

LEX DE TRIBUNICIA POTESTATE (70 B.C.)

This law, which was passed early in the year 70 B.C., was clearly a consular law, but modern scholars vary between attributing it to Cn. Magnus alone or to both consuls. Thus G. Rotondi entitled the law *lex Pompeia Licinia*,¹ and there are other examples of a joint attribution.² Hugh Last in magisterial fashion said: "While Crassus regaled the populace with Gargantuan entertainment, Pompey carried a law to satisfy the tribunician agitators."³ Other historians have reached the same conclusion.⁴ Such a discrepancy arises from the ancient sources. The fragmentary references to the election of the two consuls and the early events of their joint tenure in 70 can establish a probable answer.

In 71 it seemed inevitable that Crassus would canvass successfully for the consulship.⁵ He was the son of P. Crassus, consul in 97 and censor in 89; he had almost certainly been praetor in 73;⁶ and he had just defeated all but the *reliquiae* of the slave revolt under Spartacus, for which action he received an *ovatio*. But, despite the distinction of the older man and the extraordinary events of the early career of the younger man, Pompey was the stronger candidate and he was *maior consul*⁷ in 70.

In the canvass it is clear that a program of action was set forth, a procedure rather foreign to the Roman political scene. One or both of the candidates promised drastic revision of the Sullan constitution: full restoration of the powers of the *tribuni plebis*, a revival of the censorship, and revision of membership in the *decuriae* of the *iudices*. It would seem that Pompey was the instigator of these promises. Whether he distrusted his ability as an *eques* and as a member of a family but newly ennobled by the consulship of his father to break through the formidable barriers to the office, or whether he looked upon these measures as necessary reforms, must remain in doubt. Neither extreme view may be correct, although the later *leges Gabinia et Manilia* tend to point to the former. The role of Crassus is difficult to ascertain. According to Plutarch (*Crass.* 12. 1; *Pomp.* 22. 1-2), Crassus sought the aid of Pompey in the canvass. A most significant statement is preserved in the fragments of Sallust (*Hist.* 4. 48 Maurenbrecher): "Collegam minorem et sui cultorem expectans." Obviously *expectans* refers to Pompey, and thus it would appear that, before the *comitia consularia*, and perhaps while they were *designati*, there was no overt sign of disagreement. Hostility during their consulship is so presented in the sources (especially in Plutarch's account) that we cannot be certain of the exact points which engendered hostility.⁸

1. *Leges publicae populi Romani* (Milan, 1912 [Nachtrag, 1922]; repr. Hildesheim, 1966), p. 369.

2. For events preceding, during, and following 70, cf. especially M. Gelzer, "Das erste Consulat des Pompeius und die Übertragung des grossen Imperium," *APAW*, 1943, no. 1, pp. 3-43. This article is now available in Gelzer's *Kleine Schriften*, vol. 2 (Wiesbaden, 1963), pp. 146-89. The specific items are (p. 19 = p. 163) "Offenbar wurden sie sich darüber einig, das Gesetz über die *tribunicia potestas* gemeinsam vor das Volk zu bringen"; (p. 20 = p. 164) "die *lex Pompeia Licinia*." Cf. also J. Lengle, s.v. "Tribunus," *RE*, 2. Reihe 6 (1937): 2486. 33-41; T. R. S. Broughton, *The Magistrates of the Roman Republic*, vol. 2 (Cleveland, 1952), p. 126; Sir Frank Adcock, *Marcus Crassus* (Cambridge, 1966), p. 30; D. Stockton, "The First Consulship of Pompey," *Historia* 22 (1973): 205-218 (esp. 212).

3. *CAH*, vol. 9 (Cambridge, 1932), pp. 335 f.

4. E.g., T. Rice Holmes, *The Roman Republic and the Founder of the Empire* (Oxford, 1923), 1: 164 ("Pompey introduced his bill . . .").

5. Cf. Adcock, *Marcus Crassus*, p. 28.

6. *MRR*, 2: 110, 118, and esp. 121, n. 2.

7. Cf. Festus 154. 4-5 Lindsay.

8. L. R. Taylor suggested that Licinius Macer, *tr. pl.* 73, probably represented Pompey's ideas

Cicero had this comment to make in August of 70 about Pompey's first public speech after his election (*Verr.* 1. 45): "ipse denique Cn. Pompeius cum primum contionem ad urbem consul designatus habuit, ubi id quod maxime expectari videbatur ostendit se tribuniciam potestatem restitutum, factus est in eo strepitus et grata contionis admurmuratio." If Maurenbrecher was correct, one fragment from Sallust refers to this *contio* (*Hist.* 4. 44M: *magnam exorsus orationem*), and three fragments are from Sallust's version of the speech (4. 45–47M).⁹

In January Pompey, who as *maior consul* held the *fascēs*, introduced the matter for discussion in the senate.¹⁰ Cicero had a comment on this session (*Verr.* 1. 44): "neque enim ullam aliam ob causam populus Romanus tribuniciam potestatem tanto studio requisivit. quam cum poscebat, verbo illam poscere videbatur, re vera iudicia poscebat. neque hoc Q. Catulum hominem sapientissimum atque amplissimum fugit, qui Cn. Pompeio viro fortissimo et clarissimo de tribunicia potestate referente cum esset sententiam rogatus. . . ." Cicero here surely overestimates (for his own purposes in the prosecution) the popular interest in the two measures, for certainly in Rome venality in the courts was less a popular issue than restoration of the tribunician power. However, the attitude expressed by Q. Lutatius Catulus, *primus rogatus* in the senate¹¹ and a member of the *consilium iudicum* in the Verrine trial (cf. Cic. *Verr.* 2. 4. 69 et alibi), and here rehearsed by Cicero, was part of the attempt by the *optimates* to accede with as good grace as possible to reforms which were inevitable. By giving way on the tribunician issue it is quite possible that they forestalled the complete exclusion of senators from the *decuriae* of *iudices*.

Plutarch said that Crassus had greater influence in the senate and Pompey greater support from the people (*Pomp.* 22. 3), but there seems to be no doubt that Catulus and the senate approved the presentation of a *rogatio consularis* to the assembly. The circumstances surrounding this climax to the struggle by popular elements to restore the full rights and privileges to the *tribuni plebis* indicate clearly the primacy of Pompey in the final stages of the struggle. Crassus seems not to have acted overtly in opposition.

There are numerous casual references later to this crucial change in the Roman political scene. They are found in the works of Cicero, Asconius, Caesar, Sallust, and Livy. Each needs discussion. When Caesar wrote (*BC* 1. 7. 4), "Pompeium, qui amissa restituisse videatur bona," the situation early in 49 had been such that the omission of the name Crassus may not have been significant for either interpretation of the event in 70. The passage in Sallust (*Cat.* 38. 1: "nam postquam Cn. Pompeio et M. Crasso consulibus tribunicia potestas restituta est . . .") has been cited as a reference for the passage of the law by both consuls,¹² but here the two names are no more than the standard device for dating an event.

(cf. Sall. *Hist.* 3. 48. 3M), and that later the revival of the censorship was the cause of the break between the consular colleagues: "Caesar and the Roman Nobility," *TAPA* 73 (1942): 11 f. and n. 23.

9. Sir Ronald Syme, *Sallust* (Berkeley, 1964), p. 201, has some entertaining conjectures on the contents of this speech. Presumably M. Lollius Palicanus, *tr. pl.* 71, presided.

10. The passage of the law must have been early (cf. Cic. *Caec. Div.* 7 f.): Gelzer, "Das erste Consulat des Pompeius," p. 20 (= *Kl. Schr.*, 2: 164).

11. I assume that Catulus was *primus rogatus*, but not *princeps senatus*. I plan to discuss this problem fully in another context.

12. E.g., by Rotondi and Gelzer.

A key passage, often considered as authoritative, is in the *periocha* of the ninety-seventh book of Livy. On the face of it there is proof of action by both consuls:¹³ “. . . M. Crassus et Cn. Pompeius coss. facti (S.C. Pompeius, antequam quaesturam gereret, ex equite Romano) tribuniciam potestatem restituerunt” It is deceptive to cite this sentence for what Livy wrote. The reduction of a complete book to fourteen lines (Rossbach) would be no easy task even for a careful epitomator, and there is evidence of carelessness even in these few lines. L. Cotta is cited as M. Cotta, an error that was surely not in the original text of Livy.¹⁴ I would conjecture that Livy named the consuls for the year in the correct order, with the *maior consul* placed first. Then in his narrative he discussed (or quoted) the *senatus consultum* granting Pompey his extraordinary privilege. Indeed this item may have been noted quite early in the book, since events of 72–71 are included. The first notable action of 70 was the *lex de tribunicia potestate*. In compressing the narrative the epitomator covered three items in one sentence. First he reversed the names of the consuls so that the parenthetical item would clearly apply to Pompey. Either he misread Livy or the *facti* early in the sentence influenced the final verb. As a consequence I assume that Livy probably assigned the law to Pompey alone.

The decisive items are in Cicero and Asconius. The implication of the two passages quoted from *Actio prima in Verrem* is very strong that Pompey acted alone. Much later, in his dialogue *De legibus*, Cicero has his brother Quintus make this statement (3. 22): “. . . Pompeiumque nostrum ceteris rebus omnibus semper amplissimis summisque effero laudibus, de tribunicia potestate taceo. nec enim reprehendere libet, nec laudare possum.” Marcus in reply says (3. 26): “Pompeium vero quod una ista in re non ita valde probas” In neither case does Cicero even hint at participation by Crassus. Moreover, he characterizes Atticus, annalist and third interlocutor, as assenting to this view by his silence. This presentation in a reasoned and acute discussion of the *tribuni plebis* seems decisive, despite the lapse of time between the event and the date at which Cicero was writing this portion of the dialogue.

There would have been no question about the evidence of Cicero were it not for a fragment from his defense of the tribune C. Cornelius in 65. I quote the fragment with the enclosing comment of Asconius (p. 59. 26–33 Stangl):¹⁵

Plebem ex Maniliana offensione victam et domitam esse dicit:

“Aiunt vestros animos propter illius tr. pl. temeritatem posse adduci ut omnino a nomine illius potestatis abalienentur; qui restituerunt eam potestatem, alterum nihil unum posse contra multos, alterum longe abesse.”

Manifestum puto esse vobis M. Crassum et Cn. Pompeium significari: e quibus Crassus iudex tum sedebat in Cornelium, Pompeius in Asia bellum Mithridaticum gerebat.

13. The text of O. Rossbach (Leipzig, 1910). He emended *facti sicut* to *facti s.c.*, i.e., *senatus consulto*.

14. Rossbach cited Sigonius for emending *M* of the MSS to *L*, but printed *M*., thereby indicating that he attributed the error to the epitomator.

15. The text of Clark (p. 76. 3–12) is identical with that of Stangl except for a question mark after the fragment. Madvig's conjecture *aiunt* for *ante* is printed by both editors, but Clark has “*fort. putant*” in his apparatus. The fragment is VII. *Corn.* 1. 48 (Fr. Schoell, ed., *M. Tulli Ciceronis Scripta quae manserunt omnia*, vol. 8 [Leipzig, 1918], p. 418); also G. Puccioni, *Orationum deperditarum fragmenta* (Milan, 1963), p. 56.

The subject of *aiunt* could be the Cominii who prosecuted (Asconius pp. 48. 24–26, 49. 14 f., 50. 9–11St.) or the five *principes civitatis* who were hostile witnesses (p. 49. 18 f. St.): more probably the former. Instead of the indicative *restituerunt* Cicero could have used the subjunctive, but his usage gives the plural more force since it is subordinate in indirect discourse. Cicero clearly attributes the restoration to both consuls, but the assumption that it was a jointly proposed law is not inherent in the fragment. We hardly need the first ten words of Asconius' comment, but the latter part of his sentence clarifies the situation. Whatever the view of Crassus had been in 70, in 65, the year of this trial, he wanted popular backing for his abortive attempt to gain support against Pompey by his Egyptian adventure, which was blocked by Catulus, his optimate colleague in the censorship, and by Cicero with his speech *De rege Alexandrino*. Thus when Crassus appeared as a member of the jury in this trial he may well have been posing as *popularis*; and Cicero, who was somewhat shameless in flattering jurors when he spoke in court, perverted the truth of the situation. In fact Cicero had a difficult part to play in defending Cornelius—he had to avoid offending hostile witnesses, he had to please a jury which was divided in its loyalties, and he had to do all this in the very year in which his own consular canvass was his chief preoccupation.¹⁶ Thus his statement here is such that it cannot be used as evidence by the historian. Asconius, who in another comment cited Pompey alone (*In Corn.* p. 63. 4St.), was here misled by Cicero.¹⁷

None of the items from later historians can be used as independent evidence; for they simply follow the received version that Pompey acted alone.¹⁸ In view of the discussion presented here, this would seem to be the fact, and the law should be labeled *lex Pompeia*.¹⁹

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16. Cf. Q. Cicero *Comm. pet.* 5.

17. Ps.-Asconius once (p. 220. 13–14St.) named Pompey alone; and again (189. 8–9St.) named both consuls.

18. Vell. Pat. 2. 30. 4; Plut. *Pomp.* 22. 3; App. *BC* 2. 29; Cass. Dio 38. 30. 3.

19. I wish to thank Allen M. Ward of the University of Connecticut for valuable suggestions.

ARISTOPHANES *BIRDS* 268–93

At this point, immediately before the entrance of the Chorus proper, the advance party, consisting of flamingo (268), Mede (cock, 274), hoopoe (279), and “gobbler” (287), comes in. From what is said at 279 and 290 it is clear that the third and fourth of these birds “occupy crests,” with the joke on the double sense of *λόφος* (“crest” on a helmet and “hilltop”). And from 291 and 293 it seems a reasonable inference¹ that the first two do likewise. K. J. Dover² makes the suggestion that these “crests” are on the roof of the *skene*.

I find this suggestion confirmed by the evidence of lines 275–76: *νῆ Δι' ἕτερος δῆτα χοῦτος ἐξέδρον χώραν ἔχων. / τίς ποτ' ἔσθ' ὁ μουσόμεναις, ἀτοπος ὄρνις, ὀρειβάτης*; For *ἐξέδρον χώραν ἔχων*³ may refer not so much to the outlandish *origin* of the Mede (a

1. The audience, of course, will have comprehended the point with their eyes: without stage-directions or more explicit reference in the text we must rely on the scene pictured in our mind's eye.

2. *Aristophanic Comedy* (Berkeley, 1972), p. 145.

3. From the *Tyro* of Sophocles, where the reference is to augury.