

father of the sharp (piercing) rays": ὀξεῖαν δ' γενέθλιος ἀκτίνων πατήρ (*Ol.* 7. 70).

Aristophanes uses almost the same words as Homer when he speaks of the eyes brightly flashing: οὐ δεινότατοι μὲν ἀπ' ὀφθαλμῶν Κύννης ἀκτῖνες ἔλαμπον (*Vesp.* 1032). A red cloak also appears sharply brilliant: ἔχοντα καὶ φοινίκιδ' ὀξεῖαν πάνυ (*Pax* 1173).

Euripides describes the brilliance of stars as an arrow or missile (βέλος) shot through the air (*Hipp.* 530). He also uses a word which can mean "bows and arrows" or simply "arrows" for "sunbeams": τόξα θ' Ἡλίου (*HF* 1090). Virgil applies the "bow" idea to light and color when he says that the rainbow shoots its colors athwart the sun: "ceu nubi-bus arcus / mille iacit varios adverso sole colores" (*Aen.* 5. 88–89).

Ennius follows in the tradition by describing dawn in terms of rays which can strike blows: "exin candida se radiis dedit icta foras lux" (*Ann.* 90 Vahlen).

The missile image is carried on by Lucretius when he mentions the sun's rays and "day's bright missiles": "non radii solis neque lucida tela diei / discutiant" (1. 147–48). It is thus possible to propose the equation: *tela diei* = Ἡλίου ὀξυβελῆς = τόξα θ' Ἡλίου. This may be related to *acies* when *acies* is used to mean a projected sharp brilliance which can be blunted (*obtunsa*).

Lucretius says that eyes emit brilliance: "ex oculis micat acribus ardor" (3. 289). He also claims that objects tangibly emit sharp light: "praeterea splendor quicumque est acer ad-

urit / saepe oculos ideo quod semina possidet ignis / multa dolorem oculis quae gignunt in-sinuando" (4. 329–31). *Acer splendor* may be a translation of Homer's αὐγὴ ὀξεῖα.

In the above examples, the quality of sharpness is linked with that of searing heat. Both are emissions, as shown by *quae gignunt in-sinuando*. Both are sharp and both can be blunted, and this is what matters in defining *acies obtunsa*.

In addition, Lucretius describes a tower seen from a distance (4. 353–64). The sharp effluences are blunted in the transmission, so that the transmitted impression of the object appears blurred: "angulus optunsus quia longe cernitur" (4. 355), a phrase similar to "nam *acies obtunsa videtur*." *Acies* appears in this same passage (4. 357) to describe the eye as it receives the striking (*ictus*) of the emission. Even if this passage did not directly influence Virgil, it at least helps to define *acies*. *Angulus* suggests a tangible sharp emission which Virgil applies to light or brilliance by using *acies*. Both can be dulled.

Aratus' τὰ γε ὀξέα, equated with his φάος ἀστερόθεν, leads to Virgil's compressed *acies*. But, in addition to Aratus, Virgil draws on an extensive literary and scientific tradition for his use of *acies*. This tradition helps define *acies* in the phrase, "nam neque tum stellis *acies obtunsa videtur*" (*Georg.* 1. 395) as "the sharp (projected) brilliance of starlight."

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THE USE OF *LIBERO-DAMNO* AND *ABSOLVO-CONDEMNO* IN THE JUDICIAL PROCEEDINGS OF THE LATE REPUBLIC

Since Mommsen's time it has been customary to draw a distinction between the two pairs of judicial terms *libero-damno* and *absolvo-condemno*. However, the meanings of *libero* and *absolvo* as well as of *damno* and *condemno* are apparently identical. In *Römisches Staatsrecht* Mommsen stated that *libero*

and *damno* (or abbreviations thereof) were the words used by the citizens in judicial assemblies (*iudicia populi*) when they voted to acquit or condemn a defendant.¹ He suggested that, in contrast, *absolvo* and *condemno* were the words used by the jurors for acquittal and condemnation in the *quaestiones*. He based his

1. *Röm. Staatsr.*³ (Leipzig, 1887), III. 1, 402 and n. 4. Also see his *Geschichte des römischen Münzwesens* (Berlin, 1860), p. 636, n. 497.

conclusions on two coin types issued in the late Republic. One type, on a denarius minted about the middle of the first century B.C.,² is the head of C. Coelius Caldus who was consul in 94 B.C. and an ancestor of the moneyer.³ To the left of the head is a tablet inscribed with the letters *LD*. Mommsen understood the type as a reference to a law which the Coelius Caldus pictured introduced when he was tribune in 107 B.C. This law provided for the use of the written ballot in trials for *perduellio* (a form of treason) held in the *comitia centuriata*:⁴ "Cassia est de populi iudiciis . . . lata . . . uno in genere relinqui videbatur vocis suffragium, quod ipse Cassius exceperat, perduellionis. dedit huic quoque iudicio C. Coelius tabellam . . ." (Cic. *Legg.* 3. 35–36).⁵ On the basis of this passage and Coelius' coin type, Mommsen assumed that *libero* and *damno* (abbreviated by *L* and *D* respectively on the coin type) were the words used in the judicial assemblies. The contrasting terms *absolvo* and *condemno* were, he thought, used in the *quaestiones*. He found evidence for this on another coin minted by Q. Cassius of about the same date as the Coelian coin.⁶ Cassius' coin has a reverse type of the temple of Vesta *in foro*⁷ inside which there is a *sella curulis*. To the left of the temple is an urn and to the right

a tablet inscribed with the letters *AC*. The clue to the reason for the representation of the temple of Vesta is found in the appearance of the *sella*. This chair originally served as the king's (later the magistrate's) seat of justice before which the people were brought to be tried.⁸ Clearly Q. Cassius alludes to the trial of the Vestal Virgins which took place in 113 B.C. under the direction of his ancestor L. Cassius Longinus Ravilla, who merited the curule chair as an ex-consul and specially appointed *quaesitor*.⁹ In *Römisches Staatsrecht* Mommsen also suggested that the urn and tablet referred to this trial, and thus concluded that *absolvo* (abbreviated *A*) and *condemno* (abbreviated *C*) were terms used in the *quaestiones* such as that established for the trial of the Vestal Virgins.¹⁰ Later in *Römisches Strafrecht* he modified his view. *Damnare*, he said, was in use in the *recuperatores*' courts of Plautus' day—the forerunners of the *quaestio de repetundis*—although *condemnare* was more usual in such courts. He also said that the voters in the judicial assemblies may have used the formula *condemno*, though he cited no evidence to support the point.¹¹ L. R. Taylor, in the most recent commentary on these terms,¹² accepted Mommsen's early distinction between *libero-damno* and *absolvo-condemno*.¹³

2. E. A. Sydenham, *The Coinage of the Roman Republic* (London, 1952), Nos. 891–93. Sydenham dates the coin to ca. 62 B.C.

3. Sydenham, No. 891, n.; E. Babelon, *Description historique et chronologique des monnaies de la République romaine*, I (Paris, 1885), 370; and H. A. Grueber, *Coins of the Roman Republic in the British Museum* (London, 1910), I, 474–75.

4. For these trials see L. R. Taylor, *Roman Voting Assemblies* (Ann Arbor, 1966), pp. 5, 100 ff.

5. For other sources of his tribunate, see Broughton, *MRR*, I (New York, 1951), 551.

6. Sydenham, Nos. 917–18. Sydenham's date for this coin is ca. 57 B.C.

7. Sydenham, No. 917. This is the traditional identification and, so far as I know, only A. Alföldi, "The Main Aspects of Political Propaganda on the Coinage of the Roman Republic," *Essays in Roman Coinage Presented to Harold Mattingly* (Oxford, 1956), p. 85, disagrees. His identification of the building as the chapel erected in 123 B.C. by Licinia and destroyed by the Senate will not stand: see my article, "New Evidence for the Republican *Aedes Vestae*," *AJA*, LXXVII (1973), 43–50.

8. Mommsen, *Röm. Staatsr.*³, I, 400, and *Röm. Münzwesen*, p. 636, n. 497; Grueber (n. 3), I, 481, n. 2.

9. Ascon. 45–46C.

10. *Röm. Staatsr.*³, III, 1, 402, with n. 4 and *Röm. Münzwesen*, p. 636, n. 497. The only evidence which he cites is the coins themselves. Further, Mommsen saw a reference to

the *lex Cassia* of 137 B.C. which provided for the written ballot in all comitial trials except those for *perduellio* (see text above) on the coin of another Cassian moneyer (Sydenham, Nos. 935–36). He believed that *antiquo* and *uti rogas* (abbreviated *V* on the coin) were the formulas employed in the judicial assemblies under that law. Later he changed his mind, as will be discussed below. Grueber (n. 3), I, 481–82, n. 2, follows the early views of Mommsen. See also G. Lafaye in Daremberg and Saglio, *Dictionnaire des antiquités grecques et romaines*, V (Paris, 1912), 5.

11. *Röm. Strafr.* (Leipzig, 1899), p. 179, n. 4. Evidence for the use of *damnare* in the *recuperatores*' courts is Plaut. *Bacch.* 271–72; *Rud.* 1282. *Condemnare* is also used: *Most.* 1099. All these courts antedate the first *quaestio perpetua*, which was established in 149 B.C.

12. *Roman Voting Assemblies*, pp. 35, 37.

13. She suggested (p. 37) that the urn and tablet on the coin of Q. Cassius could be a reference to the *lex Cassia* of 137 B.C. (see n. 10). Since she accepted that *absolvo* and *condemno* were terms of the *quaestiones*, she thought it possible that the law of 137 B.C. had a provision for the use of the written ballot in "the only public court that surely existed at that time, that for extortion." This suggestion has also been made by C. Nicolet in the appendix to his paper "Confusio Suffragiorum," *MEFR*, LXXI (1959), 202. It may be that both types of judicial bodies were included in the Cassian law, for Cicero (*Legg.* 3. 35) seems to give a comprehensive list of all the *leges tabellariae* which had been passed to his

In fact, it is impossible to determine the exact limitations of these terms from the coin types, and the evidence resulting from any such attempted determination must be inconclusive. It is the purpose of this paper to determine from reliable primary evidence for the Republican period whether or not there was a clear distinction in usage between the formulas *libero-damno* and *absolvo-condemno* in the judicial proceedings of this time. In considering this problem, I shall not enumerate the positions of modern scholars, as none of them has made a comprehensive survey of the ancient testimonies.¹⁴ I have restricted myself for the most part to the evidence found in the speeches of Cicero and the commentaries on them by Asconius. Cicero, as an advocate actually engaged in arguing cases before the courts, would be expected to employ the appropriate technical terminology; and Asconius, using documentary evidence on these trials, could be expected to echo the legal terminology of the Ciceronian period. The evidence from Livy and Valerius Maximus will also be mentioned occasionally because, although not contemporary writers, they provide the bulk of the testimony for the time prior to the establishment of the *quaestiones perpetuae* when the assemblies were of primary importance in the handling of judicial matters.¹⁵

Evidence for the use of *libero* and *damno* in both the judicial *comitia* and the *quaestiones*

is abundant. Among Republican sources for the comitial use of *liberare* is Cic. *Sest.* 140: "hunc (Opimium) . . . populus Romanus . . . liberavit," where the phrase is used of the acquittal of Opimius on the charge of murdering C. Gracchus.¹⁶ Also note Cic. *Flac.* 98: "M'. Aquilium patres nostri . . . iudicio liberaverunt."¹⁷ Most convincing for this usage is Cic. *Mil.* 7, where Horatius is said to have been "populi Romani comitiis liberatus." There is, likewise, evidence for the use of the same term in the *quaestiones perpetuae*: for instance, Cic. *Sull.* 88, of the defendant in a trial *de ambitu* under the *lex Plautia de vi* in 66–65, "si erit vestro iudicio liberatus"; Cic. *Verr.* 2. 1. 9, of the defendant in the *quaestio de repetundis* in 70 B.C., "si qui istum . . . liberarint"; and Cic. *Rosc. Amer.* 128, of a defendant charged with parricide in the *quaestio inter sicarios*,¹⁸ "crimine liberatus sit."¹⁹

The same sort of evidence is available for the use of *damnare*. To cite but a few representative examples, testimony for the use of this term in the *comitia* is found in Cic. *Dom.* 86, where there is reference to a whole series of past Romans as "damnati comitiis centuriatis." For the *quaestiones*, where Mommsen at first thought the formula *damno* was not used, we find that Asconius 54C uses the term in connection with three charges levied against Milo in such courts.²⁰ *Damnare* is also used in connection with the trial of Q. Sergius in a

time ("sunt enim quattuor leges tabellariae . . ."), and it is more likely that he abbreviated his commentary on the actual content of the laws than that he missed out a law providing for the written ballot in the *quaestiones* altogether. Since we know from numerous passages in the speeches and letters of Cicero that the written ballot was used in the *quaestiones perpetuae*—and we know of no other law instituting the procedure there—it may be that Cicero (*loc. cit.*) only mentioned the *iudicia populi* (or judicial assemblies) because they were the more important judicial bodies at the time of the law's passage. It is also possible that the term *iudicium populi* had a less specific application than is generally believed today. See A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (Oxford, 1901), pp. 415 and 330, n. 5, who cites one ancient source for the use of *iudicium publicum* of trials before the people (the term is usually restricted by moderns to proceedings before the *quaestiones*). Cicero may have also omitted mention of the *quaestio* because in this passage he is only concerned with the amount of power which ought to be granted to the *populus*, and consequently he concentrates on the *comitia* to the exclusion of other bodies in the state. Cic. *Brut.* 106 seems to distinguish between the two types of court (against this see Nicolet, p. 202, who stretches the meaning

of the passage). Also Ascon. 78C: "legem Cassium tulisse ut *populus* per tabellam suffragium ferret." In sum, there is more evidence to indicate that the Cassian law covered only the *iudicia populi* and little to support the inclusion of the one existing *quaestio* in its provisions. Perhaps the written ballot was instituted in each *quaestio* at the time of its establishment. The amount of detail on the provisions for the written ballot in the *lex Acilia* (CIL I. 198) would tend to support such a conclusion.

14. For reference, a few of these are: F. F. Abbott, *Roman Political Institutions* (Boston, 1902), p. 256; Greenidge (n. 13), p. 497; Lafaye (n. 10), p. 5.

15. On the judicial functions of the assemblies in the late Republic see Taylor (n. 4), pp. 5–6 and foldout opposite page 5.

16. The trial took place in 120 B.C.: *MRR*, I, 523–24.

17. The trial took place in (?)98 B.C. for misconduct of the slave war in 101–99: *MRR*, II, 2–3.

18. In 80 B.C.

19. Also see Cic. *Rab. perd.* 8, of Curtius on a charge of *peculatus*; and Cic. *Prov. cons.* 24.

20. *De ambitu*, *de sodaliciis*, and *de vi*.

*quaestio inter sicarios*²¹ and of Rutilius in a court *de repetundis*.²²

To turn to the other pair of terms, *absolvo* and *condemno*, we again find that they are used indiscriminately of both *quaestiones* and comitial trials. Of judicial proceedings before the people, *absolvere* appears with great frequency in Valerius Maximus²³ as well as in Cicero and Asconius. A few examples of this usage, which has not been brought to notice, follow. Asconius' enumeration of the *sententiae* in the trial of Scaurus on a religious charge includes: "a tribus tribubus damnaretur, a XXXII absolveretur" (21C). Of the trial of Silanus (100 B.C.) he says, "sed plenissime Silanus absolutus est; nam duae solae tribus eum . . . damnauerunt" (80C); and Cicero (*Brut.* 128) speaks of Opimius as "a populo absolutum." As many scholars have noted, there is much evidence for the use of *absolvere* in a technical sense for trials in the *quaestiones perpetuae*.²⁴ The same is true of *condemnare*. Typical is *CIL* I. 197. 10, *condumnari popul(o)*; and in the *quaestiones* the same term is employed of the trials of Verres and Sestius.²⁵

We can see that, so far as contemporary and reliable sources show, there is no distinction in usage between the two pairs of terms, between *libero-damno* and *absolvo-condemno*. All four words are used of cases before the *quaestiones* and before the *comitia* without distinction.

The two pairs of terms are always assumed to be linked together just as they are coupled on the coin types: *libero* always with *damno* and *absolvo* always with *condemno*. But the

primary source material clearly shows that in common usage this was not always so, for in reference to a single trial *libero* and *condemno* and, especially, *absolvo* and *damno* are often paired. To cite a few of many available examples, Cicero in speaking of the trial of Oppianicus (*Clu.* 69 and 76) couples *absolvo* with *damno*. Asconius uses the same combination of the trial of Catiline (89C): "ut senatorum urna damnaret, equitum et tribunorum absolveret."²⁶ Cicero (*Clu.* 60) also joins *libero* and *condemno*: "hunc, quem condemnatum acceperant, liberarent?"²⁷

Two synonymous terms—such as *condemno* and *damno*—are often used together with one of their antonyms—for example, *absolvo*—in reference to a single trial. Asconius 55C writes of the *sententiae* in a trial: "Condemnaverunt senatores X, absolverunt VIII; condemnauerunt equites Romani VIII, absolverunt VIII; sed ex tribunis aerariis X absolverunt, VI damnauerunt."²⁸

We have seen that in Republican usage the four legal terms *absolvo*, *condemno*, *libero*, and *damno* are not linked together in pairs of inseparable terms, *absolvo-condemno* and *libero-damno*. In addition, there is no distinction in the use of any one of the four terms with respect to the two major judicial bodies in the Roman state. All four terms appear to have been used indiscriminately of trials held in the *quaestiones* and trials held in the judicial assemblies.

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21. Cic. *Clu.* 21.

22. Ascon. 21C. Also see Cic. *Phil.* 1. 21–23 (of a proposed law that *damnati* should have the right to appeal to the people); *Sest.* 66 (of the Catilinarians under the *lex Plautia de vi*); and *Pis.* 97 (of Piso's trial *de repetundis*).

23. 6. 5. 3; 8. 1 *absol.* 1, 7; etc. Also Liv. 4. 41. 11; 43. 16. 15–16.

24. For example, Cic. *Att.* 1. 2. 1; 1. 4. 2; 1. 16. 9; 4. 15. 4; 4. 18. 1; *Clu.* 103, 104, 108; *CIL* I. 198. LI ff.; Ascon. 53, 55C.

25. Cic. *Verr.* 2. 1. 20 and *Vatin.* 41.

26. Other examples are: Ascon. 21, 55, and 80C; Cic. *Att.* 1. 4. 2 and 4. 18. 1, 3, 4.

27. For additional examples, see n. 28.

28. Other examples are: Cic. *Verr.* 1. 2 with 2. 2. 180 (*absolvo* with *condemno* and *damno*); *De or.* 1. 231–33 (*absolvo* with *condemno* and *damno*); *Cael.* 23, 24 (*libero* with *absolvo*); *Clu.* 69 (*absolvo* with *condemno* and *damno*); *Clu.* 97 (*condemno* with *damno*); *Rab. Post.* 37 (*condemno* with *damno*); Liv. 43. 16. 15–16 (*absolvo* with *condemno* and *damno*); and Ascon. 90–91C (*damno* with Cicero's *condemno*), 89C (*libero* and *absolvo* with *damno*).

PRUDENTIUS, SHAKESPEARE, AND THE SEVEN AGES OF MAN: A NOTE

C. Witke in a valuable paper ("Prudentius and the Tradition of Latin Poetry," *TAPA*, XCIX [1968], 509–25) has provided a sympa-

thetic analysis of the artistry and literary background of Prudentius' *praefatio* (pp. 3–4 in J. Bergman's edition, *CSEL*, LXI [Leipzig,