

## INTRODUCTION

### I. THE SETTING

With the benefit of hindsight and knowledge of Gaius Verres' premature flight into exile, it would be tempting to assume that Cicero knew an easy target when he saw one. Yet, at the outset of the year 70,<sup>1</sup> when charges for extortion were being prepared, Verres was no mere pushover. He had ascended the political ladder to the second highest position on the *cursus honorum* – a post that only two out of every five new senators had hopes of attaining – and all this from a family only newly senatorial.<sup>2</sup> On his way up, he had proven to be an adroit and savvy politician. He started out as an adherent of the Cinnan faction, but while serving as a *proquaestor* under Cn. Papirius Carbo in 83, he deserted his superior officer to fall in league with Sulla. The dictator rewarded him handsomely for his defection. He also made close connections among the other leading figures of the regime, including Q. Catulus, L. Lucullus, three members of the Metellan clan,<sup>3</sup> and the renowned orator, Q. Hortensius Hortalus. He continued to ascend the ranks as a legate for Dolabella, whom he subsequently helped convict for extortion, and was later elected *praetor urbanus* for 74. After his term as *praetor*, he served as the *propraetor* of Sicily for the years 73–71. A slave revolt in southern Italy required other leading senators to be dispatched to quell the uprising, and as a result, Verres saw his tenure in Sicily prorogued for an additional two years beyond

<sup>1</sup> All dates are BCE unless referring to 'centuries' or otherwise noted.

<sup>2</sup> Mitchell (1986) 5.

<sup>3</sup> Quintus, Marcus, and Lucius. In the year 70, Quintus was elected consul, Marcus was to become the praetor in charge of the *quaestio de repetundis*, and Lucius was assigned as the governor of Sicily.

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the original term.<sup>4</sup> He eventually left office on the first day of the year 70 to return to Rome.

Meanwhile, Cicero was still a relatively young *novus homo* on the rise. His path of ascendancy was through advocacy. He had first spoken in the Roman courts in 81 and gained a favourable reputation for his skills when he defended Sextus Roscius in 80 on criminal charges of patricide. He would further hone his skills of persuasion with additional education under the Stoic philosopher Diodotus, the Epicurean Phaedrus, the famous rhetorician Molon of Rhodes, and additional teachers of rhetoric in Asia Minor.<sup>5</sup> He put this training to work and spoke, with mixed success, as an advocate in a number of venues – before a tribune, the senate, and a provincial governor, as well as in both criminal and civil courts.<sup>6</sup> During this time in the spotlight, he gained entry into the senate when he was elected to the office of quaestor for the year 75. Although he would later express dismay at how little reward he would reap for the conscientious dispatch of his duties, he served out his year in the western Sicilian city of Lilybaeum. In the intervening years, as he converted his oratorical success into political capital, he looked forward to canvassing for the next office on the Roman political ladder. He was eligible to campaign for the aedileship at the age of 36 – in the year 70.

The broader political landscape of that year had its share of intrigue. Legislative changes were afoot. The Sullan reforms that made the courts the purview solely of the senate and substantially reduced the power of the tribunate faced revision. In 75 the ability of former tribunes to seek higher office had been restored, and in the year 71, Pompey had promised to ‘give thought’ to the issue of renewing the full powers of the office. There were also discussions of redistributing jury duty to include non-senatorial members. The two consuls of the year 70 were Cn. Pompeius Magnus and M. Licinius Crassus, and the time seemed right to amend further some of the late dictator’s

<sup>4</sup> See Introduction, §III.

<sup>5</sup> Fantham (1996) 31; see §39 *Athenis* n.

<sup>6</sup> *Pro Quinctio* was his first recorded civil trial. For a full list of his known appearances as an advocate, see Powell and Paterson (2004) 417–422.

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measures. In fact, during that year, the veto power of the tribunate and office of the censor would be reinstituted, and the *lex Aurelia* would assign senators, *equites*, and *tribuni aerarii* to serve on juries in equal measure.<sup>7</sup>

Of course, at the beginning of the year, these changes had not yet been enacted. And this was also the time that Verres' term as governor of Sicily drew to a close. Divested of *imperium*, he was no longer protected from prosecution. When it became clear that a Sicilian delegation would have him arraigned on charges of extortion, Hortensius came to his defence. The situation must have looked enticing to Cicero: a senator of praetorian rank would be defended by the man who was then Rome's leading orator. Political and legislative developments were waiting to be exploited. Higher office beckoned. In front of this backdrop, Cicero came before the Extortion Court to bring charges against Verres. But he was not alone. Before the trial could go forward, he would need to make his case to be the lead prosecutor against another would-be accuser – Verres' own quaestor, Q. Caecilius Niger.

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Little definitive can be said about the life of Cicero's opponent and Verres' former quaestor, Quintus Caecilius Niger. Our best source is Cicero's speech against him, but an opponent's characterization merits obvious caution.<sup>8</sup> Other information primarily comes from the scholiast, pseudo-Asconius,<sup>9</sup> and a brief reference in Plutarch's *Life of Cicero*. From these, one can only come to tentative conclusions about Caecilius' origins and career, but even these shine a brighter light on his bid to prosecute Verres and Cicero's challenges in facing him.

In his opening summary of the speech, the scholiast introduces his reader to Cicero's rival; [Asc.] 98 (187 Stangl):

<sup>7</sup> *LGRR* 23–37; Vasaly (2009).

<sup>8</sup> Lintott (2008) 85–86.

<sup>9</sup> [Asc.] 98, 112, 114, 121 (185, 195, 197, 202 Stangl). On pseudo-Asconius, see Introduction §VI, 'Other Sources'.

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*His ita constitutis extitit Q. Caecilius Niger, domo Siculus, [et] quaestor Verris et eiusdem, ut ipse dicebat, inimicus, qui se potius accusatorem contenderet [se] constitui oportere, has afferens causas: unam, quod ab eo laesus et ob hoc iure illi sit inimicus, quare praeuicator esse non possit; alteram, quod, cum quaestor ei tum fuerit, etiam sine inquisitione crimina nouerit Verris; tertiam, quod Siculus pro Siculis agat.*

While discussing the merits of his claim to prosecute the former governor of Sicily, the scholiast twice remarks that Caecilius was himself Sicilian. Yet it is unclear whether the scholiast had other ancient evidence to hand about Caecilius or was simply deducing information from the speech itself.<sup>10</sup> Three passages from the *Diuinatio* do suggest that Caecilius, at the very least, had some familial or economic connection to the island. As he reviews Caecilius' rhetorical education, Cicero disparagingly remarks: 'si litteras Graecas Athenis non Lilybaei, Latinas Romae non in Sicilia didicisses ...' (§39). An extended period of education on the island would suggest that Caecilius had spent part of his earlier life there, but Cicero has cast Caecilius in the role of an ὀψιμαθής ('late-learner'), so perhaps Cicero is simply suggesting that Caecilius has only recently taken up the study of oratory during his magistracy in Sicily – especially since Cicero makes a pointed reference to Lilybaeum, the seat of Caecilius' quaestorship.<sup>11</sup> Two other comments are more illuminating. At one point, Cicero refers to 'the other Sicilians' (§53 *Sed ceteri Siculi ultorem suarum iniuriarum inuenerunt*)<sup>12</sup> and, at another, says

<sup>10</sup> The ablative of respect with the ethnic (*domo Siculus*) may suggest that he was not a member of the ethnic group of Sicilians but simply an inhabitant of the island. Sherwin-White (1939) 307n remarks: 'Nothing in Cic. *Diu. in Caec.* 4 and 20 suggests that Q. Caecilius was more than a resident of Sicily by economic connection (cf. [Asc.] 98 *domo Sicilia* [sic]) or remote servile origin (Plut. *Cic.* 7.6).' On the origins of the Sicilian people from Italian residents on the Tiber, see Plin. *Nat.* 3.56, and also 3.71.

<sup>11</sup> If Caecilius had been a Sicilian, it would explain why Cicero adopted this line of invective. Since C. was professing to represent Sicilian clients, exploiting ethnic stereotypes to ostracize his opponent would have been ill advised, but using education as a differentiator would have allowed Cicero to denigrate Caecilius' provincial origins without sully the culture of his 'clients'.

<sup>12</sup> [Asc.] 121 (202 Stangl) *Saepe in Caecilius utitur hoc conuicio, ut illum non Romanum, sed Siculum dicat.*

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of his opponent *te adhuc a nullis nisi ab Siculis potuisse cognosci* (§28).<sup>13</sup>

The only reference outside of Cicero and the scholiast is an anecdote told by Plutarch in his biography of Cicero; *Cic.* 7:

ὁμῶς δὲ πολλὰ χαρίεντα διαμνημονεύεται καὶ περὶ ἐκείνην αὐτοῦ  
 τὴν δίκην. βέρρην γὰρ οἱ Ῥωμαῖοι τὸν ἐκτετμημένον χοῖρον  
 καλοῦσιν. ὥς οὖν ἀπελευθερικός ἄνθρωπος ἔνοχος τῷ Ἰουδαΐζειν  
 ὄνομα Κεκίλιος ἐβούλετο παρωσάμενος τοὺς Σικελιώτας  
 κατηγορεῖν τοῦ Βέρρου, “τί Ἰουδαίῳ πρὸς χοῖρον;”

Although nothing in the speech or the scholiast would lead us to believe that Caecilius was a freedman or Jewish, some have suggested that Plutarch had reliable sources for his biography, for example Tiro.<sup>14</sup> In defence of the quip, one might note that there was a sizable slave population from the East in Sicily during the great slave revolt of 130, and while not a freedman himself, Caecilius could have been a freeborn descendant of a Jewish slave.<sup>15</sup> However, Plutarch's suggestion is unsubstantiated. One might easily counter that the pun on Verres' name was well known and suppose that Plutarch was only mining for a joke.<sup>16</sup>

Whatever his ancestral status or ethnic origins were, the preponderance of the evidence still leads one to believe that Caecilius had a close association with the island, either through descent or domicile. Moreover, this is not prosopographical speculation for its own sake. A relationship with Sicily would have given Caecilius a strategic advantage in the *divinatio* and recourse to an *argumentum a persona*, since, as the scholiast noted, *Siculus*

<sup>13</sup> At which point the scholiast adds ‘*Quia aut Siculus ipse est aut quia nisi quaestor in Sicilia nihil aliud fuit Caecilius, in quo nosceretur “quid hominis” esset*’; [Asc.] 112 (195 Stangl). As the scholiast notes, this could just refer to time in political office. Even Cicero lamented that news of his accomplishments during his quaestorship never reached Rome; see *Planc.* 64–65 and *Plut. Cic.* 6.

<sup>14</sup> Pelling (1979) 89.

<sup>15</sup> For anti-Semitism in Cicero, see Bernard (2000). His *nomen* may suggest that he was one of the residents of Sicily granted citizenship by the Metelli. For an example of citizenship granted by Metellus, see *Ver.* II.2.20. His *cognomen*, Niger, offers no help. It was commonly used to distinguish between individuals with the same *praenomen* and *nomen*; see Cameron (1998).

<sup>16</sup> See §57 *aliquo Circaeo poculo factus est Verres* n.

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*pro Siculis agat*. The fact that Cicero so ambiguously alludes to Caecilius' origins may be another point in its favour.

At some juncture, Caecilius made his way to Rome to canvass for the quaestorship, where he would attain the magistracy that placed him in Verres' administration. If he was in fact Sicilian, his political success is even more remarkable, since senators of provincial origin, although more numerous in later generations, were few at this time.<sup>17</sup> Upon election to the quaestorship, he was assigned to Sicily for his term in office. Quaestors were typically appointed by lot (*sortitio*),<sup>18</sup> but if he had a prior connection with Sicily, this may have been grounds for an appointment *extra sortem ex senatus consulto* – a procedure not infrequent at the time.<sup>19</sup> Such arrangements, however, would normally be made at the request of the governor, and if this had been the case with Caecilius, Cicero would have mentioned it in his speech to strengthen his insinuations of *praeuvaricatio* against his rival.<sup>20</sup> Therefore it remains a possibility that Caecilius' appointment was from his own request or simply through the luck of the draw.

The date of Caecilius' quaestorship has also been a matter of debate. Verres served as *propraetor* from 73 to 71, and evidence from the Verrines makes it clear that four quaestors served in Sicily during his administration. In §§55–58, Cicero narrates an episode in which Caecilius convenes a court in Lilybaeum in connection with a dispute over slaves requisitioned by a legate of M. Antonius Creticus. Creticus had been dispatched to combat piracy in the region, and though his *imperium* held until 71, his activities in Sicily seem to have been limited to 74 and 73 before going east to Greece and Crete. This suggests that Caecilius was the quaestor stationed at Lilybaeum at the beginning of Verres'

<sup>17</sup> For other provincial senators, see Wiseman (1971) 19–23.

<sup>18</sup> Schol. Bob. on Cic. *in Clod. et Cur.* (332 Stangl). On the procedure, see introduction to §§59–65.

<sup>19</sup> On the procedure of appointment *extra sortem*, see Thompson (1962b) and Pina Polo and Díaz Fernández (2019) 69–78.

<sup>20</sup> In any event, if we were to accept this *extra sortem* reconstruction, we must understand Cicero's statements at §46 (*sortis religionem*) and §61 (*coniunctionem sortis*) to be common parlance for the obligation between the governor and his staff upon assignment – whether or not it was actually done strictly by lot. See the introduction to §§59–65.

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governorship in 73, and that his counterpart in Syracuse must have been Marcus Postumius.<sup>21</sup> It also seems clear that Caecilius ended his tenure in Sicily before his commander. Verres appointed Caecilius' *scriba*, Potamo, to his staff upon Caecilius' departure.<sup>22</sup>

Caecilius' whereabouts in 72 are more difficult to ascertain. Marinone has convincingly argued from *Ver.* II.5.83–135 that M. Postumius only served one year as quaestor in Syracuse and was replaced by Titus Vettius, which may also imply that Caecilius was only in his post for one year.<sup>23</sup> The slave revolt of Spartacus interrupted the regular change of administration in Sicily and accounts for Verres' prorogation in 72. Before the spread of the revolt, however, Quintus Arrius, who had been a praetor in 73, was originally allocated Sicily as a propraetorian province for 72.<sup>24</sup> The senate probably appointed new quaestors in anticipation that Arrius would take over as governor. At some undetermined date, Arrius was diverted from taking up his place in Sicily and dispatched to combat the slave revolt under the consul, L. Gellius Publicola. Fierce fighting in 72 made it clear that Verres would have to continue to serve in Sicily in 71 before a new governor was assigned.<sup>25</sup> Consequently, there are grounds for believing that Arrius' allotted quaestors, Vettius and Caesetius, took up their posts under Verres in Syracuse and Lilybaeum, respectively. If this is the case, then Caecilius served as quaestor in Lilybaeum and his counterpart, Marcus Postumius, in Syracuse

<sup>21</sup> *Ver.* II.2.44.

<sup>22</sup> §29.

<sup>23</sup> Marinone (1965). For the sole mention of Vettius, see *Ver.* II.5.114.

<sup>24</sup> *Ver.* II.4.43.

<sup>25</sup> See *Ver.* II.2.37; Marinone (1965) 219. Quintus Arrius probably continued to fight the slave revolt in 71 under Crassus. See B. A. Marshall (1975b) 221–231. *Ver.* II.2.37, 4.42; *Liv. Per.* 96; [Asc.] 97, 101 (185, 188 Stangl); *Schol. Gronov.* 324 Stangl. Marinone (1965) 237: 'Invece per il 71 fu senz' altro prorogato l'imperium a Verre e non si procedette ad alcuna nuova nomina per il governo della Sicilia. Sembra molto plausibile inferire che anche i due questori siano rimasti al loro posto a fianco del governatore, in considerazione degli stretti rapporti di collaborazione che si reputava dovessero instaurarsi fra il questore e il suo superiore.' *Contra* [Asc.] 207 (260 Stangl) *apparet, cum triennio Siciliam tenuerit unus Verres, quaestores tamen per annos singulos huic esse mutatos*. Broughton, on the strength of the article by Marinone, corrects the entry for 73–71 in *MRR Suppl.*

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only for the year 73,<sup>26</sup> while the quaestors allocated to Arrius, Publius Caesetius<sup>27</sup> and Titus Vettius,<sup>28</sup> remained in their post for the years 72–71.<sup>29</sup>

Caecilius' political career may have stopped here. Owing to Sullan legislative reform, his election to the quaestorship gave him automatic life-membership in the senate. There may have been a tribune in 68 named 'Q. Caecilius', but neither the date nor the identity of this tribune is certain.<sup>30</sup> If Caecilius failed to ascend the political ladder any further, it was certainly not out of the ordinary for the time. Of the senators in the post-Sullan senate, over 100 would not have ascended above the rank of quaestor.<sup>31</sup> Caecilius' attempted prosecution of Verres, in addition to righting whatever wrongs he alleged, may also have had the enticement of re-energizing his political career. Having served so recently as quaestor, he was probably ineligible to canvass in the upcoming election for aedile, but a victory in a high-profile criminal case could certainly help to place him in the spotlight.

Despite Cicero's unsympathetic depiction of him as a struggling neophyte, Caecilius would have had some experience in the courts. Provincial governors would routinely tour their provinces to conduct hearings and issue legal decisions. With limited time and a large geographic area, governors frequently delegated these judicial responsibilities to members of their staff – the quaestor was an obvious choice when he was not busy with financial matters. The post in Lilybaeum came with particularly heavy judicial responsibility, and he would have been able to

<sup>26</sup> *Ver.* II.2.44.

<sup>27</sup> *Ver.* II.4.146, 5.63.

<sup>28</sup> *Ver.* II.3.168, 5.114.

<sup>29</sup> This reckoning also establishes a *terminus ante quem* for Caecilius' date of birth; see §70 *ea iam aetate n.*

<sup>30</sup> The name is preserved in *CIL* I<sup>2</sup>.2.744 as CAECILI and may have been on the *lex Antonia de Termessibus*. The dates of both these inscriptions are controversial. See *Statutes* 331–340 for a bibliography on the *lex Antonia*; also Syme (1963) 57–58. It is tempting to think that the tribune Q. Caecilius in 68 was Q. Caecilius Metellus Celer; *Man.* 58; *MRR* 3.37.

<sup>31</sup> Hawthorn (1962); Syme (1963) 60: 'Numbering 600 in its membership, the Senate after Sulla embraces a mass of more or less reputable nonentities. The bottom 200 at any time evade record and defy recognition.'



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exercise nigh-praetorian authority.<sup>32</sup> 'It was only in Sicily, where the second quaestor at Lilybaeum was opportunely situated for the western circuits of the island, that quaestorian jurisdiction was the constant factor in the government of the province.'<sup>33</sup>

We hear nothing of his previous experience as an advocate. The Q. Caecilius mentioned in connection with the prosecution of P. Gabinius (§64) would not have been Cicero's present opponent – much more would have been made of the incident if he were; the name Q. Caecilius was certainly common enough.<sup>34</sup> Cicero's comments strongly insinuate that Caecilius had never led a criminal prosecution, though the emphasis on *causae publicae* does leave the possibility that Caecilius had appeared in civil cases (*causae priuatae*), where many orators presumably spent most of their time.<sup>35</sup>

Even so, after his departure from office, Caecilius may have begun discussing his intent to prosecute Verres. Cicero's insinuations of *praeuicatio* in the *Divinatio in Caecilium* are groundless and unsustainable.<sup>36</sup> In the trial speeches against Verres, Cicero outlines all the wily machinations of the defence to delay or subvert the course of justice, but Caecilius is implicated in none of them. Caecilius' connection with Sicily and detailed information about Verres' administration would have been to his advantage. He could claim for himself every justification that Cicero did: a history of public service and personal connections on the island as well as a duty to his country to eliminate corruption and defend Rome's reputation abroad. Moreover, as Cicero would

<sup>32</sup> On the various powers of the quaestor, see A. J. Marshall (1966) 237. On the governor's sole *imperium*, see *Prou. Cons.* 3.5; *Q.Fr.* 1.1.3.10; cf. Balsdon (1962) 138. On the delegation of authority, see *Q.Fr.* 1.1.7.20; *Flac.* 49. *Straf.* 247 quotes *Diu. in Caec.* 56, *Ver.* II.2.44, and *Suet. Iul.* 7.1 as attestations for the regular judicial employment of quaestors. The extent of employment of delegates was a matter for the individual governor's decision.

<sup>33</sup> Greenidge 130.

<sup>34</sup> Chief among those who have incorrectly assumed that our Caecilius here and that of the trial of Gabinius are the same: *TLRR* 174 and bibliography; B. A. Marshall (1977a). Not so Shackleton Bailey (1976) 8, 14.

<sup>35</sup> §26: *in mentem tibi non uenit quid negoti sit causam publicam sustinere ... ?*

<sup>36</sup> From §36 onward, Cicero would have us believe that Caecilius is more inept than dishonest.

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later admit, Caecilius also had justifiable personal motives for prosecuting his former commander.<sup>37</sup>

Caecilius was not the straw man that Cicero makes him out to be and that readers of the *Divinatio* have long assumed. He had the traditionally acceptable means and motives to mount a sincere and thorough prosecution. So, when Cicero entered his own bid to prosecute Verres, if he was going to avoid the impression of shameless political ambition, he would need to find another, innovative way to distinguish himself from his worthy opponent.

### III. PRE-TRIAL LEGAL PROCEDURE IN THE SULLAN *QUAESTIO DE REPETUNDIS*

In Roman criminal law, a statute would establish a court to try a particular offence, such as extortion or embezzlement, and also dictate the procedure to be employed. The first law on extortion,<sup>38</sup> the *lex Calpurnia de repetundis*, had been passed in 149 during the tribunate of L. Calpurnius Piso.<sup>39</sup> This enactment offered foreign litigants standardized access to a civil procedure (*actio sacramento*) initiated by the *praetor peregrinus*. These cases were made through Roman *patroni* and were conducted before a tribunal under the system of *legis actiones*.<sup>40</sup> A true criminal procedure was introduced by the *lex Acilia* of 123 or 122.<sup>41</sup> According to its provisions, a jury sat in judgement of the accused, and if the defendant was found guilty, a penalty of twice the amount of the misappropriated funds was imposed.

<sup>37</sup> *Ver.* II.1.15.

<sup>38</sup> A *lex de repetundis* is literally a 'recovery' law, i.e. a mechanism for recovering extorted property.

<sup>39</sup> For a detailed history, see Balsdon (1938); Lintott (1981); Venturini (1979). A shorter survey is available in Lintott (2004) 68–74. For references to this original *lex*, see *Ver.* II.3.195, 4.56; *Off.* 2.75; *Brut.* 106; *CIL* I<sup>2</sup> 583.1.74 (81).

<sup>40</sup> On legal *patroni*, see §64 *quod eum sibi Achaei patronum adoptarant* n.

<sup>41</sup> Sometimes called a *lex Sempronia*. It is unclear whether the law was introduced by or at the behest of C. Gracchus. For ancient sources, see *Ver.* I.51, II.1.26; [Asc.] 149, 165 (221, 231 Stangl). This law is generally agreed to be the one preserved on the Tabula Bembina; see §18 *nam* n.