

Cass. Dio 41.43: Religion as a Liability in Pompey's Civil War¹

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After the evacuation of Italy in 49 BC, the magistrates, promagistrates, and reportedly two hundred senators opposed to Caesar gathered in Thessalonica. It was there, according to Cassius Dio (41.43), that they considered holding elections for 48 BC. Dio reports that the Pompeians even went so far as to purchase a piece of ground for the taking of auspices in correct legal form, 'so that they regarded the people and the whole city as present there' (χωρίον ἐς τὰ οἰωνίσματα, τοῦ δὴ καὶ ἐν νόμῳ δὴ τι ἀτὰ δοκεῖν γίνεσθαι, δημοσιώσαντες, ὥστε καὶ τὸν δῆμον δι' αὐτῶν τὴν τε πόλιν ἅπασαν ἐνταῦθα εἶναι νομίζεσθαι). In the end, however, they held no elections, 'for the reason that the consuls had not proposed/had not carried the *lex curiata*' (αἴτιον δὲ ὅτι τὸν νόμον οἱ ὕπατοι τὸν φρατριατικὸν οὐκ ἐσενηνόχεσαν).

This brief notice in Dio is the only evidence for this incident in the Pompeian camp in 49, and the only secure reference to Pompeian difficulties with the curiate law in this year. The incident has attracted little interest amongst scholars of the civil war between Pompey and Caesar, and is frequently dismissed as just one more case in which Republican Romans used a constitutional or religious scruple as a pretext (the theory being that the Pompeians actually had no wish to hold elections in 49, and simply used the supposed lack of a curiate law as an excuse). The story has drawn more attention from scholars of the *lex curiata*, but their treatments have concentrated on the implications of the incident for current theories about the purpose of the *lex curiata* (in particular the ongoing debate about whether the *lex* conferred *imperium*, auspices, or both, or merely legitimated one, or more, of these).² The purpose of this paper is not to reopen the debate about the

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² On the interpretative problems posed by the ancient evidence, see now Stasse 2005; Van Haepren 2012.

purpose or origins of the *lex curiata*,³ but to shift our focus from what Dio may or may not tell us on that score, to what he clearly does tell us about the historical, political, and religious significance of this incident. What I will argue is that this incident from 49 BC sheds valuable light on two things in particular: firstly, on the procedure and importance of the curiate law in the Late Republic; and secondly, on the extent to which Roman generals like Pompey might be disadvantaged by their respect for religious requirements.

In what follows, I will begin with the question of what actually happened in 49 BC, and then move on to consider the implications for our understanding of the curiate law and of religion during the Civil Wars.

1. Reconstructing Dio 41.43

The situation outlined so sparingly by Dio, if it is historical, raises several questions. Firstly, the current consensus is that the curiate law was incredibly easy to obtain.⁴ If this was so, why had the consuls of 49 BC not passed one before they left Rome? Secondly, although the precise function of the *lex curiata* is much debated, it is clear that the law related in some way both to the auspices⁵ and to magistrates' *imperium*.⁶ Given this, how could the consuls of 49 have been waging the civil war without a curiate law up to and after the incident described by Dio, without facing constitutional problems? In other words, why did the lack of a curiate law seem to become a

³ There is an abundance of modern theories about the origins and purpose of the *lex curiata*: for an overview of the older scholarship, see Versnel 1970, 320-339; more recent summaries in Brennan 2000, 18-20 and notes; Stasse 2005, 376-380; exhaustive bibliography and discussion in Vervaet 2014, 301-4; recent discussion in *Cahiers du Centre Gustave-Glotz* 26: Tarpin 2015; Humm 2015; Van Haepere 2015. On the various functions of the *comitia curiata*, see Van Haepere 2017.

⁴ Below, **Section 2**.

⁵ Cic. *Leg. agr.* 2.27, 2.31 (the *comitia curiata* is held *auspiciorum causa*). It is perverse to take the fact that Cicero refers to the *comitia* here, not the *lex curiata* specifically, as proof that there was no link between the *lex* and the *auspicia* (so Nicholls 1967, 260; Versnel 1970, 328; Stasse 2005, 390; cf. the criticisms of Van Haepere 2012, 85). For a range of views on the nature of the link, see e.g. Altheim 1953, 86-88; Staveley 1956, 88-9; Catalano 1960, 481; Magdelain 1968, 26-30, 34-5.; Linderski 1971, 312; Develin 1977 (tenuous); Heuss 1982, 418-421; Brennan 2000, 19 and n. 91; Dalla Rosa 2003, 212; Smith 2006, 221-2, 224; Van Haepere 2012; Vervaet 2014, 300-51; Berthelet 2015, 103-137; Vervaet 2015; Humm 2015, 232; Van Haepere 2015.

⁶ Cic. *Leg. agr.* 2.30 (a *lex curiata* is necessary to conduct military affairs); Cic. *Rep.* 2.25, 31, 33, 38 (the *lex curiata* concerns *imperium*); Livy 5.52 (the *comitia curiata* '*rem militarem continet*'). For a range of views, see Mommsen 1887 (vol. 1), 609, 614; Siber 1937; Mazzarino 1946, 218; von Lübtow 1952; Catalano 1960, 424; Magdelain 1968; Versnel 1970, 339, 340-349; Coli 1973, 481; Heuss 1982; Rüpke 1990, 51; Dalla Rosa 2003, 245; Smith 2006, 217, 219; Vervaet 2014, 317-21; Vervaet 2015, 216; Tarpin 2015, 278.

problem at this particular point in 49 and not before? To date, four main explanations have been proposed.

The first solution is to suppose that Dio's reference to the curiate law is an error, and that it was not actually relevant to the events described.⁷ A variation on this theme has been to argue that it was in fact the Pompeians' absence from the *urbs*, not their lack of a curiate law, that prevented them from electing new consuls.⁸ The argument depends on the premises that the *comitia centuriata* had to be held one Roman mile from the *urbs*, and that the *comitia curiata* had to be held within the *urbs*/within the *pomerium*. Of these claims, the assumption that the curiate assembly could only be held within the *pomerium* is the least secure: though likely, it is a modern hunch.⁹ That the *comitia centuriata* could only be held close to the city may well be right, at least from 357 BC onwards. If Livy 7.16 is to be relied upon, a plebiscite in that year made it illegal for anyone to convene the *populus* (*populum sevocaret*) away from Rome (though it is worth noting that Livy does not specify which assemblies the tribunes had in mind, nor how close to the city those assemblies were thenceforth required to be).¹⁰ Perhaps the curiate assembly was somehow exempt from this requirement,¹¹ but this would still seem to make it impossible for the Pompeians legally to hold electoral assemblies in Thessalonica. The argument therefore runs that Dio has misunderstood the problem facing the Pompeians, for they would hardly have worried about the curiate law when they could not have held elections anyways.

This argument is open to four objections. The first is that Dio attributes the lack of a curiate law to the current consuls of 49 BC, not the consuls to be elected in Thessalonica for 48. If the consuls of 49 had indeed failed to pass their curiate laws before leaving Rome, then the issue of their own legitimacy and ability to preside over elections should be seen as separate from the issue

⁷ So Nicholls 1967, 269; Rüpke 1990, 50 n. 134; Vaahtera 1993, 101-102; Brennan 2000, 252 n. 81.

⁸ So Catalano 1960, 264-266, 272; Develin 1977, 57. Mommsen 1877 (vol. 1), 102 and n. 3 also identifies this as one of the Pompeians' problems in 49, though he accepts that the lack of a curiate law was also relevant (Mommsen 1887 [vol. 1], 614).

⁹ As noted by Vaahtera 1993, 101, 103.

¹⁰ Vaahtera 1993, 100-102.

¹¹ Not likely if the plebiscite applied to all assemblies of the *populus*, for the curiate assembly too could be described as expressing the people's will: see below, p. 6 n. 25 and pp. 12-13.

of where elections for 48 could be held. The second objection is that we should not necessarily expect Dio to tell us how the Pompeians would have addressed every constitutional issue raised by their plans. They began, it seems, with the curiate law, since it was this that gave the consuls their authority to hold elections in the first place; the issue of where elections could legally be held may have been next on the agenda. The third objection is that Dio may in fact give us some evidence for the Pompeians' proposed solution to this problem. The clue may lie in Dio's statement that the Pompeians had purchased a piece of land for augural purposes, enabling them to consider 'the whole city as present there'. His words must denote more than the mere creation of a magisterial *templum* within which to take the auspices, since this could be done on enemy territory.¹² He has typically been taken to mean that the Pompeians tried to create an inaugurated *templum*,¹³ perhaps an *auguraculum* for the augurs, or a space in which the senate could legally meet.¹⁴ One wonders, however, whether his statement is not a garbled reference to the creation of an alternative *urbs/pomerium* in Thessalonica.¹⁵ For those who accepted the propriety of the manoeuvre, recreating 'the city' itself would have enabled the Pompeians to fulfil any putative requirement that the *comitia curiata* be held within the *pomerium* and/or that the *comitia centuriata* be held close to the *urbs*. This would admittedly have been a drastic and controversial step, but it remains possible given the emergency conditions in which the Pompeians found themselves. A final objection to the view that we should reject Dio's account entirely, is that his comments on divination in the Late Republican books are usually quite accurate.¹⁶ Given how little we know about the curiate law in general, it is arbitrary to dismiss his testimony altogether.

¹² On the distinction between inaugurated *templa* and those which were not inaugurated, particularly those created by magistrates on campaign, see Linderski 1986a, 2262; Linderski 1986b, 337.

¹³ Cf. Catalano 1960, 265, 269; Vaahtera 2001, 120 n. 109.

¹⁴ According to Varro (ap. Gell. *NA* 14.7.7) and *Serv. Aen.* 7.174, the senate could only meet in an inaugurated *templum* (Vaahtera 1993, 108 and n. 64; *contra* Magdelain 1977, 15 n. 17).

¹⁵ A possibility seemingly also envisaged by Vervaeke (2014, 337 n. 108), who speaks of the Pompeians' 'creation of an augural *templum* in order to create some sort of equivalent of intrapomerial *templa*'.

¹⁶ For example, his description of the *augurium salutis* in 63 BC (Cass. Dio 63.24-25); his account of the prodigies and Sibylline oracle which delayed the restoration of Ptolemy Auletes in 56 BC (Cass. Dio 39.15-16); and his treatment of the procedure of 'watching the sky' (*servare de caelo*) (Cass. Dio 38.13). Although Dio's chronology is sometimes suspect, his details about rituals tend to cohere with those preserved in other sources such as Cicero and Livy. See especially Lintott 1997, 2510-2520,

A second modern interpretation of Dio's evidence is championed by Dalla Rosa, who argues that the curiate law conferred upon magistrates the right to take only the *auspicia urbana*, and did not impinge upon their right to take the auspices outside the *pomerium*.¹⁷ This might seem to solve rather tidily the problem of why the consuls' lack of a curiate law became a problem at this particular point in 49, since the consuls of 49 would have been exercising only military functions since their departure from Italy, whilst the act of holding elections, if indeed it required the taking of auspices within the *pomerium* as Dalla Rosa argues, would suddenly have necessitated *auspicia urbana*. However, this solution cannot be correct. Even our scant surviving evidence makes it clear that it was above all the magisterial powers needed to function outside the city which could be jeopardized by the lack of a *lex curiata*.¹⁸ This is demonstrated not only by general ancient statements to the effect that the curiate law impinged on military affairs and/or *imperium*,¹⁹ but, more conclusively, by Appius Claudius Pulcher's scramble to obtain a curiate law towards the end of his year as consul in 54 BC.²⁰ For it was only when he was preparing to depart for his province of Cilicia, not whilst he was fulfilling his functions within the city, that Appius seems to have felt the need for the *lex curiata*.²¹ (Having failed to obtain it, Appius went on to assert that the curiate law was not absolutely necessary in order for him to assume command in his province,²² and this argument may well have resurfaced in 49, as we shall see. Yet in 54, at least, it is plain that many contemporaries disagreed with Pulcher,²³ and that he himself would have preferred to obtain the law: it was for this reason, according to Cicero, that he joined in the notorious electoral corruption

¹⁷ Dalla Rosa 2003, 212.

¹⁸ This does not mean that the sanction conferred by the *lex curiata* was not also needed for affairs *domi*, however: cf. Vervaeke 2014, 310-321; Van Haepelen 2015: 227-9; Van Haepelen 2017: 395.

¹⁹ Above, n. 5.

²⁰ Cic. *Att.* 4.17.2-3 (1 Oct. 54); 4.18.4 (late Oct.); *Fam.* 1.9.25 (Dec. 54).

²¹ As noted by Drogula 2007, 437; Van Haepelen 2012, 98; but cf. the cautions of Vervaeke 2015, 221 n. 55; Van Haepelen 2015: 227-9.

²² Cic. *Fam.* 1.9.25: *Appius (...) dixit (...) legem curiatam consuli ferri opus esse, necesse non esse; se, quoniam ex senatus consulto provinciam haberet, lege Cornelia imperium habiturum*. Various explanations of Appius' reasoning have been proposed: cf. Mommsen 1877 (vol. 1), 614; Siber 1937, 239-241; Cuff 1958, 467-8; Catalano 1960, 424; Rüpke 1990, 49; Brennan 2000, 18; Dalla Rosa 2003, 245; Drogula 2007, 441; Vervaeke 2014, 335-6; Vervaeke 2015, 220-22; Tarpin 2015, 268-9.

²³ For example Cicero himself, who opines: *ne id quidem valde dubium est*. Cicero's apparent surprise that Appius made his argument *etiam in senatu palam* also suggests that the majority view was not in his favour (Humm 2012, 62; cf. Stasse 2005, 396-7).

pact of this year.²⁴) Consequently, we cannot escape the problems raised by Dio's testimony by assuming that the lack of a *lex curiata* would not have affected the consuls of 49 until they attempted to hold elections. On the contrary, it ought to have caused serious doubts about the validity of their military command as soon as they began to exercise it.

The third possible interpretation of this passage of Dio is that he misattributed the lack of a curiate law to the current consuls, when in fact it was the prospective consuls-elect who would have lacked the law. Thus we might suppose that the consuls of 49 BC had indeed obtained the curiate law for themselves, but that it became apparent that the law could not be passed for the prospective consuls-elect (conceivably because there was no *urbs/pomerium* in Thessalonica within which the *comitia curiata* could be held, or because there were not enough of the correct kind of lictors in Thessalonica to attend.)²⁵ This is an attractive solution in many respects, as it would explain why the lack of a curiate law only became an issue when the possibility of electing new magistrates arose, and why the consuls of 49 were able (so far as we know) to go on commanding troops until the end of the year without further questioning of their auspices.²⁶ However, this solution does face some difficulties.

The first difficulty is that we have evidence outside Dio for ritual errors by the Pompeian leadership in 49. One hint may come from a highly tendentious passage in Caesar (*Bell. Civ.* 1.6), who alleges that the Pompeian forces in 49 confounded 'all divine and human law' in their decisions prior to abandoning the city, including their failure to wait, 'as had happened in former years, to refer the matter of their (*eorum*) *imperium* to the people'.²⁷ The *comitia/lex curiata* are not

²⁴ Cic. *Att.* 4.17: in exchange for Appius' support, Memmius and Domitius were to provide him with false evidence that his *lex curiata* had been passed.

²⁵ We do not know how the thirty lictors who represented the *curiae* in Cicero's day were chosen, nor whether they were magisterial or, alternatively, members of/chosen by each *curia*.

²⁶ This solution may also be supported by Cicero's claim that the consuls possessed *imperium* in 49 (*Att.* 8.15), but see below.

²⁷ *Neque expectant, quod superioribus annis acciderat, ut de eorum imperio ad populum feratur (...) omnia divina humanaque iura permiscentur.* It is worth noting that Caesar's accusations here may simply be untrue, or a blend of truth and falsehood, though the exact nature of his distortions is probably unrecoverable. For the sake of argument, I proceed on the premise that they would have been more effective if they contained at least a hint of truth. For a range of views on the interpretation of the entire passage, see Mommsen 1877 [vol. 2], 249 n. 3; Cuff 1958, 466-468; Marshall 1972; Linderski 1996 = 2007, 152-156; Van Haepelen 2012, 105-6; Tarpin 2015, 275-6; Van Haepelen 2017: 395-6.

explicitly mentioned here, and it is possible that Caesar's *de imperio* refers to other laws,²⁸ perhaps made necessary by the *lex Pompeia* of 52 (if we assume, for instance, that a *lex* of the *comitia centuriata* or *tributa* would have been required for those *privati* whom the senate was now recruiting as governors).²⁹ However, the fact that the curiate law could be described as *de imperio*, and as an expression of the *iussum populi*,³⁰ may suggest that it is the curiate law Caesar has in mind. If so, what exactly is he saying about it? Uncertainty arises in determining to whom *eorum* refers. Given that the preceding lines complain about the assigning of provinces to *privati*, it may be that when he speaks of 'their' *imperium* Caesar is referring only to those men, and claiming that it was they who lacked the curiate law.³¹ Although this reading would not provide explicit confirmation for Dio's account, it would be compatible with his testimony, since it suggests that at least some Pompeian attempts to pass *leges curiatae* in 49 were unsuccessful, and it is difficult to see why the consuls would have succeeded where the governors had failed.³² Alternatively, since the passage as a whole concerns decisions taken not just by these *privati* but the Pompeians *en*

²⁸ So Carter 1990, 162; Linderski 1996 = 2007, 154-5.

²⁹ Willems 1883 (vol. 2), 590 n. 2; 598 n. 5; Marshall 1972, 892-895; cf. Gelzer 1969, 225.

³⁰ *De imperio*: Cic. *Rep.* 2.25, 33, 35; Livy 9.38.15; *Iussum populi*: Livy 5.46.

³¹ We do not know whether prorogued magistrates would have required a new *lex curiata* to regularize or confirm their position as governor, or whether one *lex* per magistracy was sufficient, with the auspices remaining valid until their holder re-crossed the *pomerium*. In the former case, the Pompeians in 49 would have needed to pass curiate laws for all of their governors; in the latter, only those who did not previously hold *imperium* at the time of their appointment, such as Scipio and Domitius, would have required it. If these men are Caesar's target, and if the curiate law is the law he means, was he correct to say that they lacked it? The evidence seems to me to be inconclusive. Cicero numbers Scipio (but, interestingly, not Domitius) among those who have *imperium* in *Att.* 8.15.3, although in *Att.* 9.1.4, written only a few days later, he floats a range of possible justifications for Scipio's leaving Italy (*Scipio vel in Syriam proficiscitur sorte vel cum genero honeste vel Caesarem fugit iratum*); perhaps this shows some discomfort over Scipio's official position. Scipio later claimed the title *imperator*, which must have entailed the claim that his *imperium* was fully valid (Linderski 1996 = 2007, 156-160), and Caesar in undermining his claim to this title stresses Scipio's military losses, without raising augural considerations (*Bell. Civ.* 3.31), but it is difficult to tell how much significance we should read into this. Appius had laid claim to the title and to a triumph in 54, even though in all likelihood he never succeeded in passing his curiate law (Vervaeke 2014, 334-6). Perhaps at *Bell. Civ.* 3.31 Caesar was focusing on the strongest objection, rather than giving an exhaustive list. The author of the *Bellum Africum* reports that captured Caesarian veterans refused to call Scipio *imperator* (*Bell. Afr.* 45), but whether theirs was a constitutional objection or simple defiance is unknowable.

³² It would remain puzzling that Caesar did not attribute the lack of a curiate law to the consuls themselves more explicitly, since this could only have strengthened his argument, but perhaps his ire in this sentence was directed primarily at governors such as Scipio. The next, corrupt sentence begins with *consules* and must have alleged some kind of flaw in their behaviour as well, perhaps including their auspices.

masse, Caesar may mean to include the consuls of 49 in his criticism, in which case we may see him as confirming Dio's testimony.³³

Further support for Dio may be drawn from Plutarch's report that the consuls fled Rome in March of 49 without making 'the sacrifices usual before departure' (Plut. *Caes.* 34) or 'the sacrifices customary before a war' (Plut. *Pomp.* 61).³⁴ Of course, this is not an explicit reference to the curiate law but rather to the consuls' alleged failure to offer the *vota* on the Capitol which were required in order to depart the city *paludatus*.³⁵ However, if it is true that the consuls neglected these ceremonies in 49, it may seem more likely that they were willing (or compelled?) to bypass other ritual requirements as well, perhaps including the passage of the curiate law.³⁶

The second and strongest objection to the modern solution of assuming that it was not the consuls of 49 who lacked the curiate law, however, is that it requires us to abandon Dio's own testimony. This clearly refers to 'the consuls' (ὑπατοί) and uses the pluperfect ἐσεννόησαν to describe their failure to obtain the law, suggesting that the failure predated the attempt to hold elections, not that it was caused by that attempt.³⁷ Tempting though it may be to accuse Dio of mistakes which remove our own difficulties, it seems best to see what we can make of his account as it stands.

The best option for interpreting Dio 41.43, then, is that it was indeed the current consuls who lacked the curiate law, and that this should indeed have compromised their ability in 49 not just to hold elections but also to command troops.³⁸ The question we cannot escape, therefore, is why

³³ So Nicholls 1967, 259; Jahn 1970, 181; Rüpke 1990, 50; Drogula 2007, 441 and n. 145; Vervaeke 2014, 336-8; Van Haepelen 2017, 395-6.

³⁴ Plut. *Caes.* 34: Οἱ μὲν οὖν ὑπατοὶ μὴδ' ἂν νόμος ἐστὶ πρὸ ἐξόδου θύσαντες ἔφυγον; *Pomp.* 61: οἱ δὲ ὑπατοὶ μὴδὲ θύσαντες ἂν νομίζεται πρὸ πολέμων ἔφυγον.

³⁵ For these rituals, see Orlin 1997, 45-66.

³⁶ It remains possible that Plutarch's (clearly anti-Pompeian) sources for these passages simply lied about the consuls' behaviour, a possibility made more likely by Caesar's own statement in most MSS of *Bell. Civ.* 1.6.6 that the consuls *paludatique votis nuncupatis exeunt*. However, we may be able to save Plutarch's testimony by adopting the variant *exeant* which occurs in U (Linderski 1996 = 2007, 152 n. 71; cf. Carter 1990, 162 on possibilities for emending 1.6.7). Pelling 2011, 325 suggests that the purpose of omitting such ceremonies may have been 'to impress the public with the extremity of [Caesar's] actions'.

³⁷ Rightly noted by Van Haepelen 2012, 104.

³⁸ So Mommsen 1887 (vol. 1), 614; Meyer 1922, 313; Altheim 1953, 87; Jahn 1970, 181; Rawson 1994, 432; Humm 2012, 60; Vervaeke 2014, 336-8; Van Haepelen 2017, 396. Brennan 2000, 18-19 and n. 81 must be right that the consuls'

only the elections were jeopardized in practice. One answer previously proposed is that of Catalano, Nicholls, and more recently Stasse and Van Haepere, who argue that in fact those in command at Thessalonica did not want to hold elections (which in this view would cause ‘dissension in the camp’ and ‘criticism in Rome’), and that they used the absence of the consuls’ curiate law simply as a convenient excuse.³⁹ Whilst this solution may appear plausible in light of the long scholarly tradition of seeing Republican state religion as an enabling device for humans’ desires and plans,⁴⁰ upon closer inspection it fails to convince. It may well be true that electing new magistrates would have increased the likelihood of disagreement, which was rife even before this point, among the commanders at Thessalonica.⁴¹ Yet this theory fails to explain two things: firstly, why the Pompeians would have canvassed the possibility of holding elections at all, and secondly, why the leadership would have used this particular excuse to avoid going ahead. On the first point, it must be acknowledged that Dio’s picture of the Republican forces acting as a unit in 41.43 may well be too tidy. His implication that the Pompeians were carrying out a deliberate policy may have been true by the end of the process, but there could have been a good deal of division initially, with some arguing that elections were a necessity, and others denying this with equal passion. Even if there were such debate, however, this would show that at least some Pompeians considered it desirable to hold elections at Thessalonica. Unlike modern scholars, they must have reasoned that holding the elections would actually attract less criticism in Rome than not holding them. Although the proceeding would have been open to several constitutional objections, as we have already seen, these men may have argued that it would still demonstrate their side’s respect for more fundamental values, such as the rotation of offices and the sovereignty of the people. Dio confirms that the Pompeians’ decisions at this time were shaped by their desire to demonstrate to the Roman people

lack of a curiate law should have caused problems for their ‘military’ auspices, but his assertion that these auspices alone were relevant at Thessalonica is overconfident given the paucity of our evidence.

³⁹ Catalano 1960, 425 n. 125; Nicholls 1967, 270; Stasse 2005, 399-400; Van Haepere 2012, 104, 108. It is also possible, as Richard Westall points out to me, that the Pompeians, by refraining from holding the year’s elections and placing the onus for them onto Caesar, sought to direct such potential strife and criticism away from themselves and towards him. This seems to me to explain even better than the traditional theories why the Pompeians eventually decided not to hold elections in Thessalonica.

⁴⁰ A tradition I have challenged elsewhere: see Driediger-Murphy 2014; Driediger-Murphy, forthcoming.

⁴¹ On disagreement among the commanders (and the other Pompeians) see Vervaeke 2006.

such respect for legality and tradition.⁴² The same motivation, and the same preference for holding legal elections if possible, is evident in the strenuous efforts of Caesar and his partisans in Rome to make his eventual election as consul for 48 appear as constitutional and as compatible with augural law as possible.⁴³ The emphasis Caesar subsequently placed in *Bell. Civ.* on the legitimacy of his consulship (e.g. 3.11; 3.12; 3.31) demonstrates how valuable he deemed these elections to be in the battle for public opinion. The evidence we have therefore suggests that the ability to hold constitutional elections in this year was initially seen as highly desirable by adherents of both sides in the conflict.⁴⁴ The most plausible interpretation of Dio 41.43 is that this was a battle which some Pompeians, at least, were reluctant to lose.

Some Pompeians may therefore have had good reason to want to hold these elections. What is overlooked by most modern commentators on this incident is that all Pompeians also had even stronger reasons not to want to acknowledge that their consuls lacked the curiate law. For, as we have seen, such an admission must have impugned the validity of the consuls' auspices. What is crucial to understand, if we wish to make sense of this incident, is that for the majority of Late Republican Romans augural correctness was no mere matter of form or convenience.⁴⁵ If it had been, neither the Caesarians nor the Pompeians would have expended the effort they did on ensuring an augurally-correct election (in Rome) or on creating an inaugurated space for conducting public business (in Thessalonica). Nor would Caesar have found it worth his while, as we have suggested he did, to reproach the Pompeians with their failure to obtain the curiate law for at least some of their magistrates or promagistrates. Such actions mattered not just because they were thought to demonstrate (or to fail to demonstrate) respect for *ius* and *mos maiorum*, but because

⁴² Cass. Dio 41.43.4: 'For they were very careful about precedents, even though [or perhaps 'because'] they had taken up arms against their country and abandoned it, and they were anxious that the acts rendered necessary by the exigencies of the situation should not all be in violation of the strict requirement of the ordinances' (πάνυ γάρ που τῶν πατριῶν αὐτοῖς ἔμελε τὰ τε ὄπλα ἀνταίρομένοις καὶ τὴν πατρίδα ἐκλελοιπόσιν, ὥστε μὴ πάντα τὰ ἀναγκαῖα πρὸς τὴν τῶν παρόντων ἀπαίτησιν καὶ παρὰ τὴν τῶν τεταγμένων ἀκριβείαν ποιεῖν.)

⁴³ Cic. *Att.* 9.9; 9.15; *Caes. Bell. Civ.* 2.21; for interpretation, Mommsen 1887 (vol. 2), 126 n. 2; 704 n. 2; Jahn 1970, 181-186; Linderski 1986a, 2182-2184. As Jahn observes, the Caesarians' manoeuvres reveal that the object of these elections was not simply to make Caesar consul, but to make him consul in the most constitutional way possible.

⁴⁴ So, rightly, Jahn 1970, 181; Rawson 1994, 432.

⁴⁵ As demonstrated by a growing tide of scholarship, especially Beard, North and Price 1998 and Scheid 2005; on augury in particular, see Driediger-Murphy, forthcoming.

they were thought to elicit (or to forfeit) the support of the gods, a strategic advantage no less important to many Romans than supplies or terrain. The Roman soldier was raised on *exempla* of the catastrophes which awaited the army whose general defied or failed to take the auspices: the consular tribunes at the Allia,⁴⁶ P. Claudius Pulcher at Drepanum,⁴⁷ C. Flaminius at Lake Trasimene.⁴⁸ Indeed, it seems that neglect of augural law by commanders was thought to result even more surely in death for their troops than in death for the guilty generals themselves.⁴⁹ For the consuls of 49 to admit publicly that they had not carried the curiate law was therefore to open themselves up to criticism and doubt, not only from their senatorial colleagues but also from the fighting men whose loyalty and morale was so crucial to their chances of success.⁵⁰ Such an admission cannot have been made as lightly as many scholars suppose. What is much more likely is that it actually hurt the Pompeian cause.

That the Pompeian consuls were able to go on exercising command after this incident⁵¹ reveals that this augural blow to their legitimacy was not fatal. Perhaps some Pompeians accepted an interpretation similar to Appius Claudius Pulcher's in 54, that the curiate law was desirable but not necessary for the exercise of *imperium* and the taking of auspices.⁵² Present himself at Thessalonica, Appius would have been well-placed to make this argument to his compatriots.⁵³

⁴⁶ Livy 5.38;

⁴⁷ E.g. Cic. *Div.* 1.29; *Nat. Deor.* 2.7; Min. Fel. *Oct.* 26.

⁴⁸ Cic. *Div.* 1.77; 2.71; *Nat. Deor.* 2.8.

⁴⁹ As evidenced by Livy's surprise (41.17-18) that Q. Petilius by an ominous utterance redirected onto himself the fatal punishment which his augural mistakes would normally have brought upon his entire army. For a concise interpretation of the passage, see Konrad 2007, 116.

⁵⁰ The importance of auspices in Roman military thinking is not undermined by the modern debate about the kinds of auspices available to promagistrates, for what is clear, despite passages like Cic. *Nat. Deor.* 2.9 and *Div.* 2.76-7, is that promagistrates must have taken auspices of some kind (Magdelain 1968, 54-57; North 1990, 55; Hurlet 2001, 160-162, 176-7 n. 83, 179; Dalla Rosa 2011, 248-252).

⁵¹ Caes. *Bell. Civ.* 3.5 has Marcellus commanding the Rhodian squadron of the Pompeian fleet during the winter of 49, but he must have died at some point during the civil war. As for Lentulus, *Josephus Ant. Iud.* 14.228-230, 234, 240 proves that he was still levying troops in June (September in the pre-Julian calendar) of 49. (On the interpretation of Josephus' documents see Ben Zeev 1998, nos. 10, 13, 16; Gruen 2002, 86-88, 293 n. 9.) One Lentulus was also in command of one wing at Pharsalus (*Appian Bell. Civ.* 2.76; *Lucan Phars.* 7.217-219; cf. Plut. *Caes.* 44) and this may well have been Crus, though his brother Lentulus Spinther is also a possibility (see Pelling 2011, 365).

⁵² Siber 1937, 241; Drogula 2007, 441; Dalla Rosa 2003, 245 also posits a range of ancient views on the issue.

⁵³ Cic. *Att.* 8.15.3 lists Appius among those following Pompey to Greece. He commanded the Pompeian forces in Achaia as proconsul until his death in 48 BC (full refs in Broughton 1952 [vol. 2], 261, 276 with Broughton 1986 [vol. 3], 57).

Perhaps the pressure of circumstances simply outweighed other considerations.⁵⁴ Appius' fellow-augur Cicero provides one probable example of such thinking. In 54 BC, as we saw above, Cicero had been inclined towards the view that commanders such as Appius required the *lex*. By 49 BC, however, he was prepared to number the consuls among those who held *imperium* (Cic. *Att.* 8.15.3). Granted that the consuls of 49 did lack the *lex*, Cicero's change of heart seems most likely to be a response to the demands of the situation: there was simply more pressure to adopt an Appius-style interpretation of the rules than there had been in 54. There must always have been a spectrum of views among the Pompeians (as among the Roman population as a whole) on how much one ought to worry about constitutional and ritual failings.⁵⁵ Yet this does not mean that all Pompeians were content with the apparent decision to allow the consuls (as well as any governors who may, on Caesar's evidence, have lacked the *lex*) to continue in their military roles.⁵⁶ Many must have felt the same reservations Cicero attests for 54. Thus the confusion and disagreement we glimpse in Dio 41.43 must have continued long after the opportunity to hold elections had passed. And it must have been serious. We can no longer interpret the incident described by Dio as the passing airing of a trivial pretext. What Dio has preserved for us is a dispute of genuine legal and historical significance. It is to that significance which we must now turn.

2. The Procedure and Importance of the Curiate Law

One of the most important points we can draw from Dio's evidence is that the curiate law cannot have been as easy to obtain as is commonly supposed. If the passage of the *lex curiata* had required a *trinundinum*, we might suppose that it was this which prevented the consuls from proposing their curiate laws before they left Rome on or around 17 January. However, there is no explicit evidence that the *lex curiata* was subject to the *trinundinum* requirement, and the

⁵⁴ A senatorial prerogative of simply waiving the need for a *lex curiata* (as posited by Mommsen 1877 [vol. 1], 614; Brennan 2000, 18) is unlikely.

⁵⁵ Well observed by Meyer 1922, 313 n. 2.

⁵⁶ Van Haepelen's claim (2012, 104) that 'aucun des Pompéiens ne semble avoir prêté attention' to the consuls' lack of a curiate law before or after the proposed elections thus overlooks the fact that Dio's own account is evidence for Pompeian disagreement and anxiety on this score.

importance of the *lex* in establishing the legitimacy of each year's magistrates tends instead to suggest that it would have been proposed as early as possible in a magistrate's year of office, probably on the first comitial day.⁵⁷ Nor do we know for certain that the *comitia curiata* could only be held on *dies comitiales*,⁵⁸ though this was probably the case. Even if we restrict opportunities to pass the *lex curiata* to comitial days, however, we are left with several comitial days in early January which the consuls could have used to pass their laws. (According to the surviving *fasti*, these would have been the 3rd, 4th, 7th, 8th, 12th, and 16th of January.)⁵⁹ It goes without saying that the Pompeians were preoccupied in January of 49, but even if we choose to dismiss 3 and 4 January on the grounds that the senate would have been preoccupied with responding to Caesar's letter, and 7 January on the grounds that it would have been taken up by the passing of the *senatus consultum ultimum*, we are still left with several days on which the consuls could conceivably have acted. Why didn't they?⁶⁰

There are three possibilities. The consuls could conceivably have chosen deliberately to omit the ceremony, but, Caesar's slanders aside, this seems unlikely given its ideological importance. Alternatively, they may have put passing their curiate laws farther down their list of priorities for the first months of the year, not suspecting that Caesar would invade Italia; by the time news of his advance arrived in Rome, on 17 January, there was simply no time to attempt to pass their curiate laws before the evacuation. The example of Appius in 54 BC shows that it was possible to (seek to) pass the curiate law later in one's term of office. However, the difficulties Appius himself faced as a result might be expected to have served as a warning to subsequent consuls to act sooner rather than

⁵⁷ So e.g. Mommsen 1, 611 and n. 1; Magdelain 1968, 26; Brennan 2000, 19 and n. 91. Van Haepere 2012, 92; Van Haepere 2015, 225 and Vervaeke 2014, 340-43 opt for the consuls' first day of office.

⁵⁸ Michels 1967, 46-47.

⁵⁹ For a list of the *dies comitiales*, see Michels 1967. On the Roman calendar see especially Rüpke 2011.

⁶⁰ The question becomes even more puzzling if we believe that the Pompeians succeeded in passing the *lex curiata* for their governors newly appointed under the *lex Pompeia*, such as Scipio and Domitius. This is just possible if we assume that the consuls' own *leges curiatae* attracted more opposition than those of the governors. My hunch is that in fact several of the Pompeian governors may also have failed to pass the *lex curiata* before they left the city: this seems to be the most natural reading of Caesar *Bell. Civ.* 1.6 (if it does indeed refer to the *lex curiata*, as argued above). Cassius Dio's statement in 41.43 singles out the consuls simply because it was they who were relevant to the question of holding elections. If this is correct, then the governors went on to exercise military power despite the augural irregularity of their position, probably on the same grounds explored above for the consuls (p. 11-12).

later. A final possibility, and perhaps the most likely, is that the consuls did try to pass the *lex*, but were in some way prevented from doing so.⁶¹ Appius had apparently been thwarted in his attempts in 54 BC,⁶² and Dio reports that curiate laws were obstructed in 56 BC, at Clodius' instigation.⁶³ By what mechanisms could the curiate law have been blocked? One possibility is tribunician intercession.⁶⁴ In 63 BC, when arguing against Rullus' proposal to pass *leges curiatae* for the members of his agrarian commission, Cicero claimed that consuls' attempts to pass the *lex* in the past had 'often' been blocked by this method.⁶⁵ Although we should be mindful, as ever, of Cicero's powers of exaggeration, there is no compelling reason to reject his testimony altogether.⁶⁶ If the consuls attempted to pass their *leges curiatae* at the earliest opportunity, on 3 or 4 January, Caesar's tribunes Antony and Cassius would still have been present in Rome to thwart them, though this would not explain why the consuls did not try again once the Caesarian tribunes had fled the city. (Perhaps there was no more time.) *Obnuntiatio* of unfavourable divinatory signs compelling an assembly to break up was also open to any citizen in attendance,⁶⁷ and is a possibility here.⁶⁸ The motives behind such an *obnuntiatio*, if it occurred, are unrecoverable (there may already have been dissension within the senate about the advisability of having Lentulus and Marcellus sharing command with Pompey at this crucial juncture, or the relevant signs may have occurred spontaneously and been respected despite the inconvenience they caused.)⁶⁹ It is even possible that

⁶¹ Pace Van Haepere 2012, 105; Van Haepere 2015, 229.

⁶² Pace Brennan 2000, 18, we do not know what it was that prevented Appius' law from being passed.

⁶³ Cass. Dio 39.19 reports that Clodius as aedile 'would not allow the curiate law to be introduced' and thus stalled the transacting of public business (οὐκ εἶα τὸν φρατριατικὸν νόμον ἐσενεχθῆναι· πρὶν γὰρ ἐκεῖνον τεθῆναι, οὐτ' ἄλλο τι τῶν σπουδαίων ἐν τῷ κοινῷ πραχθῆναι οὔτε δίκην οὐδεμίαν ἐσαχθῆναι ἐξῆν). Unfortunately the means by which he accomplished this are not stated. Whatever we conclude about the impact of the *lex curiata* on magistrates' civil functions, the story proves once again that passage of a curiate law was not a foregone conclusion. (For a range of interpretations accepting at least some of Dio's testimony, see e.g.: Mommsen 1877 [vol. 1], 610 n. 4, 614; Staveley 1956, 86; Catalano 1960, 426 n. 126, 470 n. 104; Magdelain 1968, 18-19; Van Haepere 2012, 81 n. 55, 100-103; Vervae 2014, 332-3; Tarpin 2015, 266 n. 40; *contra* Siber 1937, 242-4; Nicholls 1967, 269; Brennan 2000, 18; Stasse 2005, 393-4).

⁶⁴ Vervae 2014, n. 112.

⁶⁵ Cic. *Leg. agr.* 2.30: *Consulibus legem curiatam ferentibus a tribunis plebis saepe est intercessum.*

⁶⁶ See Vervae 2014, 330-1; similarly Vervae 2015, 215-16.

⁶⁷ Linderski 1971, 315, 317-18.

⁶⁸ We may compare Livy 9.38, who claims that in 310 BC the dictator Papirius' first attempt to pass a *lex curiata de imperio* for his master of horse was prevented by an (apparently spontaneous) *triste omen*.

⁶⁹ Such respect for spontaneous (oblative) auspices is well attested in our sources: e.g. 215 BC (invalidating the entry into office of M. Claudius Marcellus: Livy 23.31.13-14); 202 BC (elections delayed by storms: Livy 30.39.5 [for other

the *comitia curiata* actually voted against the consuls' *leges*, though we would expect to hear more about this from Caesar if that were the case.⁷⁰ Whatever the mechanism, the most plausible interpretation is still that Lentulus and Marcellus encountered obstacles to the passing of their curiate laws.

That this could be so even during the crisis of January 49, when efficiency was vital, suggests that it is time for us to move beyond the view that the passing of the *lex curiata* was a mere formality without political significance by the time of the Late Republic.⁷¹ This view rests almost entirely on Cicero's assertion in *Leg. Agr.* 2.27 that the people (whom he was addressing) 'do not enter' (*vos non initis*) the *comitia curiata*, and on his reminder to the people in *Leg. Agr.* 2.31 that the *comitia curiata* is comprised solely of thirty lictors, *ad speciem atque ad usurpationem vetustatis*. Whether this was in fact always the case or not (and I am more reluctant than many have been to take Cicero as expressing a general truth here about the curiate assembly of his day),⁷² the examples of Clodius in 56, Appius in 54, and the Pompeians in 49 show that even an assembly of lictors (if such it truly was) could thwart the wishes of Rome's highest magistrates. Such examples should count at least as heavily as Cicero's highly tendentious claims about the facile manipulation of the *comitia curiata* (where, be it noted, even he lets slip that Rullus thought tribunician intercession in this *comitia* a real possibility).⁷³ If anything, the proliferation of cases where the *lex* could not be passed in the last years of the Republic⁷⁴ should count as evidence for its continuing (even growing) political and procedural significance at this time.⁷⁵

storms of divinatory significance, see Val. Max. 8.1. [absol.](#) 4, with *Schol. Bob.* p. 90St; Livy 28.15.10-11; 40.2]; 180 BC (invalidating the cooptation of L. Cornelius Dolabella: Livy 40.42. [8-11](#)).

⁷⁰ Rüpke's statement (1990, 49) that we know of no cases where the *comitia curiata* rejected a proposed *lex curiata* is true as far as it goes, but Appius is a possible candidate.

⁷¹ So Altheim 1953, 86; Marshall 1972, 894 n. 27; Rüpke 1990, 50-1; Dalla Rosa 2003, 211 n. 83; cf. Smith 2006, 220; Tarpin 2015, 281.

⁷² There is much to commend Van Haepere's suggestion (2012, 95) that Cicero may simply be alluding here to the minimum number of participants required for the *comitia curiata*, not to a standard practice in his day.

⁷³ Otherwise Rullus would not have had to propose that the veto be forbidden: Cic. *Leg. agr.* 2.30.

⁷⁴ The example of C. Pomptinus, whose enemies *negant (...) latum de imperio* in 54 BC (Cic. *Att.* 4.18.4), is sometimes cited as another example, but the *lex* referred to is most likely not the annual *lex curiata* which legitimized Pomptinus' praetorship, but the enabling *lex* he needed to keep his *imperium* within the *pomerium* (and hence to triumph): so Catalano 1960, 425 n. 125; Shackleton Bailey 1965, 223; Stasse 2005, 381-2 n. 27; Van Haepere 2012, 79-80.

⁷⁵ Rightly, von Lübtow 1952, 169; Cuff 1958, 447; Nicolet 1980, 218; Van Haepere 2015, 230.

3. *Respect for Religion as a Liability in Pompey's Waging of the Civil War*

Finally, if our interpretation of Dio 41.43 as evidence for internal debate among the Pompeians about the necessity of the curiate law is correct, then we should read this incident as evidence that even in the final years of the Republic, and the crisis conditions of civil war, many Pompeians retained, and respected, scruples about religious law and custom.⁷⁶ That these scruples were eventually overruled in the military sphere should not obscure the significance of the fact that they were obeyed with respect to the elections. Furthermore, we have seen that, far from being able to use such scruples as a convenient pretext, the Pompeians would actually have been disadvantaged by them. They lost demonstrably to Caesar in the public relations war over who would hold legitimate elections for 48, and they must also have suffered damage to the consuls' religious authority and to the morale of their troops.

What this finding suggests is that our assessments of the role of religion in the Civil Wars must allow for religious liabilities as well as religious legitimation, for religious stumbling-blocks as well as religious propaganda. Modern treatments of religion in this period of crisis have tended to focus on those aspects of religion which Roman politicians and generals invoked either to justify their own power, or to damage the reputation of their enemies.⁷⁷ Yet Dio's testimony in 41.43 reminds us that religion was not always legitimizing for generals: sometimes it could be painfully inconvenient. And perhaps more than inconvenient: there is a certain poignancy in the fact that it was the 'Republican' side in this conflict which was hurt the most by its adherents' respect for constitutional and religious norms.⁷⁸ Although stories about Pompey's refusal to heed forbidding

⁷⁶ Cf. Jal 1961, 401.

⁷⁷ Witness, for example, Rosenberger's bald statement in the recent *Blackwell Companion to Roman Religion* that '[g]enerals of the civil wars accepted only positive signs' (Rosenberger 2007, 302).

⁷⁸ We may compare the stories of Caesar's disregard for, or more charitably his ability to reinterpret, unfavourable signs: especially Cic. *Div.* 2.52; Suet. *Iul.* 59. Vervaet 2014, 348 makes the interesting suggestion that in the years that followed Caesar may also have been less scrupulous about ensuring that his governors had *leges curiatae*. Krostenko (2000, 386) grasps the two sides' positions well: 'manipulative skepticism' from someone like Caesar 'would have posed trouble for fideists, not least because they were put at a severe political disadvantage: while they, too, might have been able, as the omens permitted, to appeal to divine approval, they would also be hindered by its apparent absence, if the omens were contrary, or, perhaps worse yet, deluded by good omens into thinking their course had divine sanction.'

signs circulated after Pharsalus, helping both to explain his defeat and to justify his opponents,⁷⁹ competing traditions survived which resisted such easy resolutions: Cicero laments that the Pompeians had in fact been misled by an abundance of prophecies of victory ‘sent to us in Greece’ and ‘spoken to Pompey’, who placed great faith in them.⁸⁰ Survivors such as King Deiotarus were left to explain that the auspices which had sanctioned the Republican cause had not been misleading, even though they culminated in disaster: the gods always counselled support for the better cause, even at personal cost.⁸¹ Whispers that the gods had ultimately backed the wrong cause, deceiving those who most honoured them, would continue for generations.⁸² For those with religious scruples, religion in civil war could harm as well as help. Perhaps Cicero himself put it best in a *dictum* preserved by Plutarch, uttered in response to Labienus’ attempts to maintain Pompeian morale after Pharsalia by insisting on the divinatory signs (*manteiai*) which predicted victory for Pompey. ‘Why yes indeed, it is by using this strategy that we have now lost our camp.’⁸³

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⁷⁹ Especially evident at Val. Max. 1.6.12; full references in Engels 2007, 655-661.

⁸⁰ Cic. *Div.* 2.53, with Schultz 2009, 202-5. Cicero attributes these prophecies to the *haruspices*, who interpreted entrails and other portents (*extis et ostentis*). Although these prophecies to Pompey are usually assumed to have been freelance (e.g. Santangelo 2013, 31), there is no obvious reason to rule out an official/public dimension to them. The mention of reports ‘sent’ to the Pompeians in Greece (from loyal *haruspices* to the senate sitting in Thessalonica, perhaps?) is tantalizing. On other aspects of Pompey’s religiosity, see Santangelo 2007.

⁸¹ Cic. *Div.* 1.27; cf. 2.78-9. For Cicero’s own thinking on this point, see Santangelo 2013, ch. 1.

⁸² Most famously in Lucan’s *Pharsalia*: see Jal 1962; Fantham 2003.

⁸³ Plut. *Cic.* 38.

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