PATROCINIUM ORBIS TERRAE: PRINCIPLES OF ROMAN FOREIGN RELATIONS TO THE FALL OF CARTHAGE

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ABSTRACT

Lekha Shupeck: *Patrocinium Orbis Terrae*: Principles of Roman Foreign Relations to the Fall of Carthage
(Under the direction of Richard J. A. Talbert)

This dissertation examines the role of traditional principles and values in Roman foreign relations during the period from the end of the Second Punic War to the fall of Carthage. It offers a new perspective by focusing on aspects which have not been adequately connected, and presents a counterpoint to realist theoretical approaches to early Roman imperialism. The principles of Roman foreign relations can be traced back to the institution of the fetial priests, whose rituals and religious values were the springboard for these principles, including the Roman concept of “just war.” These ideals developed to become part of a larger set of norms concerning Roman foreign relations, including both justifications for war and rules about its proper conduct. The Senate enforced this set of rules against Roman officials who violated them by abusing and extorting foreign peoples. The victims came from across the Mediterranean world, and were drawn from both allies and enemies. Their complaints to the Senate were heard, and they were routinely compensated for their injuries. Over time, the formalization of these norms led to the establishment of a permanent court at Rome for cases of extortion. In its relations with Carthage after the Second Punic War, especially when mediating disputes between Carthage and the Numidian king, Massinissa, Rome still attempted to adhere to the values and norms which had guided its behavior towards foreign people. However, the pressures of Rome’s expanding role in the
Mediterranean eventually caused the relationship to break down. Nonetheless, Rome made a point of following the letter, if not the spirit, of its own rules, and represented even the total destruction of Carthage as conforming to the requirements of just war. While the character of Roman imperialism may have changed, the traditional values were maintained in the Late Republic through the works of Roman historians and the extortion court. This dissertation demonstrates the need for recognition of the role that traditional Roman principles played in Roman imperial expansion and for integrating them into analysis of this crucial period.
For my parents
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ABBREVIATIONS

Abbreviated references to ancient sources follow the conventions of *The Oxford Classical Dictionary*, 4th edition.

Abbreviated references to modern publications follow the conventions of *L'Année philologique*. 
INTRODUCTION

In 171 B.C.E.,\(^1\) at the beginning of the Third Macedonian War, an incident occurred about which we have considerable detail and which is both notable and seemingly exceptional. Livy reports that a group of envoys from the Greek city of Abdera requested an audience before the Roman senate. There the Abderites wept and complained that the praetor L. Hortensius had taken their city by force and plundered it. This was because, they said, when Hortensius had requested 100,000 denarii and 50,000 modii of wheat for his armies, the Abderites had asked for a reprieve so that they might send a delegation to the Roman consul and Senate to discuss the matter. In fact, the same envoys that stood before the Senate now had barely reached the consul, A. Hostilius Mancinus, when they learned that their city had been stormed, their leaders beheaded, and the rest of the citizens sold into slavery. To the Senate these actions did indeed seem shameful and intolerable, and a senatorial decree was issued on the Abderites’ behalf.\(^2\) The Senate sent two legates, C. Sempronius Blaesus and Sex. Iulius Caesar to find and free those who had been enslaved. These legates were also instructed to inform both Hostilius and Hortensius that an unjust war \((iniustum bellum)\) had been undertaken against Abdera, and that the Senate thought it right that all who had been enslaved be

\(^1\) All dates are B.C.E. unless otherwise noted

\(^2\) Livy 43.4.11
sought out and restored to freedom. The response of the Senate to this incident might be surprising, but on closer inspection, it proves to be routine – a similar incident had occurred in the previous year concerning the consul P. Licinus Crassus and the inhabitants of Coronea.\(^3\)

Although Abdera had been granted its freedom by Rome after the defeat of Philip V of Macedon in 197, there is no evidence of a special diplomatic relationship between the city and Rome. Nor is there an indication that any particular individual Roman senator acted as the Abderites’ patron or advocate in this case. Abdera was a prosperous city. It was known for its grain production and as a port of trade for inland Thrace. Still, it was not so prominent as to obviously warrant special treatment by Rome. Nor was there anything truly special about the response the Abderites received from the Senate. There are many similar cases in which foreign peoples approached the Senate to demand redress for abuse by Roman generals and allies during the second century, and they were almost uniformly granted some kind of aid or material assistance. This occurred whether those lodging the complaints were Greek allies, hostile Gauls, an obscure Ligurian tribe, or Chalcideans led by Micythio, one of Rome’s most steadfast friends. While scholars have laid much emphasis upon the historical ramifications of patronage, friendship, and other ongoing diplomatic relationships during this period, the behavior of Rome towards those who were neither allies nor active enemies is often overlooked. In examining cases such as those referenced above, it becomes clear that Rome developed a set of norms

\(^3\) Livy Per. 43: The precise nature of the decree concerning the Abderites is not known, but Livy notes that a similar decree was passed in the previous year concerning the inhabitants of Coronea, who had been mistreated by the consul for 171, P. Licinius Crassus. Additionally, Livy Per. 43 notes that a senatorial decree restored those whom Licinius had sold into slavery.
meant to guide the treatment of foreign peoples, covering issues from what constituted a just cause for war (*iustum bellum*) to the appropriate disposition of captured foreign property. Above all, however, the guiding principle in every case seems to be the desire to project an image of Rome and Romans as just, clement, and virtuous.

This dissertation seeks to add a further dimension to the scholarly understanding of Roman foreign relations during the Middle Republic. By examining the links between Roman religious and cultural values on the one hand, and institutions and cases like that of Abdera on the other, it is possible to see a process of gradual evolution. Moving from priestly ritual to formalized legal procedure, these values and norms shaped particular interactions between Rome and foreign peoples. Furthermore, this dissertation will seek explanations for the continued salience of these norms in the second century by applying social science theories concerning the strategic use of principled behavior for both external signaling and internal social coherence. This analysis will provide additional ways of interpreting interactions between Rome and foreign peoples that do not fit neatly into other scholarly readings of Roman foreign relations during this period. While others have thoroughly documented topics like the rituals of the fetial priests, or the law of war (*ius belli*), before now no one has drawn direct links between these topics and how the Roman Senate dealt with cases in which Roman officials or allies violated the principles that these institutions had established. By doing so, this dissertation will show that traditional Roman values and norms concerning the treatment of foreign peoples and states played a strong role in Roman foreign relations during the Middle Republic, and that their enactment and enforcement created an image of Rome as a virtuous and generous partner that remained powerful through the Late Republic and beyond.
In the past fifty years of scholarship on Roman foreign relations and imperial expansion during the Republic, there have been two distinct lines of discussion. One focuses on Rome’s diplomatic relationships with allies and other foreign peoples. The other seeks out explanations for the motives and mechanisms behind Roman war and conquest. Ernst Badian’s 1958 book, *Foreign Clientelae*, is perhaps the most influential work in the former category. In it he posits that the patron-client relationship is the model for Rome’s relations with external groups, distinguished from more formal and legalistic interpretations by the fact that allies’ “rights and obligations are in practice independent of law and treaties and are entirely defined and interpreted by Rome,” to its benefit.\(^4\) Still, Badian sees this kind of abject clientage as an end result, rather than a starting principle of Rome’s increasingly expansionist efforts overseas during the second century. Before the Second Macedonian and Second Punic Wars, Rome is well-established in Illyria, Sicily, and Sardinia, but makes few diplomatic overtures to other states and seems to have no desire to expand further. By 146, with the destruction of Carthage and the final defeat of Macedon and the Greeks, Roman domination of large segments of both the East and West is assumed, and terms like “socii” have become merely a polite fiction in a world where Roman power over its allies is only limited by the will of the Roman Senate.\(^5\)

\(^{4}\) Badian 1958: 114

\(^{5}\) Badian 1958: 115
Badian is widely accepted to have been correct about the ultimately informal nature of Rome’s relationships with most extra-Italian states. In addition, his examination, in the second half of his book, of the role which relationships between individual Roman elites and foreign peoples began to play from beginning of the second century onwards is also recognized as fundamental to understanding Roman foreign relations during the Republic. Even so, his analogy between such individual patron-client relationships and the operation of the Roman state as a whole towards other states and peoples has been contested. For example, Andrew Lintott criticizes the analogy both because it overlooks the language of friendship employed by the sources when describing these relationships, and because it implies that the same strict moral obligations applied to these relationships as applied to patron-client relationships between individual Romans.\(^6\) More recently, Paul Burton has attempted to refocus the discourse on this topic on the Roman style and method of diplomacy, especially the Roman discourse of friendship, rather than equating the terminology of Roman historians with the realities of Rome’s imperial power.\(^7\)

Following on from Badian’s work, a second line of discussion has been efforts made to further define the motivations behind Roman imperialism during this period. In his 1979 book, *War and Imperialism in Republican Rome*, William Harris contends that the chief reason that Rome went to war was because of the material benefits that accrued to Romans because of it, particularly to the elites who led military campaigns. According

\(^6\) Lintott 1981: 61-62

\(^7\) Burton 2011: 5; For more on the character of clientage in Roman interstate relations, see Braund 1984.
to Harris, Roman motives for undertaking a war were primarily economic, although aristocratic competition for glory in battle also played a role. In particular, Harris singles out the fetial law and its theory of just war as a mere psychological matter for the Romans, since the wars they fought were not exclusively in clear defense of themselves or allies. This view has been criticized by many, including John North, for assuming too much about the states of mind and intentions of Roman actors, and for its incompatibility with the evidence that Rome did actively choose not to annex many states even after a clear victory.

Arthur Eckstein took Harris’ perspective further in his 2006 work, Mediterranean Anarchy, Interstate War, and the Rise of Rome. Eckstein applied modern Realist political theory to the history of the ancient Mediterranean. He maintained that not only was Roman practice towards other states completely and calculatedly self-serving, but also every other state in the Mediterranean behaved similarly. With the lack of formal international law, or any enforcement mechanism targeting violations of shared norms, ancient Mediterranean states functioned in a “multipolar anarchy,” the harsh and competitive nature of which drove the states acting within it towards aggressive and warlike behavior. This approach by Eckstein tends towards treating states as undifferentiated actors without distinctive cultures and histories, and depends on decision-making individuals within these states being rational actors with access to all relevant information about a particular situation.

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8 Harris 1979: 166-175
9 North 1981: 2-3
10 Burton 2011: 16
My dissertation is not intended to wholly overturn these theories or replace them with another grand formulation of Roman imperialism in the Republic. Rather, it seeks to complicate and supplement current scholarly ideas about how the Romans handled certain aspects of foreign relations, and how they constructed their self-image in these instances to reflect cultural values that had been institutionalized from the Republic’s earliest days. While Badian recounts the increasing domination of Rome over its nominal allies, at the same time it is possible to document a parallel narrative - the development of traditional religious values into a legal regime meant to protect foreign peoples from certain kinds of abuse by Roman officials, as well as efforts by the Roman Senate to make amends for that abuse where it happened. No doubt, as Badian’s theory would predict, these values and behaviors are followed only to the extent that the Romans themselves determined. Yet, at the same time, principled behavior had its own logic within the realm of Roman foreign relations, and was not wholly determined by immediate expediency. For example, contrary to Harris’ reckoning, the principle of just war was often cited not just to give legitimacy to wars which were carried out, but also to punish and chastise those who contravened the principle by fighting against allies or blameless foreign peoples. The Roman Senate frequently repudiated commanders who undertook such improper wars, despite the fact that the state might have profited by them. Furthermore, while it is true that international law in the modern sense, with its multinational treaties, Geneva Convention, and International Criminal Court, did not exist in the ancient world, there were some norms that were shared among Mediterranean states, the most well-known being the inviolability of ambassadors. It is for this reason that, on multiple occasions, we see the Romans turn over to the injured states those who
harm ambassadors. Even where both shared norms and multilateral enforcement were 
absent, Rome clearly possessed and acted upon law which governed state interactions 
with foreign peoples.

Traditional Roman principles concerning the treatment of foreign peoples had inherent value to the Romans as a reinforcement of their cultural identity, and these were not to be laid aside at will. Furthermore, there was a logic to demonstrating clemency towards other states and peoples in order to show the inherent good faith of Rome towards any potential partners who might be observing Roman behavior. For this reason, it makes sense to take Roman authors at their word when they refer to concepts like just war and *ius belli* as fundamental to Roman behavior abroad. Similarly, it is rash to regard the aid given to foreign peoples who are abused and extorted by Roman generals as a mere sop, rather than as a sincere expression of repentance. Such acknowledgements need not conflict with the recognition of the changes that took place in Rome’s foreign relations as its imperial power increased. Rather, these incidents of principled behavior complicate the picture of a uniform decrease in the Roman regard for the rights of allies, which some now contend occurred alongside Roman imperial expansion. After all, the permanent court for extortion (*quaestio de repetundis*) was established only three years before the final destruction of Carthage.
Performing Roman Identity

A further purpose of this dissertation is to explore the idea that certain elements of Roman foreign relations were performative in nature, both for external and domestic Roman audiences. Social theorists, economists, and scholars of international law have long debated why individuals and states sometimes exhibit altruistic or principled behavior even when the immediate benefit to themselves is neither immediate nor apparent. One outcome of these investigations has been the formulation of what is broadly termed “signaling theory,” in which individuals undertake costly or altruistic actions, thereby signaling their quality as cooperative partners. Within the discipline of ancient history, scholars like Susan Mattern have tried to explain Roman decision-making in terms of the education and cultural milieu within which elite Romans were raised.¹¹ My dissertation attempts to bring these two ideas together, arguing that Roman obedience to religious and moral ideas which had long been embedded in Roman culture acted as a signal, both to foreign peoples and to Romans themselves. To the former, these signals were meant to convey the fact that Rome was a trustworthy partner in diplomatic relationships. To the latter, adherence to what were ultimately religious strictures demonstrated their inherent worth because of the costs involved in adherence, thereby no doubt enhancing group stability and cohesion.

Valerius Maximus’ work is illustrative of how the Romans’ principled behavior was focused on creating a particular identity. In his Facta et Dicta Memorabilia, Valerius

¹¹ Mattern 2002: 14-20
seeks to collect and catalogue the notable actions of individual Romans from history in order to provide models of both proper and improper behavior as guidance for his readers. In the section titled *De Fide Publica* he includes a story meant to illustrate the Romans’ dedication to honor and good faith. In 188, Marcus Claudius, the urban praetor, ordered that L. Minucius Myrtillus and L. Manlius be turned over to the Carthaginians by the fetial priests, because they had been accused of violence against Carthaginian ambassadors.\(^{12}\) Minucius and Manlius, while not easy to identify, bear the names of prominent Roman families, making their surrender a significant event. Furthermore, the Carthaginians, although formal allies after the end of the Second Punic War, were often regarded with suspicion by Rome. These circumstances raise the question of why the Romans would choose to perform such a costly action (the loss of two notable citizens) without the promise of any commensurate benefit. Valerius Maximus tells us that “In this the Senate was considering not those to whom the men were surrendered, but itself.”\(^{13}\)

In his preface to the section in which this story is included, Valerius states that the *exempla* to follow are evidence that *fides*, the Roman concept of good faith and reciprocity, has always flourished in the Roman state, and that all nations have been witness to this fact.\(^{14}\) This statement recognizes that there were two sides to Roman actions like the surrender of these Roman citizens to Carthage. First, Romans conceived of themselves and their society as exceptionally virtuous and observant of certain ethical

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\(^{12}\) Livy 38.42.7; Val. Max. 6.6.3

\(^{13}\) Val. Max. 6.6.3 *Se tunc senatus, non eos, quibus hos praestabatur, aspexit.*

\(^{14}\) Val. Max. 6.6.praef
principles, in particular *fides*. This is a complex term, encompassing “everything on which one can rely, a guarantee in the broadest sense, an affirmation, a particular legal relationship of people to each other, or a property found in people or things.”¹⁵ For Romans, *fides* was the virtue which underlay all relational norms. On the other hand, non-Roman peoples could both witness and accept the Roman devotion to *fides* as part of their larger picture of the Romans as a people and state.

Consciousness of such observation by non-Romans is essential to understanding Roman foreign relations under the Republic. Good faith and other norms derived from *fides* played a fundamental role in the ways that the Roman state and Roman officials approached and interacted with foreign peoples. Social theorists have often had difficulty in reconciling the seemingly altruistic and principled behaviors of actors with the idea that those same actors make decisions on the basis of rational self-interest. Scholar have struggled to explain how principled behavior can be undertaken in the service of self-interest when the benefit to the actor is not obvious or immediate. In his influential article, “The Strategic Basis of Principled Behavior,” Eric Posner argues that such actions may be taken in order to acquire a positive reputation which may be useful in future interactions.¹⁶ This theory has been extended to international law by scholars like Andrew Guzman, who focuses on the reputational effects of states’ compliance with international laws and norms.¹⁷

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¹⁵ Fraenkel 1916:. 187: “bezeichnet also alles, worauf man sich verlassen kann, Garantie im weitesten Sinne, sei es dass sie in einem Akte, einer Versicherung, einem bestimmten rechtlichen Verhältnis von Personen zu einander, oder in einer Eigenschaft von Menschen oder Dingen gründet”

¹⁶ Posner 1998: 1186-1187

¹⁷ Guzman 2002
By this model, if the Romans do not adhere to their principles in any particular interaction, their reputation for fair-dealing would suffer, and this failure would negatively affect future relationships. “Collateral consequences,” as Oona Hathaway calls such reputational effects, 18 would occur when other states which have observed Roman actions premise their own decisions about how to interact with them on the basis of those observations. So, if Roman commanders repeatedly made war on allied peoples, refused surrenders, or improperly seized property without proper justification, this behavior might deter other states from contemplating an alliance with, or surrender to, Rome. These considerations are recognized in Roman sources; anxiety about the reputational effects of an errant commander’s cruelty is voiced by the Senate. 19

Ian Hurd identifies three reasons why a particular state actor might choose to comply with a norm or rule: (1) the actor fears punishment by those empowered to enforce the rule, (2) the rule is in the actor’s self-interest, and (3) the actor sees the rule as inherently legitimate. 20 Enforcement of norms through punishment by an external, international authority is an element that was absent from the ancient Mediterranean. The punishment of individual Roman commanders for violations of norms was reasonably common, and is the focus of Chapter Three of this dissertation. However, domestic enforcement of norms does not account for the state level incentives for this enforcement. Thus self-interest and devotion to principle must be the primary motivators when the

18 Hathaway 2012: 54
19 Livy 42.8.5
20 Hurd 1999: 379
Romans choose to act in compliance with their norms of foreign relations. Self-interest has already been mentioned above, and many analyses deem it a sufficient and complete motive for any and all seemingly principled behavior. However, Hurd and others explore the idea that rules may be obeyed because the actors who obey them see them as originating in a process or institution which they consider to be legitimate and in which they themselves are participants.\(^{21}\) This claim is linked to the constructivist idea that norms and rules are primarily social concepts, and that compliance with these norms is a condition of expressing and retaining group identity.\(^{22}\)

Such reinforcement of group identity and strengthening of social cohesion are another necessary component for understanding Roman compliance with foreign relations norms. This compliance serves to strengthen what Émile Durkheim termed the “collective consciousness.”\(^{23}\) The values that inform Roman foreign relations – piety, clemency, justice – are also the key virtues emphasized by Roman culture more generally. Together with shared beliefs and traditions they serve as a kind of collective psychology for Romans. Hence violations of the principles of Roman foreign relations not only endanger the practical interests of the state, but also offend its collective consciousness. Thus, the state, as the protector of these beliefs, must act to ensure their observance. For this reason, the state is conscientious in carrying out the appropriate rituals to guarantee the piety of its foreign relations, in punishing violators, and in

\(^{21}\) Alford 2012: 17-18

\(^{22}\) Alford 2012: 18

\(^{23}\) Durkheim 1997: 39
justifying and rationalizing any apparent transgressions when they are in the state’s larger interest. The strength of the collective consciousness empowers the cooperative venture of the state, which could not survive without strong social cohesion. Social cohesion as a motivation for principled behavior also adds a degree of comprehensibility to the costly actions which Roman principles of foreign relations often require. After all, the collective consciousness, which has been formed over the life of the society through its historical development, cannot be expected to consist only of elements which are purely advantageous and useful. Consequently, Roman foreign relations are often judged by state actors on the basis of their “Roman-ness” or “un-Roman-ness” rather than their strict utility.

Analyses that fail to consider the impact of principled action on the conduct of Roman foreign relations during the Republic will always fall short in comprehending certain aspects of Roman imperialism. By envisioning Romans as fixated on exerting hegemonic control over the Mediterranean, and equating the absence of a central international enforcement authority with the lack of any real norms for the conduct of foreign relations, scholars have created an oversimplified picture of this crucial period in Rome’s history. Such models fail to account for the regular punishment of Roman commanders who contravened real norms and attacked and abused foreign peoples. I maintain that Rome’s traditional values served to shape its foreign relations at least as much as imperial ambitions, economic advantage, and pure strategic self-interest. In the sphere of foreign relations, Romans respected and sought to obey the values of their

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24 Durkheim 1997: 62
society because those values were both advantageous to them and had an inherent legitimacy and meaning. Adherence to these values was a part of Roman identity, and compliance was an assertion of the Romans’ cultural superiority.

Sources

This dissertation aims to examine how Romans both acted upon and thought about the principles concerning foreign relations embedded in their culture. While a few references are made to epigraphical sources and the works of Virgil and Plautus, the great majority of evidence used comes from prose authors, in particular Livy and Cicero. In general, there are few literary sources for the period between the end of the Second Punic War in 201 and the destruction of Carthage in 146, which forms the heart of this dissertation. In addition, with the exception of Polybius, whose extant work relating to this period is mostly fragmentary, the sources we do have are writing at least a century after most of the events that they record. Furthermore, the practice of history in the ancient world was unlike modern methods and more akin to rhetoric than a social science.

Thus, it is to be expected that the events of the Roman past are not reflected perfectly in our sources. On the basis of the scholarship of source criticism we know that the writing of history itself does not seem to have emerged among the Romans before the late third century. Therefore, it may be presumed that later sources like Livy and Cicero did not have access to substantial historical narratives for earlier periods. Still, when we
consider the significant events and narratives concerning Roman foreign relations that are contained in our sources, it is possible to view them as part of a larger discourse about how Romans interacted with foreign peoples. This discourse related to reality by influencing how historical actors performed in these interactions, while the discourse itself adapted to the reality of events in order to preserve its integrity in the eyes of its audience. In this way, even if the historicity of a particular event cannot be verified beyond doubt, we can expect that the sources reflect the way that the Romans typically conceived of such events.

For this dissertation, which is concerned primarily with the role that traditional Roman values played in foreign relations from a Roman perspective, access to the Roman discourse concerning these relations is essential. Recurrent citation of ideas like the fetial law, just war, and unconditional surrender in the sources allow me to make connections between institutions like the fetial priests and the permanent court for extortion that may not have been apparent if I had disengaged from this discourse in search of a more “objective” version of Rome’s history. For example, the historical accuracy of Minicius and Manlius’ surrender to the Carthaginians is of less concern to me than whether Romans would have believed that such an incident occurred because it comported with their understanding of how Rome generally reacted to Romans who abused foreign ambassadors. In the same way, when Cicero writes in De Officiis in 44, long after the fetial priests have ceased to function as an active part of Rome’s foreign relations, that the fetial law is the basis of the equitable conduct of war, we can believe that he and his audience are easily able to see a connection between the conduct of war in their time and
the rituals of those priests.\textsuperscript{25} When viewed in this way, even our sources’ writings concerning the earliest periods of Roman history, for which their evidence is the most questionable, can be useful in trying to understand the Roman perspective on their own foreign relations behaviors.

\textit{Patrocinium Orbis Terrae}

In \textit{De Officiis}, in the midst of a discussion about the duties owed to one’s enemies, Cicero, the well-known Late Republican politician, orator, and author, describes the Roman empire of the Middle Republic as “\textit{patrocinium orbis terrae}” – a guardian of the world. The Romans’ idea that their society was uniquely placed, by the natural talents and values of its people, to rule the world was a key influence on both the decisions they made and the identity they tried to construct through their interactions with other Mediterranean peoples. Cicero speaks of the ideal Roman state not as an empire (\textit{imperium}) driven by power, but as a place of refuge for the weak and the abused, a tool employed in service of the allies, and one that displayed by its every act the clemency, justice, and honor of the Roman people.\textsuperscript{26} This idea of Rome as a benevolent power in its world relied upon Rome’s commitment and obedience to the values, traditions, institutions, and laws which governed its existence as a state and a people. The reality of these elements and their impact demands that we take them into account in any analysis.

\textsuperscript{25} Cic. \textit{Off.} 1.36

\textsuperscript{26} Cic. \textit{Off.} 2.26-27
of Roman imperialism. This dissertation attempts to trace some of the most consequential traditional institutions and values which exerted this influence from their origins in early Rome through their development and application in the Middle Republic, and on to moments of their eventual breakdown.

Chapter One explores the origins of Roman foreign relations in the institution of the fetial priests, and the rituals and duties they carried out. It shows how an institution, whose primary purpose was to maintain the pax deorum when Rome formally interacted with foreign peoples, became a vehicle for the formalization of a set of foreign relations principles often referred to as the ius fetiale. Chapter Two continues to trace this formalization, examining the creation of a theory of just war (justum bellum) among the Romans, which is based on the fetial law. Alongside just war, a further set of norms had evolved to deal with other aspects of the Roman conduct of war, termed ius belli, and together they formed the foundation of Roman foreign relations law. In Chapter Three I show how this emerging set of rules was enforced against Roman officials and allies who compromised relationships with foreign peoples through acts of abuse and extortion. In this chapter I will also follow how the development of these cases led to increasing procedural formalization, and the eventual creation of Rome’s first permanent criminal court, the quaestio de repetundis, which became the venue for prosecutions of this kind. Chapter Four presents a case study of the unique relationship between Rome and Carthage from the conclusion of the Second Punic War to the destruction of that city by the Romans in 146. The aims of this chapter are twofold. First it demonstrates the strength of the Romans’ values concerning the proper treatment of allies by documenting the efforts they made to maintain a friendly and just relationship with their former chief
rival. Second, this chapter shows how Roman adherence to traditional principles could break down under simultaneous pressure both from the unique circumstances of the relationship with Carthage, and from Rome’s changing role in the Mediterranean. Finally, Chapter Five explores how the history of Roman foreign relations is mythologized by writers of the Late Republic, and analyzes the legacy of the quaedestio de repetundis.

When Cicero refers to the *patrocinium orbis terrae*, or praises the incorruptibility of Regulus or Scipio Africanus, he is pointing to a Roman past governed by a set of principles and values still observed in his own time. I seek to reach back into that past and assess the combined impact of elements of Roman culture and history which have been for too long regarded as separate entities. It is possible to see the fetial priests not as an institution which became obsolescent by the third century, but rather as the seed of a set of legal norms. By tracing the development of these norms from traditional religious values through to formal court procedure, it is possible to shed new light on Roman foreign relations during the Republic. I am not primarily concerned with the motives behind Roman imperialism – whether it was defensive or aggressive, disinterested or acquisitive. Rather, my aim is to give due weight to an important element of the Roman perspective which has typically been overlooked. I make it clear that throughout the critical period of the Middle Republic the Romans regarded themselves as uniquely principled among the powers of the Mediterranean. This self-image was not merely a token justification for war and peace and alliance and conquest. It was meaningful to the Romans as reflecting distinctively Roman values and principles for success in diplomatic relationships. This thinking merits the serious consideration and analysis that my dissertation provides.
"As for war, justice is defined by the most sacred fetial law of the Roman people." So says Cicero in *De Officiis* when discussing the duties which are owed to those who have injured Rome. In this category he places not only those with whom Rome is actively at war, but also the conquered, those engaged in diplomatic negotiations, and those who have become allies through peace treaty. Following Cicero, one would expect the fetial law to be a codification of the Roman law of foreign relations. However, as far as it is possible to discover it, the *ius fetiale* is both more and less than this. A sacred institution, created by a college of priests whose origins are as old as the Roman people itself, the *ius fetiale* is not a simple systematic digest of the self-imposed rules of Roman foreign relations. While no text of this law is extant, from what is recorded about the priests and their duties and rituals it is clear that the *ius fetiale* preserves traditional Roman practices and beliefs about the just way to deal with foreign peoples. And while some of the principles contained within the fetial law are shared with other

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27 Cic, *Off.* 1.36: *Ac belli quidem aequitas sanctissime fetiali populi Romani iure perscripta est.*

28 The best recent introductions to the subject of the fetials and their law are as follows: Watson 1993; Santangelo 2008; Wiedemann 1986; Saulnier 1980; On the Augustan “revival” of the fetial institution, which is not within the scope of this chapter, see Zollschan 2011; Fontana 1989.
Mediterranean cultures, the fetial law as an institution is unique to Rome.\textsuperscript{29} These practices and beliefs both sprung from and contributed to fundamental Roman religious and cultural values. The fact that they were recorded by the priests does not mean that the Roman people were otherwise ignorant of these values. Rather the recapitulation and codification of these rites by the fetial priests created a set form of these beliefs which became a source of authority concerning principles that were already essential to Roman culture. For this reason Cicero is able to point to the fetial law as the font of justice in war at a time when the college of the fetials had become obsolescent as a discrete institution.

Thus, from the first century Roman perspective, the fetial law contained the essential elements of Roman \textit{mores} surrounding foreign relations. It is through the examination of this institution that it is possible to uncover the major principles which the Romans believed were a fundamental part of their identity when interacting with foreign peoples. Some of these principles include the necessity of only engaging in “just war” (\textit{bellum iustum}), the sacred nature of treaties, justice and protection for allies, and, what is an inherent part of all of these, the scrupulous observance of the duties imposed by \textit{religio}. The rituals observed by the fetial college enact and reify these principles. Furthermore, in addition to performing necessary religious duties, the fetial rites also manifest aspects of proper Roman relations with the Other. These aspects are visible and expanded upon in later periods when the fetials themselves may not have been particularly active. For this reason a study of the fetials, their rites, and their \textit{ius}, is indispensable to full comprehension of the way in which the Romans thought about their

\textsuperscript{29} While I show below that the fetial priesthood was probably common to the Latin tribes, there is no evidence that it developed into a formal institution elsewhere than at Rome.
interactions with foreign peoples. Thus the ritual of *rerum repetitio* forms the basis of the Roman concept of *bellum iustum*. The fetial solemnization of treaties similarly underlies the inviolability of a properly made peace (*pax*). Various other episodes involving the priests demonstrate what duties the Romans felt were owed to allies and enemies. Furthermore, the deep roots of the fetial institution within Roman society, and the Romans’ own accounts of how and when it was created, show that the fetial priests are a manifestation of cultural values and beliefs which have been part of Roman culture from its earliest days. When the Romans choose to take costly actions, either as a message to other peoples or to their own, it is the *ius fetiale* that they draw upon. In this way, an understanding of the *fetiales* is the first step towards a thorough analysis of how religious and cultural values shaped Roman foreign relations under the Republic.

The Origins of the Fetiales

As Theodor Mommsen describes in his *Römisches Staatsrecht*, negotiation between the Roman state and foreign states was handled by the college of fetial priests in the earliest years of the Republic.\(^30\) The most comprehensive and concise ancient account of the origins, duties, and functions of the fetial priests is given by Dionysius of Halicarnassus in his Ῥωμαϊκὴ Αρχαιολογία:

\(^30\) Mommsen 1887-1888: 675. For Mommsen’s full evaluation of legates more generally see pp.675-701.
εἰσὶ δ’ ἐκ τῶν ἁρίστων οἴκων ἄνδρες ἐπίλεκτοι διὰ παντὸς ἱερόμενοι
tοῦ βίου, Νόμα τοῦ βασιλέως πρώτου καὶ τοῦτο Ὅρμαῖος τὸ ἱερὸν
ἀρχεῖον καταστησαμένου: εἰ μέντοι παρὰ τῶν καλουμένων Αἰκικλῶν
tὸ παράδειγμα ἔλαβεν ὡσπερ οὐσίας τινες, ἢ παρὰ τῆς Ἀρδεατῶν
πόλεως ώς γράφει Γέλλιος οὐκ ἔχω λέγειν, ἀπόχρη ὅ ἦ μοι τοσοῦτο
μόνον εἰπέν, ὅτι πρὸ τῆς Νόμα ἁρχῆς οὐπω τὸ τῶν εἰρηνοδικῶν
σύστημα παρὰ Ὅρμαῖος ἤν . . . ἅπαντα μὲν οὖν ὡς ἀνάκειται
tοῦτοις τοῖς εἰρηνοδίκαις ἐπελθεῖν διὰ πλῆθος οὐ ράδιον,
κεφαλαιώδεις δ’ ὑπογραφῆ δηλῶσαι τοιάδ’ ἐστι: φυλάττειν ἵνα μηδένα
ἵνα Ὅρμαῖος πόλεμον ἐξενέγκεισθι κατὰ μηδεμίας ἐνσπόνδου πόλεως
ἀδικον, ἀρξάντων δὲ παρασπονδεῖν εἰς αὐτοὺς ἔτερον πρεσβεύσθαι
tε καὶ τὰ δίκαια πρὸ τοῦ αἰτεῖν λόγῳ, ἀν δὲ μὴ πεἴθουνται τοῖς
ἀξιομένοις, τότ’ ἐπικυριοῦν τὸν πόλεμον. ὁμοίως δὲ κἂν ἀδικεῖσθαι
τινες ὑπὸ Ὅρμαῖον ἐνσπόνδοι λέγοντες τὰ δίκαια αἴτησι, τοῦτος
διαγινώσκειν τοῖς ἄνδρας εἰ τι πεπόνθασιν ἐκσπονδὸν καὶ ἐὰν δόξωσι
τά: προσήκοντα ἐγκαλεῖν τοὺς ἐνόχους ταῖς αἰτίαις συλλαβόντας
ἐκδότοις τοῖς ἀδικηθεῖσι παραδιδόναι τά τε περὶ τοὺς πρεσβευτάς
ἀδικήματα δικήσει καὶ τά περὶ τάς συνθήκας ὡς φυλάττειν εἰρήνην
τε ποιεῖσθαι καὶ γεγενημένην, ἐὰν μὴ κατὰ τοὺς ἱεροὺς δόξη
pεπράξθαι νόμους, ἀκυροῦν καὶ τάς τῶν στρατηγῶν παρανομίας, ὡς
περὶ τέ ὂρκους καὶ σπονδάς ἐπιτελοῦνται . . .

They are chosen men, from the best families, and exercise their holy
office for life; King Numa was also the first who instituted this holy
magistracy among the Romans. But whether he took his example
from those called the Aequicoli, according to the opinion of some, or
from the city of Ardea, as Gellius writes, I cannot say. It is sufficient
for me to state that before Numa’s reign the college of the fetiales
did not exist among the Romans. . . . The multitude of duties, to be sure,
that fall within the province of these fetiales makes it no easy matter
to enumerate them all; but to indicate them by a summary outline, they are as follows: It is their duty to take care that the Romans do not enter upon an unjust war against any city in alliance with them, and if others begin the violation of treaties against them, to go as ambassadors and first make formal demand for justice, and then, if the others refuse to comply with their demands, to sanction war. In like manner, if any people in alliance with the Romans complain of having been injured by them and demand justice, these men are to determine whether they have suffered anything in violation of their alliance; and if they find their complaints well grounded, they are to seize the accused and deliver them up to the injured parties. They are also to take cognizance of the crimes committed against ambassadors, to take care that treaties are religiously observed, to make peace, and if they find that peace has been made otherwise than is prescribed by the holy laws, to set it aside; and to inquire into and expiate the transgressions of the generals in so far as they relate to oaths and treaties . . . 31

Here Dionysius outlines the duties which the priests undertook to ensure the proper, religious conduct of Rome’s foreign relations, and also places their origin with the king Numa Pompilius. Numa was the fabled second king of Rome, and, by crediting him with the fetial college’s creation, Dionysius is choosing to espouse a particular narrative. Numa is recorded in the ancient sources as having been the originator of the greater part of traditional Roman public religion. Livy tells us that he was famed for his justice and piety, and most learned in all matters of law, both human and divine. 32 It was on this


32 Livy 1.18.1
basis that he was offered the kingship by the Senate. He is credited with the creation of the Temple of Janus, the cults of Fides and Terminus, and the creation of the major Roman priesthoods: the *augures, flamines, Vestals, Salii,* and *pontifices,* along with the *fetiales.* In essence, Numa is considered to be the founder of the significant religious elements of the Roman state. It is significant that in Plutarch’s Parallel Lives, he is paired with the designer of the Spartan constitution, Lycurgus. For this reason, if Romans believed that Numa created the *fetiales,* they must have considered them, their rituals and laws, as fundamental to the continued piety and fortune of the Roman Republic, and one of its oldest institutions.

However, ancient writers do not all agree on the identification of the fetial college with Numa. Livy places their origins with the fourth king of Rome, Ancus Marcius, and Cicero with Tullus Hostilius, the sixth. In either case, these authors’ attribution of the fetials is not arbitrary. Ancus Marcius was said to be Numa’s grandson, and similarly pious, while also aggressive in his defense of Rome. Thus, his motivation in creating the *fetiales* was to bring religious scruple into the Roman conduct of war in the same way that Numa had brought it into the domestic functions of the state. Tullus Hostilius was similarly associated with war, particularly the long conflict with Alba Longa: the story of the Horatii is included under his reign. He is also said to have built the first Senate house (*Curia*) and the *Comitium,* earning him a place alongside Numa and Ancus as a founder.

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33 Penella 1987 argues that Livy is only referring to the *ius fetiale* as originating with Ancus Marcius, while the fetial priesthood was an earlier institution in Livy’s text.

34 Livy 1.32

35 Livy 1.32
of signal Roman institutions. Similarly to Livy on Ancus, Cicero states that Tullus Hostilius instituted the fetial rites “so that war, if it was not announced and declared publicly, would be judged unjust and impious.”\footnote{Cic. Rep. 2.31} This assertion, along with the archaic (or archaizing) details of the fetial rituals described by these authors, serves to show that the fetiales and their ius were connected, in Roman minds, to the regal period. This is the period during which they considered some of their most essential cultural institutions to have originated. To place the fetiales alongside the likes of the Flamen Dialis and the Curia was to give them equal legitimacy and status as a fundamental part of the religious and political functions of the Roman state. Thus it is necessary to regard them, as Romans with any knowledge of their cultural heritage must have, as an indispensable part of Roman traditional practice.

If the ancient sources can tell us what the Romans themselves believed, they also give some indications about the historical origins of the fetial priests. The way that the rituals of the priests are described seems to show that they had aspects in common with the early legis actiones, the earliest forms of Roman civil procedure.\footnote{Wiedemann 1986: 487} These were so ancient that they seem to have already undergone a certain amount of formalization by the time of the drawing up of the Twelve Tables. However, the fetial rites may have been yet more ancient, since the symbolism of the rites, involving implements like a spear of cornelwood, sacred herbs, and a flint stone might seem to indicate a time before materials like iron were in common use. Furthermore, for the fetials to have been of any use to the

\footnotetext[36]{Cic. Rep. 2.31}

\footnotetext[37]{Wiedemann 1986: 487}
Romans, the priests must have been intelligible as an institution to those peoples with whom the Romans had occasion to use the fetials in the period of their origin. This must have been the larger group of Latin tribes, which Rome came to dominate very early on in its growth. Since the tenth century the Latins had formed a discrete cultural group, distinct from other surrounding Etruscan and Osco-Umbrian peoples. Archaeological evidence indicates that they shared important cultural traditions and evolved together from small subsistence villages into more substantial city-states. Despite their cultural similarities, the co-existence of numerous individuated Latin groups in a small geographical area must have led to frequent conflict. The mythologized histories of early Rome depict a state constantly at war with the other Latin tribes, and there is no reason to doubt that this was the usual situation in these early years.

In this context the existence of a body such as the fetial priests, common to the different Latin tribes, and meant to mediate, or at least regularize, conflicts between them seems natural. This is impossible to prove definitively, since the literary evidence for such a shared institution is primarily Augustan. Yet Dionysius and Livy, among others, point to the Latin tribe of the Aequi (or Aequicoli) as the tribe whom Numa or Ancus were imitating when they created the fetials. This evidence seems to indicate the possibility that the Latins shared a similar priesthood or type of embassy for the simple reason that Numa and the other kings are shown as having created many other religious and social institutions out of whole cloth. The importation of the fetials from another Latin tribe thus may have been similar to the importation of the haruspices from Etruria, who also formed a Roman priestly college.
Whether the *fetiales* were imported by Rome from other Latins, or had sprung up at the same time among all Latin tribes, their original use is only understandable in an environment of mutual similar institutions among other Latin and nearby Italic tribes.\(^{38}\)

Yet, as the evidence demonstrates, their use by the Romans extends beyond their interactions with other Latin tribes. Furthermore, the principles contained in the fetial law persist in Rome’s actions even when the *fetiales* themselves are no longer recorded as carrying out their rites. Cicero’s citation of the *ius* is followed years later by Octavian’s personal enactment of the fetial declaration of war against Cleopatra.\(^{39}\) Clearly, power and legitimacy can be drawn from this ancient tradition. Alan Watson describes the righteousness of the *ius fetiale* as providing a “psychological advantage” to the Roman state in its interactions with foreign peoples.\(^{40}\) The nature of Roman society dictated that such a “psychological advantage,” springing from a confidence in and assurance of the piety and justice of Roman actions, must be drawn from continuity, actual or perceived, with ancient Roman values and traditions. Thus, the main function of the fetials and their law from the fourth century on seems to have been to provide Rome with a reliable default source of moral authority which could be used to legitimate its foreign relations.

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\(^{38}\) Santangelo 2008: 89. From Livy there is evidence that they existed among the Aequicoli (1.32) and the Samnites (8.39); Servius suggests also the Faliscans (*Aen. 7.659*) However, this may be analogic terminology on Livy’s part, as he often uses the names of Roman institutions when referring to similar foreign institutions.

\(^{39}\) Dio Cass. 50.4.5

\(^{40}\) Watson 1993: 27
The conduct of a just war is perhaps the single most prominent element of Roman military conduct which can be directly linked to the fetial priests. Cicero defines the term as follows: “No war is just, unless either a request for restitution has been made or an announcement has been made and a formal declaration.”\textsuperscript{41} This short statement lines up well with the various descriptions given by ancient authors for the fetial ritual which has come to be known as the \textit{rerum repetitio}.\textsuperscript{42} Among Livy’s accounts of early disputes between the Romans and other Latins, we find a detailed description of the rituals which fetial priests performed in order to declare a just war at the time of the king Numa Pompilius. It is important to note that, while all evidence points to the fetial priesthood’s origins in Rome’s earliest days, the rituals related by later Roman historians are most likely reflective of a much later process of formalization and rationalization undergone by most of Rome’s religious institutions. As Jörg Rüpke writes, our modern understanding of Roman religion can be traced in large part to changes in Roman society that occurred between the mid-fourth and mid-first century which pushed Romans to institutionalize religious roles and rituals and standardize religious knowledge.\textsuperscript{43} However, this does not mean that the rituals recorded by Livy are unable provide important information about how the \textit{fetiales} operated and how Romans conceived of their role in foreign relations.

\textsuperscript{41} Cic. \textit{Off.} 1.36: \textit{Ex quo intellegi potest nullum bellum esse iustum, nisi quod aut rebus repetitis geratur aut denuntiatum ante sit et indictum.}

\textsuperscript{42} It is important to note that the phrase \textit{“rerum repetitio”} does not actually appear in the ancient accounts, but is an invention of modern scholars. Santangelo 2008: 66

\textsuperscript{43} Rüpe 2011: 1-4.
According to the ancient sources, just war could only take place in the case of a legitimate grievance against the opposing state. Once this was determined by the king or Senate, the selected fetial, called the *pater patratus*, was sent to the borders of enemy territory. There he covered his head with the traditional wool fillet of Roman priests and recited the following formula:

'audi, Iuppiter', inquit; 'audite, fines' — *cuiuscumque gentis sunt, nominat*—; 'audiat fas: ego sum publicus nuntius populi Romani; iuste pieque legatus venio verbisque meis fides sit'. peragit deinde postulata. inde Iouem testem facit: 'si ego iniuste inpieque illos homines illasque res dedier mihi exposco, tum patriae compotem me numquam siris esse'.

“Hear me, Jupiter,” he says, “hear me, boundaries” – he names whatever people whose boundaries they are – “hear, Divine Law! I am the official messenger of the Roman people. I come justly and piously as their ambassador, may good faith be in my words.” Then he runs through the demands. Next he makes Jupiter the witness: “If I unjustly and impiously pray that those men and those things be given over to me, then may you never permit me to return to my native land.”

He then crossed the boundary and repeated the same formula, then did so again to the first person he meets, then again when entering the city gates, and again when he comes

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44 Livy 1.32.6-7
to the enemy city’s marketplace. If the men, money, or objects he demanded were not offered within thirty-three days, he announced the prospect of war thus:

‘audi, Iuppiter, et tu, Iane Quirine, diique omnes caelestes vosque, terrestres, vosque, inferni, audite: ego vos testor populum illum’ — quicumque est, nominat—’iniustum esse neque ius persolvere. sed de istis rebus in patria maiores natu consulemus, quo pacto ius nostrum adipiscamur’. ⁴₅

“Heard, Jupiter, and you, Janus Quirinus, and all the gods in heaven, and you on earth, and you in the underworld, hear me! I call you as witness that those people” – whoever they are, he names them – “are unjust and do not give what is due. But about these matters we will consult with the elders in our native land, as to how we may obtain what is due to us.”

The pater patratus then returned to Rome, and, after the war gained the approval of the Senate and people, he would be sent back to the enemy boundary to formally declare war.

Carrying an iron or wooden spear⁴⁶ and in the presence of at least three adult men, he spoke the following words (in this example, against the Latins):

‘quod populi Priscorum Latinorum hominesque Prisci Latini adversus populum Romanum Quiritium fecerunt, deliquerunt, quod populus

⁴⁵ Livy 1.32.10

⁴⁶ As noted above, the use of a spear made of iron or fire-hardened cornelwood (hastam ferratam aut sanguineam praeustam) seems intentionally archaic if one accepts that Livy is recounting a later, idealized version of the ritual.
Romanus Quiritium bellum cum Priscis Latinis iussit esse senatusque populi Romani Quiritium censuit, consensit, conscivit, ut bellum cum Priscis Latinis fieret, ob eam rem ego populusque Romanus populis Priscorum Latinorum hominibusque Priscis Latinis bellum indico facioque.\[^{47}\]

Whereas the people and men of the Ancient Latins have acted and transgressed against the people of the Romans of the Quirites, and whereas the Roman people of the Quirites has commanded war against the Ancient Latins, and the Senate of the people of the Roman Quirites have deliberated, determined, and voted for war to be made on the Ancient Latins, Therefore, I and the Roman people declare and make war on the people of the Ancient Latins and the men of the Ancient Latins.

Having said this, the fetial hurls the spear into enemy territory, and war can commence.\[^{48}\]

The first part of the *rerum repetitio*, which is the conveyance of Rome’s demands to the offending party, was probably developed in response to a particular kind of conflict which the Romans often faced in earlier times. That is that the Romans have suffered an injury (real, perceived, or invented) which could justify an act of war against the offending party. Yet their response to this situation, in the persons of the *fetiales*, also dictates that before such a war can be declared, they must first make their enemy aware of the injury and give them an opportunity to render whatever recompense is due. While observance of this rite may have had some practical purpose if it allowed Rome to avoid

\[^{47}\] Livy 1.32.13

\[^{48}\] Livy 1.32
war with its neighbors, the great majority of instances of the *rerum repetitio* which are found in the ancient sources are ultimately met by a refusal of the opposing party to make any concessions, and subsequently a declaration of war by the Romans. Indeed, the formulaic nature of this fetial ritual does not seem calculated to induce negotiation, but instead demands prompt capitulation.

Furthermore, while the Romans might often expect a negative or absent response to their request for reparations, they might also be disadvantaged by the delay that the fulfillment of the fetial ritual might cause to their military preparations. For example, in 426 Rome was plotting revenge against Veii for the help it had provided to the city of Fidenae, an Etruscan settlement in Latium, when it had raided Roman territory and attempted to attack Rome itself. Yet despite the obvious casus belli, the war was put off to the next year, because “religious scruples stood in the way” (*religio obstitit*). The *fetiales* would have to be sent to demand redress first. Without them, Livy makes clear, Rome would have declared war upon Veii and sent out its armies against the Veientes as soon as possible, yet the fetial law stands in the way of any precipitous action. This is despite the fact that the Veientes had made an open attack on Rome, and in doing so had already violated a truce they had recently made with the Romans.

49 Livy 4.21-22

50 Livy 4.30.13

51 Notably this truce is termed *indutiae*, as opposed to a formal and lasting peace (*pax*), which would have had to be solemnized by the fetials. Livy 4.30.14
However, it may be Livy’s framing alone that construes this episode as one where Rome complied with the demands of religion to its own disadvantage. The ritual procedure of a fetial *rerum repetitio* followed by the prescribed declaration of war was an occasion which could be useful to Rome both as evidence of Roman piety, restraint, and justice, but also of Roman implacability. In 304 the Romans were on the brink of a new conflict with the Aequi, a Samnite tribe which had been memorably defeated by Cincinnatus in 458 and again in 431 by the dictator A. Postumius Tubertus. The Aequi had been nominally at peace with Rome for some time, while still sending reinforcements to the Samnites during their conflict with the Romans. However, earlier in 304 the Samnites had asked the Romans for a truce, and an older treaty made between the two parties was re-validated. This gave Rome an opportunity to pursue the Aequi now, and the fetial priests went to meet them and demand redress. The Aequi’s reaction to this demand, as recorded by Livy, was as follows:

> temptationem aiebant esse, ut terrore incusso belli Romanos se fieri paterentur, quod quanto opere optandum foret, Hernicos docuisse, cum, quibus licuerit, suas leges Romanae civitati praepotaverint; quibus legendi, quid mallent, copia non fuerit, pro poena necessariam civitatem fore.

They asserted that it was an attempt, so that by wielding the fear of war with the Romans they might be made to submit; just how much that was to be wished for, the case of the Hernici showed: those who

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52 Livy 9.45.5: Cappelletti 1997 uses this episode as evidence of the nature of the Roman citizenship that was extended to certain allies during this period.
were able to choose preferred their own laws to Roman citizenship, and for those who had no opportunity to choose, compulsory citizenship was a punishment.

Clearly, the Aequi interpreted the dispatch of the *fetiales* as a ploy intended to ensure their total surrender, rather than as a sincere request for whatever reparations were demanded. No doubt the Aequi had observed the general sequence of events which followed Rome’s employment of the fetials. In this way the *rerum repetitio* could be seen as an ultimatum rather than an opening of negotiations. True, the Aequi had been treacherous in their aid to the Samnites, but they had maintained the appearance of peace with Rome. To a state with such a poorly prepared military force, the approach of the fetial priests was not so much an invitation to assuage the injury they had done to Rome, but a prelude to their ultimate defeat and subjugation. The Aequi knew this because they had seen it happen to others like the Veientes, the Faliscans, and the Hernici. 53 Though they still chose to resist Rome, the signaling behavior exhibited by Rome’s employment of the *fetiales* worked. After the Aequi’s defeat and almost total obliteration, the Marrucini, Marsi, Paeligni, and Frentani sent embassies to Rome to sue for ally status and formal peace treaties, which they were granted. 54

Similarly, the Veientes, in an earlier episode, sent an embassy to intercept the *fetiales* who had been dispatched to them to enact the *rerum repetito* in order to beg for

53 Livy 7.6; 7.16
54 Livy. 9.45.18
respite owing to their internal civil discord. The favor was granted, but this attempt to forestall the *rerum repetitio* by forestalling the arrival of the *fetiales* shows that the Veientes were aware of the true motivation of their mission. Even the Samnites, one of Rome’s fiercest enemies of this period, marked their willingness to make peace with Rome in 322 by returning the Roman prisoners of war and plunder that had been originally demanded by the fetials. The local tribes had watched and learned, and were intimidated into playing Rome’s game.

This analysis emphasizes the use which the Romans may have made of the fetial *rerum repetitio* in order to signal their intentions and disposition to neighboring peoples, and, consequently, to influence the behavior of the latter towards Rome. However, this does not mean that the religious and cultural value of this fetial rite should be ignored. The *rerum repetitio* was still a serious and necessary act of piety. Its enactment could indeed be a disadvantage where quick action was required, since the matter of war could not be put before the people, nor troops levied until it was properly completed. In this and other ways it was not akin to ordinary acts of diplomacy. After all, the *fetiales*, like other priestly colleges, were religious specialists, experts in ensuring that Rome’s foreign relations were pleasing to the gods. The Senate could be expected to defer to their authority on such matters, much as it deferred to the judgment of the *augures* on the taking of auspices.

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55 Livy 4.58

56 Livy 8.39.13
Indeed, the augurs, being a better attested and better-known priestly college, are a helpful analogy when considering the ways in which the fetial priests operated in connection with the political decisions of the Senate and people. The *augures* were the masters of religious space within Rome.\(^5^7\) The Senate house, the *comitium*, and even the *pomerium* were all spaces which were defined by the augurs’ blessings. In this way the political was subordinated to, and merged with, the religious: votes on legislation, elections, and meetings of the Senate took place within spaces sanctified by the augurs, and were continually re-dedicated to their purpose by the auspices taken before any particular public event held there. Therefore, the legitimacy of all public business in the city was dependent upon the correctness and completeness of the rituals performed by the augurs and upon adherence to the rules of their college.

We can understand the role of the *fetiales* in much the same way. Instead of the area within the *pomerium*, the *fetiales* were charged with the sacred space in which the Romans confronted other peoples.\(^5^8\) Whether that was at the border between their lands, in a foreign marketplace, or before the enemy’s ruling council, the realm of the fetials was wherever the representatives of Rome and those of an enemy or ally met in a formal capacity outside of the realm of active war. It was they who ensured that the gods were satisfied with the righteousness of Rome’s cause. Only with their ritual performance could Rome be confident that the gods would favor its efforts in war. Just as the sincere religious beliefs of the Romans and their political actors prevented them from doing any

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\(^{57}\) Beard 1998: 22-23
business on days when the augurs recorded unfavorable omens, the political decisions of Rome with regard to foreign relations were contingent upon the actions of the *fetiales*.

For this reason, Hans Drexler rightly calls the fetial law the natural starting point for any exploration of the Roman concept of *iustum bellum*.\(^{59}\) Even in the Middle and Late Republic this concept was underpinned by and generally conformed to the ritual procedure of the original fetial rites. These rites were so deeply ingrained in the practice of Roman foreign relations that it was impossible for the Roman state to occupy that defined space between Rome and the Other without conforming to their outlines.

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**Foedus et Pax**

The fetial ritual which accompanied the solemnization of treaties probably came to be viewed by Rome’s allies with similar seriousness. Much like the *rerum repetitio*, the version of the ritual described by Livy reflects a certain deliberate antiquarianism. According to Livy, the principal fetial priest chooses another fetial to be the *pater patratus*, who is to lead the group on their mission. In order to designate him as such, the original priest anoints the other’s head and hair with a sacred herb (*verbena*) which he has collected from the *arx* of the city.\(^{60}\) After this, the *pater patratus* is now able to

\(^{59}\) Drexler 1959: 97

\(^{60}\) Livy 1.24.5-6: Most scholars seem to accept that the “pure herb” taken from the *arx* and the “*verbena*” are one and the same. However, the text is not altogether clear on this point. Zollschan 2011 states that the priests both carried the *verbena* and wore it on their foreheads.
solemnize the treaty. He does so by reciting the necessary oath dictated by law, including the terms of the agreement. Unfortunately, this oath is not preserved by Livy, who insists that it is too long to be worth repeating. Presumably it is a formulaic construction similar to that he describes as being recited during the *rerum repetitio*. Standing before a pig prepared for sacrifice, the *pater patratus* then calls on Jupiter to be a witness to the treaty and asks him to punish the Romans if they betray it: “For if they are the first to defect by public decision with deceit and malice, then on that day may you, Jupiter, thus smite the Roman people, just as I here on this day smite this pig; and smite them so much more, as you are so much stronger and more powerful.” The pig is then slaughtered and sacrificed to secure the god’s attention and favor.

The ritual is sufficiently impressive that the noted antiquarian emperor Claudius chose to revive it when he made treaties with foreign peoples, sacrificing the pig himself in the Forum. However, perhaps most illustrative of the cultural import of this rite is Livy’s account of the Battle of the Caudine Forks and its aftermath. Michael Crawford argues that Livy’s version of the event became popular when the Roman general, C. Hostilius Mancinus, was handed over to the Numantines in 137, after his defeat at their

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61 Livy 1.24.6: *pater patratus ad ius iurandum patrandum id est sanciendum fit foedus multisque id verbis, quae longo effata carmine non operae est referre, peragit.*

62 Livy 1.24.8: *si prior defexit publico consilio dolo malo, tum illo die, Diespiter, populum Romanum sic ferito, ut ego hunc porcum hic hodie feriam; tantoque magis ferito, quanto magis potes pollesque.*

63 The implement used (*saxo silice*) is often translated as “flint knife.” However, Wiedemann 1986: 485 contends that this is more likely to be the stone used to incapacitate the animal so that it falls on to the sacrificial knife.

64 Suet. *Claud.* 25.5
hands. The reason given by the Senate was that Mancinus had, in defeat, made a peace agreement with the Numantines that was unfavorable to Rome and could not be ratified. According to Plutarch, in doing so the Senate referenced the events of the Caudine Forks to provide historical justification for its choice.

Livy reports that in 321, during the Second Samnite War, two Roman armies were trapped by the Samnites in the Caudine Forks, a series of narrow passes in the Campanian section of the Apennines. Faced with this dilemma, the Romans were at a loss. The Samnites too had no set strategy for how to take advantage of this successful ambush. The retired and elderly Samnite general, Herennius Pontius, father of the current general, advised them either to set the Romans free or to kill them all: for the former would mean lasting peace and friendship, and the latter would cripple the Roman forces to an extent from which they could not recover. The Samnite council rejected both of these propositions, and instead decided that it would let the Romans go, but only on condition of concessions and as the defeated party. Herennius presciently warned the Samnites that this situation would only inflame the Romans’ desire for revenge. Meanwhile the Romans were becoming desperate due to lack of supplies, and sent messengers to the Samnite general to sue for peace, hoping that the two forces might be able to come to

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65 Crawford 1973: 1

66 Plut. Ti. Gracch. 7.2-3

67 Livy 9.2-3

68 Livy 9.3
some agreement that could lead to an equitable peace treaty, or if not, to provoke a battle.69

Considering the Romans’ miserable position, the Samnite general, Pontius the younger, laughed off these demands. Instead he offered them the option to leave peacefully, having surrendered their arms and other goods.70 Urged by their strained circumstances, the Roman consuls met with the Samnite leader to negotiate. However, “they denied that they were able to make a foedus without the order of the people and without the fetical priests and the sacred rites and other necessary rituals.”71 This point is essential to the intention of Livy’s story, which is to differentiate between the nature of a foedus, which is a formal peace treaty ratified by the people and ritually sanctified by the fetics, and a sponsio. While a foedus binds the Senate and people of Rome, a sponsio is only binding upon those who make the agreement, according to Livy.72 Crawford argues that this is a fictitious distinction, which imports the Roman civil law concept of a sponsio, a private oral contract between individuals, to justify what might appear to be Roman faithlessness.73

For the Romans were faithless to this agreement. The Roman generals agreed to sacrifice their arms, along with promising that Rome would withdraw its colonies and

69 Livy 9.4.

70 Livy 9.4.3

71 Livy 9.5.1: negarunt iniussu populi foedus fieri posse nec sine feticalibus caerimoniaque alia sollemni.

72 Crawford 1973: 2

73 Crawford 1973: 1
armies from Samnite territory, and leaving behind six hundred *equites* as hostages.\textsuperscript{74} Upon their return to Rome the newly elected consuls for that year immediately raised the matter of the Caudine Forks truce before the Senate. Spurius Postumius, one of the humiliated generals, was allowed to speak first. He defended the truce, saying that although dishonorable, it had been necessary to preserve the legions. However, he argued, the agreement had no force at Rome without the vote of the people. Therefore, he and the other generals ought to be handed over to the Samnites by the fetial priests, in order to free Rome of any obligation. In the meantime the consuls for that year could gather their armies and wait for the surrender to be finalized. At that point the Romans would be able to renew hostilities without offending the gods.

Some Roman officials did object that, since the Romans were unable to return the Samnites to their previous situation, they could not legally consider the agreement to be nullified by handing over its guarantors. Yet they were eventually swayed by Postumius’ fiery rhetoric and the fact that, if the Samnites had truly wanted to solidify the peace, they ought to have sent negotiators to Rome while the legions were still captive in order to secure a true peace.\textsuperscript{75} This part of the narrative is interesting for two reasons. First, it reveals the internal legal reasoning which the Romans must have felt was requisite to such a situation. If the agreement made by Postumius could be legally categorized as a *sponsio*, with a *sponsio*’s attendant characteristics, the undesirable treaty could be avoided if the correct steps were taken. Here the distinction between *foedus* and *sponsio*

\textsuperscript{74} Livy 9.5.5

\textsuperscript{75} Livy 9.9
is taken seriously for the purposes of the narrative of the situation. Whether the distinction truly existed in the larger Roman legal context is irrelevant. Within the context of the story the Romans had devised a way to make what they wanted to happen happen, while still ensuring that they were on the right side of the law and in no danger of offending the gods. This is a classic way that parties who are invested in signaling a particular ethical identity to others deal with events which might seem to cast doubt on their good character. The concerned party may attempt to explain the lapse in ethical behavior as exceptional, or an aberration or mistake. Or they may, as in this case, find a way to rationalize their behavior as not a lapse at all.\textsuperscript{76}

The second aspect of this narrative is that the Romans in the story are presented as assuming that the Samnites will understand the workings of Rome’s fetial law. The fact that Postumius suggests that, if the Samnites had been serious about peace they would have come to the Senate to demand a properly solemnized \textit{foedus}, presumes much knowledge of Roman culture and politics on their part. Yet perhaps the Romans care little about what the Samnites might or might not think or understand, and more about their own perception of their ethical persona. The coda to the Caudine Forks story is perfectly illustrative of this turn of mind. Postumius and the other officials who had negotiated the truce were led by the fetials, shackled and chained, to the Samnite assembly. When there the lead fetial, Aulus Cornelius Arvina, made the following statement: “Because these men, without orders from the Roman people and the Quirites, promised that a treaty would be struck and because of this committed a crime, I give up these men to you so

\textsuperscript{76} Posner 1998: 120
that the Roman people may be freed from an evil impiety." Immediately upon these words, something shocking happened. Postumius struck Arvina in the thigh with his knee as hard as he could and shouted that he was a Samnite citizen, and that the fetial legate had been violated by him in contravention of the *ius gentium*, and that this was a just cause of war for Rome.  

If this story seems incredible, that is because it is. Most modern scholars have discounted everything in the story after the disaster at the Caudine Forks. However, while the legend was a helpful piece of propaganda later, when the Senate wished to repudiate Mancinus, it remains possible that the basic outline of the narrative came into popular existence long before this time. Stories which demonstrated signal Roman values were always popular with Roman authors. Postumius’ willingness to sacrifice himself for the sake of Rome in many respects mirrors that of the famous hero M. Atilius Regulus, who turned himself over to the Carthaginians during the First Punic War in order to honor an oath. In fact, Cicero relates their stories together, along with that of Mancinus. Assuming that the Caudine Forks story was current well before 137, the truth or fiction of it is irrelevant for the purposes of determining its meaning within the larger context of the fetial priests as an institution. The crucial role played by the priests in the narrative must arise from a broader sense of the importance of the fetial law and rites to both the legality

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77 Livy 9.10.9: *quandoque hisce homines iniussu populi Romani Quiritium foedus ictum iri spoponderunt atque ob eam rem noxam nocuerunt, ob eam rem, quo populus Romanus scelere inpia sit solutus, hosce homines vobis dedo*.

78 Livy 9.10.10

79 Crawford 1973: 2

80 Cic. *Off.* 3.29-30
and the piety of treaties. The Romans' willingness to use the *ius fetiale* as cover for other motives only shows how invested they were in presenting themselves as ultimately both pious and just. For if the Romans were not seriously devoted to the idea of themselves as a particularly morally disciplined people, then there would have been no need to invent a story that relies so conspicuously on obscure distinctions between the concepts of *foedus* and *sponsio*.

It is possible to see a common thread of Roman self-regard at the heart of this narrative: the Romans may be cunning and deceptive, but they are always somehow able to present themselves as adhering closely to their own *mores* when the matter concerns their outward relations. In some ways this potentially fabricated version of the Caudine Forks story is more useful to an analysis of the import of the fetials than the truth. The parsing of the fetial law and what is and is not ethically permissible puts on display the important role that the fetials and the values which they represented played in the conduct of Roman foreign relations. The *fetiales* are boundary-keepers, providing a set of principles that is meant to guide Roman decisions. However their other, equally important function is to ensure that the acts of the Romans always come within those bounds, and enjoy the favor, or at least the tolerance, of the gods. Sometimes some clever maneuvering, which comes with an intimate knowledge of their own Roman value system, is necessary to make that happen. While it is more likely that the Romans simply accepted the peace made by Postumius, the fantastic tale of his surrender provides much more insight into Roman self-identity than the true story would.
Allies and Others

One of the reasons why Postumius’ violence towards the fetial, Arvina, is an effective part of the story of the Caudine Forks truce is because of the Roman belief in the sacred inviolability of ambassadors. In his 1625 work, *De Iure Belli ac Pacis*, Hugo Grotius quotes sources as diverse as Cicero, Varro, Diodorus Siculus, Statius, Velleius Paterculus, and Procopius in his extensive footnotes all to reinforce the point that the right of embassy is sacred and so are the persons of ambassadors, and these rights are enshrined by laws both divine and human.\(^81\) In a section of the Digest, Pomponius points specifically to the *ius gentium*, the Roman term for the law that is common to all peoples, as the source of this idea.\(^82\) It is to this fundamental value that we can trace back the modern immunities which ambassadors to foreign countries commonly enjoy. Since the fetial priests were charged with all matters involving the sacred aspect of diplomacy, it was their duty to punish any Romans who dared to outrage the envoys of other peoples. Nonius Marcellus, the fourth century C.E. grammarian, citing Book III of Varro’s *De Vita Populi Romani*, gives us this summary of the priests’ obligations in these cases: “If the ambassadors of any people have been violated, the offenders, even if they are *nobiles*, should be surrendered to their city; and the twenty *fetiales* may consider this matter, give judgment on it, decide it, and resolve it.”\(^83\)

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81 Grotius. *De Jure Belli ac Pacis*: 2.18

82 Dig. 50.7.18

83 Non. lib.: 12, pag.: 529 M., linea: 25 (vol.: 3, pag.: 850 L.): *si cuius legati violati essent, qui id fecissent, quamvis nobiles essent, uti dederentur civitati statuerunt; faetiales que viginti, qui de his rebus cognoscerent, iudicarent et statuerent et constituerent*
There are two incidents recorded by the ancient sources which show the fetial priests carrying out this duty. The first is recorded by Livy’s epitomator, Valerius Maximus, Cassius Dio, and Zonaras. In 272, ambassadors from Apollonia, a Corinthian colony in Ionia, had come to Rome on some diplomatic mission. A fight had broken out, and in its course the aediles Q. Fabius and Cn. Apronius had struck the Apollonians. They were then delivered by the fetial priests to the Apollonians. Dio’s version of the story only mentions Fabius as the offender, but adds the detail that the Apollonians, rather than punishing him, sent him back to Rome uninjured.

Here it is again possible to see the two aspects of Roman fetial performance discussed above. By surrendering Fabius to the Apollonians at the hands of the fetial priests the Romans are conforming to their own internal legal and religious expectations. This is not to deny that the inviolability of diplomats was a widespread value in the larger Ancient Mediterranean world. Rather, the specific steps Rome took to deal with such incidents were distinctive. After all, violence towards ambassadors could be interpreted as an act of war, for which the gods might take vengeance. The fetial arrest, judgement, and surrender of offenders of this value was the Roman procedure for expiating such a sin, and as such was unique to them. Having undertaken and completed that procedure, Rome could consider the gods to have been appeased and the matter closed. The sources

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84 Val. Max. 6.6.5
85 Dio Cass. 10.42
86 Hdt. 7.133
87 Broughton 1987 argues that the fetials may have carried out a formal trial in these cases.
do not indicate that the Apollonians’ return of Fabius had any effect on the Romans securing this result. After all, they had performed the ritual perfectly.

This outcome is indicative of the other aspect described above. Romans were either ignorant of, or indifferent to, the ability of the recipients of their fetial performance to understand the nuances of the process. Certainly, the fact that they had taken action in response to the violation of the Apollonian ambassadors might have been a meaningful signal to the Apollonians and other potential allies. Certainly also, the Romans deployed such signals with intention and attuned to their possible effect. However, the signaling act was not merely for the benefit of others, but also for the Romans themselves. Another incident similar to that of Q. Fabius demonstrates this fact. It occurred in 188, and is recorded by both Valerius Maximus and Livy. The Second Punic War had concluded just twelve years previously, but the Roman Senate was still careful to observe the niceties of the fetial law with regard to the Carthaginians. Valerius describes the incident as follows: “The consuls, M. Aemilius Lepidus and L. Flaminius, made sure that L. Minucius and L. Manlius were surrendered to the Carthaginian legates by the praetor M. Claudius by means of the *fetiales*, because they had laid hands on them.” 88 By way of further explanation, Valerius continues: “It is clear that, in doing this, the Senate regarded not so much those [Carthaginians], but itself.” 89

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88 Val. Max. 6.6.3: *M. enim Aemilio Lepido L. Flaminio consulibus L. Minucium et L. Manlium Carthaginiensium legatis, quia manus his attulerant, per fetiales <a M.> Claudio praetore dedendos curaverunt*

89 Val. Max. 6.6.3: *se tunc senatus, non eos quibus hoc praestabatur aspexit*
This is the essential point in a thorough analysis of the functions of the fetial institution. The judgement and ritual surrender of Roman officials who violated foreign ambassadors were undertaken chiefly for the sake of preserving and reinforcing Rome’s own values and traditions. While third parties may have recognized the sacrifice as meaningful and appreciated the gesture, the particularities of the process were purely self-interested. For example, in 101, when political rivals wished to discredit the infamous tribune L. Appuleius Saturninus for pointing out the bribery by which Mithridates of Pontus was corrupting the Senate, they chose to put Saturninus on trial for violation of the ambassadors who had delivered the bribe money. By portraying Saturninus as someone who would abuse the person of an ambassador, his rivals believed that they would be able to permanently disgrace him. This is the thread running through much of the fetial performance. While, in general, the rites undertaken may have been seen by foreign peoples as indicative of the character of the Roman state as an ally or enemy, the details of the rites were fully intelligible only from a Roman perspective. These acts ensured that the gods looked favorably upon the Roman ventures that they consecrated, and this pax deorum could only be insured where Roman traditions and values were precisely obeyed.

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90 Diod. Sic. 36.15
Conclusion

All this is not to say that the institution of the fetial priests persisted unchanged through the centuries. As noted at the beginning of this chapter, there was a time during the Late Republic when the fetial law as a concept superseded the acts of the actual fetials in importance. Yet this itself is evidence that even as certain practices waned, the values which had evolved with them continued to be fundamental to Roman foreign relations. Certainly, with the growth and expansion of Roman overseas interactions and territory, rituals which had been formed by conflicts with nearby Latin tribes of equal status might prove inadequate to new conditions. Still, there was clear reluctance to abandon an institution which had so much meaning and importance for the Romans, and so the system adapted. For example, according to Servius, in the early third century, when the Romans wished to declare war on Pyrrhus, whose home kingdom was across the Adriatic in Epirus, they forced one of his captured soldiers to buy a plot of land near the temple of the war goddess Bellona. This plot was then declared enemy territory and the ritual spear was hurled into it. From this point on, the temple of Bellona was used as a stand-in whenever the Romans needed to declare war on an enemy overseas.91 We see this ritual continuing to hold significance, as when Octavian, as fetial, threw the ritual spear before the temple of Bellona when declaring war on Cleopatra in 32.92

91 Serv. Aen. 9.52
92 Dio Cass. 50.4
The fetiales probably long maintained their practice of solemnizing treaties. No doubt, since such matters are negotiated ahead of time between the parties there was more time to prepare a legation of fetials to perform the ritual on site. This is shown by Livy’s account of the fetiales’ mission to Carthage in 201, sacred herb in hand, to finalize the treaty which ended the Second Punic War. Such rites could also have been routinely modified for use in Rome, as in the Emperor Claudius’ performances in the Forum which were noted above, if travel was inconvenient. By and large, however, there is evidence that the diplomatic aspects of fetial practice were taken over by senatorial envoys, while the priests themselves gained an advisory role.93 Livy shows the fetiales answering the Senate’s questions about the proper way to declare war on Philip the V in 200 – specifically whether it would be proper to make the declaration at one of Philip’s military camps, or whether it must be made to the king himself.94 Similar inquiries were made about declaring war against Antiochus III in 191, and in addition the Senate asked whether the Aetolians warranted a separate declaration, or whether, as Antiochus’ allies, they were included under that which would be made to him.95

This incident also includes mention of the many demands for restitution by ambassadors (legatis repetentibus) made by Rome to Antiochus, which seems to indicate that even if other kinds of envoys had replaced the fetial priests, the forms and structure of their rites were to some extent preserved. More importantly, the values they and their

93 Oost 1954 argues that senatorial envoys carried out the fetial rerum repetitio and subsequent declaration of war against Jugurtha in 112.

94 Livy 31.8.3-4; Walbank 1949 notes that by this time war would often have been approved by a vote of the popular assembly before the equivalent of rerum repetitio was carried out.

95 Livy 36.3.7-12
law represented continued on. As will be shown in successive chapters, the concept of *bellum iustum* remained powerful as the Republic expanded its empire, finding new and tortuous ways to make its wars appear just. This reliance on the appearance of virtue rather than virtue itself has been seen in the application of the fetial law throughout this chapter. Even so, Romans did take these values seriously; performance was an inherent part of what constituted them. Whether that performance was intended to impress outsiders or reassure Roman citizens, this aspect remains the same. Indeed, the performative nature of Roman foreign relations cannot be underestimated. Yet, as we will see, repeated performance of values and principles can create its own momentum, giving rise to new ways of applying those principles when relating to foreign peoples.
CHAPTER TWO

IUSTUM BELLUM AND IUS BELLI: PRINCIPLED CONDUCT OF WAR

According to Livy, in 200, soon after the start of the Second Macedonian War, a Roman legate by the name of Lucius Furius Purpurio found himself defending Rome’s reputation before a meeting held by the Aetolian League. The League was attempting to decide whether or not to ally itself with the Romans in conflict with Macedon. The Macedonian representative had already opened with a scathing indictment of Rome’s treatment of its allies in Italy, and now it was Purpurio’s turn to defend his motherland and refute the accusations point-by-point. First, it was true that a legion sent to defend Rhegium during the war with Pyrrhus had committed a crime in seizing the city for its own, but did Rome approve of this atrocity? No, it went to battle against the guilty legion, and having won, punished it brutally, and restored the city to its people. As for Syracuse, its siege in 214 had been necessitated by the fact that it was under the domination of foreign tyrants allied with Carthage, and it too had been returned to independence soon after its seizure.96 And certainly the Campanians had been treated more leniently than they deserved. After all, they had defected to Hannibal and murdered the Roman garrison after being defended so vigorously by Rome in the Samnite Wars and even gaining citizenship. If their chief city had been razed to the ground and all their

96 Livy 31.31.8
people put to death they still should not have been able to complain. Instead their city was preserved while they were relocated to new land, and more of their leaders committed suicide out of shame than had been executed.\textsuperscript{97} As a further proof of the Romans’ leniency, peace and freedom had even been granted to conquered Carthage!\textsuperscript{98}

This speech, although likely an invention of Livy, is a remarkably faithful representation of the image of itself which the Roman state wished to present to the outside world during this period. Two distinct threads run through Purpurio’s refutation of the Macedonians’ claims. First, he is at pains to point out that each instance of Roman aggression was undertaken in accordance with the fetial principle of \textit{bellum iustum}. Both Syracuse and Capua had allied themselves with Carthage during a period of open war and thus become Rome’s formal enemies. Rhegium had been improperly seized, but the legion involved had been punished for this violation and the city had been freed. Clearly, in Purpurio’s mind, and likely that of Romans more generally, this rendered the Macedonian complaints moot. Furthermore, in addition to these conflicts having been properly undertaken in accordance with fetial law, Purpurio points out that the Romans went further, displaying notable indulgence towards the conquered. He even speculates that the greater danger was that such generous treatment would incite more peoples to try their fortunes at war against Rome.\textsuperscript{99}

\textsuperscript{97} Livy 31.31.10-15

\textsuperscript{98} Livy 31.31.15

\textsuperscript{99} Livy 31.31.16: \textit{magis illud est periculum, ne nimirum facile victis ignoscendo plures ob id ipsum ad experiundam adversus nos fortunam belli incitemus}. 
The precise nature of this indulgence is a matter of some interest when seeking to understand the performative aspect of Roman foreign relations. Clearly, in emphasizing Rome’s clemency the Roman representative seeks not only to absolve Rome of charges of cruelty, unjust war, and devastation, but also to claim that Rome is exceptionally lenient in its treatment of conquered peoples. This comes into sharper perspective when Purpurio’s speech is compared to the speech given by Athenian delegates, who were also Roman allies, immediately preceding his own in Livy’s narrative. In this speech the Athenians bewail the devastation of their people and land. However, “They did not complain that they had suffered the treatment of enemies from an enemy, for there are certain laws of war (belli iura) which it is right (fas) to suffer as well as to make; for it is unfortunate rather than unjust that crops are burned, homes destroyed, and men and livestock taken as prizes.” The Athenian representatives went on to complain of Philip V’s impious destruction and depredation of shrines and temples, which ought to have been protected property in the course of any licit war.

This passage makes it clear that some amount of plunder and destruction of conquered peoples’ land and property was perfectly within the bounds of the rights of war as conceived of by the Athenians. It is possible to link this opinion to a common understanding of what may be called a shared law of war, to which peoples like the Greeks and Macedonians could be thought to subscribe. In this context it is notable that the Roman Purpurio claims that, even if Capua had been burned to the ground and all of

\[\text{Livy 31.30.2-3: neque id se queri, quod hostilia ab hoste passi forent; esse enim quaedam belli iura, quae ut facere, ita pati sit fas; [3] sata exuri, dirui tecta, praedas hominum pecorumque agi misera magis quam indigna patienti esse}\]
its citizens executed, this fate would not have been more than they deserved.\textsuperscript{101} Instead, the Romans treated them with much more leniency. Here Purpurio seems to be drawing a clear distinction between the shared law of war which was cited by the Athenians, and the Romans’ own standards of behavior for such a situation.

The concept of a natural law shared among all peoples was well established by the early Empire, and no doubt current during the Republic.\textsuperscript{102} Cicero refers to it in \textit{De Legibus} as being the standard by which all other law should be judged.\textsuperscript{103} However, in their own foreign relations the Romans were subject to more specifically Roman principles. As has already been shown in Chapter One, the fetial law played a significant role in Roman relations with foreign peoples, even when the fetial priests themselves ceased to be immediate participants in such relations. From the fetials comes what is often called the doctrine of just war, or \textit{iustum bellum}, which governs the proper initiation of wars. Alongside the somewhat more formal \textit{iustum bellum}, further principles concerning the disposition of conquered peoples and property can also be observed to exist. As a group these are sometimes termed \textit{ius belli}, which, while less well-defined than \textit{iustum bellum}, is commonly linked to traditional Roman values and the \textit{mos maiorum}.

Both \textit{iustum bellum} and \textit{ius belli} work in concert. Admittedly, they neither constitute a wholly formal Roman theory of war, nor were they consistently and slavishly

\textsuperscript{101} Livy 31.31.13: \textit{horum si neque urbs ipsa neque homo quisquam superesset, quis id durius quam pro merito ipsorum statutum indignari posset}; The similarity of language between this passage and that cited immediately above is notable.

\textsuperscript{102} Both Gaius and Ulpian discuss the topic, although their views differ in particulars. Dig. 1.1.1-9

\textsuperscript{103} Cic. Leg. 1.43
obeyed by the Romans. Still, their existence as a cultural benchmark which guided Roman behavior is vital to a complete understanding of Roman foreign relations in the Middle Republic. In addition, their consistent application, influence, and reference in the accounts of the ancient sources are indicative of the broader character of Roman foreign relations. *Iustum bellum* and *ius belli* themselves are not generally applied to military strategy within the midst of active war. However, it has been observed that Romans did generally shy away from, and often loudly repudiated, any military strategy based on deception, such as ambushes or false retreats.\(^{104}\) It was also common for Romans to repudiate attempts by deserters to betray their former leaders to the Romans.\(^{105}\) Furthermore, it is also possible to identify numerous instances in which Romans acted outside of immediate self-interest and made a calculated effort to appear unusually clement or virtuous in their foreign relations during this period. Thus the principles laid down by these more formal rules of war can be seen as part of a larger effort by the Roman state to project and perform a particular ethical persona in its relationships with foreign peoples. While later chapters will concentrate on how these principles influenced Roman behavior in particular situations, it is essential first to examine exactly what meaning these ideas had for the Romans. For this reason, it is necessary to outline the principles which the terms *iustum bellum* and *ius belli* evoked for Romans at this time, in order to understand how those same principles influenced foreign relations in the early period of Roman imperial expansion.

\(^{104}\) Achard 1994: 474–486

\(^{105}\) Livy 5.27.5-8, 24.45.3; Cic. Off. 1.40
The basis of the Roman theory of just war is, of course, the fetial rituals which have already been discussed. However, even as the fetiales transitioned from active participants in foreign relations to an advisory role, the importance of just war to Roman principles did not fade. As a first point, it is important to note that “just war theory” in so far as it applied to the Romans, was not a formal legal theory at the time of the second century. Scholars have tended towards such a formalistic understanding, but this does not hold with the ancient sources. Rather, as Andrew Riggsby puts it, it may be described as a kind of “folk theory” which expresses itself mostly through the assumptions made by the actors involved. Indeed, the actual phrase “iustum bellum” appears rarely in the ancient sources, but where it does appear it makes clear the solid place that the concept occupied in Roman thought. Both instances of the phrase in Livy actually refer to foreign states. In one case it is used to refer to the Aetolians’ inability to wage a “iustum bellum” against Chalcis, and differentiates a conventionally announced and conducted war from a conflict making use of ambush and guerilla warfare. In the second, even more telling instance, it describes a situation in which the Athenians, after having had their city attacked and plundered by the Acarnanians alongside Philip V, experienced a first incitement towards war, which was subsequently made with a formal declaration.

106 Ilari 1985: 172
107 Riggsby 2006: 158
108 Livy 35.38.11
It is this meaning of *iustum bellum* which has the most force in Roman foreign relations. As formulated by Georg Wissowa, it requires that any violation of peace necessitates expiation by the guilty party (demanded in the *rerum repetitio*); a refusal to perform such expiation dissolves the previous legal situation (of peace or more formal alliance) and thus justifies the injured party in its declaration of war.\(^{109}\) It has this force in the earliest known example of the phrase in a Latin text, Cicero’s *Divinatio in Q. Caecilium*, in which he disputes Caecilius’ appropriateness as a prosecutor of Verres. Here Cicero uses *iustum bellum* as a metaphor, saying that since Caecilius was Verres’ quaestor, acting as his prosecutor would be “*iniustum impiumque bellum*” because he would be attacking Verres without having received any injury from him, and indeed would be violating a sacred relationship between a praetor and his quaestor.\(^{110}\) The fact that Cicero could use the concept of *iustum bellum* here (or rather, *iniustum bellum*) as a metaphor for a criminal case seems to indicate that the concept was well-known enough for such an extrapolation to make sense to Cicero’s audience.

Cicero is also our best source in an attempt to understand how this concept appeared in the abstract to Romans. Many scholars have long considered Cicero’s writings on the topic of *iustum bellum* to be merely philosophical, reflective of his particular intellectual bent rather than of the real influences on Roman foreign relations. Further some have even said that these writings were too far idealized to be applicable to any actual Roman behavior.\(^{111}\) However, Cicero is an important source for what actually

\(^{109}\) Wissowa 1912: 550-554

\(^{110}\) Cic. *Div. Caec.* 61-62

\(^{111}\) Notably, Brunt 1978: 159-192
constituted just war in theoretical terms, and, as we will see later, that theory did have its impact upon the reality of Roman foreign relations.

The place where Cicero discusses this idea at most length is in *De Officiis*. Cicero’s statement about the *ius fetiale* as the basis of just war has already been mentioned in Chapter One. Yet it is worthwhile to dig further into the details of his views about what constitute *ius bellum*. According to Cicero, the only just cause for war is “so that one may live in peace without injury.” Further “no war is just, unless, before it is declared, a demand for reparations is made or a formal warning given.” These are the requirements which Rome must meet before waging war, if that war is to be considered just. Clearly they derive from the rituals and law of the fetial priests: the *rerum repetitio* is sought and a formal declaration made. Of course, there are some distinct differences. In Cicero’s formulation the *rerum repetitio* is not mandatory, and may be replaced by a “warning” (*denuntiatum*). Furthermore, he insinuates in an earlier passage that less than a direct injury might be a sufficient cause of war when he states that in his opinion “we should always take care to make a peace which has no trace of artifice (*insidiarum*)”. This seems to imply that what a modern reader might call a “preemptive strike” is sometimes warranted, even against a nominal ally, if subterfuge of some kind is detected. For with true enemies there is no possibility of *insidiae*, as hostility is already in the open. Still, despite these apparent deviations, the fact that

\[\text{Cic. Off. 1.34: ut sine iniuria in pace vivatur}\]

\[\text{Cic. Off. 1.36: nisi quod aut rebus repetitis geratur aut denuntiatam ante sit et indictum.}\]

\[\text{Cic. Off. 1.35: Mea quidem sententia paci, quae nihil habitura sit insidiarum, semper est consulendum.}\]
Cicero begins this discussion by citing the *ius fetiale* makes it safe to assume that Cicero felt he was following in the tradition of those priests, rather than departing from it.\(^{115}\)

In large part this assumption is manifestly true. An injury to peace, whether overt or covert, is always necessary in Cicero’s scheme. In addition, there must be some kind of warning given to the offending party before an official declaration of war is made, whether through a *rerum repetitio* or some other form of diplomatic effort. In this way Cicero’s formulation obeys the spirit of the *ius fetiale*, if not what one might call the letter. This, of course, is the essential characteristic of a folk or cultural, rather than legal, theory of just war. It urges one to act in good faith with regard to the values held by (in this case) Roman society. Tellingly, in a passage which immediately follows Cicero’s treatment of just war, he discusses the importance of keeping one’s word, even when it has been given to the enemy. Unsurprisingly, his first example is M. Atilius Regulus, one of the heroes of the First Punic War. The negative example given is of an unnamed Roman captive of Hannibal, who sought to evade his promise to return to the Carthaginians by leaving, returning to, and then leaving the Carthaginian camp again, thus, as he claimed, voiding his oath. Cicero strongly disapproves of this subterfuge,\(^{116}\) saying that “In matters of *fides*, one must always consider the meaning, not only the words.”\(^{117}\) There is no doubt that just war is very much a matter of *fides*.

\(^{115}\) Cic. Off. 1.36: *Ac belli quidem aequitas sanctissime fetiali populi Romani iure perscripta est.*

\(^{116}\) Again, the Roman distaste for deception is evident.

\(^{117}\) Cic. Off. 1.40: *Semper autem in fide quid senseris, non quid dixeris, cogitandum.*
Fides was an inherently religious concept for the Romans. It was the value of reciprocal honesty, uprightness, and trustworthiness, embodied by the goddess Fides. It is meaningfully called upon by the pater patratus in the fetial rerum repetitio, who begs Jupiter that his words are uttered “in good faith.” In addition he prays that if his request is unjust and impious (iniuste inpieque), then Jupiter may bar him from his native land. In this way the fetial priest, whose mission is by nature religious, is given charge of what constitutes both fides and what is iustus. These values are preserved in Cicero’s discussion of the rights of war. Here, the concept of fides becomes more strongly associated with the surrender or deditio which occurs after the cessation of hostilities, and which will be discussed further below. At the same time iustus and its close associate ius are used repeatedly in his general discussions of just war. Thus, as we have seen, “the rights of war must be closely observed”, “no war is just unless . . .” and “As for war, equitable laws have been compiled by the fetials . . .”

By following the guidelines of a just war, the Romans ensured that the gods would look with favor upon their cause. Of course, the proof that any war had been undertaken with the approval of the gods, and was therefore justly declared, was its success. Similarly, failure in war could be blamed upon incorrect ritual. Before the

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118 Wissowa 1912: 133-134

119 Livy 1.21.4 names Numa Pompilius as the founder of her cult.

120 Livy 1.32.6-7: iuste pieque legatus venio verbisque meis fides sit

121 Cic. Off. 1.34, 1.36
disastrous Battle of Drepana in the First Punic War, Cicero tells us that the Roman naval commander, P. Claudius Pulcher, committed a serious sacrilege. When the auspices were taken before the battle, the sacred chickens refused to eat, and so Pulcher had them thrown into the sea, saying that they might drink, if they did not wish to eat.\textsuperscript{122} This story has the ring of myth to it, but at the same time it shows how improper religious practice was linked to military defeat in the Roman mind. Such inferences were not limited to the events of earlier Roman history. Cicero also links Crassus’ defeat by the Parthians in 55 to a failure to adhere to the principles of just war.\textsuperscript{123}

Still, it is not proper to regard just war as merely a post hoc method which gave extra glory to victory while explaining away defeat. It had real effects on which conflicts Rome chose to initiate. Andrew Riggsby points out the case of C. Manlius, who, while proconsul in the East, chose to attack the Galatians instead of Antiochus, because he could find no cause for war with the latter.\textsuperscript{124} This strike occurred after he had made every effort to provoke some action on the part of Antiochus which would give him a legitimate pretext to attack, and so it was not a lack of desire for conflict that stayed his hand. The Roman Senate itself was on the hunt for justifications for war five years earlier in 192, but was unable to come up with any, despite sending legations to Syria to investigate.\textsuperscript{125} Similarly, after the conclusion of the Second Macedonian War, Philip V,

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\textsuperscript{122} Cic. Nat. D. 2.7 \\
\textsuperscript{123} Cic. Fin. 3.75. Livy Per. 55 records a similar incident, when the sacred chickens escape from their coop while C. Hostilius Mancinus (cos. 137) is sacrificing, foreshadowing his disastrous assignment in Spain. \\
\textsuperscript{124} Riggsby 2006: 162; Livy 38.45.5: \textit{nullam belli causam inveniret} \\
\textsuperscript{125} Livy 35.22
\end{flushright}
after much negotiation, scrupulously followed the terms of the treaty, and even made war on tribes in Thrace to divert attention, so that the Romans could find no cause to take up arms against him again. Lack of just cause for war could also have other foreign relations implications. In 192, foreseeing no opportunity to engage Antiochus, Rome refocused its forces on conflicts in Liguria and Spain. Likewise, Philip’s compliance with Roman demands was itself the result of concerted diplomatic efforts on the part of Rome to satisfy Greek allies and shore up its support in the region rather than to engage in further direct conflict with him.

In fact, throughout Livy it is possible to find many examples which parallel Cicero’s formulation of just war. Sigrid Albert has thoroughly documented the kinds of instances which are claimed as legitimate justification to initiate war in Livy and other sources, including: an attack on a Roman ally, a breach of treaty, the breaking of an alliance, refusal of neutrality, an attack on an inviolable ambassador, violation of territorial rights, and the refusal to turn over those who may have committed such offenses to Rome. On this basis Albert argues that Cicero, while to some extent romanticizing a past in which values were practiced that had been neglected during of the civil wars, was representing a salient aspect of Roman culture. Although Cicero is perhaps using the behavior of Roman ancestors as a cudgel with which to decry the behavior of his contemporaries, he is also providing formal philosophical documentation of a theory which had long been in operation in Roman foreign relations. In this way

126 Livy 39.53

Albert chooses to frame Cicero’s discourse about *iustum bellum* as a stage in the development of such values. These values, proceeding from a religious origin in the fetial ritual, had taken on certain formal and substantive aspects in and of themselves before Cicero addressed them as a coherent formal theory. Although they may not have existed in this precise way before that point, they had still had a long tenure as cultural norms in the minds of Romans. In his writing Cicero merely gave them a prescriptive theoretical basis and description.¹²⁸

It is important to note that Cicero’s discussion of just war fits in naturally to his larger discussion on duties for this same reason. For the values of Rome in just war are not very far divorced from the values which Romans held concerning personal relationships. Therefore, Cicero sees no need to make any excuses for discussing the obligations of a state towards its enemies in the middle of a text which is otherwise principally concerned with personal virtue – for the simple reason that they are in many ways one and the same. After all, *fides*, while readily applied to the relations between states, is more commonly thought of in its applications in Roman values surrounding relationships between individuals, whether personal or transactional. *Fides*, as Cicero has it, is both the foundation of justice, and the underlying structure of stable friendship.¹²⁹

This is not to say that relations between states can be properly referred to as friendships. Personal patronage relationships between particular Roman individuals and foreign peoples often did operate on this basis, and certainly had an impact on decisions made by the Senate. However, the way that the Roman state as a whole dealt with, and evaluated,

¹²⁸ Albert 1980: 25

¹²⁹ Cic. *Off.* 1.23; *Amic.* 65
possible conflicts seems to have been more driven by general principles of behavior. The search for justification for war, as in the cases of Philip and Antiochus related above, was ostensibly divorced from the actual motives and intentions behind such a war.

In this way Roman just war theory presents modern scholars with a particularly difficult puzzle. It was clearly an important element in the decisions of the Roman Senate and people when war was imminent. It also obviously impacted the choice of when, and with whom, the state and its generals chose to enter into conflict. Yet despite being an important part of Roman cultural values with regard to foreign relations, and having obvious impacts on the choice of whether or not to go to war with a particular enemy, it does not conform to modern expectations of what one might call “morality.” For example, in 200 on the eve of the Second Macedonian War, the speech which Livy gives to the consul P. Sulpicius when he seeks to convince the people to vote in its favor revolves around the existential threat to Rome that is posed by Philip V’s power. Philip is likened to Pyrrhus, and the public is told that if Rome does not fight him in Greece first, it will inevitably have to fight him in Italy. However, in contrast to these statements, the actual bill promulgated by Sulpicius and put before the comitia states the basis for war as Philip’s aggression towards Rome’s Greek allies.\textsuperscript{130} While it is entirely possible that both of these issues motivated Rome’s declaration of war, it is also true that only one of them constitutes justification under the terms of \textit{iustum bellum}.

This situation may lead modern readers to assume that the Romans are intentionally deceptive or hypocritical. In this case they seem to be hiding their true

\textsuperscript{130} Livy 31.6-7
motivations behind false pieties and outrage about the treatment of their allies. This behavior was not uncommon. Johannes Thiel argues that the incongruity between avowed Roman causes for war and actual Roman behaviors and motivations means that the Romans, not the Carthaginians, were the inherently deceitful party in the Punic Wars.\(^{131}\) However, this claim applies a modern understanding of morality to a decidedly different ancient culture. In our modern world, and even in our legal systems, intent is considered to be a fundamental element when evaluating the legitimacy or legality of any particular action. Yet, as has often been argued with regard to ancient religion, intent is almost immaterial compared to the importance of proper form or ritual. This understanding must also be applied to the cultural values and theories, such as \textit{iustum bellum}, which concern the different aspects of Roman foreign relations.

For example, Romans with traditional values could get quite exercised about deception surrounding the commencement of hostilities under certain circumstances. In 171 Roman commissioners returned to the Senate after conducting peace negotiations with King Perseus of Macedon. Livy tells us that they congratulated themselves on having deceived the king by offering the prospect of peace only to help Rome gain more time to prepare for a planned war. Some senators approved of this ruse, but others felt that it was contrary to Roman character and values, saying that it was the custom of their ancestors to declare war before beginning it, and often even to notify the enemy of the time and place of battle.\(^{132}\) To order preparations for war while feigning peace was a

\(^{131}\) Thiel 1994: 129-150

\(^{132}\) Livy 42.47.5-6: \textit{indicere prius quam gerere solitos bella, denuntiare etiam interdum ... finire, in quo dimicaturi essent}. 
violation of *iustum bellum*. Anything less was Punic cunning or Greek shrewdness.\(^\text{133}\)

Although in this instance the majority voted to continue this deception, there was a clear argument against it from the perspective of just war theory, not merely moral distaste. This distance between the values which fundamentally guided many aspects of the Roman conduct of war and modern conceptions of ethics and morality will become further apparent in the following discussion of the other aspect of Roman war regulations, *ius belli*.

**Ius Belli**

The Roman theory of just war has a clear origin in the fetial law and rites. However, this theory only applies to the determination of whether or not a war can be justly initiated. Watson argues that the *fetiales* played no role in the actual conduct of war, and similarly, that just war theory does not relate to anything that occurs after the initial declaration of war is made.\(^\text{134}\) Yet there are certain principles which tend to recur in Roman war practices, which are often united under the term *ius belli* by modern scholars. Scholars have long linked *ius belli* and *ius fetiale* in their work. For example, Coleman Phillipson states that the *ius fetiale* is the broader category which contains *ius*

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\(^{133}\) Livy 42.27.7: *non versutiarum Punicarum neque calliditatis Graecae*

\(^{134}\) Watson 1993: 52-53
belli as well as iustum bellum. However, there is no clear evidence of the genealogy of ius belli which indicates its exact relationship to the ius fetiale and just war theory.

Returning to De Officiis, the principles of ius belli are referred to in a general manner by Cicero in the following way:

Sunt autem quaedam officia etiam adversus eos servanda, a quibus iniuriam acceperis. Est enim ulciscendi et puniendi modus; atque haud scio an satis sit eum, qui lacesserit, iniuriae suae paenitere, ut et ipse ne quid tale posthac et ceteri sint ad iniuriam tardiores.

There are certain duties that we owe even to those who oppose us, from whom we have received injury. For there is a proper limit to vengeance and punishment. And I think it is enough that the one who has provoked us is made to repent his unjust acts, so that he may not act in such a way afterwards, and others may be forestalled in doing wrong.

This passage indicates that there were principles associated with the proper treatment of an enemy beyond merely the justice of the cause of war against them. Primarily, Cicero seems to be invoking mercy or a moderation of tactics. The enemy should be punished for wrongdoing, but not excessively, and the goal of such a rebuke is to ensure good behavior and to provide an example to others rather than purely to exact revenge.

135 Philippson 1911: 1.97
136 Cic. Off. 1.33
137 Cic. Off. 1.33
Cicero refers to *ius belli* in a few places in his known works, mostly as a commonly accepted legal theory. For example, in the *Pro Balbo* he refers to the law of war and peace (*belli ius atque pacis*) as something which would be familiar to any competent military commander, and especially as learned a one as Gnaeus Pompey.\textsuperscript{138} These laws encompass “treaties, agreements, and the conditions of peoples, kings, and foreign states.”\textsuperscript{139} Livy has Camillus cite *ius belli* as the source when he states that Romans do not fight against children or the unarmed.\textsuperscript{140} In addition, Livy relates a story in which a Roman consul settles a land dispute by declaring that a particular area had been conquered and become Roman territory “iure belli.”\textsuperscript{141} From this it is possible to determine some broad categories for the principles which constitute the Roman *ius belli*. First, it regulates who may or may not licitly participate in a conflict or be targeted during it. Second, it determines the appropriate treatment of those who have been subdued, whether they offered an unconditional surrender (*deditio*), or were conquered in active combat. Third, *ius belli* provides for the proper disposition of property at the end of a conflict, whether that property be land, persons, or other booty.

The issue of whether a particular person was a licit or illicit participant in a particular conflict returns us to the passage in Livy concerning Camillus. Obviously, children and those who are unarmed are not valid targets of Roman military action.

\textsuperscript{138} Cic. *Balb.* 14-15, 45

\textsuperscript{139} Cic. *Balb.* 15: *in foederibus, pactionibus, condicionibus populorum, regum, exterarum nationum*

\textsuperscript{140} Livy 5.27.7

\textsuperscript{141} Livy 3.71.7
Cicero also relates a story in which Cato the Elder forbade his son to engage with the enemy after he had been discharged from his initial general’s command. Unless he was sworn into service again he could not be considered a licit participant in the conflict, “for it is not just for he who is not a soldier to fight the enemy.”¹⁴² A similar narrative is given by Plutarch in the Life of Camillus. When Clusium was besieged by the Gauls, the Clusians begged that Roman ambassadors be sent to negotiate on their behalf. However, the three Fabii brothers who were sent decided instead to incite the Clusians to war and engaged in battle on their behalf. Of course, an ambassador joining the conflict which he was sent to mediate was against the shared law of foreign relations.¹⁴³ Plutarch has the Gallic leader, Brennus, call this act “contrary to the custom of all mankind, that which is just and sacred.”¹⁴⁴

More insistently emphasized in *De Officiis* is the Roman duty to show clemency, especially to the unarmed. This is particularly true in the case of those who have surrendered, even if that surrender comes in the midst of a battle. Cicero states that when Romans are victorious in battle, they should show mercy to those who have fought without cruelty or inhumanity.¹⁴⁵ However, just as important is the guarantee of protection that must be given to those who lay down their weapons and entrust themselves to the *fides* of the Roman general “even if the battering ram has struck their

¹⁴² Cic. *Off.* 1.37: *negat enim ius esse, qui miles non sit, cum hoste pugnare*

¹⁴³ This topic is discussed further in Chapter 1.

¹⁴⁴ Plut. *Vit. Cam.* 17.6: *νενομισμένα πάσιν ἀνθρώπωις ὅσια καὶ δίκαια*

¹⁴⁵ Cic. *Off.* 1.35
city walls.”

When a city has been conquered, it is the duty of great men to punish only the guilty and spare the multitude. That this is a common value is affirmed by a passage from Sallust’s *Bellum Catilinae*, in which the consul of 68, Q. Marcius, tells the conspirators that “if they wished to make any case to the Senate, they must put down their arms, and proceed as suppliants to Rome, since thus always had been the clemency and sympathy of the Roman Senate and people, that no one ever petitioned them in vain.”

Among the Romans, Cicero says, justice has been so well cultivated, that those generals who have offered their protection to a conquered or surrendered people become, by tradition, the patrons of those states.

Of course, the scenario in which this offer of protection most often takes place is during a surrender. The form of surrender required by the Romans in order to end a conflict peacefully is called *deditio*. The *deditio* is, at least ostensibly, a voluntary unconditional surrender of sovereignty to Rome. It is often phrased as a *deditio in potestatem* or a *deditio in fide*. Each of these formulations indicates a slightly different status, and Livy has a surrendering tribe of Gauls “entrusting (*dedisse*) themselves rather to the good faith (*in fide*) than to the power (*in potestatem*) of the Roman people.”

Alan Watson speculates that the difference was akin to the differing kinds of property

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146 Cic. *Off.* 1.35: *quamvis murum aries percusserit*

147 Cic. *Off.* 1.82: *punier suntes, multitudinem conservare*

148 Sall. *Cat.* 34: *Si quid ab senatu petere vellent, ab armis discedant, Romam supplices proficiscantur; ea mansuetudine atque misericordia senatum populi Romani semper fuisse, ut nemo umquam ab eo frustra auxilium petiverit.*

149 Cic. *Off.* 1.35

150 Livy 39.54.7
transfer which occur in Roman civil law, and that the type of surrender imposed different conditions concerning the treatment of the surrendered people and property.\footnote{Watson 1993: 51-52: Specifically, in civil law, items owned by mancipatio can be transferred to a creditor in trust (\textit{in fidem}) as collateral, versus a full transfer of property rights.}

Regardless of this distinction, the \textit{deditio} is an unconditional surrender which, after formal acceptance by the Senate or a magistrate with \textit{imperium}, meant that the surrendered state as it was ceased to legally exist. All of its citizens, land, and moveable goods became the property of Rome. Livy formulates a version of the \textit{deditio} in the regal period as requiring the surrender of “the people, city, fields, water, boundary lines, temples, goods, and everything divine and human.”\footnote{Livy 1.38.2: \textit{deditisne vos populumque Collatimum, urbem, agros, aquam, terminos, delubra, utensilia, divina humanaque omnia in meam populique Romani dicionem?}} A similar \textit{deditio} formula is found in an incomplete inscription dating to 104 from Alcántara in Spain. The text, reconstructed by Dieter Nörr, lists “arms, siege works, deserters, captives, stallions, mares . . . fields and buildings, laws, and everything else.”\footnote{Nörr 1989: 23: \textit{DE CONSILI SENTENTIA INPERAVIT ARMA OBSIDES (TRANSFUGAS?) CAPTIVOS EQUOS EQUAS . . . AGROS ET AEDIFICIA LEGES CETERAQUE OMNIA}}

However, once a \textit{deditio} had been rendered, Cicero makes it clear that Roman values called for mercy towards the surrendered. Those who have not been savage or inhumane should be spared and treated well. He compares how many Italian tribes were admitted to full Roman citizenship after their defeat, while Carthage and Numantia were razed, ostensibly because of their brutal conduct in war.\footnote{Cic. Off. 1.35} In addition, according to Virgilio Ilari, because the \textit{deditio} was a bilateral act from a legal perspective, Romans
were compelled to accept it at any time before their attack on an enemy city had begun.\textsuperscript{155} Cicero goes further, stating Romans must be ready to accept surrender at any point during the conflict.\textsuperscript{156} Making such an option available may be seen as further clemency on the part of the Romans, since a city which was conquered outright could expect to face more severe treatment by them than one which had offered a deditio. Sallust puts this best when he says, reporting Cato’s speech on Catiline: “when a city is taken, nothing is left to the conquered.”\textsuperscript{157} Conversely, a failure to show mercy to the surrendered is seen as contrary to fundamental Roman values. When Marius burns the city of Capsa and kills and enslaves its population following its citizens’ offer of deditio to him during the Jugurthine War, Sallust terms this act “contra ius belli.”\textsuperscript{158}

A significant issue to be dealt with after a conquest or deditio was the matter of the real property of the subdued peoples. Cities conquered in war were at the complete disposal of the Romans. For example, during the peace conference at Tempe after the Second Macedonian war, the Roman general T. Quinctius Flamininus points out that he can only freely give the city of Phthiotic Thebes over to the Aetolians, because it alone had been conquered by force, while other cities in question would need to be considered separately because of their differing status.\textsuperscript{159} When the Aetolians protested that their

\begin{flushright}
\textsuperscript{155} Ilari 1985: 160
\textsuperscript{156} Cic. Off. 1.35
\textsuperscript{157} Sall. Cat. 52.4: capta urbe, nihil fit reliqui victis
\textsuperscript{158} Sall. Iug. 91
\textsuperscript{159} Polyb. 18.38.7; Livy 33.13 provides the opposite account, stating that the Romans chose to hold on to Thebes because it was theirs by ius belli. However, this may be due to a mistaken reading of Polybius on Livy’s part.
\end{flushright}
previous treaty with the Romans had stipulated that all captured cities would be turned over to them, while movable property would be allocated to the Romans, Flamininus again objected. First, he declared that that treaty had been rendered invalid by the Aetolians’ subsequent alliance with Philip V. However, more significantly, only Phthiotid Thebes had been captured, while the other Thessalian cities had voluntarily come under the sovereignty of the Romans.\textsuperscript{160} Clearly, then, the status of cities taken by force and those which surrendered voluntarily was different in terms of the property rights of the victor. It is also clear that \textit{ius beli} was the default underlying force determining the status of conquered and subdued cities. The peace treaty which Rome made with Antiochus at the end of the Roman-Seleucid War explicitly forbade him from holding any city \textit{belli iure}, despite the fact that he was still allowed to use military force in self-defense.

As cases below will demonstrate, there seemed to be no specific legal recourse for those whose cities and land were taken through \textit{ius beli}. However, such property could be returned through the benevolence of the possessor, which occurred quite regularly in the case of Rome. A specific case concerns the Thessalian city of Chyretiae, one of those mentioned above that had surrendered to the Romans in the course of the Second Macedonian War. An inscription preserves a letter sent by Flamininus to the city in order to return certain properties which had come into the Roman’s possession upon their victory over Philip. After a formal greeting to the people of Chyretiae and their officials, Flamininus writes: “Since in all other matters both I and the people of Rome have made

\textsuperscript{160} Livy 33.13.12: \textit{Thessalae civitates sua voluntate in dicionem nostrum venerunt}
clear our intentions towards you generally, we wish also in the following affairs to show how in every aspect we are champions of what is honorable.”161 In the context of this letter, honorable behavior consisted of the immediate return of all buildings and property in Chyretiae held by the Roman treasury, “so that in this way too you may learn our character; that we wish in no matter to be avaricious, valuing above all goodwill and a good reputation.”162 He then outlines the procedure by which any Chyretienses who have not yet recovered their property might have their claims evaluated by him. The language of this inscription makes it clear that the properties are being returned out of a Roman sense of honor and generosity, not according to the specific laws of war.

The disposition of the moveable property of a subdued city which has come into Roman possession is also a matter dealt with by ius belli. Cicero has a firm opinion on the matter, which he uses the examples of the Roman generals L. Aemilius Paulus, Scipio Aemilianus Africanus, and L. Mummius to illustrate. Cicero tells us that, after his defeat of Perseus of Macedon, Paulus deposited the whole of the wealth of that state with the Roman treasury, such that he eliminated the need for a property tax in Rome. Yet to his own home he only brought fame and the honorary cognomen, Macedonicus.163 Similarly, after the ultimate destruction of Carthage, Scipio Aemilianus did not enrich himself by the overthrow of that city, and his colleague in office, L. Mummius, who had destroyed


162 SIG 3 593. Sherk 1969: 211-213: ὡς καὶ ἐν τούτοις μᾶθητε τὴν καλοκαγαθίαν ἢμῶν καὶ ὡτι τελέως ἐν οὐθενί φιλαργυρῆσαι βεβουλήμεθα, περὶ πλείστου ποιοούμενοι χάριτα καὶ φιλοδοξίαν

163 Cic. Off. 2.7
Corinth, preferred to adorn Italy with the riches of Greece rather than his own house.\textsuperscript{164} Of course, this is a high standard to set for any general, and most probably did not live up to the reputed modesty of these men. Still, the ideal of the self-sacrificing general existed.

There are indications that \textit{ius belli} could be used to determine the proper status of deserters and slaves who had been taken in the course of a conflict.\textsuperscript{165} However, the booty which seems most calculated to disturb the Romans’ sense of decency, and that of others as well, was sacred objects. An important example of this disturbance is exhibited by the case of M. Claudius Marcellus after his successful siege of Syracuse during the Second Punic War. According to Livy, Marcellus ensured that his soldiers did not commit violence against innocent citizens, but he did leave them free to take anything in the city as booty.\textsuperscript{166} Two years later, in 210, the Syracusans sent an embassy to the Senate to complain of the manner of Marcellus’ conquest of their city, including the fact that he and his men had despoiled shrines of their sacred objects – specifically, statues of the gods and their associated ornaments.\textsuperscript{167} Marcellus defended his actions before the Senate, saying that people who had openly allied themselves with Carthage deserved no less. Furthermore, Livy reports, Marcellus says “As to that which I, as victor, took from or gave to individuals, I believe that I have acted in accordance with the law of war (\textit{cum

\begin{quote}
\textsuperscript{164} Cic. Off. 2.76
\end{quote}

\begin{quote}
\textsuperscript{165} Seavey 1993: 82-84
\end{quote}

\begin{quote}
\textsuperscript{166} Livy 25.25.7: \textit{Marcellus ex omnium sententia edixit militibus ne quis liberum corpus violaret: cetera praedae futura}
\end{quote}

\begin{quote}
\textsuperscript{167} Livy 26.30.9
\end{quote}
belli iure) and the merits of each case.” Many senators openly deplored Marcellus’ actions. Even so the final resolution failed to openly rebuke him, but rather assigned the case to the current consul, who was charged with reviewing the situation and seeing what could be done for the Syracusans without detriment to the interests of Rome.

This outcome demonstrates the role which *ius belli* often played in Roman foreign relations, one similar to that of *iustum bellum*. The principles espoused by the Romans may not have completely prevented acts of cruelty or excess. However, they clearly did often prompt Roman officials to modify their approach to particular situations. Furthermore, in cases where cruelty or excess did occur, Romans often registered their disapproval of the actions in question. This disapproval could take the form of a negative historical framing by a later writer like Cicero or Sallust, or a contemporary initiative by the Senate to make some remedy for the situation. Culturally accepted values often work in two directions in this manner: they discourage certain actions, and also prompt efforts at punishment or amelioration when discouraged actions are taken. Even without a formal legal or theoretical discourse, *iustum bellum* and *ius belli* clearly fall into the category of such cultural values.

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168 Livy 26.31.9: *quae autem singulis victor aut ademi aut dedi, cum belli iure tum ex ciusque merito satis scio me fecisse.*
Principles in Action

It is instructive to return to the example of M. Claudius Marcellus and Syracuse in order to see how the principles embodied by *iustum bellum* and *ius belli* were cited in cases where Roman officials were accused of violating them. The complaints by the Syracusans before the Senate cover a number of issues. Marcellus’ delay in engaging in conflict with the tyrants Hippocrates and Epicydes, who had allied the city with the Carthaginians, had meant that leaders friendly to the Romans within Syracuse had been abandoned and many had been executed. In addition, Marcellus’ cruel conduct during a previous conflict at Leontini had been the event which provoked the accession of the tyrants in the first place. Marcellus’ refusal to collaborate with deserters in order to gain the city peacefully also meant that he had an excuse for excessive violence towards a traditional Roman ally. The complaints about Marcellus’ plunder of *sacra* have been noted above, but the Syracusans also alleged that he had seized so much landed property that they were now unable to support themselves.

These allegations touch on many issues raised by *iustum bellum* and *ius belli*. First, Marcellus’ cruelty at Leontini is stated to be the proximate cause which led to the domination of the tyrants at Syracuse. That these tyrants were allied with Carthage provided the justification needed for the siege of that city. As has been shown, excessive violence and cruelty are always discouraged by the Roman principles of foreign relations, and although the *iustum bellum* does not typically trace back the cause of war so far as the Syracusans wish to do in this case, the charge of inhumanity is a serious one. Marcellus’ failure to take advantage of the plans offered by deserters is a more
complicated question. On the one hand, there is a clear history of Roman refusal to take part in such subterfuge. At the same time, the Syracusans’ insistence that their leading men (who were still supposedly on the side of the Romans) would have surrendered the city to him could be construed as an inappropriate refusal of the option of \textit{deditio}. The matter of the confiscated property is similar. While the city was taken by force, and therefore ought to have had no expectation that the land would be returned, the fact that the Syracusans positioned themselves as allies who had been suppressed by the tyrants makes this decision seem more harsh. Certainly a freely surrendered city, or a city of allies taken in the context of a larger conflict, would not have received such treatment.\footnote{Livy 26.30}

Notable too is Marcellus’ response. Rather than disavowing the relevance of the claims, as might be expected in a culture where \textit{iustum bellum} and \textit{ius belli} were not taken seriously, he responds to them by making reference to those same principles. First, he makes the broad assertion that in this case the Syracusans were enemies (\textit{hostes}), and therefore his actions are defended by the \textit{ius belli}.\footnote{Livy 26.31.2: \textit{sed non quid ego fecerim in disquisitionem venit—nam quidquid in hostibus feci ius belli defendit}} His justification for giving them the status of enemies (and therefore validating his actions in war) was that they had attacked Roman ambassadors,\footnote{Livy 24.33: In 214 Roman emissaries had narrowly escaped an attack on their ship in the harbor of Syracuse} had closed the walls of the city to Roman forces thereby bringing on the siege, and had engaged the Carthaginians (with whom Rome was then engaged in open war) in their defense. These hostile acts justified Rome’s war with Syracuse, and the

\textsuperscript{169} Livy 26.30

\textsuperscript{170} Livy 26.31.2: \textit{sed non quid ego fecerim in disquisitionem venit—nam quidquid in hostibus feci ius belli defendit}

\textsuperscript{171} Livy 24.33: In 214 Roman emissaries had narrowly escaped an attack on their ship in the harbor of Syracuse
Syracusans’ enemy status determined the treatment they duly received at Marcellus’ hands. As for the offers of surrender, they were not genuine, in his opinion, and none of the Syracusans in the embassy which had made these complaints were among those who had made such offers. Indeed, even after the first incident, further Roman legates had been sent to the city gates to negotiate a settlement, but had been refused.172 As for the seizure of property made, all had been done in accordance with *ius belli*, and the fact that Marcellus chose to adorn the city of Rome with his booty showed that he had no doubt that his conduct in this matter had been proper.173

The exchange between Marcellus and the envoys from Syracuse makes the import of the principles of *iustum bellum* and *ius belli* clear. Rather than dismissing the importance of the values which the Syracusans cite, Marcellus attempts to answer their claims point by point. He first provides a clear justification for the Roman entry into conflict by pointing out that the Syracusans had allied themselves with Rome’s enemies, and thus become enemies themselves. He then outlines further hostile acts on their part which cemented their enemy status. Then he gives a clear narrative which shows that the opportunity of surrender was offered and refused, necessitating the capture of the city by force. Finally, as has been noted above, both the moveable and landed property of a city taken by force are forfeited to the victor, and therefore the Syracusans’ claims in that respect are also invalid. In short, *iustum bellum* and *ius belli* have become firm points of reference which a Roman general, who is naturally very aware of their implications, may use to demonstrate the lawfulness of his behavior in a very precise manner.

172 Livy 24.33

173 Livy 26.31.9
Conclusion

While Marcellus may indeed have complied with the so-called “letter” of the law, clearly the ideal expectations put forward by Cicero were much higher. As Joseph Plescia puts it, the Roman citizenry was bound together not just by the rules of war, but by the ethics of accountability. Still, the fact that such a phenomenon as strict adherence to the literal implications of *ius belli* while ignoring the more “moral” aspects could exist says something very important about the role of these cultural values in Roman foreign relations. The Romans have always been regarded as a uniquely “legal” society, as is usually shown by citing the extensive development of their civil law, especially under the Empire. However, it is valid to claim that the legal nature of their societal values has a much earlier origin and more pervasive spread than can be deduced by the legal tradition contained in the Digest. This nature is a deeply ingrained cultural habit which manifests itself in many areas of Roman society, including in its relations with foreign peoples. A question naturally raised by this revelation is how and why these values are acted upon in the larger context of early Roman imperial expansion. After all, principles which clearly originate in the earliest days of the Roman people surely came to be adapted to the needs of a changing world and served an important purpose there, as their persistence in the second century attests. How they serve Roman interests and reify Roman identity in the Mediterranean during this period is an issue to be explored in the next chapter.

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174 Plescia 1990: 502
CHAPTER THREE

THE DEVELOPMENT OF LEGAL CONSCIOUSNESS

Marcus Aemilius Lepidus (cos. 187) was not only the most beautiful man of his time, as Philip V had said (and Polybius, who recorded the statement, agreed).\textsuperscript{175} He also had something of a bitter and vengeful temperament. According to Livy, he was convinced that M. Fulvius Nobilior (cos.191) had prevented his elevation to the consulship when he presided over the elections of the previous two years. As consul Fulvius had led the siege against Ambracia, and his victory there had eventually forced the Aetolians to make peace with Rome. While consul, Lepidus, in order to take his revenge, brought some Ambracian envoys into the Senate where they accused Fulvius of violating the law of war. The Ambracians alleged that they had been attacked unjustly, since they had been at peace with Rome, complied with the orders of the previous consuls, and were ready to be similarly obedient towards Fulvius.\textsuperscript{176} Despite this good behavior, their lands had been plundered, and when their city was threatened with the same treatment, they were forced to close their gates. The siege followed, and after the city had fallen, it had been pillaged and destroyed, and the women and children had been seized and sold into slavery. However, what shocked the Ambracians most of all was that

\textsuperscript{175} Polyb. 16.34.6

\textsuperscript{176} Livy 38.43.2
the city’s temples had been stripped of their ornaments, and even the images of the gods had been carried away.

Gaius Flamininus, Lepidus’ fellow consul, defended Fulvius by citing the example of M. Marcellus, who had been accused by Syracuse of similar violations (discussed above in Chapter Two) after he conducted its siege during the Second Punic War. Fulvius’ conduct was therefore not in violation of the normal conduct of war, and in fact he was prepared to cite these very acts in his petition to the Senate for a triumph. 177

The attack on Ambracia itself had been justified because the city had allied itself with the Aetolians, with whom Rome was then at war, and this action made any previous friendship between Ambracia and Rome irrelevant. Flamininus subsequently blocked any action against Fulvius. 178 However, taking advantage of a day on which Flamininus was absent due to illness, the Senate, led by Lepidus, passed a *senatus consultum* stating that the Ambracians should have all of their property returned to them, that they be free to live according to their own laws, and even to collect tariffs on goods so long as Rome and the members of the Latin League were exempt. 179 The matter of the religious objects which had been seized was to be referred to the college of pontiffs for it to decide on a course of action when Fulvius returned to Rome. In addition, Lepidus took the further initiative of having another *senatus consultum* passed which affirmed that Ambracia had not been taken by force (*vi captam*).

177 Livy 38.43. 8-10

178 Livy 38.43.11-13

179 Livy 38.44.3-4
On his return to Rome, and while Lepidus was attending to his proconsular province, Fulvius successfully overcame Lepidus’ supporters and was awarded a triumph. With an army loaded with spoils waiting outside the pomerium, his political capital was high, and the tribune who most vocally supported Lepidus was not able to withstand his influence. However, although this whole affair was manifestly grounded in domestic senatorial power politics, it still gives important evidence for the force of the principles of iustum bellum and ius belli in the era after the conclusion of the Second Punic and Second Macedonian Wars, when Rome held more overseas territory, and was more involved in the larger Mediterranean, than ever before. Livy states that Lepidus had coached the Ambracians in how to frame their complaints, and he no doubt did so with a mind to focusing them on patent violations of the laws of war. Thus Fulvius is accused of not having declared war justly, and having improperly seized religious objects.

Fulvius’ defender Flamininus countered with arguments meant to bring those actions into line with the laws, providing a conventional justification for the attack (alliance with the enemy) and citing the precedent of M. Marcellus. The senatus consultum subsequently proposed by Lepidus, which declared that Ambracia had not been taken by force, was meant to overturn that defense, since it was only in the case of a city vi capta that such extensive seizures would have been permitted. So we may see, that even though iustum bellum and ius belli did not take on the formality of codified law or statute, they can still be said to be legal in character. They form a clear basis for the accusations made against Fulvius. Rather than dismissing them out of hand, Fulvius and his defenders are forced to address them, and to explain why his actions did in fact conform to these principles. The Senate, which has long been the venue for issues
involving foreign delegations, is asked to decide on the merits of the case according to its knowledge of the norms invoked.

Also of interest is the other *senatus consultum* passed by the Senate under Lepidus' leadership. Obviously, the return of the goods plundered by Fulvius and the recognition of Ambracia as a free city would have had a devastating effect on the status of his victory and requested triumph. However, beyond their political implications, these actions would make an impact in two further ways. They would serve as a sanction against an officeholder who transgressed essential cultural norms, and also as a form of compensation to his victims. Although Fulvius’ actions against Ambracia did not materially harm the interests of the Senate or Rome, but rather ensured Rome’s victory against the Aetolians, his punishment would still serve to enforce important cultural values and to promote social cohesion in a society that relied on shared values and shared self-concepts. Punishment in this sense can be seen as a way for the punishing body to demonstrate its allegiance to traditional ideas of how to relate to foreign peoples. Furthermore, willingness to enforce such sanctions even unharmed by the violations is an attractive means of signaling to outside observers that the state and its political institutions are honest brokers. If the Senate was willing to punish officials who violated the laws of war, foreign peoples could be persuaded by such actions that it would not intentionally allow violations in the first place, and would be willing to remedy any that occurred.

Modern social science research has supported the idea that those who are willing to punish individuals who violate social norms are more likely to be seen as
trustworthy. However, this research also shows that enforcement of sanctions is not the only way to appear trustworthy to outside observers. If there is an opportunity to offer aid to another group, this aid can also signal that the one offering it will act in good faith in the future. This is the other way in which the senatus consultum returning seized Ambracian property may have worked. By remedying the original violation, and demonstrating a willingness to help the victims, the Senate could convey to third-parties that Rome took such violations seriously and could be relied upon to make amends for future breaches.

This is an appropriate point to explore whether enforcement and signaling behavior were consistently and broadly enacted by the Senate in similar cases arising in the fifty years after the conclusion of the Second Punic and Macedonian wars. This is the period when Rome first held extensive territory outside the Italian peninsula and began to expand its influence throughout the Mediterranean. It is also when foreign embassies begin to appear regularly before the Senate to seek redress for acts of abuse and extortion committed by Roman officials and allies. These cases are evidence of the continuing force of the cultural values contained in iustum bellum and ius belli, and of their acceptance as formal standards by which Roman officials’ interactions with foreign peoples would be judged. Adherence to these principles was consistently expressed through efforts to impose sanctions on those who violated them, and to provide aid (monetary and otherwise) to the violators’ victims. In turn, this consistency of application fulfilled the dual purposes of expressing fealty to Roman values to an internal audience,

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180 Jordan 2016: 473-476
and signaling trustworthiness to foreign peoples. It becomes apparent that this nascent “law,” with its origins in *iustum bellum* and *ius belli*, played a key role in Roman foreign relations at this time, a role which was consequently cemented by its ultimate formalization into statute by the end of this period.

**Performing Virtue**

Considering how closely the laws of foreign relations were tied to Roman cultural values and identity, it is tempting to assume that internal discipline of Roman officials was the chief area in which they were applied. However, in examining events in Greece following the conclusion of the wars with Philip V and Antiochus III, it becomes clear that Rome did not shrink from holding others to its standards, or from making amends for the errors of its formal allies in the same way as it would have for its own generals.

Strategically, it is unsurprising that Rome maintained a strong interest in affairs in Greece. Although the original arguments for Roman involvement there were based on the possibility that the Hellenistic kings of that time might choose to follow Pyrrhus’ example and venture onto Italian soil, Rome also had allies calling for aid. Certainly, it was not in line with Roman interests to allow Philip and Antiochus to overrun the East and overwhelm budding Roman influence there.

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181 Livy 31.7
After the Romans’ victory in the Second Macedonian War, the peace negotiated by the consul Titus Quinctius Flamininus was engineered to allow Rome to occupy the place of friendly superpower to the region. Philip was hemmed in by the historical borders of Macedon, but not dethroned, since, as Flamininus put it, “it was not the Roman way . . . when victorious the brave should be moderate, gentle, and humane.”\(^{182}\) Furthermore, the formal peace treaty as drawn up by the Senate declared all Greeks free and subject to their own laws, and Romans further gave up claims to some territories that could have been said to be theirs by right of war through a famous declaration by Flamininus at the Isthmian Games of 196.\(^ {183}\) The Roman pattern of dismantling threats and declaring Greek cities to be free, while retaining the position of most powerful ally, continued when a force led by Flamininus and including Greek allies defeated the Spartan tyrant Nabis, freeing the city of Argos, but leaving Nabis in place as the Spartan king. Flamininus stayed in Greece until 194 in order to dispense justice and manage the disordered affairs of the various city-states that had been occupied by Philip and his lieutenants.\(^ {184}\) However, his dramatic exit in 194, following a rousing speech at the Nemean games, after which Rome withdrew all remaining troops and gave up its last few garrisons, did not bring an end to Rome’s involvement in Greek affairs.

\(^{182}\) Polyb. 18.37.2-7: οὔτε γὰρ Ῥωμαίους οὐδενὶ τὸ πρῶτον πολεμήσαντας εὐθέως ἀναστάτους ποιεῖν τούτους . . . πολεμοῦντας γὰρ δὲ τοὺς ἀγαθοὺς ἀνδρας βαρεῖς εἶναι καὶ θυμικούς, ἡττωμένους δὲ γενναίους καὶ μεγαλόφρονας, νικώντας γε μὴν μετρίους καὶ πραεῖς καὶ φιλανθρώπους

\(^{183}\) Polyb. 18.44-46; Livy 33.31-32

\(^{184}\) Livy 34.48
Many scholars have examined Flamininus’ declaration of freedom and the rest of his time spent in the settlement of Greece in terms of the Roman adoption of a particularly Greek vocabulary of freedom, liberty, and autonomy. They posit that the adulation of the Greek audience at the Isthmian games was due to Flamininus’ expert deployment of terms like ἐλευθερία, which were familiar to the Greeks and carried a distinct political meaning.\textsuperscript{185} Certainly, as can be seen in his letter to Chyretiae noted in Chapter Two above, Flamininus had a strong command of the nuances of Greek diplomatic rhetoric of the time, and used them to effect what has come to be thought of as his unique philhellenism.\textsuperscript{186} Furthermore, this letter is evidence that his involvement in the affairs of the Greek city-states was highly detailed. Yet Flamininus, while enjoying wide latitude as the chief representative of the Senate and the Roman people in Greece at the time, was not a wholly independent agent. Rather, his conduct during his time in Greece, while augmented by his own particular talents and turn of mind, can be seen as an extension of Roman attitudes of the time towards foreign relations more generally. The Greek city-states, with their wealth, cultural influence, and political standing, were clearly important allies to Rome, especially in its challenge to the power of Hellenistic monarchs in the East. For that reason, even after Flamininus’ theatrical departure, Rome continued to intervene in Greek affairs to check the power of Philip, maintaining strong relationships with its allies, and ensuring its dominant influence in the region.

\textsuperscript{185} Sviatoslav 2011: 166-199; Walsh 1996

\textsuperscript{186} Armstrong 1986; For more on Flamininus’ Philhellenism see Badian 1970. Balsdon 1967 argues that Flamininus was primarily driven by desire for personal glory.
During Rome’s war with Antiochus, Philip saw his opportunity to again expand his base of power within Greece, and he took control of several cities in Thessaly and Thrace.\textsuperscript{187} As Philip was now a formal ally of Rome by treaty,\textsuperscript{188} those victimized by him saw the Senate as an appropriate place to seek redress, while other allies of Rome from the area also expected the Senate to protect their interests against Philip. Envoys came to Rome from Thessaly, Perrhaebia, Eumenes of Pergamum, Athamania, and Maronea, all complaining of Philip’s domination over them. Philip’s own envoys protested that he had captured those cities in Rome’s service while fighting against Antiochus, and therefore they were his by right of war. The Senate, skeptical of the legality of Philip’s claim, felt that the situation merited serious consideration, and sent a commission of three senators to settle the disputes.\textsuperscript{189} In addition, all of the cities under Philip’s control were notified that they could bring their grievances to the commission’s headquarters in Thessaly.\textsuperscript{190}

Rome had sent commissioners to Greece before, during Flamininus’ tenure, in the aftermath of the original peace treaty. However, in this case they were not merely enforcing a peace treaty with defined terms, but were being asked to judge both Philip’s and his alleged victims’ claims according to their broader sense of what was and was not licit behavior on the part of an ally. The fact that this was a deliberate and thoroughly

\textsuperscript{187} Livy 39.23
\textsuperscript{188} Gruen 1974: 125 argues that the alliance may not have been formalized by the Senate. However, Rome’s subsequent behavior shows that the alliance created obligations on the part of Rome regardless of legal status.
\textsuperscript{189} Livy 39.24
\textsuperscript{190} Livy 39.24
considered process, rather than a mere cover for Roman attempts to weaken Philip, is conveyed by the events which followed. The commission of three met in Tempe in 185 and heard various complaints. Livy described the scene as equivalent to a court hearing, with the Romans as judges, the Thessalians, Perrhaebians, and Athamanians as accusers, and Philip in the place of a defendant listening to the charges against him.\textsuperscript{191} The debate itself centered on the issue of the correct disposition of the cities and property claimed by Philip, and whether the line of possession by the Aetolians, against whom Philip had been allegedly fighting on Rome’s behalf, allowed them to be properly taken by right of war. In addition, it was stated that Philip had interrupted all sea trade in Thessaly in order to divert it to Macedonian-controlled Demetrias, and had even assaulted Thessalian envoys on their way to see Flamininus.\textsuperscript{192} Philip countered by making his own accusations that Thessalians and Perrhaebians themselves had improperly seized certain cities, and flatly denying all other charges.

The commissioners were overwhelmed by the situation, and determined that a further legal procedure (\textit{formula iuris}) would have to be established to properly resolve the issues raised by both sides. For the time being the Macedonian garrisons were to be withdrawn from all disputed territories, and Philip’s rule limited to the historical boundaries of Macedonia, as Rome’s original treaty with him had stipulated. Livy’s statement that the commissioners had called for the establishment of a formula meant that subsequent hearings concerning these accusations would have the character of a formal

\textsuperscript{191} Livy 39.25.1: \textit{ibi cum Romani legati disceptatorum loco, Thessali Perrhaebique et Athamanes haud dubii accusatores, Philippus ad audienda crimina tamquam reus consedissent}

\textsuperscript{192} Livy 39.25
trial, one intended to examine the factual and legal circumstances of the accusers’ claims, and to determine Philip’s guilt or innocence and any possible penalties. This was a procedure clearly established for the benefit of Rome’s Greek allies. However, instead of summarily punishing Philip or taking military action against him for harming their interests, the Romans chose to treat the situation as a legal case which could be settled on its merits. Of course, the standards by which Philip would be judged, as can be inferred by the character of the dispute described above, were those constituting the Roman law of foreign relations, the fetial law and *ius belli*.

The matter was drawn out over the next two years. A further commission meant to carry out the hearings was sent from Rome in 184, and issued another order stating that that Philip was to withdraw all of his forces from the occupied cities. According to Livy, in response Philip attempted to silence his accusers with violence, commissioning the assassination of Maronean leaders and going to war against the Thracian chieftains. Subsequently, Rome was thronged in 183 by even more delegations from even more cities, who had heard that the Senate was giving serious consideration to the grievances of those who had been harmed by Philip. Philip’s son Demetrius had been sent to represent his interests in Rome, but he was unable to offer a satisfactory defense of his father’s actions. Finally, another Roman delegation was sent to Macedonia later in 183

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193 Livy 39.33

194 Livy 39.34-35

195 Livy 39.46. 7-8
and Philip, now fearful of provoking a new war with Rome, ultimately complied with its orders and withdrew his forces from the occupied cities.¹⁹⁶

There is no doubt that the Senate wished to blunt the power of Philip in Greece. Any dominant power in the area could be considered a threat to Roman interests. In addition, according to Roman values, allies must be protected from depredation. However, the choice to handle their complaints against Philip through this kind of legal procedure indicates something more than a simple attempt to prevent him from regaining his former position. A trial, even a show trial with a predetermined outcome, was a forum through which the Romans could publicly display their virtue. Through it, the Greeks and others could witness Rome’s willingness to go out of its way to protect its allies’ interests. The evidence that this show of good faith was effective is the strong reaction by these states to the earlier commissions. The Greeks saw how Rome had dealt with the claims against Philip, and they internalized the image that had been projected of Rome as an enforcer of the rights of its allies. Consequently, these Greek cities flooded the Romans with embassies making further accusations against Philip, because they had been successfully convinced that these accusations would be heard and dealt with fairly. Thus, the legal procedures established had done what a military offensive or even a unilateral command against Philip could never have accomplished. While the threat of possible war was what finally intimidated Philip into compliance, its actual declaration might have prompted fear and resistance in the Greeks, who may have been wary that Rome would simply replace Philip as their ruler, as they had been before Flamininus’ departure in

¹⁹⁶ Livy 39.47, 53.10-11
Instead, by instating various commissions to hold these hearings, Rome was able to achieve several objectives, cowing Philip and strengthening its relationship with its Greek allies, without the effort of direct confrontation.

Of course, Rome did not necessarily need to hold a trial to demonstrate its position and values to allies. As was demonstrated by Flamininus’ letter to Chyretiae, such statements could be explicit. While the letter to Chyretiae ostensibly served to advertise the proper procedure for handling certain property claims, it contains several attempts by Flamininus to impress upon his audience that the Romans are a deeply virtuous people. In Flamininus’ words, the letter is meant to demonstrate “how in every aspect we are champions of what is honorable, . . . so that in this way too you may learn our character; that we wish in no matter to be avaricious, valuing above all goodwill and a good reputation.”

Similarly, when the Lycians come to complain to the Senate in 178 about their treatment at the hands of Rhodes, the Senate reprimands Rhodes in a letter that makes its role as a defender of their allies clear. While the Rhodians had been given control of Lycia by L. Cornelius Scipio during the conflict with Antiochus as a reward for their loyalty, that did not mean that Rome would necessarily tolerate bad behavior. The Lycians complained of being treated like slaves, and so the Romans gave them a letter for the Rhodians which stated that it would not permit the Lycians or any other freeborn people to be given over to the Rhodians or anyone else as slaves. It also stated that the

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197 Livy 34.49

198 Armstrong 1986: 33: βεβουλήμεθα καί ἐν τοῖς ἐξῆς ἐπιδείξαι κατά πάν μέρος προεστηκότες τοῦ ἐνδόξου . . . ὡς καὶ ἐν τούτως μάθητε τὴν καλοκαγαθίαν ἡμῶν καὶ ὅτι τελέως ἐν οὐθενι φιλαργυρήσας, περὶ πλείστου ποιούμενοι χάριτα καὶ φιλοδοξίαν.
Lycians had the same rights as any other ally of Rome, and that these rights must be respected.\textsuperscript{199}

Whether the letter had any effect on Rhodes’ behavior, we do not know, but it is easy to imagine it being publicly inscribed in a Lycian community, like Flamininus’ letter to Chyretiae, as a symbol and a warning of Rome’s protective stance towards Lycia.\textsuperscript{200}

An inscription from what must have been a similar case has been found near Cadiz. It records a decree of Lucius Aemilius Paulus made during his pro-praetorship in Hispania from 191 to 189: “Lucius Aemilius, son of Lucius, general, decreed that the slaves of the people of Hasta, who dwell in the tower of Lascuta, shall be free. The fields and town which they had possessed at that time he ordered they should possess and hold so long as the people and Senate of Rome are willing.”\textsuperscript{201}

While the details of the event remain unknown, this example, like the others, demonstrates the way in which Rome made use of documents meant to resolve particular problems and disputes in order to make public statements about Roman virtue and trustworthiness as an ally. Just as in the case of the commissions sent to handle the complaints of Greek allies against Philip (himself a nominal ally of Rome), actions taken to address specific concerns could be made to stand as signals of Rome’s desirability and reliability as an ally to a wider audience. The responsiveness of many Greek city-states to this behavior further demonstrates that such signals could be effectively read by this

\textsuperscript{199} Livy 41.6.8-10

\textsuperscript{200} For more on this phenomenon see Ferrary 2008.

\textsuperscript{201} CIL 1\textsuperscript{2}.614: L(ucius) Aemilius L(uci) f(ilius) inpeirator decreivit / utei quei Hastensium servei / in turri Lascutana habitarent / leiberei essent agrum oppidumqu(e) / quod ea tempestate posedis(s)ent / item possidere habereque / iuos(s)it dum pop(u)lus senatusque / Romanus vellet
audience and used to guide its actions towards Rome. Thus, it is imperative to consider such diplomatic actions not only as expressions of Romans’ devotion to their conception of the considerations owed to their allies, but also as signaling behavior, meant to convey the image of a Rome whose foreign relations were determined by the dictates of law and good faith.

**Internal Discipline**

The Romans did not only perform for an external audience, however. The principles of just war were fundamental to the Roman worldview. They could be applied just as strictly in cases in which the injured party was no friend of Rome, in which Roman actions were unlikely to be noted by third parties, and in which the offenders sanctioned were their own officials, rather than an ally acting badly. Two notable examples of such cases occur when somewhat obscure Gallic tribes are attacked without justification by Roman generals hoping to gain some of the glory that successful battles can bring.

The praetor of 187, M. Furius Crassipes, had been assigned to Gaul, and Livy tells us that he was anxious to find an excuse to start a war there, for the sake of his reputation. Unfortunately for him, the area was relatively peaceful at the time, and so proper justification was lacking. Despite this, he targeted a tribe called the Cenomani, perhaps because they had previously been Rome’s enemies, siding with the Carthaginian general Hamilcar against Rome in 200, when he was leading the remainder of Hasdrubal’s army
and fomenting revolts in the area. Furius took the Cenomani’s arms, even though they had offered no resistance nor provided any other justification for such a seizure. In turn, the tribe sent a deputation to Rome to complain and were referred to the consul M. Aemilius Lepidus, who was also in Gaul at the time, and who was given authority to investigate the matter. Acting as judge, Aemilius heard both the Cenomani’s accusations and Furius’ defense, but in the end sided with the Gauls. Furius was then ordered to restore the Cenomani’s property to them, and to leave the province.

A parallel case occurred in 186 when a group of Gauls crossed the Alps and began to construct a new town in Venetia, in the area which would later become Aquileia. First, Roman envoys were dispatched across the Alps to investigate the matter, but the migrants’ tribe of origin claimed that it had not authorized the move, and disavowed all connection with the incident. In 183, the consul for that year, M. Claudius Marcellus, ordered the proconsul L. Porcius to confront the Gauls with his legions at the site of their new settlement. Upon his arrival, the Gauls surrendered. Nevertheless, Porcius seized their arms and much of their other property. The Gauls resented this confiscation and sent envoys to the Senate to protest. They explained that they had been driven over the Alps by destitution and famine at home and, finding an

202 Livy 31.10
203 Livy 39.3.1-3
204 Livy 39.22
205 Livy 39.54.2
206 Livy 39.54.3-4
area which was unoccupied and uncultivated, had settled there with no ill intent. They had begun to build a village, which they felt should prove that they did not intend to prey upon the people of the surrounding area.²⁰⁷ Originally, Marcellus had warned them that if they did not surrender, he would take their intrusion into Italy as a just cause for war. So, preferring a certain peace to the uncertainties of war, they had surrendered themselves to the fides rather than to the power of the Roman people.²⁰⁸

The statements of the Gauls at Rome, as rendered by Livy, seem to convey a sophistication in understanding of Roman deditio which may be implausible. Still, they must have known that a deditio rendered before any initiation of conflict should have forestalled Porcius’ broad confiscations of property. Furthermore, it must have been clear to them, from their knowledge of Rome’s reputation, that they had some chance of success if they presented their case before the Senate. They were right. The Senate determined that that the Gauls had been wrong to cross the Alps and attempt to settle in Italy without the permission of Rome. However, Porcious’ seizure of their movable goods had also been contrary to law, and it was not pleasing to the Senate that those who surrendered willingly should be despoiled of their property.²⁰⁹ Accordingly, legates would be sent to Marcellus to ensure that, if the Gauls returned over the Alps whence they came, everything which had been taken from them would be returned. Livy even names the senators sent on this mission, including Lucius Furius Purpurio, so notable for his speech before the Aetolian League.

²⁰⁷ Livy 39.54.5

²⁰⁸ Livy 39.54.7: dedidisse se prius in fidem quam in potestatem populi Romani

²⁰⁹ Livy 39.54.10: neque senatui placere deditos spoliari
Livy tells us that the Gauls received their recovered property and left Italy as instructed. There is no evidence that Porcius faced any reprimand for his behavior, besides the criticism implied by the Senate’s statement. However, the Roman response to this situation, and that involving the Cenomani, could certainly be considered generous. If both parties of Gauls had been plundered by Roman officials and left to their fate, there would have been no serious damage to Roman interests. The Cenomani had been Rome’s enemy, and were no match for Roman legions at that time in any case. The other Gauls had clearly intruded on Roman territory, and retaliation should have come as no surprise. In both instances, unlike in the case of Philip and the Greek allies, deference to the interests of the victims did not seem to offer any particular benefits – the main audience for the Senate’s actions would be its own members and the Gauls themselves.

Still, the Senate considered and judged the facts of these cases as brought before them by the injured parties, and evaluated them according to its understanding of the law of war. M. Furius Crassipes had no just cause to threaten the peaceful Cenomani, and thus his seizure of their arms was invalid and must be corrected. Porcius had violated the rules of the *deditio* offered freely before battle, which disallowed extensive seizures of property. The Senate rectified this misstep as well. Even when the apparent benefits of obeying Roman principles of foreign relations were small, the Senate chose to expend the effort to do so. Clearly, the Senate saw investigations and commissions of this kind as a worthwhile investment of Roman resources. It is likely that this is because reification of these essential Roman values, values which arose from Roman efforts to ensure divine favor, was assumed to be a crucial component of Roman success abroad in and of itself, rather than merely a tool by which to manage Rome’s power and influence.
Extraordinary Measures

The illicit seizure of property from a surrendered people was no doubt a violation of *ius belli*. Still, it was fairly easy to remedy, and did not seem to elicit much action on the part of the Senate against the errant general. Much more serious violations were possible, and required different treatment. One of the most striking examples of such a case involved M. Popillius Laenas and the Statellates of Liguria. As consul for 173, Popillius had been assigned there due to the ongoing conflict between Rome and various Ligurian tribes. Livy tells us that the Statellates, alone of all of the Ligurians, had declined to take up arms against the Romans.²¹⁰ Nevertheless, Popillius drew up his army outside of their city, Carystum, and the Statellates, fearing the worst, responded by sending their forces out to defend it.²¹¹ Popillius attacked, and the battle went on for more than three hours without a decisive outcome.²¹² Finally, a Roman cavalry charge broke the Statellates’ line, and they fled in a panic towards the city. Livy reports that 10,000 of the Statellates were killed and more than 700 were taken prisoner.²¹³ The Romans also lost more than 3,000 men.²¹⁴

²¹⁰ Livy 42.8.5 *Statellates, qui uni ex Ligurum gente non tulissent arma adversus Romanos.*

²¹¹ Livy 42.7.3-4

²¹² Livy 42.7.5

²¹³ Livy 42.7.8

²¹⁴ Livy 42.7.9-10
After the battle, the Statellates offered themselves to Popillius in an unconditional surrender. In doing so, Livy tells us, they assumed that he would treat them no more savagely than any other Roman general. They were mistaken. Popillius seized their arms and other property and destroyed the city. The Statellates who lived there were sold into slavery. Popillius then sent a report of all of his actions to the Senate, perhaps assuming that it would overlook his illicit behavior and congratulate him on a glorious victory.\textsuperscript{215} The Senate instead regarded it as an atrocity. \textit{Iustum bellum} had been contravened when Popillius attacked the Statellates without provocation, and the sacredness of the \textit{deditio} had similarly been disregarded when they were sold into slavery. According to Livy, the Senate feared that this treatment would discourage others from surrendering to Rome, if they believed it meant their enslavement.\textsuperscript{216} Popillius was ordered to buy the Statellates back out of slavery using whatever profits he had made from their sale, and to restore all of their property that could be recovered. The Senate further instructed Popillius that he was not to leave his province until the Statellates had been returned to their homes.

What follows illustrates the difficulty that the Senate might have in punishing a disobedient commander. Rather than staying in his province, as soon as Popillius got news of the Senate’s decision, he returned to Rome to defend himself. He delivered a long and angry speech, directed against the praetor Aulus Atilius whom he blamed for targeting him.\textsuperscript{217} He asked the Senate to impose a fine on Atilius, to rescind the earlier

\textsuperscript{215} Livy 42.8.1-3

\textsuperscript{216} Livy 42.8.4-6

\textsuperscript{217} Livy 42.9.1-3
order regarding the Statellates, and to order a public thanksgiving for his victory.\textsuperscript{218} Many senators attacked him for his audacity, and ultimately he slunk back to his province with none of his demands fulfilled. With no real enforcement mechanism in place, it was difficult for the Senate to force Popillius to action. The fact that Popillius’ brother, Gaius, had been elected consul for the next year was no help. He intimidated his colleague into keeping quiet about the matter. The Senate retaliated by assigning both consuls to Liguria, despite the fact Rome seemed to be headed to war with Perseus of Macedon. By refusing to assign either consul to Macedonia until the Statellates’ case was dealt with, or even to pass \textit{consulta} allowing for the conscription of new armies, the Senate felt that it could compel the consuls to action. Instead, they declined to leave for their provinces, and Gaius made it clear that he would veto any attempt to renew the previous resolution against his brother.\textsuperscript{219} Amid all of this, Popillius wrote to the Senate stating that he had fought with the Statellates again, and killed another 6,000 of them, an action which only led more Ligurians to take up arms against him.\textsuperscript{220}

Passions were inflamed on all sides, and two of the tribunes for 172 entered the fray by threatening to impose a fine on the consuls and to bring their own resolution regarding the Statellates. The Senate gave its approval, and the tribunes presented a bill to the \textit{concilium plebis}, which stated that if any of the Statellates who had surrendered had not been restored to their homes by the Kalends of Sextilis, the Senate would put a

\begin{thebibliography}{9}
\bibitem{218} Livy 42.9.4-5
\bibitem{219} Livy 42.10.8-12, 4.21.1
\bibitem{220} Livy 42.21.2
\end{thebibliography}
magistrate under oath who would seek out and punish the person whose bad act had enslaved them.\textsuperscript{221} The plebeian assembly passed the measure, and the Senate assigned the praetor C. Licinius to carry it out. The consuls were finally prompted to leave for Liguria, and Popillius handed over his forces to them, but avoided returning to Rome for fear of being put on trial, especially before a public assembly which was clearly so hostile to him. However, he was forced to return when the tribunes threatened another resolution allowing Licinius to render judgement in his absence. Unfortunately, Popillius ultimately evaded prosecution. He was present for hearings before Licinius, but the praetor, out of deference to Popillius’ brother, the consul, postponed further examinations until the new magistrates for 170 were set to take up their offices, thus absolving him of his duty. Still, further acts of the Senate ensured that many thousands of those who had been wrongfully enslaved were freed. They were even granted land on the far side of the Po and resettled there at Rome’s expense.\textsuperscript{222}

This case reveals much about the importance of the law of \textit{iustum bellum} and \textit{ius belli} to the Romans in this period, as well as an evolution in its use at this time. In the face of an atrocious violation of norms, the Senate took extraordinary measures to correct the situation and punish the perpetrator. Those opposed to Popillius did not hesitate to punish his brother and his other defenders in order to get their revenge on him. The Senate was even willing to jeopardize the safety of Rome itself by refusing to allow the consuls to prepare for the war against Perseus until this matter was dealt with. While

\textsuperscript{221} Livy 42.21.5: \textit{sanciebatur, ut qui ex Statellis deditis in libertatem restitutus ante calendas Sextiles primas non esset, cuius dolo malo i is in servitutem venisset, ut iuratus senatus decerneret, qui eam rem quaeret animadverteretque. ex auctoritate deinde senatus eam rogationem promulgarun}

\textsuperscript{222} Livy 42.22
political factors allowed Popillius to escape direct punishment, there can be no doubt that significant resources were devoted to rescuing the Statellates from slavery and resettling them, which was no small feat. This persistence should not be surprising. Acts which violently defied the norms of war and foreign relations could have serious repercussions. Roman diplomatic relationships could suffer from the mistrust engendered by them. These acts could (and in this case, did) prompt foreign peoples to retaliate with their own declarations of war. Not least of these consequences is the possibility that such disregard for the law could earn the displeasure of the gods. Furthermore, whatever the ramifications, such cruel behavior was simply not Roman. It lay in stark opposition to a fundamental cultural narrative of shared values.

The importance of adherence to the law to Roman identity and success abroad may have prompted the involvement of the tribunes and, ultimately, the plebeian assembly, in enforcing it. In earlier instances the Senate acts on its own, and takes the initiative when it comes to dealing with abuses committed by the magistrates drawn from its own ranks. However, in this particular case, the Senate seems unable to enforce any sort of discipline on Popillius. Both he and the consuls are recalcitrant in the face of the Senate’s threats and resolutions. It is only when the tribunes become involved, and are able to pass their resolutions through the plebeian assembly, that Popillius and his supporters are forced to respond. Even then, when his prosecution is entrusted to a fellow senator, Licinius, Popillius escapes punishment through his personal connections.223 As

223 It is likely that this case was not pursued further, as Livy’s final statement on the matter is that the Ligurian question was avoided through deception: Livy 42.22.8: *ita rogatio de Liguribus arte fallaci elusa est.*
will be shown, failures like this lead to increasing formalization and innovation in procedure, as well as further involvement of the tribunes and popular assemblies in such cases over the next two decades.

**Searching for Solutions**

In 171 a deputation from the two Hispaniae came to the Senate complaining of the *avaritia* and *superbia* of various Roman magistrates who had been assigned there in previous years.\(^{224}\) Although the Spaniards clearly had many grievances, most of their complaints related to “*pecuniae captae,*” i.e. extortion.\(^{225}\) Perhaps for this reason L. Canuleius, the praetor assigned to Spain for 170, was instructed to appoint five *recuperatores* from the senatorial order. Evidence concerning the exact nature of the *recuperatores* and their duties is sparse before the Late Republic. However, some brief passages from Plautus imply that *recuperatores* were judges, meant to aid in the return of property in cases involving foreign peoples.\(^{226}\) In addition, Livy tells us that in 210, after the sack of New Carthage, Scipio Africanus appointed three men, whom Livy calls *recuperatores*, to resolve a dispute between two soldiers concerning which one of them had scaled the walls of the city first, and thus was deserving of the military honor known

\(^{224}\) Livy 43.2.2

\(^{225}\) Livy 43.2.3

\(^{226}\) Plaut. *Rud. ver.* 1281; *Bacch. ver.* 270
as the “mural crown”. In the case which occurs in 171, it is unclear if the *recuperatores* are a formal institution, or simply a general term for arbitrators appointed in case of certain kinds of disputes. In either interpretation, the use of *recuperatores* here indicates a proactive effort on the part of the Senate to use a variety of tools to resolve the improper seizure of property on the part of Roman officials.

In this case, the board was to try each of the individual magistrates accused by the Spaniards, who were free to choose their own advocates. The Spanish deputation chose very eminent men as their advocates: M. Porcius Cato, P. Cornelius Scipio, L. Aemilius Paulus, and C. Sulpicius Gallus. Unfortunately, this step may have hindered their cause. The Spaniards were able to bring three previous praetors of Spain before the *recuperatores*. One was acquitted, and the other two went into exile (although this exile took them only as far as Tibur and Praeneste.) However, a rumor circulated that the Spaniards’ counsel had prevented them from accusing anyone of higher rank. According to Livy, Canuleius himself gave way under the pressure and left for his allotted province so that he would no longer be obliged to oversee the hearings. Livy says of this ultimate denial of justice, “*ita praeteritis silentio obliteratis* (thus what was done before was erased by silence).” The Senate eventually made some concessions to limit future

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227 Livy 26.48
228 Livy 43.2.3-4
229 Livy 43.2.5
230 Livy 43.2.8-10
231 Livy 43.2.11: *ne plures ab Hispanis vexarentur*
232 Livy 43.2.12
abuse by magistrates in Spain, exempting grain from taxation and ensuring that Roman generals would pay a fair market price for the grain they did buy. Yet, the specific injuries suffered by the Spaniards were not given any further consideration.

The *receptatores* do not reappear in the historical record until the Late Republic. Their use may have been limited by their confinement to questions of property. Beyond this, the Senate still struggled to deal adequately with cases of illicit abuse and violence committed by its generals against foreign peoples. For example, the next year, in 170, envoys from Chalcis arrived in the Senate to make complaints about their treatment at the hands of C. Lucretius and L. Hortensius. As successive praetors assigned to Greece, both men had despoiled its temples, plundered its land, and sold free men into slavery. The embassy is notably led by Micythio, a Chalcidean leader who had aided the Romans on numerous occasions during their wars in Greece, and who was dramatically borne on a litter into the Senate due to his paralysis. Micythio made a point of enumerating the Chalcideans’ various services to Rome during the war against Perseus to demonstrate that, against such a strong ally, these abuses could have no possible justification in law.

The Senate decided to summon Lucretius to answer the charges, but his shaming was not confined to the Senate house. The tribunes Manius Juventius Thalna and Cn. Aufidius

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233 Livy 43.2.12

234 Livy 43.7.10. L. Hortensius is also accused of abuses to the citizens of Abdera, and this case is dealt with in the Introduction to this dissertation. There is evidence of further offenses by Lucretius in Greece in the same passage, which are serious enough to be raised by the tribunes before the comitia, but a large section of the preceding text has been lost. Livy 43.4.8-13

235 Livy 35.38, 46, 50-51
had taken up Chalcis’ case against Lucretius, and dragged him before a *contio*. There they made multiple accusations and set a date for a trial.\(^{236}\)

The Senate attempted to make some amends to the Chalcideans on its own. A letter was sent to Hortensius, who was still in the field, denouncing his actions and insisting that he buy back those who had been sold into slavery. The Senate also gifted 2000 asses to each of the Chalcidean envoys, and even hired vehicles to take Micythio to Brundisium in greater comfort.\(^{237}\) However, the Roman people proved more harsh than their Senate. When Lucretius’ crimes finally came to trial, the thirty-five tribes of the *comitia tributa* unanimously found him guilty and assessed a fine of one million asses, as requested by the tribunes.\(^{238}\) Clearly, it was not only the Senate that was concerned with the crimes of Roman generals against foreign peoples. In addition, the use of a trial before a public assembly is evidence of the continuing formalization of *iustum bellum* and *ius belli*. These were no longer just sets of principles used by the Senate to judge the appropriateness of a particular official’s behavior. They had become components of Roman criminal law, able to be used as a basis for charges in a formal trial before the people. Even the use of *recuperatores* indicates that the Romans of the time were searching for formal procedures by which to enforce this law. That search would be concluded in the very near future.

\(^{236}\) Livy 43.8.1-2

\(^{237}\) Livy 43.8.7-8

\(^{238}\) Livy 43.8.9: *multamque deciens centum milium aeris*
Lex Calpurnia de Repetundis

We know from a brief reference in Valerius Maximus that in 154 L. Cornelius Lentulus Lupus, cos. 156, was found guilty of unspecified crimes of extortion (repetundarum.) In this case the recuperatores were not used. Rather, a lex Caecilia is cited as having been applied. This lex may have instituted a special quaestio for Lentulus’ trial, an additional signal in the move towards a more criminal complexion for cases of abuse against foreign peoples. However, in the end it was the disgraceful result of a particular case that prompted a drastic change in how such cases would be handled in the future, and ultimately altered the fundamental nature of Roman criminal law in this sphere.

As pro-praetor of Further Spain in 150, Servius Sulpicius Galba targeted the Lusitanians for violence and abuse much as M. Popillius had the Statellates. The Lusitanians had surrendered themselves to Galba in fidem populi Romani, but Galba had sold them into slavery in Gaul. The tribune L. Scribonius Libo promulgated a motion that they should be freed, and a special quaestio was initiated to try Galba for his crimes. Cato the Elder argued vigorously on its behalf. Cato’s rival, Q. Fulvius Nobilior, spoke for Galba, and Galba himself exploited the people’s sympathy to evade prosecution. He

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239 Val. Max. 6.9.10: L. Lentulus consularis lege Caecilia repetundarum crimine oppressus

240 Many scholars amend “Caecilia” to “Calpurnia” and place the trial at a later date, but Gruen 1968: 11 argues that this is an unnecessary change.

241 Livy Per. 49; Cic. Orat. 1.227
brought in his two sons, still wearing the *toga praetexta*, and made such piteous speeches that the motion to try him was defeated.\textsuperscript{242}

The *Lex Calpurnia de repetundis* was passed in this same year, and it has been argued that there is a direct connection between it and the failure to prosecute Galba.\textsuperscript{243} This law, passed by the tribune L. Calpurnius Piso Frugi, established a permanent list of senatorial jurors from which the magistrate designated as judge in a case of extortion would draw. This was to be Rome’s first permanent criminal court, the place where all such cases would be brought, and where the Roman law of foreign relations would be formally applied. There is disagreement about the motives for the passage of the Lex Calpurnia. Erich Gruen argues that it was a response to the increasing frequency with which senators were being prosecuted for crimes of abuse and extortion before the public assemblies. In this telling, the Senate wished to regain its prerogative over foreign relations and the punishment of its own members.\textsuperscript{244} Others, like Ernst Badian, believe that the law was prompted by a genuine feeling of responsibility in Rome for the well-being of foreigners and provincials.\textsuperscript{245} In either case, the establishment of the *quaestio de repetundis* provided the first permanent and exclusive forum for the enforcement of *iustum bellum* and *ius belli*, ensuring its enduring importance for centuries to come.

\textsuperscript{242} Livy Per. 49

\textsuperscript{243} Gruen 1968: 13

\textsuperscript{244} Gruen 1968: 13-14

\textsuperscript{245} Badian 1968: 10-11
Conclusion

Many scholars have started their studies of the crime of extortion, or Roman criminal law more generally, with the creation of the *quaestio de repetundis*. Even those who choose to look at earlier cases may go no further back than 171 or 173. While such examinations serve an important purpose, it is equally vital to note that the *quaestio* is only one stage in a long succession of developments. Its existence is predicated upon and supported by a deep structure of Roman values which originated with the fetial priests, *iustum bellum*, and *ius belli*. Without these, and the history of their consistent use and gradual formalization, no court of extortion could ever have come into existence. More fundamental, perhaps, is the fact that without understanding these underlying values and how they were applied, it is not possible to see the role which Roman identity and external signaling behavior played in the foreign relations of this crucial period.

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246 Ferguson 1921; Gruen 1968; Betts 2013
In 201, after the defeat of Carthage at the Battle of Zama, a group of Carthaginian envoys arrived at Rome to negotiate the peace treaty that would formally conclude the war. Leading the delegation was Hasdrubal Haedus. According to our sources, this Hasdrubal had long opposed the Barca faction in Carthage, and had been seeking peace between Rome and the Carthaginians throughout the course of the conflict. When initial efforts towards a truce were made in the immediate aftermath of Zama, he had protected Roman ambassadors from angry Carthaginian mobs.\textsuperscript{247} He had also been the first to negotiate with Scipio Africanus for peace at that time.\textsuperscript{248} Now, before the Senate, Hasdrubal made an audacious speech, which is summarized by Livy. He warned the senators that they should make use of their good fortune in a virtuous and restrained way. After all, the reason that the Roman people remained invincible was that in moments of victory, they remembered to consider the matter carefully and act wisely. For this reason their power had expanded almost more by clemency to the conquered than by conquest itself.\textsuperscript{249} This speech moved the Senate towards a compassionate stance, but then, we are

\begin{footnotesize}
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\item \textsuperscript{247} App. Pun. 34
\item \textsuperscript{248} App. Pun. 49-52
\item \textsuperscript{249} Livy 30.42.14-17
\end{itemize}
\end{footnotesize}
told, one senator stood up and angrily asked Hasdrubal which gods they would swear by to conclude this peace, since they had betrayed those gods which they had invoked for the previous one. “The same gods,” Hasdrubal replied, “who are so cruel to those who violate treaties.”

Thus began a fifty-year period during which Rome was at peace with Carthage, its former main rival in the Mediterranean, now its ally. Although becoming Rome’s ally was a standard element of any treaty after a Roman victory in war, in this case that status carried special import. Carthage had been Rome’s bitterest enemy, and during this war Rome had come closer to total annihilation than ever before. For these reasons, maintaining Roman standards for the treatment of allies may have been a challenge. Yet, on closer examination, the Romans took Haedus’ advice, and adhered to their own principles of fairness and clemency much better and for much longer than anyone might have predicted.

The actual terms of the treaty, which the Senate gave Scipio full authority to determine, were strict. The Carthaginians were to surrender all of their warships with the exception of ten triremes. They were barred from making war on any party without the consent of Rome. They were also forced to restore any seized territory to Massinissa, the king of Numidia who had aided Rome during the war, and to compensate him for his losses. An indemnity of ten thousand talents of silver was imposed, to be paid out in installments of two hundred talents per year. In addition, one hundred young men from Carthage’s prominent families were to be surrendered to the Romans as surety. Still, the

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Livy 30.42.21: “per eosdem” inquit Hasdrubal, “quoniam tam infesti sunt foedera violantibus.”
Carthaginians would be allowed to retain the territory and property which they had held before the start of the war, and they were left otherwise autonomous.\textsuperscript{251} Even Hannibal is reported to have said that the terms of the treaty were as favorable as could be expected.\textsuperscript{252} Above all the treaty itself was necessary. Carthage had been totally defeated in its own territory in Africa, and in the interests of its own preservation, a peace treaty was unavoidable.

Livy reports that it was mostly practical motives that prompted Scipio to begin peace negotiations after Zama. Many of his officers urged an attack Carthage itself. However, the siege of such a well-fortified city would have been a costly and time-consuming operation. Scipio was also concerned that, if he did not conclude the war himself, his successor as consul would be able to take credit for all of his successes.\textsuperscript{253} In any case, the Senate and the Roman people wanted peace. In 201, the \textit{concilium plebis} voted unanimously to authorize a treaty with Carthage, and the fetial priests were accordingly sent to Africa with the requisite flint knives and sacred herbs needed to solemnize the peace.\textsuperscript{254}

The possibility for tension between the past of Rome’s conflict with Carthage, and its ostensibly friendly relationship after the conclusion of the Second Punic War, is obvious. However, when the actual events which made up this relationship are closely examined, it emerges that, whatever suspicions there may have been of Carthage’s

\begin{itemize}
\item \textsuperscript{251} Polyb. 15.18
\item \textsuperscript{252} Livy 30.37.10
\item \textsuperscript{253} Livy 30.36.10-11
\item \textsuperscript{254} Livy 30.43
\end{itemize}
intentions at Rome, both sides made a strong effort to appear to be cordial and helpful allies. Rome, in particular, was careful to conform to its traditional standards of behavior towards foreign allies. However, despite this outward comity, in the end conflict did again arise between the two powers. Consideration of the fraught relationship between the two states provides a unique insight into the power of traditional Roman values around foreign relations to encourage restraint and moderation in difficult situations. In addition, a thorough examination of the eventual breakdown in relations which led to the Third Punic War and Carthage’s destruction shows how those values were strained, and ultimately changed, by Rome’s increasing power.

**Between the Wars**

The question which is typically posed with respect to the Third Punic War is “Why did Rome choose to destroy Carthage?” After all, when the Carthaginians had been defeated in 202, a hefty war indemnity was levied, and the treaty which concluded the war imposed strict limits on Carthaginian militarization. From this point on, Carthage posed no obvious threat. Furthermore, as will be shown, Carthaginian relations with Rome were at least ostensibly deferential, if not slavish, and Carthage was so effectively hemmed in by Rome’s Numidian ally, Massinissa, that it could have little capacity for other conflicts. Taking all of this into account, Rome’s destruction of Carthage in 146 is puzzling. A few theories have been proposed to explain this action. One, which is effectively summarized by Frank Adcock, is that Rome destroyed Carthage and annexed
the province of Africa in order to prevent a Numidian takeover and domination of North Africa.\textsuperscript{255} Another explanation is advanced by William Harris, who contends that Carthage, being the richest state in the immediate periphery of Rome, and having completed indemnity payments in 152, presented a lucrative target for Romans bent on self-enrichment and enlarging Rome’s commercial power.\textsuperscript{256} A further theory, perhaps the most natural in light of the evidence, is that an irrational desire for revenge, and an irrational fear of the dangers posed by Carthage’s continued existence, drove Rome to destroy the city.\textsuperscript{257}

All of these interpretations likely have something of value to add to our understanding of this period. However, in order to better explore these and other possible factors in the lead-up to the Third Punic War, it is perhaps more helpful to reverse the initial question, instead asking, “Why did Rome wait so long to destroy Carthage?” After all, if Rome wished to establish a base of power in North Africa, or to absorb Carthage’s significant wealth and trading power, surely the right time to do so would have been on the occasion of the devastating defeat of that state at the conclusion of the Second Punic War. Rather, when examining the years between the conclusion of the peace treaty in 201 and the initiation of the third war in 149, there is no indication that Rome harbored aggressive intentions towards Carthage. Instead, Rome positions itself as an unbiased ally of Carthage, scrupulously obeying the terms of the treaty. While this upright image is in

\begin{footnotes}
\item\textsuperscript{255} Adcock 1946: 118-119
\item\textsuperscript{256} Harris 1979: 234-240.
\item\textsuperscript{257} Adcock 1946: 127-128
\end{footnotes}
some ways belied by Rome’s failure to check Massinissa’s encroachments upon Carthage’s historical territory, this failure appears more as a desire to favor the closer relationship that Rome had with Massinissa, rather than as part of a systematic anti-Carthaginian policy.\(^{258}\)

In some ways the lack of immediate acquisitive aggression resembles Rome’s forays into Greece around the time of the Second Macedonian War, when Rome was willing to exert a strong influence in the area, relying on the support and compliance of its allies, but refrained from taking an imperial role. This is a distinct phase of Roman foreign relations, where we see Rome content to ensure its own safety by checking the power of any Mediterranean rivals and making friendly alliances with smaller states which were unable to challenge it. There were exceptions. Rome had gained control of Spain after the Second Punic War and encountered a more hostile environment there along with its new territory. Similarly, while some of the Gallic tribes of the Alps maintained peaceful relations with Rome, Rome looked upon Northern Italy as its rightful possession and was engaged in frequent conflict there. However, in North Africa and the East, where established states and networks of power had greater purchase, Rome was mostly content to assure its own dominant influence (whether through war or alliance).

Carthage, by being a good and compliant ally, played a role in ensuring that the Roman Senate did not feel the need to engage more actively in North Africa. Carthage held scrupulously to the terms of the 201 peace treaty. In addition, Carthage did

\(^{258}\) Walsh 1965: 157
everything that could be reasonably expected to ensure Roman goodwill towards it. In 200, the Senate sent envoys asking for the surrender of Hamilcar, who was rousing armies of Gauls and Ligurians against Rome, and for the return of the remaining Roman deserters, some of whom were living openly in Carthage.259 The Carthaginians replied that they could not surrender Hamilcar, having no control over his actions, but only declare him an outlaw and confiscate his property. As for the deserters, they had already sent back as many as they could find, and would send an embassy to the Senate to explain the situation.260 In addition, they sent 200,000 modii of wheat to Rome and another 200,000 to the Roman armies fighting Philip V in Macedonia.261 This extra gift may have been made to match Carthage’s rival in Africa, Massinissa. He had become a close ally of Rome through his aid in the Second Punic War, and was now providing both grain and cavalry for the Roman war effort against Macedon.262 Certainly it was important that Carthage, being disarmed and with a strong and ambitious neighbor in Massinissa, remain on friendly terms with Rome. Thus these additional offers were probably meant to curry favor and prove that Carthage’s position as Rome’s ally was not a mere title resulting from the treaty, but indicative of a genuinely friendly relationship.

The feeling may have been (at least somewhat) mutual. When an embassy from Carthage brought the first installment of tribute to Rome in 199, after making up for the

259 Livy 31.11
260 Livy 31.19
261 Livy 31.19
262 Livy 31.19
impurity of their silver by borrowing the shortfall locally, it requested, if the Senate was so disposed, the return of Carthaginian hostages.\textsuperscript{263} Apparently the Senate was favorable to this request, and one hundred hostages were returned with the promise that the rest might be restored in return for good behavior.\textsuperscript{264} In the meantime the Senate acquiesced to the Carthaginians’ request that the remaining hostages be moved from Norba, where they were not comfortable, and permitted them to go to Signia or Ferentinum.\textsuperscript{265} This indulgence from the Senate indicates a cordial relationship between Rome and Carthage at this time. Even when it was suspected that the Carthaginian prisoners had fomented a slave rebellion the next year, this did not seem to affect the relationship, and there is no record of any exchange on the matter between Rome and Carthage itself.\textsuperscript{266}

Further evidence of the cordiality of the relationship between Rome and Carthage may lie in the fact that there was a strong, elite pro-Roman and anti-Hannibal faction at Carthage in these years. Members of this group were in communication with their friends among the Roman leadership, and warned that Hannibal was colluding with Antiochus III and urging Carthage to war.\textsuperscript{267} Livy states that Hannibal was as popular among the common people of Carthage as he was unpopular among the elite, and that he attempted many reforms of the Carthaginian state in their favor.\textsuperscript{268} However, when, despite P.

\begin{footnotes}
\item[263] Livy 32.2
\item[264] Livy 32.2.4: \textit{de ceteris, si in fide permanerent, spes facta.}
\item[265] Livy 32.2.5
\item[266] Livy 32.26: Due to the suspicions against them, the Carthaginian hostages were confined to private custody and restrained with heavy chains.
\item[267] Livy 33.45
\item[268] Livy 33.47
\end{footnotes}
Scipio’s advice against intervening in Carthaginian politics, the Roman Senate sent a group of ambassadors to Carthage in 195 in order to intimidate Hannibal and his supporters, Hannibal saw that he had no option but to flee into exile.\textsuperscript{269} As the anti-Carthaginian senators had claimed he would, Hannibal went to Antiochus, thus cementing their impression that he had been the driving force of any war-mongering at Carthage, especially as the pro-Roman faction continued to keep Rome apprised of Hannibal’s suspected movements.\textsuperscript{270} It even went so far as to attempt to arrest Aristo, a Tyrian who was supposedly an agent of Hannibal and Antiochus at Carthage, in order to turn him over to Rome; but he escaped before they could do so.\textsuperscript{271}

Perhaps, Hannibal’s exit was enough to make the Roman senators feel secure in their relations with Carthage. Perhaps, as Livy tells it, the mere presence of Aristo at Carthage indicated more support there for Hannibal than the Romans would have liked.\textsuperscript{272} In any case, when Carthage sent an embassy to Rome in 193 to complain of Massinissa’s capture of certain of their territories, the Senate felt an obligation to obey the forms dictated by Roman values, if not the spirit, just as they had in previous cases. Several sources state that around this time Massinissa had seized the area surrounding Emporia, a Carthaginian subject territory, and compelled the towns within it to pay him

\textsuperscript{269} Livy 33.49

\textsuperscript{270} Livy 33.47, 34.60

\textsuperscript{271} Livy 34.61

\textsuperscript{272} Livy 34.62
The Carthaginians, not being permitted by their treaty with Rome to make war on Massinissa on their own initiative, sent an embassy to Rome to complain of this treatment. Seeing this, Massinissa sent his own embassy to dispute whether the territory had ever properly belonged to Carthage. The Carthaginian ambassadors pointed out that Emporia had been within their borders as declared by P. Scipio at the end of the war; however, their case was hurt by their seeming incompetence in the matter of Aristo. Against them, the Numidians urged that they had the right of possession from before the time of the treaty. Accordingly the Romans sent a commission to determine the boundary, including P. Scipio, whose authority should have been absolute on the question. According to Livy, the matter was left undecided because that was the most expedient course for Rome. Polybius and Appian do not specify the resolution of this particular matter, but both say that the Romans were determined to favor Massinissa because they were convinced that this was in the best interests of their state. In either case the appropriated territory remained in Massinissa’s possession.

This failure by Rome to do justice when called in by allies can be interpreted in several ways. Patrick Walsh proposes that it may be a result of indecision by the Senate which did not wish to be seen as dismissing a legitimate complaint by its Carthaginian

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273 Polyb. 32.2; Livy 34.62; App. Pun. 10.67
274 Livy 34.62.13
275 Livy 34.62.18
276 Livy 34.62.17
277 Polyb. 32.2; App. Pun. 10.67
allies or failing to favor Massinissa.\textsuperscript{278} This failure to act could also be seen as retribution against Carthage, whose allegiance was under suspicion due to Hannibal’s flight to Antiochus and the Aristo affair – and Livy states that this was a motivation for Massinissa timing his attack in this year.\textsuperscript{279} Charles Saumagne implies another alternative when he says of Livy’s account that “the two powers argue exactly as two peasants from the Roman suburbs who demand a magistrate be called in to hold a debate \textit{in iudicio}.\textsuperscript{280}

Saumagne here particularly indicates a court case decided by the principle of \textit{uti possidetis}, which entitles the party which retains possession of a piece of land after a conflict to title to that land by virtue of this possession.

Another alternative line of reasoning would be that the Numidians had claimed the territory through legitimate capture according to \textit{ius belli}. This seems to be the vein in which the Numidians argue their claim to Emporia before the Senate, since they say that, in the past, possession of this area had always rested with the party that was better armed.\textsuperscript{281} Perhaps then the case was not left undecided as such by the Roman arbitrators – after all, Livy is the only source which records this outcome specifically. Rather, P. Scipio and the others saw the situation on the ground and decided that the correct course of action was to leave matters as they were. The Numidians, having correctly asserted that possession ought to lie with those who had conquered and held the land by virtue of

\begin{itemize}
\item \textsuperscript{278} Walsh 1965: 158
\item \textsuperscript{279} Livy 34.62.1
\item \textsuperscript{280} Saumagne 1931: 238
\item \textsuperscript{281} Livy 34.62.13
\end{itemize}
ius belli, were allowed to keep it.\textsuperscript{282} In this way, it is possible that the resolution of this affair was not, as some would assume, a dereliction of duty or barefaced favoritism on the part of the Roman commissioners, but rather a situation in which they fell back upon established Roman principles in order to resolve a dispute between allies, however convenient the outcome may have been for their interests. After all, what is principled may also be what is advantageous.

In any case, Roman support for (or complaisance towards) Massinissa’s encroachments was not enough to sour the relationship between Rome and Carthage. Shortly afterward in 191 a Carthaginian embassy came to the Roman Senate to offer 500,000 modii of wheat and another 500,000 of barley, in aid of the war with Antiochus, and to transport half of it free of charge to Rome (and the other half, presumably, to where it was needed for the Roman army.)\textsuperscript{283} In addition they offered to prepare a fleet of ships for Roman use at their own expense, and to pay in full the remaining balance of the tribute that had been imposed by the 201 treaty.\textsuperscript{284} Again, there was an element of competition for the position of most helpful ally, as Massinissa too had sent an embassy to Rome to offer his own portion of grain as well as cavalry and even elephants to aid the war effort.\textsuperscript{285} The Senate told both parties that Rome would be happy to take the grain if they would accept payment for it. As for the fleet and the lump sum offered by the

\textsuperscript{282} Livy 34.62.13
\textsuperscript{283} Livy. 36.4.5
\textsuperscript{284} Livy 36.4.6
\textsuperscript{285} Livy 36.4.7
Carthaginians, the Romans would only accept such ships as were required by the treaty, and they categorically refused to accept any of the tribute money before it came due.

Of course, these offers do admit of other motives than trying to please Rome. Carthage may have been attempting to discharge its debt at a time when it could comfortably do so (according to Appian, Carthage continued to prosper during this period) and end a tiresome obligation. In this way a friendly offer of aid could have been made to serve two purposes. Still, disclosure of the ability to easily mount a fleet on short notice and at their own expense may not have been the most apt way to assure Rome of Carthage’s submissiveness. Either way, this episode seems to be a sign that both sides were still on good terms, even if Rome wished to appear not to be dependent on Carthage’s services, and to prolong its treaty obligations.

Another sign of the relatively placid nature of these relations is the fact that the next territorial dispute between Carthage and Massinissa in 182, which Rome was asked to arbitrate, is in fact quietly resolved. The piece of territory in question had passed back and forth between Carthage and Massinissa for some years, but had come into the possession of Massinissa only within the past year. The short duration of this possession

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286 This does not appear in other accounts of the terms of the treaty. However, per Livy 44.5 there were Carthaginian ships among the Roman fleet in the East at this time.

287 Livy 36.4.9

288 App. Pun. 10.67

289 There is also the question of what effect such a large infusion of wealth would have on the Roman political scene.
weakened Massinissa’s case somewhat before the arbitrators, and Livy states that he was afraid that the decency (pudor) of the Romans would make them fear appearing to favor a friendly king against common enemies.\textsuperscript{290} Here Livy probably overstates the matter, as there is no evidence that the Carthaginians were then seen as the implacable enemies which later narratives present.\textsuperscript{291}

As before, the Romans are in a difficult position, being forced to choose between two allies, one of whom is clearly more favored, but both of whom it is important to keep subdued. The arbitrators, at a loss, refer the case to the Senate. There is no account of the specific resolution of this case. However, Livy later states that in 180 one hundred hostages were returned to the Carthaginians. At the same time peace was made between Carthage and Massinissa, “who at that time with an armed force was occupying the land which was in dispute.”\textsuperscript{292} It is unclear from this account what the eventual distribution of territory was that allowed peace to be made. However, it is reasonable to assume that Massinissa kept at least some of the territory he had gained. Despite the apparent weakness of his claim, this does not necessarily imply an injustice on Rome’s part. After all, Livy uses the term pax to refer to the situation between Carthage and Massinissa, implying some kind of formal agreement, the terms of which must have been negotiated between the two parties. The release of the hostages might have been offered to the

\textsuperscript{290} Livy 40.17.5

\textsuperscript{291} For thorough discussions of Second Century perspectives on Carthage more generally, see: Gruen, 2011; Franko 1994. For the first century see Burck 1943; Starks 1999; Dubiusson 1983.

\textsuperscript{292} Livy 40.34.14: \textit{qui cum praesidio armato agrum qui in controversia erat obtinebat}. 
Carthaginians to induce them to accept this agreement and to enable both Rome and Massinissa’s people to live on peaceful terms with them.

An apparent pattern has arisen in all of the recorded interactions discussed above. In the first place, it is not helpful to attempt to evaluate the relationship between Rome and Carthage alone. It is obvious that there is an interconnected relationship between Rome and Carthage and Massinissa. Both Carthage and Massinissa are the major allies of Rome in North Africa. Both seem to compete for Rome’s approval and protection while attempting to preserve their own bases of power. Massinissa has the advantage of being a favored ally who provided aid to Rome during the Second Punic War, while Carthage has the corresponding disadvantage of having become an ally by treaty upon losing that war. Furthermore, Carthage’s actions are severely restricted by this treaty, and it is not allowed to raise any forces to defend itself against attack. Still, Rome appears to arbitrate the disputes between the two according to the forms of Roman justice, if not in the spirit of what a modern reader might see as just. Where Massinissa has a strong claim to territory, he wins his claim before Rome. Where Massinissa’s claim is weak, a favorable peace agreement is arranged between the two parties at Rome’s behest. All along, both Carthage and Massinissa strive to be allies who prove their loyalty to Rome by their generosity with their resources. Rome thus benefits by this competition in maintaining a favorable balance of power in North Africa and ensuring its allies’ continued loyalty. Throughout, Rome is able to claim that it has acted in all fairness and according to Roman values in each case – a stance reinforced by the Roman Senate’s

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293 Rome’s relationship with Ptolemaic Egypt at this time was also friendly, but Egypt may be more properly considered a part of the East for these purposes.
scrupulous refusal of any excessive gifts of grain, money and arms from either Carthage or Massinissa.

However, this equilibrium could not be maintained forever, and it began to break down within the next decade. The catalyst for this shift in relations is predictable: the suspicion (supported by Numidian insinuations) that Carthage is colluding with Rome’s enemies. The same specter had been raised before in the case of Antiochus, but it seems that then Rome was sufficiently appeased by the expulsion of Hannibal. This time Rome could not be so easily calmed. Starting in 174, Massinissa begins to allege that the Carthaginians were in communication with Perseus of Macedon. Massinissa even says that the Carthaginian Senate had met with the Macedonian ambassadors at night in the temple of Asclepius.\textsuperscript{294} Considering the well-known Roman cultural aversion to clandestine nighttime activities, this report gives a particularly sinister cast to the alleged meeting.\textsuperscript{295} No doubt the allegation was troubling to Rome, since its most dependable ally in the East, Eumenes of Pergamum, came to Rome himself to warn the Romans that Perseus had long been making preparations for war soon after.\textsuperscript{296} Still, these accusations did not immediately affect the relationship between Rome and Carthage. In 172, Carthage and Numidia again brought their territorial disputes to the Senate, but any attempt to arbitrate was interrupted by the commencement of the Third Macedonian War in 171.\textsuperscript{297}

\textsuperscript{294} Livy 41.22.2

\textsuperscript{295} This calls to mind the Senate’s reaction to the Bacchanals in 186

\textsuperscript{296} Livy 42.11

\textsuperscript{297} Livy 41.22-24
While Livy puts some enraged speeches into the mouths of the Carthaginian representatives, and repeated insinuations into those of the Numidians, no decision was made and the case was deferred until the parties could better prepare their arguments.\(^{298}\) Livy does note that gifts were given, and all of the appropriate signs of hospitality shown, to both embassies.\(^{299}\)

Still the onslaught of accusations continued, and, in 170, Massinissa’s son, Gulussa, came to Rome to offer his father’s assistance in the war against Perseus, but also to warn the Romans to beware of the Carthaginians. He told the Senate that they were building a large fleet, which was ostensibly meant to aid the Romans against Perseus, but “when this was ready and equipped it would be in their power to have what enemies and allies they would.”\(^{300}\) This is the fear that was to underlie Roman relations with Carthage over the next quarter century leading up to Carthage’s destruction. No gifts of wheat (which Carthage subsequently offered again to Rome)\(^{301}\) could assuage this fear, which had ebbed and flowed since the end of the Second Punic War: that Carthage would become an ally to, and a staging ground for, the attacks of Rome’s other, now mightier enemies.

At times Carthage’s apparent submission could calm these suspicions temporarily. Furthermore, in the absence of Carthaginian aggression, and with Massinissa acting as a

\(^{298}\) Livy 42.23-24

\(^{299}\) Livy 42.24

\(^{300}\) Livy 43.3.7: *ubi ea parata instructaque esset, ipsorum fore potestatis, quem hostem aut socium habeant.*

\(^{301}\) Livy 43.6.11
counter-weight, Rome was satisfied with playing the role of a fair-minded patron, obedient to its own concepts of justice and good faith. Indeed, as has been shown, this was Rome’s fallback position once it had successfully asserted itself. Carthage was not seen as the treacherous and implacable enemy of later times, merely as another vanquished antagonist in a long list of such, albeit uniquely positioned. Furthermore, Roman senators may have believed that their treatment of Carthage could lead to collateral benefits by signaling Rome’s clemency towards the conquered. Certainly, Livy seems to think that the Roman attitude toward Carthage served this purpose, since he has the Rhodians beg for the freedom of those states which had sympathized with Antiochus by citing the example of Carthage “free with its own laws.”

It is clear then that, when not compelled by some pressing need, Rome relied upon traditional values to determine its course of action towards Carthage and preferred to leave well enough alone. It responded to Carthaginian complaints in a way reminiscent of how had dealt with other, similar complaints from other allies. The endless commissions and investigations of territorial disputes between Carthage and Numidia are reminiscent of those organized by Rome to deal with the disputes between Rome’s Greek allies and Philip V. In turn, Carthage had dutifully offered aid to Rome in its war efforts, the same as any other ally, and despite incidents like that concerning Aristo, the general tenor of the relationship was positive.

Thus it is possible to answer the question of why Rome waited so long to destroy Carthage: Carthage was an ally. The relationship between Carthage and Rome during this

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302 Livy 37.54.26 Carthago libera cum suis legibus est. T. Quinctius Flamininus also claims that Roman mercy to the Carthaginians is a proof of a long Roman tradition of sparing the conquered: Livy 33.12
time bore no trace of serious problems. Carthage had obeyed the terms of the treaty and, for the most part, had done its best to tamp down any issues that might upset Rome. A properly justified and motivating reason to destroy Carthage did not yet exist. In the absence of such a reason, Rome’s general response in such situations was to seek to maintain order rather than to aggressively expand its power. It took the reawakened fear of Carthage as a launching point for some greater power (Antiochus, Perseus, and the like) to bring on the gradual degradation of relations which brought about the Third Punic War and Carthage’s ultimate destruction.

**Just War**

Despite an identifiable motive, the utter violence with which Carthage was razed is still shocking. Equally shocking was the devastation faced by another strategically valuable and historic city, Corinth, later in the same year. Two years after the total defeat of Macedon in 148, and its conversion into a Roman province, the Achaean League declared war on Rome. After the Roman army had defeated the Achaeans in their first battle, the consul L. Mummius moved on to Corinth. His legions broke the Achaean line, entered, and utterly destroyed the city while seizing any valuable property.

Just as the example of Rome’s dealings with Greece after the end of the Second Macedonian War provided insight into the actions of Rome in North Africa around the

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303 For discussion of the possible motives for the Achaean declaration of war see Gruen 1976.
same time, a comparison between the treatment of Corinth and that of Carthage may be instructive. Both constituted a sharp departure from previous policy. In the East Rome had long advocated, at least nominally, Greek freedom and leniency towards those who had been allied with Philip or Antiochus. Similarly, in North Africa, as has been shown, Rome pursued a policy of treating both Numidia and Carthage as valuable allies and refraining from interfering in their internal politics. Yet, in 146, the principles that had earlier guided Roman behavior towards Carthage and Greece were abandoned. War, which would usually be concluded by a deditio, treaty, and the return of surrendered territory by Rome, took an entirely different path. Instead, these conflicts end not with a peaceable surrender, or even with a city captured by force of arms and some property taken as booty. Instead Rome takes the drastic action of demolishing these cities so completely that neither is re-established again for decades. Unfortunately, the fragmentary nature of Polybius’ Histories for this period, and the loss of Livy’s full text covering the period after 167 means that a consistent account of the reasons for this radical change in Roman behavior are difficult to find.

Still, the situation of Rome seems to have been much more difficult at this time than during the previous conflicts. The emergence of the Macedonian pretender Andriscus, and his destabilization of Greece, may have indicated to the Romans that their previous strategy of leaving Macedonia intact, and advocating for Greek autonomy, may not have been wise. The Achean League’s declaration of war would only have confirmed this perception. Around the same time, Viriathus emerged as a leader of the Lusitanian rebellion in Spain, and became a serious problem for Rome there. In North Africa, Massinissa’s continued determination to expand his territory and power at Carthage’s
expense may have begun to seem threatening to Roman interests, since Carthage was powerless, under the terms of the 201 treaty, to provide any real counterweight there. In general, Rome found itself seriously involved in more places outside of Italy than ever before and under pressure on all sides of the Mediterranean. Together, these new pressures could have forced a reconsideration of the traditional Roman default towards clemency.

Another insight may be contributed by Cicero, who commented on the destruction of both Corinth and Carthage. In his second speech De Lege Agraria of 63, Cicero summarized the motives behind this destruction while speaking against a proposal to colonize Capua. Capua, he says, was one of only three cities, the others being Carthage and Corinth, which our ancestors could not allow to exist, because these three alone were able to aspire to the power and name of an empire.

deleta Carthago est, quod cum hominum copiis, tum ipsa natura ac loco, succincta portibus, armata muris, excurrere ex Africa, imminere duabus fructuosissimis insulis populi Romani videbatur. Corinthi vestigium vix relictum est. erat enim posita in angustiis atque in faucibus Graeciae sic ut terra claustra locorum teneret et duo maria maxime navigationi diversa paene coniungeret, cum pertenui discrimine separantur.

Carthage was destroyed because, with both its large population, and also the nature of its location, surrounded by harbors, defended by walls, it seemed to jut out from Africa and to endanger the two most
fruitful islands of the Roman people.\textsuperscript{304} Of Corinth there is scarcely a trace left. For it was positioned on the straits and in the jaws of Greece so that by land it was the gateway to many places and nearly joined two different seas, both highly navigable, separated by only a slight distance.\textsuperscript{305}

Clearly, in Cicero’s estimation, the explanation for the harshness with which Carthage and Corinth were destroyed was not, at heart, the conduct of their respective states, but the strategic advantage which any other enemy might gain against Rome by possessing them. This seems a plausible claim, considering the signs in Livy that it was the prospect of Carthaginian collusion with Antiochus and Perseus that was most disturbing to the Roman Senate.

In the midst of these circumstances, the balance which generally tilted in favor of Rome’s compliance with its own foreign relations norms may have shifted. As Andrew Guzman writes in his article “A Compliance-Based Theory of International Law,” the calculation which puts reputation ahead of other advantages, and promotes signaling trustworthiness through compliance with rules, is more important when the stakes are low.\textsuperscript{306} The reputational cost of violating a norm must be higher (or at least perceived as higher) for the actor than the ostensible benefits of doing so. When a state is presented with a situation of great importance, it may choose not to comply with principle, even if

\begin{itemize}
  \item \textsuperscript{304} Presumably, Sicily and Sardinia.
  \item \textsuperscript{305} Cic. Agr. 2.87
  \item \textsuperscript{306} Guzman 2002: 1884
\end{itemize}
that decision brings a severe reputational cost. Therefore, in the case of Carthage, Rome may have been presented with a choice in which the available information portrayed a situation so dangerous that reputational damage was a no longer a meaningful consideration.

With this underlying motive in mind, it is still necessary to examine how the Romans contrived to act on their fear of Carthage. Polybius and Appian claim that the determination to destroy Carthage had been fixed in the minds of Roman senators as early as 157. This is reputedly the point at which Cato the Elder began to consistently call for Carthage’s destruction at the end of all of his speeches, while Scipio Nasica, defender of Africanus’ legacy, continued to oppose this plan. As rumors swirled, Cato urged that war be declared, while Scipio Nasica warned against doing anything rash.

What delayed the Romans in putting this same plan into action was the lack of opportunity and a justifiable pretext, according to Polybius. For, he says, the appearance of righteous justification enhances the value of a Roman victory while diminishing the risks brought by defeat. In fact, Polybius claims, Rome nearly abandoned the idea of war altogether out of fear of the impression it might create on other peoples.

The fact that a lack of legal justification might prevent a Roman attack on Carthage

307 Polybius 36.2; Appian 10.69
308 App. Pun. 10.69; Livy Per. 48; See Little 1934 for a discussion of the authenticity of Cato’s famous formulation “Carthago delenda est.”
309 Livy Per. 48; For more on Nasica’s rhetoric about Carthage see Gelzer 1931.
310 Polyb. 36.2
311 Polyb. 36.2
indicates that the Romans were intensely aware of the possible collateral diplomatic damage of undertaking unjust war, and also attuned to the signaling effects of maintaining their principled appearance. In addition, there was clearly a strain of Roman thought, represented by Scipio Nasica, that exercising restraint in this case would keep Rome from abandoning its values.\textsuperscript{312}

The beginnings of a campaign to discredit the Carthaginians may have been in 154, when the Periochae of Livy record another set of Roman legates being sent to arbitrate between the Carthaginians and Massinissa and finding in Carthage a large supply of wood for making ships.\textsuperscript{313} Later in the same year the Carthaginians supposedly compelled a large army of Carthaginian-allied Numidians to range themselves against Massinissa. In response, more Roman envoys were sent to express their displeasure with this display and also with Carthage’s accumulation of naval materials. They proposed to make peace between Carthage and Massinissa, assuring the Carthaginians that Massinissa would be forced to evacuate the disputed land. These envoys were subsequently attacked by a radical segment of the Carthaginian people led by Hamilcar’s son Gesco. Due to this attack, and although Carthaginian officials agreed to comply with Roman demands, the Roman Senate was left outraged by the violence done to their ambassadors in contravention of customary principles concerning their inviolable status.\textsuperscript{314} More rumors were forthcoming from Massinissa about Carthaginian war preparations; another Roman

\textsuperscript{312} App. Pun. 10.69

\textsuperscript{313} Livy Per. 47

\textsuperscript{314} Livy Per. 48
embassy was sent in 150, and it returned with more ominous reports about Carthage’s military capabilities.\textsuperscript{315} Still, while Cato and his supporters argued for an immediate dispatch of Roman armies to Africa, Scipio Nasica continued to say that there was as yet no just cause for war. The Senate ultimately agreed, and the matter of Carthage was put off until the next year.\textsuperscript{316}

Donald Baronowski claims that the allegations of shipbuilding and violence towards Roman ambassadors are likely inventions, either by contemporary sources seeking to give additional justification to the war, or by later writers.\textsuperscript{317} This is a credible claim, yet, in either case, it merely reinforces the need that the Romans felt to make their actions seem righteous, both to other peoples who were observing them in order to evaluate their behavior as a power and ally, and to the Romans themselves within their own system of values. After all, it can be presumed that one of the chief audiences for these narratives would be Romans themselves, who were strongly invested in their identity as uniquely virtuous actors abroad. However, the Romans ultimately did not need such inventions to be strictly justified in their actions towards Carthage at this time. That is because, as all our sources agree, continuing Roman dilatoriness about the problem of Massinissa finally pushed the Carthaginians to raise an army of their own to confront him. It is from that moment that their cause was lost, because it was then that they openly

\textsuperscript{315} Livy \textit{Per.} 48

\textsuperscript{316} Livy \textit{Per.} 48

\textsuperscript{317} Baronowski 1995: 22
contravened the terms of the treaty of 201. This violation gave the Romans all the legal justification that was needed to bring war to Carthage.

Rome immediately began to raise an army. Carthage perceived the danger in this move, although the Romans declared that the force was only meant to be used in an emergency. To raise an army before allowing the intended opponent to meet Rome’s demands was, after all, contrary to the fetial law, as has been shown in Chapter Two. The Carthaginians, already hard pressed by Massinissa, decided to head off war with Rome by condemning to death the generals Hasdrubal and Carthalo, who had led the effort against Massinissa, and blaming them for the entirety of the conflict. Carthage then sent ambassadors to Rome to disown the whole affair, and ask how it could atone for the broken treaty. The Senate answered “You must satisfy the Roman people.” At first the Carthaginians were puzzled and took no action, thereby failing to satisfy Rome’s enigmatic demand. Thus Rome formally declared a bellum iustum, bolstered by the fact that Carthage had both broken the treaty and refused its repetitio. The Carthaginians, now in a panic, took the only action they could, and probably the one which Rome had been demanding all along. They made an unconditional surrender of their city and themselves to the protection of Rome.

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318 App. Pun. 11.74
319 App. Pun. 11.74
320 App. Pun. 11.74: ει το ικανον ποιησετε Ρωμαιοις
321 Polyb. 36.3; Baronowski 1995: 20
As has been shown in previous chapters, the normal course of affairs after a *deditio in fidem* is made was the creation a peace treaty and the eventual return of the conquered city and associated property to its people. The wanton devastation of city and property was unlawful and actively discouraged. Even when a city was captured without surrender, by force of arms, the city itself was allowed to remain intact, although certain valuables were seized. This was the just tradition on which Rome prided itself. However, while these traditional Roman values emphasized clemency, the technical legal ramifications of the *deditio*, once made, were that Rome was in complete control of Carthage, so its people, property, and existence were at Rome’s mercy. As Saumagne points out, by making the *deditio*, the Carthaginians had wiped away the previous dispute over the treaty and created a completely new legal situation.\(^{322}\) This situation meant that the terms of any peace would be wholly dictated by Rome, and acceptance by Carthage was pre-determined by the *deditio*. Any resistance to those terms would therefore be in breach of the *deditio* and provide a new casus belli.

The Romans, already having Carthage’s destruction in mind, made the terms of peace as distasteful as possible. First, the Carthaginians were told that they would be allowed their freedom and their own laws, their territory and all other personal property. However, Rome demanded not only three hundred hostages, sons of their prominent families, but also that Carthage obey whatever other conditions were imposed by the consuls who had been charged with the war. No mention was made of the city itself.\(^{323}\)

\(^{322}\) Saumagne 1931: 234

\(^{323}\) Polyb. 36.4
The hostages were accordingly sent to the consuls encamped at Lilybaeum, from where they were conveyed to Rome and kept prisoner in the dockyards.\textsuperscript{324} Then, the consuls landed in Africa and ordered the Carthaginians to surrender all their weaponry, which amounted to more than two hundred thousand pieces of arms and two thousand catapults.\textsuperscript{325} Having reduced the Carthaginians to the utmost subjection, the consuls made their final demand: the Carthaginians were to evacuate the city and rebuild it on another site at least ten miles from the sea.\textsuperscript{326} Livy’s epitomist says that the outrageousness (\textit{indignitas}) of this final demand is what drove the Carthaginians to war.\textsuperscript{327} How could it not have? The Carthaginians, as much as the Romans, were invested in their own cultural identity, which placed them in that seafaring city, surrounded by harbors, jutting out into the Mediterranean. Without it, they would cease to share that collective identity and become some people entirely other to what they had been before. So, faced with a termination of their existence, they mounted a resistance, which was defeated three years later in 146. Polybius tells us that Scipio Aemilianus, who commanded at the siege of Carthage, wept when he saw the city in flames.\textsuperscript{328} Rome had achieved its practical objective, but this did not negate the inherent respect that a Roman general might feel for

\begin{flushright}
\textsuperscript{324} Polyb. 36.5 \\
\textsuperscript{325} Polyb. 36.6 \\
\textsuperscript{326} Livy \textit{Per.} 49; App. \textit{Pun.} 12.81 \\
\textsuperscript{327} Livy \textit{Per.} 49 \\
\textsuperscript{328} Gruen 2011: 139
\end{flushright}
a once strong and vibrant rival, or the distress that he might feel privately at Rome’s amoral callousness.

**Conclusion**

From the account above it is obvious that Rome carefully orchestrated the downfall of Carthage in order both to comply with its own highly formalized and legal conception of right, and to signal correspondingly the righteousness of its cause to outside observers. Thanks to Polybius, it is possible to gauge the effectiveness of this strategy in the latter case. According to him, the Greeks were divided in opinion: some thought that Rome had followed a sensible course with a state that seemed determined to menace it at every opportunity, others felt that ambition for power had perverted Roman policy. Some said the Romans had pushed the Carthaginians into desperation by disguising their motives, and others that the Carthaginians should have known what making the *deditio* could mean. Polybius stands for this latter group when he makes the following argument: the Romans had not committed an impiety, for an impiety was a violation against the gods, whom they had not offended by their actions. Nor had the Romans committed treachery, since they had not made a breach of any oath or agreement. Finally, they had not broken with law, custom, or *fides*, since the *deditio* had entitled them to do as they saw fit.  

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329 Polyb. 37.1  
330 Polyb. 37.1
Still, there is a sense of unease with Roman conduct in this matter that permeates the literary sources. From Polybius’ claims that the Romans were actively seeking a pretext for war with Carthage, to the extreme and uncharacteristically cruel demands placed on the Carthaginians once they had surrendered, the conduct of the Third Punic War was a clear departure from traditional Roman values surrounding the proper treatment of a legitimate enemy. While technically within the terms of the *deditio*, Roman actions violated the norms of clemency which usually characterized the process – the same norms which the Senate had not hesitated to enforce in the past. The destruction of Carthage in 146 was a defining event for Rome on its path to a Mediterranean empire. It also marked a shift in the role of traditional Roman principles in war. The events of the Third Punic War show that, while the Romans may have remained concerned with formally remaining within the bounds of their own laws of war, they were willing to abandon the broader values which had long been associated with those laws in order to eliminate a calculated risk. War was no longer confined to immediate grievances and threats. It had become a tool of empire, and with this change Rome began to more fully take on a new identity, that of a supreme imperial power.
“But when by toil and justice the republic had become renowned, with great
kings vanquished in war, fierce tribes and mighty peoples subdued by force, and
Carthage, the rival of Roman power, had been destroyed root and branch, and all seas and
lands lay open, then Fortune began to grow savage and to overturn everything.”331 In this
way the mid first century historian, Sallust, explains how Rome came to its current state
of affairs, wracked by conspiracy and torn apart by elites’ lust for power, greed, and
ambition. With the path now open to Rome’s domination of the Mediterranean, according
to Sallust, the leisure and wealth this dominion afforded became a burden and
affliction.332 The pursuit of wealth overturned fides and introduced arrogance, brutality,
and neglect of the gods. Love of power brought active deceit, and led Romans not to
value the inherent worth of their allies, but rather to exploit them.333 Sallust ends this
passage with the following reflection: “[Our ancestors] took nothing from the conquered

331 Sall. Cat 10: Sed ubi labore atque iustitia res publica crevit, reges magni bello domiti, nationes ferae et
populi ingentes vi subacti, Carthago aemula imperi Romani ab stirpe interiit, cuncta maria terraeque
patebant, saevire fortuna ac miscere omnia coepit.

332 Sall. Cat. 10

333 Sall. Cat. 10
but their power to do harm. But we now, the most cowardly of men, with the greatest wickedness, have deprived our allies of that which those brave and victorious men left, as if the only use of imperium were to do injustice.”

Velleius Paterculus, writing during the reign of Tiberius, presents a similar view. According to him, while Scipio Africanus opened the way to world power by defeating Carthage, Scipio Aemilianus had opened the way to depravity by destroying it. Freed from fear of Carthage, Romans plunged headlong into corruption. Indeed, the structure of Velleius’ text neatly reflects this trajectory. Book one starts at the founding of Rome and covers its gradual emergence as a major Mediterranean power, ending with the destruction of Carthage in the Third Punic War. His second book starts with the rise of the Gracchi and focuses on the internal civil discord which eventually led to the Civil Wars that ended the Republic. The general narrative of decline from the heights of Roman achievement by men like Scipio Africanus to the violence and tumult present throughout the last century of the Republic is standard among writers from the Late Republic through the reign of Tiberius.335

In fact, much of the historical record of the Early and Middle Roman Republic comes from those for whom the Civil Wars that ended the Republic were within living memory. Those writers formed by the dissolution of the Republic must have felt a special concern to record what they saw as the golden days of the Roman state. Throughout this dissertation the preoccupations and predilections of Roman writers of this period have

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334 Sall. Cat. 12: neque victis quicquam praeter iniuriae licentiam eripiebant. at hi contra, ignavissumi homines, per summum scelus omnia ea sociis adimere, quae fortissumi viri victores reliquerant: proinde quasi iniuriam facere id demum esset imperio uti.

335 Lintott 1972 claims that this narrative of moral decline originated in the time of the Gracchi.
been ever-present. Even when the material of their histories can be considered to be generally accurate, their particular biases shape their narrative. Often, the shape of their construction of the Roman past is obvious. In *De Officiis*, Cicero gives the following exalted praise of the justice and virtue of the state in earlier days:

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\text{Verum tamen, quam diu imperium populi Romani beneficiis tenebatur, non iniuriis, bella aut pro sociis aut de imperio gerebantur, exitus erant bellorum aut mites aut necessarii, regum, populorum, nationum portus erat et refugium senatus, nostri autem magistratus imperatoresque ex hac una re maximam laudem capere studebant, si provincias, si socios aequitate et fide defendissent; itaque illud patrocinium orbis terrae verius quam imperium poterat nominari.}
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In truth, so long as the rule of the Roman people was maintained by acts of service, rather than injustices, wars were waged for our allies or to defend the empire, and their conclusions were marked by clemency or only requisite punishments. The Senate was a harbor and place of refuge for kings, peoples, and nations, and our magistrates and generals strove to gain the greatest fame by faithfully and justly defending our provinces and allies. Thus our rule could be more truly called a guardianship of the world than an empire.\(^{336}\)

This exaggerated picture of Roman virtue is given in the lead-up to Cicero’s account of its failure. While Sallust and Velleius Paterculus attribute Rome’s moral decline to the destruction of Carthage, Cicero points to the domination of Sulla as the

\(^{336}\) Cic. Off. 2.26-7
origin of the dissolution of traditional Roman values. “For any wrong against the allies had ceased to seem unjust,” he says, “when such cruelty could be exhibited towards Roman citizens.”\footnote{Cic. Off. 2.27: \textit{cum exstitisset in cives tanta crudelitas}} In this he references the brutal proscriptions of the Roman elite which Sulla initiated.

Despite disagreements over the initial cause, a common thread runs through these narratives of moral degradation. Sallust, Velleius Paterculus, and Cicero all point to Rome’s style of empire as the true indicator of the loss of moral rectitude. Sallust is explicit that Roman allies were treated with cruelty and disregard. Velleius complains that discipline in war was abandoned.\footnote{Vell. Pat. 2.1} Cicero bemoans the oppression and ruination of so many foreign states by over-ambitious Roman generals.\footnote{Cic. Off. 2.28} Each sees evidence for the decline of Rome in the abandonment of good faith and principle in the treatment of foreign peoples. Each also draws a clear narrative, wherein the violation and abandonment of principle, like \textit{iustum bellum} and \textit{ius belli}, do not lead to the loss of an empire, which, on the contrary, continues to expand. Instead, they meant the breakdown of Roman institutions and the loss of a culturally unique Roman political life. For Cicero, the tolerance of over-ambitious and brutal generals after Sulla led to the toleration of one supremely ambitious and ruthless man, Caesar. For this reason he says, “only the walls of Rome’s houses stand and remain . . . the Republic is completely lost.”\footnote{Cic. Off. 2.29: \textit{Itaque parietes modo Urbis stant et manent . . . rem vero publicam penitus amisimus}}
As Virgil writes in the *Aeneid*, Romans were not known for their art, rhetoric, or science. Instead their unique skill was to rule the world with justice, as only they could.\(^{341}\) While the unflattering evaluation of contemporary Roman moral decline by authors who wrote through the reign of Tiberius extends to many different aspects of Roman culture, the Roman conduct of empire is perhaps one of the most poignant. For Roman writers of this period, the just conduct of empire is the defining characteristic of Romans, and the loss of the commitment to rule justly means the loss of their identity as a people.

**Exemplary History**

From Rome’s first days, war and expansion had been among the chief drivers of its success as a state. However, while the earliest conflicts with Italian enemies remained an important part of Roman collective memory, the period that is most frequently cited and idealized with reference to displays of virtue is that extending from the mid-third to mid-second century. This is the time when Rome was emerging as Mediterranean power rather than merely an Italian one, and the flurry of conflicts and new relationships with numerous foreign peoples provided constant opportunities for the display of Rome’s style of foreign relations. While, as has been shown, the conduct of Roman generals was not always ideal, Roman writers continually drew from this period to provide *exempla* of virtuous behavior in war.

\(^{341}\) Verg. *Aen.* 6.844-853
Livy’s history, which forms the basis for most of this dissertation, was explicitly designed as a catalogue of *exempla*, modeling the virtues and vices of the Roman past through narrative, so that the audience may more easily choose which to imitate and which to avoid. Each figure or story stands as a marker on a moral compass which the reader can use to guide, contextualize, and judge their own and their contemporaries’ behavior. The past becomes a reference for the possible range of practices and values, good and bad. Of course, as Matthew Roller points out, to work as a discourse this assumes a perfect continuity of societal ethos between the past and present. In some ways, the continued and intensive use of exemplarity by Roman writers of the Late Republic would seem to insist on this continuity and at the same time regenerate it. Each writer made use of exempla in a way which suited their purpose. Livy ostensibly merely catalogues the relevant events and actors in chronological order, while making use of narratological devices to guide his audience to his desired interpretation. Cicero, on the other hand, makes use of the examples of great men to explicitly persuade his audience to accept a particular conclusion. In either case, the result intended is that the audience be driven to emulate figures presented as embodying the values which ensured Roman moral continuity and success. This emulation is seen as necessary to the continued existence of the empire, since it was through the virtuous actions of Roman heroes of the past that the empire was gained.

Scipio Africanus is the most prominent subject of frequent exemplification. The hero of Zama, conqueror of Spain, whose mind was constantly trained on matters of

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342 Roller 2009: 215
public service,\textsuperscript{343} appears to be an understandable model of proper conduct in war and foreign relations. However, when it comes to matters relating directly to \textit{iustum bellum} and \textit{ius belli}, Africanus is cited most frequently with reference to extortion and the seizure of property. Livy’s epitomator records that, unlike other generals, he did not conceal the gifts given to him by kings, but rather entered the intended bribes of Antiochus into the public accounts and kept them as rewards for exceptional soldiers.\textsuperscript{344} Africanus is also repeatedly referenced by Cicero in his speeches against Verres, where he proves a useful tool to denounce Verres’ rapacious extortion. Africanus apparently adorned the cities of Sicily with monuments taken from Carthage, rather than coveting them himself, the same monuments which Verres later appropriated.\textsuperscript{345} He is also often listed for effect among others who were virtuous in their austerity: Paulus did not touch the wealth of Macedon, Africanus was none the richer for Carthage, and L. Mummius preferred to adorn Italy with the spoils of Corinth rather than his own house.\textsuperscript{346}

In this way it is clear that particular figures are often strongly associated with particular principles. M. Atilius Regulus, as has been shown in Chapter Two, becomes synonymous with the concept of \textit{fides}, even to an enemy, because of his return under oath to Carthaginian custody.\textsuperscript{347} C. Fabricius, the incorruptible general of the third century,

\begin{itemize}
  \item \textsuperscript{343} Cic. Off. 3.1-4
  \item \textsuperscript{344} Livy Per. 57
  \item \textsuperscript{345} Cicero Ver. 2.2.3; 2.4.84; 2.5.124; 2.5.185
  \item \textsuperscript{346} Cic. Off. 2.76
  \item \textsuperscript{347} Cic. Off. 1.39-40; 3.109
\end{itemize}
demonstrates the traditional Roman abhorrence of treachery in war, by delivering back to Pyrrhus the deserter who had offered to poison him.  

Cato the Elder, revered generally for his austerity and strict morality, is used in Cicero’s *De Officiis* to demonstrate the importance of being a licit combatant in war, when he writes to his discharged son to warn him not to go into battle.  

*Exempla* could also be cautionary. The cases of Q. Pompeius and C. Hostilius Mancinus contrast what may be considered the conduct of a dishonorable man with that of an unlucky one. Both men were consuls assigned to Spain, Pompeius in 141 and Mancinus in 137, and both faced the Numantines, whom Rome had long been unable to subdue. Pompeius proved no match for them, and, after a series of disasters, found himself stuck in his camp with only raw recruits for soldiers, constantly harassed by the Numantines. Without the knowledge of the Senate, he made secret overtures to Numantia, and allowed it to publicly offer an unconditional surrender, while covertly agreeing to terms. Once his successor in office arrived, Pompeius denied ever having made such an agreement, but was contradicted by witnesses. Pompeius was sent back to Rome, and the controversy continued. The Senate invalidated the treaty he had made, and a proposal was made to surrender him to the Numantines as the guarantor, following the example of Postumius and the Caudine Forks peace. However, Pompeius had friends in the Senate. His plea for mercy was accepted, and he was saved.  

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348 Cic. *Off.* 1.40

349 Cic. *Off.* 1.36

350 App. *Iber.* 76-79

Cicero states that Mancinus’ behavior in the same situation was more honorable. As consul for 137, his assignment to Spain was beset by bad omens: the sacred chickens had escaped from their coop while he was sacrificing before his departure. Accordingly, he was defeated by the Numantines and forced to make peace with a personal oath to save his soldiers. On his return to Rome the Senate, as expected, refused to accept the treaty. However, when a bill was proposed for his surrender to Numantia, unlike Pompeius, he advocated for it, and it passed. The consul for the following year, L. Furius, attempted to turn him over to the Numantines, but he was rejected by them. Plutarch remembers Mancinus as not a bad man, but the most unlucky of Roman generals.

The cases of Pompeius and Mancinus, like that of Regulus, are taken by Cicero to demonstrate the importance of keeping an oath to the enemy, even if that obedience to fides means your own death. Death is perhaps the ultimate sacrifice to virtue. T. Manlius Torquatus, descendant of the three time Roman dictator, knew this well. In 140 his natural son, D. Iunius Silanus, was accused before the Senate by the Macedonians of taking bribes and seizing property while assigned to that province as praetor. This case most likely would have been referred to the quaestio de repetundis, but the Senate deferred to Torquatus’ request to investigate it on his own, due to his outstanding

352 Livy Per. 55; Contrary to Cicero, Rosenstein 1986 argues that the difference in treatment between Mancinus and Pompeius may be attributed to the fact that in Mancinus’ case the Romans made overtures to Numantia, while in Pompeius’ the Numantines were induced to make the offer of peace.

353 Plut. Ti. Gracch. 5.1
reputation. Torquatus then conducted a trial in his own home, listening to testimony for three days before pronouncing his verdict: “Since it has been proven in my estimation that my son Silanus took bribes from our allies, I judge him unworthy of the Republic and my house, and I order him out of my sight immediately.” Silanus hanged himself the next night, and Torquatus declined to attend the funeral.

Valerius Maximus, whose work, *Facta et Dicta Memorabilia*, has its purpose in neatly categorizing the exempla of the Roman past “so that those who wish to take examples may be freed from the labor of a long search,” categorizes this episode with the group “On the Severity of Fathers towards their Children.” However, Torquatus’ severity was meant not only to satisfy his own moral standards, but was also enacted in the interests of the state. Similarly, Cicero cites the same event in *De Finibus* to demonstrate how good men disregard their own desires and pains in the interests of Rome (*pro patria*). Torquatus in particular was well-suited to take on such a role. His ancestor of the same name was famous for having handed over his own son for execution when he violated orders by engaging the enemy without permission. Sallust even shows Cato the Younger citing this incident when arguing for the execution of the Catilinarian conspirators, arguing that if Torquatus could sacrifice his own son for the sake of the

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354 Val. Max. 5.8.3; Livy *Per*. 54

355 Val Max 5.8.3: *cum Silanum filium meum pecunias a sociis accepisse probatum mihi sit, et re publica eum et domo mea indiguum iudico, protinusque e conspectu meo abire iubeo.*

356 Val. Max. 1.1. Praef: *ut documenta sumere volentibus longae inquisitionis labor absit*

357 Val. Max. 5.8.3: *satis factum erat rei publicae*

358 Cicero *De Fin*. 1.24
Republic, even if the latter had only acted out of excessive courage, then why should the senators hesitate to act in the case of treason?359

Even when no particular case is cited, the “ancestors” (maiores) are a common trope by which authors seek to impress the importance of particular virtues and behaviors on their audience. In the companion speech of Caesar given by Sallust in the same monograph, Caesar cites instances in which the maiores acted against impulse to choose the correct and lawful path. Notably, the two examples he gives are both instances of clemency towards foreign peoples. During the Third Macedonian War, Rhodes, a former Roman ally, had supported Perseus. Despite this betrayal, when the war ended in 168, the maiores had declined to punish Rhodes, so that no one could say that they were greedy for its wealth. Similarly, Caesar cites the case of Carthage after the Second Punic War, which, he says, was guilty of many crimes. Still, the maiores never took occasion to retaliate: they considered what behavior was worthy of themselves, rather than what they were able to justly do to their enemies.360 It was this restraint with regard to foreign peoples that was to be admired and emulated. After all, it was by this means that the empire itself was gained. As Cicero states in his speech Pro Sexto Roscio Amerino, Rome’s ancestors did not graspingly desire the lands of other peoples, and by this upright behavior they enlarged and exalted the Republic, empire, and the name of the Roman people. Through their virtue a small and weak state became great and prosperous.361

359 Sall. Cat. 52.30-31
360 Sall. Cat. 51.4-6
361 Cic. Rosc. Am. 50
While it can be seen that exemplary individuals – especially war heroes – are often cited to provide *exempla* of particular virtues or principles, it is the Roman *maiores* more generally who are made to lend their *gravitas* to a wide range of righteous behaviors. As Joanna Kenty puts it, the *mos maiorum* is a powerful idea because it includes both the actual institutions which made up the Roman state, and the broader value system which supports it.\(^{362}\) In essence, they encompass both particular lawful behaviors, like the transfer of seized enemy property to the state, and the general virtues of restraint and clemency which allowed Rhodes and Carthage to survive defeat by Rome intact in these instances. In fact, some scholars have attributed the longevity of the Republic to the Romans’ ability to create a stable political culture by envisioning a strict continuity between current actions and the values of the past.\(^{363}\) In the Roman conception, the ethics and behaviors of the *maiores* should ideally dictate the behavior of contemporary Romans.

What these texts provide to their contemporary readers is the opportunity to become exempla themselves by enacting the values which had made Rome great. Furthermore, it is no coincidence that so many of these examples are of the justice, restraint, clemency, and principle which Roman ancestors showed towards foreign peoples. While, according to Cicero, it is a virtue to cultivate your own lands,\(^{364}\) the success of this virtue becomes apparent in Roman behavior when Rome conquers others. It is clear to him and to others cited above, that Rome was ideally suited to rule the world

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\(^{362}\) Kenty 2016: 429

\(^{363}\) Hölkeskamp 2010: 44-45

\(^{364}\) Cic. *Rosc. Am.* 50
because of this unique dedication to institutions, laws, and a broader ethics of foreign relations. The current state of Rome, which these writers deplore, had developed because Romans had lost their focus on these values, and thus were no longer able to check the depravity of their generals. Those empowered to oppress and subjugate foreign people do not hesitate to do the same to their fellow citizens. The insistent citation of particular exempla and the *mos maiorum* during this period is meant to bring Rome back into line with the virtues that made it great. The greatest, decidedly, are the virtues of clemency and restraint at home and abroad.

**The Legacy of the *Lex Calpurnia de Repetundis***

According to Michael Alexander’s comprehensive catalog of Roman trials, there are sixty-two attested cases of extortion of provincials prosecuted between 149 and 50 B.C.E. The permanent *quaestio* established by the Lex Calpurnia clearly saw regular and even frequent use over these years. This is significant because the extortion court represents an important aspect of the legacy of Roman foreign relations law. Its persistence and activity from 149 on show that the Romans were still very much engaged in the suppression and punishment of those who violated certain foreign relations norms. Furthermore, the nature of the court itself and the law against *repetundae* demonstrated a broad-based concern for the victims of such abuses. Similarly, the rhetoric used by

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365 Alexander 1990
Cicero in the prosecution of C. Verres for extortion displays the respect with which Romans regarded the standards established by their ancestors regarding the treatment of foreign peoples, and their desire for Rome to continue to be seen as a state that was uniquely just and generous, especially towards its allies. For these reasons the continued existence and use of the *quaestio de repetundis* is an essential element in understanding the tenacity of these Roman cultural values, and their continued salience in a state that had been strongly impacted by its widening imperial power.

The original intention of the Lex Calpurnia which instituted the extortion court (*quaestio de repetundis*) is disputed. Chapter Three presented the court as a natural part of the process of formalization that took place with regard to the enforcement of legal principles surrounding the proper treatment of foreign peoples. Others, like Erich Gruen, have argued that it represented an effort by the Senate to retake control of cases that otherwise might have been tried before the plebeian assembly. John Richardson has even contended, based on the seeming mismatch between the precipitating incident of Galba’s crimes and the law that was subsequently passed, that the Lex Calpurnia was intended to protect the interests of Roman citizens rather than foreign peoples and provincials. Whatever the primary reason for the law may have been, Cicero regards the original purpose of the Lex Calpurnia and the *quaestio* which it established as having been the protection of allies and those friendly to the Roman people. Citizens, after all,

366 Gruen 1968: 13-14

367 Richardson 1987
have access to civil actions and the private law, “This,” says Cicero, “is a law of allies – a right of foreign nations.”

Modern scholars’ focus on the political use of the *quaestio* is understandable. In some of the earliest known cases a strong element of political rivalry is recorded by our sources. In 138 two different cases were brought before the *quaestio*. In one, Q. Pompeius, C. Hostilus Mancinus’ equally hapless but luckier predecessor in Numantia, was prosecuted for extortion by Q. and L. Metellus and Cn. and Q. Caepio. The prosecutors failed to secure a conviction. Both Cicero and Valerius Maximus say that this was not because the charges were false. Rather, because the Metelli and Caepiones came from noble families and had brilliant reputations, the jury members did not wish to seem to be succumbing to the influence of their status or to be acting in the service of some private grudge. Similarly, in the second case, when L. Aurelius Cotta was prosecuted before the *quaestio* by Scipio Aemilianus, he was acquitted because the senators in the jury thought that it was unfair for a defendant to be defeated by the overwhelming power of his accuser.

Even so, convictions for misconduct towards foreign peoples were not impossible to obtain under other circumstances. With the support of Scipio Aemilianus, the tribune L. Cassius Longinus Ravilla passed a law in 137 which instituted a secret ballot for trials

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368 Cic. *Div. Caec.* 17-18: *haec lex socialis est, hoc ius nationum exterarum est*

369 Cic. *Font.* 23; Val. Max. 8.5.1

370 Cic. *Mur.* 58; *Div. Caec.* 69; *Font.* 38; Val. Max. 8.1.11 cites the case as having taken place before the people, but Cicero’s references to jury members show this to be incorrect.
before the people, except in cases of treason. Gruen assumes that this law was proposed in order to benefit Aemilianus’ political allies because of earlier failures to secure their desired verdict before the extortion court. In any event, in the same year the consul M. Aemilius Lepidus Porcina had been assigned to Spain. However, he was ordered to wait before taking any action there because of the uncertain outcome of the peace made by Mancinus with the Numantines. Appian tells us that he grew dissatisfied with his idleness and for this reason falsely accused the Vaccaei, another Celtiberian tribe, of having broken their treaty with Rome by aiding the Numantines during the recent war. He then attacked and laid siege to their main city, Pallantia, and plundered their countryside. Messengers who came to Aemilius from Rome with orders from the Senate not to further antagonize the Vaccaei were ignored. However, the siege of Pallantia went badly, and Aemilius was forced to withdraw his troops. He was then recalled to Rome, tried before the people, and fined. The success of this case shows that the principle of *iustum bellum* still had a strong influence on Roman behavior. Accordingly, in his *Gallic War*, Caesar is careful to frame many of his conflicts with Gallic tribes in terms of the protection of Roman allies and the immediate danger posed by some of these tribes to Roman Italy.

371 Cic. *Brut.* 97; 106

372 Gruen 1968: 39

373 App. *Iber.* 80

374 App. *Iber.* 81-83; Livy *Per.* 56; Val. Max. 8.1.damn.7 seems to confuse this incident with a case in which the censors (one of them being Cassius Longinus) imposed a *nota* on Aemilius due to an impropriety related to one of his houses. Vell. Pat. 2.10.1

375 Riggsby 2006: 177-180
This period was one of transition for Rome, from a primarily military power to one that also controlled an increasing number of extra-Italian provinces, and had obligations to the residents of those provinces. It is no surprise, then, that the *quaestio de repetundis* came to eventually overshadow any other judicial proceedings with respect to the claims of foreign peoples. Gaius Gracchus attempted to use the court as a political weapon against senators, many of whom had opposed him and some of whom had murdered his brother. He did this by changing the composition of the jury rolls for the court. According to his law, passed around 123 and often called the Lex Acilia, it would now be made up of members of the equestrian class rather than senators. However, as Adrian Sherwin-White convincingly argues, Gaius’ agenda was much broader than a simply bribing the *equites* or curtailing the power of the Senate. His measure is also specifically targeted at checking the corruption of Roman power, wherever it might encroach upon the life of non-Roman peoples.

Following Crawford’s reconstruction of the Tabula Bembina, on which the law is inscribed, the inscription lists the beneficiaries of the law (and potential plaintiffs) as Italian allies and Latins, citizens of nations outside of Italy, and all of those who are negotiating while under the power of the Romans or protected by the friendship of the Roman people. Almost all peoples who had any form of interaction with the Roman

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376 The Gracchan law has typically been identified with the Lex Acilia mentioned by Cicero in *Verr.* (1.1.51; 2.1.26). Acilius is taken to be M. Acilius Glabrio, tribune of the plebs in 122, and a friend and colleague of C. Gracchus. There is some debate about the identification of this law with that found inscribed on the Tabula Bembina. H. Mattingly argues against that identification (Mattingly 1969; 1970), but most take it to be accurate (Badian 1954; Sherwin-White 1982). I will follow the latter’s identification in this chapter.

377 Crawford 1996: 65: *Quoi socium non|minisue Latini exter//arumue nationum, quoile in arbitratu dicione potestate amicitiau|e populi Romani*
state would be covered by the law, regardless of status. Any case involving property or money that has been seized or given as a bribe is open to prosecution, and the law also names the magistrates liable for such offenses, from consuls down to military tribunes. This was a broad statute, meant to address corruption of all kinds and at multiple levels of Roman administration. It was not a narrow political measure meant solely to target senatorial power, or even one which would only benefit certain classes of foreign peoples. Provincials who had suffered extortion by a governor, non-allied foreign people who had had their property seized by an overzealous praetor, and kings who had been enticed to give a bribe, were all entitled to bring claims under. While the law only deals with matters of material property, it is important to remember that the proper disposition of property was a major feature of the *ius belli*, and those who honored its principles, like Scipio Africanus, were highly praised and remembered for their restraint. Also, as has been shown above in the case of M. Aemilius Lepidus Porcina, there were other legal avenues for claims of abuse against provincials and foreign states or peoples. Extortion and financial corruption were Gaius’ focus in formulating this law, perhaps because they were emerging as more frequent problems at this time.

From this point on, the number of documented trials for *repetundae* continues to increase, and the court becomes a regular feature of Roman political life. Thanks to Cicero, we have a clear idea of the kind of rhetoric that was used, as well as of the values and ideals that were commonly appealed to in order to influence a jury. In 70, in one of his earliest and best-known series of speeches, Cicero argued for the conviction of Gaius Verres, the former governor of Sicily, on charges of extensive corruption and extortion committed during his tenure there. Sicily was particularly significant by Cicero’s
account, first for personal reasons, since he had been a quaestor there in 75. Secondly, as Cicero put it, Sicily was the first place to become a Roman province, and “the first which taught our ancestors what a glorious thing it was to rule over foreign peoples.” The court itself was constituted by the Roman maiores in service of such allies, he claims; the many laws de repetundis, the procedure, the speeches of the advocates, all were for the allies’ benefit, and the senators, now returned by Sulla to their place in the jury rolls, were there in the court to listen seriously to the grievances of those allies. This was only right, as Rome was the benefactor of Sicily, and thus charged with the protection of its people and property.

Verres’ offenses are framed by Cicero as a distinct and major departure from traditional Roman practice, both towards provinces in general and Sicily in particular. According to Cicero, even before Roman rule, most of Sicily was already allied with Rome, and the few cities that were taken by force in war had their property returned by Rome. All were free to maintain their own autonomy. Such was Rome’s favor towards Sicily that Scipio Africanus adorned it with the spoils of Carthage. Even M. Claudius Marcellus is made out to be a champion of the Sicilians. Despite what is known about the complaints concerning his plunder of Syracuse, according to Cicero’s narrative he left

378 Cic. Verr. 2.2.2: prima docuit maiores nostros quam praeclarum esset exteris gentibus imperare

379 Cic. Verr. 2.2.15; 1.1.42; Vasaly 2009: 114 argues that these appeals are meant to warn senators that their actions may have an impact on whether or not senators maintain a monopoly on the juries of the standing courts.

380 Cic. Verr. 2.2.8

381 Cic. Verr. 2.3.12-13
that city unharmed and its riches intact after the siege was broken in 212.\textsuperscript{382} Cicero compares his own actions with those of other virtuous predecessors, perhaps most notably Cn. Domitius Ahenobarbus (cos. 96) who prosecuted M. Iunius Silanus in 109 for an illegal war waged against the Cimbri and his injury of Domitius’ hospes Aegritomarus.\textsuperscript{383}

In general, Cicero’s speech leans heavily on the idea of the inherently just imperial rule of the Roman ancestors, even those “maiores” were no more than a generation removed from the actors in this case. In addition, provincial governance is represented as merely a continuation of the same policies and principles that applied to allies and conquered people previously. This is why Scipio Africanus and M. Claudius Marcellus, who never governed a province in the way that Verres was intended to, can be held up as examples for ethical behavior by Cicero. In the same way he can equate himself to the prosecutor of a case of unjust war. Although the quaeestio de repetundis had been confined to matters of material extortion and corruption by Gaius Gracchus’ Lex Acilia, it was still viewed by Romans as reinforcing other, broader principles of just foreign relations. Also necessary, as Cicero’s narrative of Sicily’s incorporation into the empire shows, was for his contemporaries to act in continuity with the past. One of the chief criticisms which Cicero levels at Verres is that he not only extorted wealth from the Sicilians, but also did so by overturning traditional ways of transacting business and law. He altered the collection of Sicily’s grain tithe to his advantage, rather than following the

\textsuperscript{382} Cic. Verr. 2.2.4

\textsuperscript{383} Cic. Verr. 2.2.118; Alexander 1990: 32
laws that went back to Hiero, tyrant of Syracuse, regarding its sale, and meddled with inheritance laws to favor his friends.\footnote{Cic. Verr. 2.3.14-16}

In this way it is possible to view the extortion court, at least as used conceptually by the Romans, as an institution meant to maintain continuity with the best of Rome’s past. The language of “our ancestors” continued to permeate discourse around war and provincial governance. Nor did the principles of the past only make their appearance in rhetoric. The extortion court was also intended to put those principles into practice through a stable institution that would exist for the protection of the rights of Rome’s allies as well as of the foreign peoples who came into contact with Rome more generally. While many scholars have argued correctly that the court became a forum for Roman politicians to target their rivals, it also remained a space where those who had been abused and extorted could air their grievances and seek recompense. The language of Cicero shows us that this latter purpose had not become an afterthought in the Late Republic, but was still considered to be, at heart, the court’s primary function. From this it is possible to understand that the values which had originated with the fetials, and which were enforced by the Senate, were still practiced even after the shocking departure from principle which was the Third Punic War.
The discourse concerning the proper treatment of foreign peoples and provincials was not only present in speeches before the extortion court. As Roman provincial territory increased, a language of principled governance and imperial power emerged which drew on the values that were a demonstrated part of Rome’s past. From 61 to 59, Quintus Cicero, the younger brother of M. Cicero, was the propraetor charged with governing the province of Asia. Sometime at the end of 60 or the beginning of 59, M. Cicero sent his brother a letter outlining his advice on the proper conduct of a provincial governor. Unlike in war, Cicero writes, Fortune plays almost no part in the success of a governor. Instead Quintus’ virtue and temperance will ensure that he fulfills his obligations to the Republic in this matter.\(^{385}\) Despite providing this guidance, M. Cicero insists that he is not writing to Quintus to tell him how to act, but rather to praise his conduct of the past two years:

\[\textit{praeclarum est enim summo cum imperio fuisse in Asia biennium sic ut nullum te signum, nulla pictura, nullum vas, nulla vestis, nullum mancipium, nulla forma cuiusquam, nulla condicio pecuniae, quibus rebus abundat ista provincia, ab summa integritate continentiaque deduxerit.}\]

For it is wonderful to have spent two years in Asia with the highest imperium without any of those things with which that province

\(^{385}\) Cic. Qfr. 1.1.5
abounds having led you away from the strictest integrity and self-control – not statue, nor painting, nor cup, nor piece of clothing, nor slave, neither the beauty of anyone, nor business arrangement.\footnote{386}

The letter is full of language like this, praising self-control and moderation, care for the lives and property of the people of the province, and caution about the motives of others who might attach themselves to a provincial governor. Miriam Griffin points out that the letter also admonishes Quintus for his quick temper and susceptibility to the wiles of his subordinates.\footnote{387}

This letter presents the other side of the narratives of Roman moral decline which began this chapter. Heavy emphasis is laid upon the avoidance of extortion and improper seizures of provincial property, warnings which tie into descriptions of the deterioration of Roman ethics supposedly brought on by access to the luxury of the East, and the continued activity of the extortion court. While M. Cicero is consistent in warning his brother that his own entourage of Roman officials might not have the same pure motives as himself with regard to governance, he still presents ethical conduct as an achievable goal for a Roman provincial governor during the Late Republic.

In addition to private letters and court oratory, Cicero again drew upon these themes in speeches before the people, notably in his \textit{Pro Lege Manilia}, advocating the appointment of Pompey as commander against Mithridates.\footnote{388} He points to Pompey as

\footnotetext{386} Cic. \textit{QFr.} 1.1.8-9

\footnotetext{387} Griffin 2008: 90

\footnotetext{388} Yakobson 2008. p.59
the exceptional Roman who could both conquer the enemy and refrain from plundering them. Cicero evidently believed that the Roman people could be moved to support Pompey’s command by the argument that he would be the best general in terms of the fair treatment of Rome’s allies and conquered peoples, just as much as they might be persuaded by visions of imperial glory or desire for the safety of the Roman state. As Alexander Yakobson puts it, “The demand that the allies be treated fairly is able to stand, rhetorically, on its own feet; it does not necessarily have to be justified by appeals to Rome’s (enlightened) self-interest.”

Of course, the praise which Cicero heaps upon his brother and Pompey implies a corresponding criticism of other Roman commanders who have fallen from the standards set by the ancestors. As Griffin observes Roman sources are full of disapproval for the actions of Roman generals and governors. Caesar puts this disapproval in the mouths of Gallic leaders, who characterize Roman rule as equivalent to slavery. Similarly, Sallust has the Numidian king Adherbal denounce Roman friendship as fickle and meaningless in the face of his brother Jugurtha’s bribery. Even so, these laments about Roman disregard for principle and corruption are only comprehensible in a world where the Romans were still very much preoccupied with the problem of ethically ruling their empire. That is the common thread which unites the various elements presented by this

389 Cic. Leg. Man. 67-68
390 Yakobson 2008, p.60
391 Griffin 2008, p. 95-96; Moskalew 1990 contends that Caesar balanced this rhetoric with his own claims of just war for the protection of allies.
392 Griffin 2008, p. 97
chapter: narratives of moral decline, the use of exempla from the past, cases before the *quaestio de repetundis*, and the discourse on proper provincial governance. Each of these indicates the importance that principled rule of the empire had in the Roman collective consciousness. Ethical conduct in service of the empire ensured continuity with a revered Roman past and with the cultural values that defined what it meant to be Roman. Deviation from the norms of provincial governance severed that connection and led to disunity and the decay of the Roman state.

**Conclusion**

Many Roman authors mourned the downfall of Carthage as the end of an era. A golden age of virtuous generals and morally grounded foreign relations was seen to have ended. The emergence of greed, cruelty, and self-serving rule was understood to have replaced it. However, while the balance of power in the Mediterranean had certainly shifted with the elimination of the Carthaginian threat and the simultaneous subjection of Greece, the ideals and principles which had guided earlier times were far from wholly abandoned. Rather they lived on, not only in the memories and writings of those who still revered the old Roman heroes and the virtues of the ancestors, but also through the extortion court and the emerging norms of provincial government.

Throughout this dissertation it has been shown that the Romans maintained strong traditional values concerning just relations with foreign peoples. These values developed over time, and played an important role during the period when Rome began to vastly
expand its power and influence outside of Italy. Not only did these values impact those generals who violated them and those peoples who suffered in consequence. They also played a part in shaping Rome’s entire foreign policy. Wars could not be embarked upon without proper justification, and so they might be delayed until such time as a valid injury arose. Surrenders had to be honored, and the expectations of clemency and generosity upheld. All of the values that had sprung from the *fetiales* and the *ius belli* contributed to the shape of Roman rule as much as the abundance of Italian conscripts and Italy’s natural resources had.

Moreover, Roman cultural values were the basis of the image which Rome wished to project to the outside world. Loyal Greek allies were important to Roman foreign objectives, so Rome honored their requests and complaints and devoted resources to settling their disputes with Philip V. To gain control over Liguria was deemed necessary to Roman security, so the cruelties of Popillius towards the Statellates could not be tolerated. More than any individual act, the public insistence by the Romans on compliance with a certain set of foreign relations principles, and the equally public punishments and compensations which they handed out, were an integral part of managing Rome’s imperial expansion. After all, such expansion would be impossible without the goodwill of allies as well as the belief, at least by some peoples, that Roman hegemony would be ultimately beneficial, or at least not overly harmful, to their interests. This same attitude seems to have been prevalent among the Romans themselves. Their ancestors had followed the strictures of Roman religion and *mores* in war and peace, and this conduct had led them to success. Therefore, to ensure their own success, and to honor the values which constituted the identity of Rome, the Romans must continue to act upon
the same values. This continuity of outlook gave legitimacy to any ventures they might undertake, and also created social cohesion through the repetition and reification of traditional practices.

The marked impact that these traditional practices and values had on foreign relations during the Roman Republic opens up new perspectives on the ongoing debate about the motives and strategy behind Roman imperialism. Established views that emphasize a reactive Rome driven by fear of injury, or by greed, or by ruthless self-interest, cannot be sustained intact. Instead they must be tempered by the knowledge that the Romans not only acted out of immediate considerations and interests, but were also guided by cultural discourses about what it meant to be Roman, and therefore what it meant to be just and clement towards one’s enemies and friends. The modern debate centering around Roman imperial strategy began in part because Romans’ motivations are difficult to detect, and their approach to imperial expansion is sometimes hesitant, sometimes aggressive, and by no means accounted for by a single explanation. Thus, the boundaries instituted by Roman ideas of just war and *ius belli*, while not always perfectly observed by Romans, possess some essential explanatory power. So, for example, even though they cannot explain every aspect of Roman/Carthaginian relations between 200 and 146, they do provide insight into how and why the Romans engaged diplomatically with Carthage during those years. In this way, events and actions on the part of the Romans which otherwise may seem arbitrary or disadvantageous become consistent and explicable once they are understood to be within the bounds of Roman cultural and legal traditions.
While this dissertation makes some of the first meaningful connections between traditional Roman religious and cultural values and an emerging law of foreign relations, it necessarily leaves certain avenues of study unexplored. I do not examine the operations of the extortion court in detail, or comprehensively analyze the nature of the many cases which were heard in it. An investigation along these lines might be further able to trace the process which allowed the cultural norms discussed in this dissertation to become formalized legal principles. Furthermore, such an examination would perhaps be able to fully explain the balance of motives, political and ideological, that drove the use of the *quaestio de repetundis* in the years after the Gracchan reforms. Such an analysis could provide a counterpoint to the proliferation of scholarship which sees the court as primarily a venue for personal and factional disputes among the Roman elite.

There is also room for further exploration of the religious and cultural roots of other aspects of Roman public law. The kind of formalization which Jörg Rüpke has observed as occurring within religious rites and traditions could also be extended to the way in which Roman societal norms became law.\(^{393}\) This method may be particularly illuminating when applied to the criminal or public law, which many scholars have tended to see as a political development because of its associations with figures like Gaius Gracchus and Sulla. Instead of using political motives alone to explain the creation and proliferation of *quaestiones* from 149 through the end of Sulla’s domination in 80, a parallel investigation into the cultural origins of the values which became the basis for these courts would no doubt prove valuable. As my dissertation has shown, Roman

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\(^{393}\) Rüpke 2012. Bederman 2001: 48-87 applies this type of analysis to shared ancient international norms.
public law emerges when long-held values are subject to repeated use and refinement. The tracing of this process would no doubt enhance our understanding of the nature of an underrepresented aspect of Roman legal history.\(^3\)

Countless factors influenced Romans in their relations with foreign peoples under the Republic: self-interest, the desire for power, fear, and even greed. However, the influence of traditional Roman principles must also be taken into consideration. The Romans wished to follow in the ways of their ancestors and present themselves as uniquely just and clement in a world which was often unfair and cruel. To this end, the Romans looked to the essential values of their society to create an image that was both advantageous and culturally significant. Thus for the Romans the ideal rule of an empire was gained by following Cicero’s advice: “Let us embrace this idea . . . to turn away from fear and hold on to compassion. Thus we will most easily obtain what we want, both in private and in public life.”\(^4\)

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\(^3\) For a legal anthropology perspective on this process, see Vinogradoff 1966.

\(^4\) Cic. Off. 2.24: *id ampl ectamur, ut metus absit, caritas retineatur. Ita fac il lime, quae volemus, et privatis in rebus et in re publica consequemur.*
BIBLIOGRAPHY


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