex*, but was considered law in Sicily. In fact it was a decree of the consul Rupilius enacted under the advice of a board of ten. It concerned jurisdiction in legal disputes in Sicily and thus determined when cases would be brought before the governor or when they would be heard by local courts. Cicero goes into some detail describing its provisions in order to catalogue the ways in which Verres transgressed against it.

The repeated references to the Rupilian law do not in themselves demand repeated reference to the *decem legati*. The emphasis on the boards of ten must serve its own rhetorical purpose as part of Cicero's damnation of Verres. Cicero needed some way to differentiate Rupilius' ability to impose his will on Sicily for Verres; the repeated mention of the *decem legati* reminded the hypothetical jurors that Rupilius' decree was the product of consensus while Verres acted unilaterally, a rogue element, isolated from the moral high ground of the unified senatorial class. The contrast between Verres and the senatorial ideal is further stressed in both sections 39 and 40 through mention of the strict respect for the Rupilian law shown by all his predecessors:

There was the Rupilian law, which Publius Rupilius, the consul, had enacted, with the advice of ten chosen commissioners; **that every praetor and consul in Sicily had always observed this law.** Verres said that he should not appoint judges according to the provisions of the Rupilian law.

When it was prescribed to you by law, O most wicked and shameless man, in what way you were to appoint judges among the Sicilians; when **the authority of a general of the Roman people, when the dignity of ten commissioners, men of the highest rank, when a positive resolution of the senate** was against you, in obedience to which resolution Publius Rupilius had established laws in Sicily by the advice of ten commissioners; when, before you came as praetor **everyone had most strictly observed the Rupilian law** in all points, and especially in judicial

<sup>39</sup> Maggio (1993); Maganzani (2007).

matters; did you dare to consider so many sacred things as nothing in comparison with your own plunder?<sup>40</sup>

The latter is most elaborate in its explanation of what precisely Verres had transgressed by moving against the Rupilian law. His actions were an affront to the *auctoritas* granted to a magistrate by the Roman people, the *dignitas* of men of the highest standing, and the formally expressed opinion of the senate as a whole. Cicero refers to these three principles as *tot res sanctissimas*, 'so many most sacred things', thus impugning the impiety of Verres' political transgressions.

Cicero sanctifies the power granted by the people and collective force of the senate. Yet to these familiar elements he adds the third element of *dignitas* and raises it to the same sacrosanct level. The decisions of the *decem legati* demand respect, not because they are the long arm of the senate, the embodiment of the *senatus consultum*, but because their opinion ought to hold sway on account of their own status. The Caesarean years have taught us something of the value of *dignitas* to aristocratic Romans, but we also are thus inclined to consider *dignitas* an attribute of the individual wishing to distinguish himself from the group.<sup>41</sup> Here the *dignitas* is a collective possession of the legates, the source of their collective influence. The suggestion of Cicero's language is that Verres' transgression against this collective *dignitas* is a threat to stability. This shared *dignitas*, possessed by the group rather than the individual, may in fact explain much of the efficacy of earlier commissions of ten and also the attachment of the senatorial elite to the institution in the late Republic.

Cicero wanted his audience to believe in a past where these three elements, these *tot res sanctissimas*, worked in harmony with one another. He would not want his audience reminded of the senatorial decision in 135 BC which overturned the earlier judgement of a board of ten *legati* in a territorial dispute between Samos and Priene.<sup>42</sup> The board of ten had previously found in favour of Samos, but the senate chose to uphold instead an earlier decision reached in arbitration under the adjudication of Rhodes.<sup>43</sup>

<sup>40</sup> 2.2.39 and 40; a modified version of C. D. Yonge's translation.

<sup>41</sup> Morstein-Marx (2007) and (2009).

<sup>42</sup> Sherk (1969) no. 10A-B; re-edited by Famerie (2007).

<sup>43</sup> Habicht (2005) re-dates and explores the circumstances of the original adjudication by Rhodes.

The perception of the *decem legati* from Cicero's vantage point, a perception found all too often in modern scholarship as well, is of a once effective historical institution which no longer functions properly. There are two negative consequences of such a perception. First, it flattens out the nuance of the past instances, denying historic inefficiencies and innovation, and secondly it rejects contemporary experimentation with the same form as abnormal, even abhorrent.

There are numerous instances of earlier innovative commissions which are substantially similar to boards of ten, but do not strictly fit the pattern of ten men sent out after a war to advise on and implement a settlement agreement. Even the 'first'<sup>44</sup> such commission seems to have been formed as a contingency plan after the terms secured by C. Lutatius Catulus in 241 to end the First Punic War were rejected: their task was to renegotiate more generous terms, not to organize Sicily.<sup>45</sup> In 193 we find a commission operating in Rome instead of abroad.<sup>46</sup> In 167 we find a small group of five sent off on a secondary task and thus presumably not operating in close relationship to the commanding magistrate.<sup>47</sup> In both 132 and 116 BC we find commissions

<sup>44</sup> This is the first such legation of ten men that broadly fits the pattern of being sent out at the end of a conflict: there were certainly earlier *decem legati* such as those sent out with Q. Oglunius Gallus at their head in 292 to bring the serpent of Asclepius to Rome from Epidaurus.

<sup>45</sup> Polyb. 1.63.1 with Walbank, *HCP* 1.127; Eckstein (1987) 133. There is no agreement on how to interpret the short passage: *τούτων δ' ἐπανερχθέντων εἰς τὴν Ῥώμην, οὐ προσεδέξατο τὰς συνθήκας ὁ δῆμος, ἀλλ' ἐξαπέστειλεν ἄνδρας δέκα τοὺς ἐπισκευομένους ὑπὲρ τῶν πραγμάτων*. Mommsen focused on the *dēmos* being the one to send the men, whereas Eckstein follows De Sanctis's assumption that this was a senatorial response to negative vote. Both Walbank and Eckstein err in assuming Q. Lutatius Cerno (cos. 241/0), the commander's brother, led the commission: nothing in Val. Max. 1.3.2 or Zonar. 8.17 suggests that his involvement in the settlement predates the beginning of his consulship. In fact, Zonaros includes the participle *ὑπατεύσας*, 'having become consul', in the sentence describing his departure to Sicily. Wardle (2005) gives an improved reading of the Valerius Maximus passage: if there is a connection between events narrated by Valerius and those described in Orosius 4.11.6–9, then this passage can also be associated with his consulship, not his hypothetical participation in the commission of ten men.

<sup>46</sup> *cum Antiocho quia longior disceptatio erat, decem legatis, quorum pars aut in Asia aut Lysimachiae apud regem fuerant, delegata est. T. Quintio mandatum ut adhibitis iis legatorum regis uerba audiret responderetque iis quae ex dignitate atque utilitate populi Romani responderi possent*. Livy 34.57.4–5 cf. 34.59.1–2; Diod. 28.15.1. Compare Cic. Att. 4.15.5 = SB90 (54 BC) for *decem legati* and a consul making decisions regarding territory in greater Italy; see Linderski (1985) 249 n. 7 for review of scholarly interpretations of this passage.

<sup>47</sup> When ten commissioners were sent to settle Macedonia, five were sent to Illyria: Diod. 31.8.6.

sent out to settle territorial matters without there being an assigned magistrate or preceding conflict.<sup>48</sup> These situation-dependent arrangements illustrate the consistent flexibility of the institution of the *decem legati*, and, in all likelihood, this flexibility added to the perception of the efficacy of the institution. Such flexibility also suggests that the power of the institution rests not in a particular set formula, but is instead intrinsic to the group with its collective *dignitas*. Plurality seems to matter more than precise numbers or fixed circumstances.

When Cicero measures the efficacy of Lucullus' *decem legati* against that of Mummius' *decem legati*, he is drawing a false parallel. The commission of 146 BC was only in field for six months according to Polybius, whereas the Lucullus' *decem legati* may have been in Asia Minor for almost four years.<sup>49</sup> They were specifically dispatched to deal with a portion of conquered territory while Lucullus continued fighting in an adjacent sphere of action. Circumstantially their undertaking was substantially different from the outset. And, even this extended use of *decem legati* is not without parallels from the 120s in Asia and the 90s in Spain.<sup>50</sup> If in the late Republic we find the

<sup>48</sup> Jones (2004) uses a new inscription from Metropolis to demonstrate leadership function of the five legates of 132 and also to support a hypothesis that the Roman senate had declared the 'freedom' of the Asian cities much like the decree of 196. The inscription seems to refute the interpretations of Morstein-Marx (1996) 107 and Gruen (1984) 601, and gives slightly more weight to Schleussner (1976), although parts of the latter work remain problematic, especially his interpretation of local era years. In 116, L. Opimius led ten legates to settle the kingdom of Numidia (Sall. *Iug.* 16.2–5, 20.1; Earl (1965)). Compare also, App. *Hisp.* 99 for another commission dispatched without prior hostilities, size not given.

<sup>49</sup> The chronology of the *decem legati* sent to settle Pontus is far from clear. Broughton (1951–2) 2.131 n. 6 holds that they were in the East from 70 through 66 BC, but in (1946) 40 n. 25 he preferred a date of 69 BC: 'the alliance with Machares and the capture of Sinope and Amasia had occurred by the autumn of 70'. None of references listed in *MMR* seem to decisively confirm this extended presence (3–4 years). The strongest testimony in favour of this time-frame is Plut. *Luc.* 24.1–2 as possibly indicating the point at which Lucullus is likely to have requested the board of ten be sent out. There is not explicit record of the request, but Lucullus is said to have taken as the sending of a gold crown by the son of Mithridates as definitive proof that the Pontic war was concluded and that it was an appropriate moment to undertake a second conflict against Armenia. Magie (1950) 1.349, 2.1219 n. 58 assumes that the ten did not arrive until 67 BC. He may be giving more emphasis to the vague reference at Dio 36.43.2 where it says that 'a short time before men had been sent out to settle the conquer area' and then goes on to report the circumstances surrounding the *lex Manilia*. So also Twyman (1972) 868–9. To my mind, neither the Dio passage nor the Plutarch can be taken as definitive indicators of the timing of the embassy.

<sup>50</sup> App. *Hisp.* 100 seems to suggest that the *decem legati* who consented to Didius' treacherous massacre of the Celtiberians had come to the province five years earlier in



prorogation of magistracies, perhaps we ought not to be surprised by extended legations as well.

Pompey's disregard for the *decem legati* in 66 BC seems to have done no particular harm to the perceptions of the institution itself. Had Pompey's actions killed the efficacy of the *decem legati*, or more precisely the memory of the efficacy of the *decem legati*, there would have been no motivation for Caesar to spend political capital to secure his own personal set of ten commissioners in 56 BC.<sup>51</sup> The granting of this commission is championed by Cicero in public and bemoaned in private, but neither the championing nor the bemoaning would be necessary if he did not understand these ten commissioners to be a useful political tool in the hands of Caesar.<sup>52</sup> And even this incident did not dissuade Cicero from his belief that commissions of ten might represent (at least symbolically) the legitimate intentions of the Roman senate. During his last days as he composed his polemic attacks on Antony and worried at a solution to the crisis, he still found useful precedent in the practice of appointing such commissions:

[Antony] will never come into our camp;—much less will we go to his. It follows, then, that all demands must be received and sent to and fro by means of letters. We then shall be in our respective camps. On all his demands I shall have but one opinion; and when I have stated it here, in your hearing, you may think that I have gone, and that I have come back again.—I shall have finished my embassy. As far as my sentiments can prevail, I shall refer every demand which Antonius makes to the Senate. For, indeed, we have no power to do otherwise; nor have we received authorization [*permissum*] from this assembly, such as, when a war is

the time of M. Marius and the war against the Lusitanians; Brennan (2000) 501 is incredulous and assumes this is a conflation made by Appian. Morstein-Marx (1996) 109 points out that if Strabo 14.1.38 is read literally the ten commissioners were sent out with M. Aquilius in 129 and they are unlikely to have returned before 126 the year of Aquilius' triumph according to the *fasti*. Thus their service may have lasted three years.

<sup>51</sup> Brennan (2000) 810 n. 344 *contra* Balsdon (1962) 137–9. Brennan points out that a request for *legati pro praetore* could not be considered 'unprecedented', but rather Caesar was attempting to be the architect of his own commission of ten. Thus, it is probably incorrect to accuse Dio 39.25.1 of 'incorrectly interpreting' Caesar's requests as for a traditional boards of ten, so Broughton (1946) 41 n. 26.

<sup>52</sup> In his orations (*Prov. cons.* 28 and *Balb.* 61) Cicero claims to have been chief advocate for this decree, but in *Fam.* 1.7.10 = SB 18.10 to P. Lentulus Spinther in Cilicia, 56 BC he reports the securing of the legates as well as other concessions, and then concludes: *quod ego ad te brevius scribo, quia me status hic rei publicae non delectat*...

terminated, is usually, in accordance with the precedents of your ancestors, entrusted to ten legates [*decem legatis*]. Nor, in fact, have we received any particular commission [*mandata*] from the senate at all.<sup>53</sup>

Here, Cicero seems to be suggesting that the domestic crisis be treated as foreign war and that it would be reasonable for the senate to borrow on the precedence of earlier *decem legati* to appoint a commission empowered to act on its behalf in negotiations with Antony. Thus, even Cicero when faced with politics in flux was happy to exploit the inherent flexibility of a traditional institution.

Thus from 241 to 43 BC we find two intertwining phenomena: (a) a continuity of fluid practice across periods and (b) the attachment of senatorial elite to the institution, such that there are still multiple attempts to use it in the post-Sullan period. It is as if the institution comes to represent an ideal of shared governance amongst the elite. This may well be because its authority was dependent upon the collective *dignitas* of the members, much like the authority of the senate itself. As domestic politics destabilized, the institution of *decem legati* became more rhetorically potent. That rhetoric often sought to contrast past practice with present action as a means of explaining contemporary instability and the rhetorical exaggeration of the decline of the *decem legati* helped sharpened the contrast with the institutions mythically stable past. Yet, the known usage of boards of ten in the late Republic, in fact, follows past precedence in many of their features, but especially in their situation-dependent flexibility.

<sup>53</sup> Cic. *Phil.* 12.28; a modified version of C. D. Yonge's translation.



# Imperialism, Cultural Politics, and Polybius

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