THE EXTORTION LAW OF THE *TABULA BEMBINA*

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In a previous article, based on a rigorous study of the text on both sides, I hope to have shown that fragments A and B of the famous Tabula Bembina should be set *c.* 35 letter-spaces closer together than in Mommsen's edition, and that the estimated width of the tablet should be reduced correspondingly. This is likely to have disturbing consequences. In particular, it now seems fairly certain that four whole chapters of the extortion law—mainly concerning rewards to prosecutors—recur verbatim in the fragmentary republican law from Tarentum.[1] I would like to probe this matter further. Theoretically three possibilities would appear to be open. The two laws could be identical. The passage could have been transferred from one extortion law to another. Or, thirdly, it could have been adapted from the extortion law to a statute governing another *quaestio*. Schönbauer indeed argued that the Tarentine law was the Lex Apuleia de maiestate.[2] Against this one must set the strong arguments for identifying the Lex Bantina with Saturninus' treason law. Though there is some overlap, the Lex Tarentina and the Lex Bantina are clearly not parts of the same measure.[3]

The Lex Tarentina concerned peoples, states and *kings*—and surely no crime other than treason or extortion could have such wide relevance. Now the Lex Bembina explicitly provided for claims by client-kings, as well as by Italians, provincials and ' friends '.[4] It is doubtful, however, whether Saturninus' measure had as wide a scope as the treason law was later to acquire, and some have thought that it was basically concerned with domestic politics.[5] Both these considerations make it reasonable to regard the Lex Tarentina as an extortion law.[6]

But if it *is* an extortion law, its identity with the Lex Bembina cannot very easily be contested. The three shared chapters on prosecutors' rewards could be ' tralatician ', but the fourth hardly permits this explanation. The *praetor peregrinus* is instructed to implement the law forthwith.[7] In the Lex Bembina the peregrine praetor establishes the new jury-panel and continues to preside over the extortion law, if needed, for the year of transition. Mommsen thought that this was because the praetorian provinces had already been assigned when the law was passed; in the next year a specially created *praetor repetundis* would take over.[8] We know that this *provincia* existed in 95 B.C., when it was held by C. Claudius Pulcher, and such phrases in the Lex Bembina as *praetor quei ex h.l. quaeret* and *iudex quei ex h.l. factus erit* seem to support Mommsen's inference.[9] Bannier, however, contested this. He restored line 72/79 as ' sei is praetor quei ex h.l. quaeret sei[ve eiei peregrina] vel urbana provincia obvenerit . . . '. This, if correct, would exclude even the occasional appointment of a third praetor in Rome under the Lex Bembina.[10] But the quaestor must have been mentioned together with the praetor in this clause, since line 73/80 proves that

[1] See *JRS* XLIX (1969), 129–43 (especially 139 ff.). I use *CIL* I², 583 for the extortion law, but adjust the lacunae in accordance with my results. For Mommsen's commentary, see *Ges. Schr.* I, 1–64. For the Tarentine law see R. Bartoccini, *Epigraphica* IX (1947), 33 ff.; *AE* 1950, no. 80; Degrassi, *Imagines* . . . , no. 386 a–b. My present paper—like its predecessor—owes a great deal to searching criticisms by the editor's readers, which have improved its presentation.

[2] *Iura* (*Riv. Int. di Dir. Rom. e Ant.*) VII (1956), 113–17.

[3] See H. Stuart-Jones, *JRS* XVI (1926), 171; H. M. Last, *CAH* IX (1932), 160 f.; M. Gelzer, *Hermes* LXIII (1935), 124. Lex Tarentina, lines 19 ff. closely match lines 19 ff. of the Lex Bantina (*CIL* I², 582), but the contexts are quite different.

[4] Compare Lex Tar., 16 (' . . .]io populo ceivitate regnove tota scripta apud forum siet et . . . ') with Lex Bemb., 60 (' regis populeive ceivisve suei nomine litem aestumatem esse sibei ') and 63 (' quoius regis populeive nomine lis aestumata erit legati adessint ').

[5] See R. A. Bauman, *The Crime of Treason in the Roman Republic* . . . (1968), 37, 44–55 and 59 for a good discussion of the view that the lex Apuleia was principally concerned with the tribunate.

[6] As many scholars believe. For Caepio as its author, see G. Tibiletti, *Athenaeum* N.S. XXXI (1953), 73–5. For Glaucia, see Bartoccini, o.c. (n. 1), 28 f.; A. Piganiol, *CRAI* 1951, 62 f.; G. Luzzatto, *Archiv. stor. pugl.* IV (1951), 29 ff.

[7] See my argument and combined text in *JRS* 1969, 141 f. The crucial clause reads ' [. . . . praetor quei inter pe]regrinos ious deicat is facito utei socium nominisque Latini omnium . . . . .'

[8] See *Ges. Schr.* I, 51 f. (on lines 12 and 15 f.); *StR* II³, 200, n. 1; *Strafrecht* 205, n. 4.

[9] For Pulcher see *CIL* I², 2, p. 200 with Cic., *II in Verr.* 2, 49, 122. For the *iudex* phrase, see lines 19, 60 and 62, and the good discussion by W. Eder in *Das vorsullanische Repetundenverfahren* (1969), 176 f., n. 2 and 212 f., n. 1.

[10] See *Philologus* LXXXIII (1928), 444 f.

the chapter concerned them both.[11] So Mommsen's restoration stands, and we must surely continue to read ' sei is praetor quei ex h.l. quaeret sei[ve is quaestor quoi aerarium] vel urbana provincia obvenerit . . . '. It is true that we cannot be quite sure that the senate was not given discretion by the Lex Bembina either to allot a special *provincia* or to assign the extortion court to the peregrine praetor in any particular year; the phrases used could cover both contingencies. Yet I can see no real objection to believing Mommsen's thesis, which has won wide support. After all, Sulla found it necessary to create praetorian *provinciae* for the treason, embezzlement and *ambitus* courts—as well as for extortion.[12] If this view is right, the *praetor repetundis* should be found implementing any extortion law subsequent to the Lex Bembina—and a ' tralatician ' clause ought to have been suitably adapted. But in the Lex Tarentina we still find the peregrine praetor at work. The two laws would appear, then, to be the same.[13]

But can this really be so ? The Tarentine law is variously dated between 106 and 100 B.C., while the Lex Bembina is now almost universally ascribed to the time of C. Gracchus.[14] I do not think that the consensus over the Lex Tarentina can be challenged. It will not fit the Gracchan context comfortably. Its elaborate oath-clause closely parallels those known from the Lex Bantina, the Pirate Law and Saturninus' controversial agrarian legislation in 100 B.C.[15] Indeed, a recently published fragment of the Lex Bantina now virtually clinches the question. It comprises the end of one of the text's two Latin columns. Despite the doubts of its first editor, I think that it must be the second column, since the text preserves part of a final formula. The last two lines can be read as follows:

ịous siet rogare ex hace lege n
ṃagis in hance legem in eo magistratu e

The first is obviously part of the normal *sanctio* attested by Probus—' s(ei) s(acrosanctum) e(st) q(uod) n(on) i(us) s(it) r(ogare) e(x) h(ac) l(ege) n(ihilum) r(ogato).' We find it at the very end of the consular law for Delos in 58 B.C.[16]

Similarly it rounds off the text of the Lex Tarentina. Some scholars, it is true, believe that the text continued beyond the *sanctio* on to a fourth tablet, persuaded by the two words *tr.pl.* which follow it at the end of the last preserved line; and the new Bantine fragment shows that the *sanctio* was not necessarily the final clause. But we need assume only that the Tarentine text continued for half a line below what is preserved on the fragmented third tablet.[17] In the Bantine law we can see that the ' codicil ' after the *sanctio* was very short. The general drift is clear: ' [. . . quo] ṃagis in hance legem in eo magistratu e[x h.l. iouret ex h.l. nihilum rogato] '. Which magistrate does this concern ? The tribune, as is well known, was not bound by any law of his own board; thus, in the Pirate Law, the serving tribunes are explicitly excluded from the oath.[18] For this reason, it is almost certain that *tr.pl.* should be removed from the list of serving magistrates in the relevant oath clause of the Lex Bantina; Mommsen's restoration was wrong.[19] But the Lex Bantina in addition—unlike the Pirate Law and the Lex Tarentina—went on to impose the oath on all senators. Some serving tribunes could well have been senators admitted at the last *lectio*. Their position must have needed defining. They were not to

[11] ' . . . deque ea re eiei praetori quaestorique omnium rerum . . . siremps lex esto . . .'

[12] The lacuna in line 15 f.—on the praetor responsible after ' this year '—is most unfortunate. For the point about Sulla, see also Eder, o.c. (n. 9), 174 f., n. 2; Mommsen, *StR*[3] II, 199 f.

[13] In 95 B.C., indeed, Pulcher was instructed by the senate to draw up regulations for Sicilian Halaesa (Cic., *II in Verr.* II, 49, 122)—a task which one might have expected to be left to the peregrine praetor.

[14] For the bibliography on the Lex Tarentina see my n. 6 and Schönbauer, o.c. (n. 2), 93–104. C. Nicolet (*L'ordre équestre . . .*, (1966), 515, n. 52 and 557 f.) identifies it with the lex Acilia, which he puts vaguely *c.* 122–106 B.C. For the bibliography on the Lex Bembina, see Eder, o.c. (n. 9), 120–24.

[15] Compare Lex Tar., 20 ff.; *CIL* I[2], 582, 19 ff.; *SEG* III, 378 (*FIRA* I, no. 9), C 8–19; Appian *BC* I, 29, 130 ff.

[16] See D. Adamesteanu and M. Torelli, *Arch. Class.* XXI (1969), 1–17. For Torelli's alternative placings of the fragment, see p. 12, fig. 2 and pp. 2 and 13. For the *sanctio*, see Probus, *de litt. sing.* 3, 14; *CIL* I[2], 2, 2500, l. 36. The new fragment differs a little from the MSS readings in Probus. For *rogato* rather than *rogatur*, see Mommsen, *Ges. Schr.* I, 62. For *e(x)*, not *e(ius)*, see also *CIL* I[2], 585, 13.

[17] Against Tibiletti (o.c. (in n. 6), 39 and 55 f.) and Schönbauer (o.c. (in n. 2), 109), I wrongly argued that *tr. pl.* was merely ' a kind of signature ' (*JRS* XLIX (1969), 139, n. 67). Less than half the lines (the right-hand side) is preserved on the tablet.

[18] See *SEG* III, 378 (*FIRA* I, no. 9), C 11 f.; Cic., *ad Att.* III, 23, 4.

[19] See E. J. Yarnold, *AJPh* LXXVIII (1957), 165 f., n. 7 (on *CIL* I[2], 582, 14).

swear to the law as senators while they were tribunes, but must have been required to take the oath as soon as they left office.[20] Now the two words that open the Tarentine ' codicil ' —*tr.pl.*—suffice to prove that it too concerned the tribunes; but that is all that we can hope to know at present. In any case, the new evidence links the Lex Bantina and the Lex Tarentina even closer than before. They must be contemporary.

But can the Lex Bembina also be given a late second-century date? The possibility will have at least to be seriously considered, if the argument so far has any force. The case for the Gracchan dating is, of course, cumulative and imposing, and I shall face it squarely later. But there are a few pointers in another direction which are worth noting first.

I. THE LEX BEMBINA AND THE LEX CASSIA OF 104 B.C.

Lines 11 and 13 of the Lex Bembina exclude from service as jurors or advocates a man condemned in a public trial. The crucial phrase runs: ' [queive] quaestione ioudicioque puplico condemnatus siet quod circa eum in senatum legei non liceat '.[21] Compare with this Asconius' note on Cicero's words *alteram Cassiam quae populi iudicia firmavit* (*in Cornelian.* 78 C): ' L. Cassius L.f. Longinus tribunus plebis C.Mario C.Flavio coss. plures leges ad minuendam nobilitatis potentiam tulit, in quibus hanc etiam ut quem populus damnasset cuive imperium abrogasset in senatu ne esset.' As C. Nicolet has recently noted, there is an almost exact verbal correspondence—' le parallelisme des formules est frappante '. He went on to stress that the attitude towards senatorial offenders had once been more lenient: ' il fut un temps où ni un *iudicium publicum* infamant ni même l'abrogation de l'*imperium* n'avaient pour résultat automatique l'exclusion du Sénat: c'est . . . la *lex Cassia* de 104 av. J-C. qui prévoyait que " celui que le peuple avait condamné et dont on aurait abrogé l'*imperium*, ne serait plus dans le Sénat " '. Nicolet still holds firmly to 123 B.C. for the Lex Bembina, though the uninstructed reader might assume from this passage that it should be put no earlier than 104 B.C.[22] Another scholar, Mrs. M. I. Henderson, also responded instinctively to this verbal echo. Indeed, if I understand her rightly, it led her into a curious slip of memory. She claimed that ' Lex Acilia, l. 13, should be restored: " quei quaestione *ioudiciove populi* condemnatus siet, quod circa eum in senatum legei non liceat," with reference to the Lex Cassia of 137 (not *ioudicio puplico*).' Accepting 122 B.C. as the date of the Lex Bembina, she evidently forgot that it was the lex Cassia of 105/4 B.C.—not the lex Cassia tabellaria—*quae populi iudicia firmavit*.[23]

There is no independent reason for thinking that L. Cassius Longinus in 104 B.C. was simply strengthening the law, with an extension to those whose *imperium* was abrogated. At least one senator after 122 B.C. seems to have retained his rank after condemnation for extortion. C. Cato was found guilty on return from Macedonia in 113 B.C., but apparently survived as a *consularis* to play a part in the ensuing negotiations or war with Jugurtha. He went into exile only after condemnation by the Mamilian commission in 109 B.C. Scholars have made ingenious attempts to reconcile the evidence with the accepted date of the Lex Bembina, but no solution completely satisfies. A nagging doubt remains.[24]

II. THE *PRAETOR REPETUNDIS* AND THE *EDITICII IUDICES*

We have seen that Mommsen was probably right in deducing that the *praetor repetundis* was established by the Lex Bembina. The *provincia* certainly existed in 95 B.C., and can be traced back at least five years, since we are told that ' all ' the praetors except Glaucia

[20] Torelli has been able to improve the reading of part of the senatorial oath in *CIL* I², 582, l. 25 (*neque seese quo minus sei*). He now proposes (o.c. 9) to restore ' neque seese [intercessurum] quo minus set[iusve hace lege fiat] ', as in Lex Tarentina, 20. We must certainly allow for an extra word here, but it should surely be *gesturum* (see line 2, *senatorve fecerit gesseritve*).

[21] Despite Tibiletti's doubts (o.c. (in n. 6), 28 f.) the clause in lines 11 and 13 must be identical: I give the combined text.

[22] o.c. (in n. 14), 508 f. and 490 f.

[23] *JRS* XLI (1951), 73, n. 17 and 84 f.

[24] Asconius made enmity to Q. Caepio (whose imperium was abrogated) Longinus' main motive; but Cicero, in passing straight from the *lex Cassia tabellaria* of 137 to the *lex Cassia* of 104 B.C., implies that there was no intervening statute. For C. Cato, see Strachan-Davidson, *Problems of the Roman Criminal Law* (1912), II, 13 f.; M. I. Henderson, o.c. 73 and 85; A. N. Sherwin-White, *JRS* XLII (1952), 44 f. and *PBSR* XVII (1949), 7.

answered the consuls' call to arms.[25] Good evidence fails us before this point. We know only that Q. Fabius Maximus Eburnus presided as praetor over the *quaestio* that condemned C. Carbo in 119 B.C. It is often said that the charge was *maiestas*, but it seems altogether more likely that the trial was formally for extortion—with other irrelevant, but prejudicial matter dragged in as was the rule. The prosecutor chose to present Carbo to the jury as an unrepentant radical who could not be trusted. At this date the only permanent *quaestio* was the extortion court, and though a special *quaestio* may have been set up to try Carbo—as was done for Tubulus in 141 or the Vestals in 113 B.C.—one would rather expect a *iudex* or *quaesitor* to preside over it.[26] Now Cicero's evidence suggests that Eburnus was *not* operating under the stringent regulations of the Lex Bembina. In *de Oratore* I, 26, 121, Cicero makes Crassus recall Eburnus' extremely cooperative attitude to himself as prosecutor: 'adulescentulus vero sic initio accusationis exanimatus sum, ut hoc summum beneficium Q.Maximo debuerim, quod continuo consilium dimiserit, simul ac me fractum ac debilitatum metu viderit.' Now the Lex Bembina (lines 70 ff.) guards most carefully against any outside interference with the smooth course of a process once it is started. No other official, it seems, was to summon the praetor, the parties, the advocates or any juryman from the court or prevent him from attendance. Nor could anyone order the court to be dismissed unless for a legitimate senatorial session or legislative assembly: 'neive iudicium dimitere iubeto, nisei quom senatu[s ioure vocabitur . . . *c.* 160 . . . aut nisei quom centuriae aut] tribus intro vocabuntur, extra quam sei quid in saturam feretur.'[27] In view of this, it seems unlikely that the man who drafted the Lex Bembina meant to leave the presiding praetor the degree of procedural freedom that Eburnus enjoyed. What could be more against the *spirit* of the whole law than to dismiss the court as a sympathetic gesture to a young prosecutor who had only just opened proceedings on the first day? The argument is necessarily subjective, but it should not on that account be too lightly dismissed. This is perhaps another pointer to a later date for the Lex Bembina than that normally accepted.

Under the Lex Bembina, the praetor had to draw up a panel of 450 *iudices*. From these the prosecutor in a particular case had to select and publish a list of 100 jurors: the accused would then reduce the list to 50 and these were to form the actual trial jury.[28] Now there is a passage in Cicero's *pro Plancio* (17, 41) which, on close inspection, proves very relevant: 'an vero nuper clarissimi cives nomen editicii iudicis non tulerunt, cum ex CXXV iudicibus principibus equestris ordinis V et LXX reus reiceret, L referret, omniaque potius permiscuerunt quam ei legi condicionique parerent: nos neque ex delectis iudicibus, sed ex omni populo, neque editos ad reiciendum, sed ab accusatore constitutos iudices ita feremus ut neminem reiciamus?' The allusion is surely to the time when the knights still ruled the courts—which takes us back a generation from Plancius' trial.[29] The meaning of *nuper* in Cicero always depends very much on the context and it can be a very relative term. For instance, Cicero uses it in 70 B.C. with reference to an episode over thirty years earlier.[30]

[25] See *CIL* I², 1, p. 200 with Cic., *II in Verr.* II, 49, 122; Cic., *pro Rab. Perd.*, 7, 20 and 21 (*omnes praetores*).

[26] Eburnus was *cos.* 116 B.C. and so presumably praetor at the trial (Broughton, *Magistrates . . .* I, 526). For the charge, see Broughton, l.c. (*maiestas* or *repetundae*); Münzer, *RE* VI, col. 1797 and XVIII, col. 1020 (favouring *maiestas*): Fraccaro, *Studi stor.* V (1912), 445 ff. (*repetundae*). None of the counts in Cic., *de Orat.* II, 40, 170 can have been part of the actual charge: they simply 'proved' that Carbo was not a *bonus civis*. The consul Cn. Caepio was to have presided over the trial of Tubulus (Cic., *ad Att.*, XII, 5, 3; *de fin.* II, 16, 54). For the Vestals, see Ascon., *in Milon.* 45 C (a *quaesitor*?) and compare the *tres quaesitores* of the Mamilian bill (Sall., *Jug.* 40). For a *iudex quaestionis de veneficiis c.* 98 B.C., see *CIL* I², 2, p. 200.

[27] Strachan-Davidson incidentally (o.c. (in n. 24), I, 151) thought that the final exception was clumsy and liable to make 'tacking' easier: respectable citizens would be stopped from voting against it. But surely the assumption is that such an assembly would be illegal anyway. See Mommsen, *Ges. Schr.* I, 59. We should note also that both witnesses and jurors were under strong pressure to attend the court (including fines): see Lex Bembina, 32 ff. with 39 and 45 f.

[28] The accused had first to provide a full list of all his connections on the panel (line 20)—but if he failed to do so or would not pick his 50, this would be done for him (line 25 f.). For a good discussion of lines 20–6, see Eder, o.c. (in n. 9) 184 f., n. 2.

[29] See Geib, *Römischer Criminalprocess* (1843), 314; Strachan-Davidson, o.c. (in n. 24) 103–8. The latter compared (p. 107) *nomen editicii iudicis non tulerunt* etc. with Cicero's remark in *pro Rosc. Amer.* 48, 140 that the nobility whom Sulla restored *equestrem splendorem pati non potuerunt*. The parallel is striking.

[30] The prosecution of Silanus in 104 B.C.: see Cic., *Div. in Caecilium*, 20, 67 with Ascon., *in Cornelian.* 80 C. Strachan-Davidson was cautious about *nuper*, but gave full weight to the fact that the *editicii iudices* were equestrian: this, in his view, ruled out Mommsen's theory that the system alluded to was that proposed by Servius Sulpicius Rufus in 63 B.C. (Cic., *pro Murena*, 23, 47). See Mommsen, *De Collegiis* 63.

What does *omnia permiscuerunt* mean in the pre-Sullan context? We must first note what Cicero says, commenting on Q. Caepio's arraignment of Scaurus under Glaucia's law. After Rutilius Rufus's condemnation, even the most innocent were afraid of the use which the *equites* might make of their judicial power.[31] Asconius adds that Scaurus characteristically took the offensive, and sponsored reform of the courts.[32] In *Brutus*, 30, 115 Cicero goes further and makes Rutilius' trial the cause of a major upheaval in the state: 'cum innocentissimus in iudicium vocatus esset, quo iudicio convulsam penitus scimus esse rempublicam...'. Clearly the turmoil of Drusus's tribunate and the war that followed its failure were in his mind. *Omnia permiscuerunt* is wholly appropriate. Indeed, in the *Epitome* of Livy LXX there is a sentence that reads almost as a paraphrase of the *pro Plancio* passage: 'senatus cum impotentiam equestris ordinis in iudiciis ferre nollet omni vi niti coepit ut ad se iudicia transferret...'. It would seem then that the objectionable system of *editicii iudices* was that current under Glaucia's law. Was it the same system as we find in the Lex Bembina? This is what Geib suggested a long time ago. Cicero, he thought, had made a pardonable mistake in giving a total of 125 for the prosecutor's list, instead of the 100 vouched for by the epigraphic text. Strachan-Davidson preferred to argue that the Servilian law modified the Acilian by extending the defendant's range of rejection.[33] I find it very hard not to believe that Cicero and the Lex Bembina present us with one and the same system, by which a jury of 50 was reached by successive *editio* and *reiectio*. We would not expect Glaucia to be milder to the defendant than his predecessor.[34] I doubt, though, whether we should explain away the discrepancy by blaming Cicero's faulty memory. It is after all permissible to consider an MSS error; numbers are notoriously prone to corruption. Here we need postulate only that the first *quinquaginta* gradually evolved into *quinque et septuaginta*. This error would then lead to the 'correction' of *centum* to *centum viginti quinque*. Strachan-Davidson's instinct was surely sound when, against his own theory, he wrote a little earlier: 'When the accused has 100 names submitted to him, out of which the jury has to be found, it is a mere matter of expression whether we say with the *lex Acilia* (verse 24) that he chooses 50 out of the 100 to go into the box ('de eis iudices quos volet L legat') or with Cicero (*pro Plancio*, 17, 41) that he challenges 50 and leaves 50 behind.'[35] The clause in Glaucia's law may, of course, have been 'tralatician' and taken over verbatim from the Gracchan legislation.

So far, then, I have at most found a few pointers that suggest that the Lex Bembina may have been dated too early in the accepted view. Now it is worth noting that scholarly opinion on its dating has fluctuated. Until the 1840's it was generally regarded as the Lex Servilia Glauciae, and was so entitled in Klenze's commentary in 1825.[36] Then Zumpt and Mommsen claimed it for C. Gracchus, and, in the last 120 years, only Carcopino has seriously proposed a return to the old discredited attribution.[37] There were, unluckily, bad flaws and omissions in his case, and it was thus not too difficult for scholars like Gelzer, Last and Balsdon to refute him. Since this vigorous counter-attack, Mommsen's view has been even more decisively dominant than ever.[38] It is now time to examine rigorously the four main arguments for the Gracchan date.

[31] *Pro Scauro* in Ascon. 21 C: '... cum iudicia penes equestrem ordinem essent et P. Rutilio damnato nemo tam innocens videretur ut non timeret illa.'

[32] 'Scaurus tanta fuit continentia animi et magnitudine ut ... M. quoque Drusum tribunum plebis cohortatus sit ut iudicia commutaret.'

[33] Geib, l.c. (in n. 29); Strachan-Davidson, o.c. (in n. 24), 106 with n. 1.

[34] Note Cic., *II in Verr.* 1, 9, 26, where the lex Acilia is termed *mollior* (to the defendant) than Glaucia's, and characterized as *mitissima*.

[35] o.c. in n. 24, 98, n. 2. He was arguing against Mommsen's denial (*De Collegiis*, 63, nn. 11 f.) that the jurors of Lex Bembina 21–6 could properly be called *editicii*.

[36] *Fragmenta legis Serviliae repetundarum*. Agostino and Orsini, however, rejected this view already in the sixteenth century: see Mommsen, *Ges. Schr.* 1, 22.

[37] C. T. Zumpt, *Berl. Akad. phil.-hist. Abh.* 1845, 1–70 and 475–515; Mommsen, *Zeitschr. für Altertumswiss*, 1843, 824, n. 26 (= *Ges. Schr.* III, 350, n. 26); Carcopino, *Autour des Gracques* (1928), 205–35.

[38] Gelzer, *Gnomon* V (1929), 653; Last, *CAH* IX (1932), 890 ff.; Fraccaro, *Athenaeum* N.S. IX (1931), 316 ff.; Balsdon, *PBSR* XIV (1938), 108–14. Carcopino has had a few followers, but the weight of opinion against him can be gauged from Eder, o.c. (n. 9), 122 f., n. 1.

III. *AMPLIATIO* AND *COMPERENDINATIO*

In *II in Verrem* 1, 9, 26, Cicero declares: ' verum, ut opinor, Glaucia primus tulit ut comperendinaretur reus; antea vel iudicari primo poterat vel amplius pronuntiari '. *Comperendinatio* under the Sullan system meant the obligatory division of a trial into two distinct parts, separated by an adjournment; the verdict was given at the close of the second *actio*. In some form this system went back to Glaucia.[39] Now the procedure of *ampliatio* is regulated in Lex Bembina 46–8, and all discussion must start from this key passage. The crux lies in the words of the statute, *amplius bis*. Does this mean ' more than twice ', or should we read it as ' *amplius* ' *bis*, following Carcopino ?[40] In the context it seems hard to deny *amplius* its technical sense; and for ' *amplius* ' *bis* we may surely compare *bis ampliatus* in Livy, and in Valerius Maximus *septies ampliata*. The grammarian Charisius glosses ' *amplius* ' *dicere* or *ampliare* as *negotium differre*; it amounted to a verdict of *non liquet*.[41] This was the phrase that Mommsen chose to restore in line 47: ' [. . . iudex . . . sei rem . . . plus tertiae parti iudicum, quei aderunt, quom ea res aget]ur, [non lique]re deixerit, praetor quei ex h.l. quaeret ita pronon[tiato et . . .] '. I would prefer a modified version: ' [. . . iudex . . . sei plus tertiam partem iudicum, quei aderunt, quom ea res aget]ur, [" amplius " deice]re deixerit, praetor quei ex h.l. quaeret ita pronon[tiato et . . .] '.[42]

I believe with Carcopino that the law freely admitted a single adjournment, if more than a third of the jury were undecided. But at the second session the jury was under strong pressure. They were expected to reach a verdict and any who still refused would be automatically fined 10,000 HS and apparently exposed to the force of public opinion, having their names posted. Voting could normally proceed without the obstinate members. So much can be made out of the tantalizing remains in lines 47–9, for which I propose some new supplements: ' [. . . eoque die eorum iudicu]m quei quomque aderunt iudicare i[ubeto . . . *c.* 140 . . . ad quem praetorem iterum relatum erit iudices negare iu]dicare is HS n. ccIↃↃ quotiens quomque ' amplius ' bis in uno iu[dicio quis iudex deixerit multam deicito . . . *c.* 47 . . . tu]m quam ob rem et quantum pequ[niae deixerit publice proscribito . . . *c.* 184 . . . De] reis quomodo iudicetur ∞ ubei duae partes iudicum quei ader[unt causam sibi liquere deixerint, tum praetor quei ex h.l. quaeret facito utei eis iudice]s, quei iudicare negarint, semovant[ur . . . *c.* 210 . . .] rem agito.'[43]

Can this system be regarded as *comperendinatio* in embryo, as Carcopino claimed ? Balsdon forcefully denied it. ' There is clearly a *formal* difference,' he wrote, ' between a compulsory division of a hearing into two parts (*comperendinatio*) and, on the other hand, mere adjournments which are permitted, but, beyond a certain point, penalized, their number being restricted, not by law, but by the scruples of jurors, or their uncertainty whether the defendant's agents will continue to reimburse them the amount of their fines.'[44] But is the difference really appreciable in practice ? It seems unlikely that more than a third of the jury would readily submit at the second hearing to be harshly penalized in order to stave off a man's condemnation. On the other hand, a trial might theoretically still end after a single hearing, though there would be reluctance either to condemn straight away (in view of the stiffer penalties) or to seem in too much of a hurry to acquit.[45] Thus double

[39] See Balsdon, o.c. (n. 38), 108.

[40] o.c. (n. 37), 216 f., with n. 1 on 217. Mommsen first split the words (*CIL* I (1st. edn.), 198) but was persuaded by Rudorff to take them together and change his supplements (*Ges. Schr.* I, 57).

[41] Livy XLIII, 2, 6; Val. Max. VIII, 1, 11 (L. Cotta); Charisius, *Gramm. Lat.* I, 195. Balsdon terms Carcopino's restoration ' equally plausible ', but leans towards Mommsen's (p. 108 f.)—which most scholars adopt without question. The latest are Nicolet (o.c. in n. 14, 489) and Eder (o.c. in n. 9, 203).

[42] Between a 43 extr. ([? *aget*]*ur*) and e 3 (*er deixerit*) we cannot tell exactly how many letters are missing, since both fragments are lost. A possible alternative is [*amplia*]*re*. Carcopino follows Mommsen closer, but would read *ita pronon*[*tiato* ' amplius ']. See l.c. in n. 40. I prefer here the text in *Ges. Schr.* i.

[43] I think that we must reject Mommsen's restoration ' [. . . ad quem praetorem ita relatum erit iudicum plus tertiam partem negare iu]dicare . . . '. It depends absolutely on his view of *amplius bis*. At the second session the individual juror was already liable to be fined for persisting in *non liquet*. My supplement between *ader*[*unt*] and [*iudice*]*s* precisely fills the lacuna after adjustment according to *JRS* 1969, 132 f. (Mommsen's 111–*c.* 35).

[44] o.c. (n. 38), 109. I suspect that the legislator intended to imply by the very imposition of the fine that persistence in *non liquet* was due to bribery or ' influence '.

[45] Judgement could proceed as soon as two-thirds of the jurors present agreed to vote (lines 46–9). But see *ad Herenn.* IV for the view that to condemn at the first hearing was to be *crudelis*.

actions could well have evolved as a result of these regulations. With Sulla it became the firm rule. Carcopino put the matter well: 'Aux termes de ces dispositions, la double action n'est encore qu'une tolérance. Elle deviendra plus tard, grace à Sulla, une habitude impérative et la règle même . . . L'essence de la *comperendinatio* se réduit donc toujours au prononcé d'une *ampliatio*. Or c'est précisément cette *ampliatio* unique dont la texte de la *lex repetundarum* sanctione la droit.'[46]

The Lex Bembina system does not really match what Cicero tells us of procedural law before Glaucia (*II in Verrem*, II, 9, 26): 'antea vel iudicari primo poterat vel amplius pronuntiari. utram putas legem molliorem? opinor, illam veterem, qua vel cito absolvi vel tarde condemnari licebat. ego tibi illam Aciliam legem restituo . . . puta te non hac tam atroci, sed illa lege mitissima causam dicere.' Cicero's *tarde condemnari* suggests that before Glaucia the course of justice could be considerably delayed and the guilty given a long run for their money.[47] In practice free use of *ampliatio* could do more than merely stave off condemnation. A Spanish governor was acquitted in 171 B.C. after two adjournments, and the notorious trial of L. Cotta ended with his going free at the eighth session. Acilius may possibly have legislated against such extreme abuse of *ampliatio*, though it would appear that he could safely rely on the scruples and *severitas* of the new equestrian jurors. In any event we would not guess from Cicero that he imposed such stern sanctions as we find in the Lex Bembina.[48]

IV. THE EXTORTION LAWS BEFORE GLAUCIA

Scholars argue that the Lex Bembina cannot be the law of Glaucia, since neither the Gracchan measure nor the Lex Servilia Caepionis is listed among its forerunners. In two passages (lines 23 and 74/81) only the Lex Calpurnia and the Lex Iunia are cited.[49] It is easy to see why Caepio's law should be omitted. All our evidence indicates that it was a *lex iudiciaria*, concerned solely with the composition of juries and court-procedure for public *quaestiones*, permanent and extraordinary alike. In this it was comparable with the lex Aurelia of 70 B.C. Badian has made this crucial point excellently.[50] C. Gracchus's law is also described as a *lex iudiciaria* in our sources, and Mommsen accordingly distinguished between a *lex Sempronia iudiciaria* and a *lex Acilia repetundarum* (the Bembine law), passed by one of Gaius's colleagues. Most scholars at least accept Mommsen's view of the Lex Acilia, though Tibiletti tried to separate it from C. Gracchus—dating it *c.* 111 B.C.—and called the Bembine law the *lex Sempronia repetundarum*. Badian effectively demolished this dating of the Lex Acilia; but it still has some followers.[51]

I must clearly first deal with our scanty evidence for the Lex Acilia. We should not even know its name had not Cicero twice found it expedient to flatter the president of the court trying Verres. In one passage (*I in Verr.* 17, 51) he exhorts M'. Glabrio to follow his family tradition and prove that the Sullan system could also provide severe courts of justice: 'fac tibi paternae legis Aciliae veniat in mentem, qua lege populus Romanus de pecuniis repetundis optimis iudiciis severissimisque iudicibus usus est.' In the other, as we have just seen, Cicero offers rhetorically to restore to Verres the laxer court proceedings under the Lex Acilia. But those jurors, he reminds him, still condemned many at the first hearing: 'multi semel accusati, semel dicta causa, semel auditis testibus condemnati sunt, nequaquam tam manifestis neque tantis criminibus quantis tu convinceris.' The law

[46] o.c. (n. 37), 217. Balsdon (o.c. 108–13) very acutely demolished Carcopino's view that the Lex Acilia barred adjournments—so that Glaucia's law which permitted a single unpenalized *ampliatio*, could *alone* be identified with the Lex Bembina. Carcopino, unwisely, had put too much trust in the scholiast on *II in Verr.* I, 9, 26.

[47] Balsdon uses the very same phrase in discussing the passage (p. 112). *Tarde . . . licebat* implies to me a freer system than one imposing heavy fines after the first *ampliatio*.

[48] See Livy XLIII, 2, 6; Val. Max. VIII, 1, 11 (L. Cotta); Appian, *BC* I, 22, 92 (Cotta's trial was one of the scandals that impelled C. Gracchus to action).

[49] I cite as typical Tibiletti o.c. (n. 6), 19, n. 3; Sherwin-White *PBSR* XVII (1949), 6, n. 9; Balsdon, o.c. (n. 38), 111 f. Only Tibiletti, in fact, brings in Caepio's law.

[50] For the sources see Greenidge and Clay, *Sources for Roman History*[2], 78; and for Badian's discussion, see *Historia* XI (1962), 208.

[51] See Mommsen, *Ges. Schr.* I, 21 f.; Tibiletti, o.c. (n. 6), 35, 52 f. and 75; Badian, *AJPh.* LXXV (1954), 378–84; F. Serrao, *Studi in onore di P. de Francisci*, II (1956), 497 f., and Nicolet, o.c. (n. 14), 515, n. 52 (both follow Tibiletti); Greenidge and Clay[2], 34 f. (sources).

itself may have been *mitissima* at this point, but the jurors proved their *severitas* by refusing to take advantage of the proferred delays. Cicero is here glossing the general praise of the first passage.[52] I wonder whether that proves that the Lex Acilia *was* an extortion measure, as is always assumed. Two other passages of Cicero open the way to a different interpretation.

In his *pro Cornelio* (Asconius 79 C) Cicero had occasion to refer to a certain Lex Plotia: ' memoria teneo, cum primum senatores cum equitibus Romanis lege Plotia iudicarent, hominem dis et nobilitati perinvisum Cn.Pompeium (*sic*) causam lege Varia de maiestate dixisse.' There are grave objections to believing that the accused was Strabo, Pompey's father, and Badian has made out a very good case for emending *Cn. Pompeium* to *Cn. Pomponium*, a troublesome tribune of 90 B.C. who perished later in the Sullan victory.[53] Asconius notes that Silvanus passed his law *adiuvantibus nobilibus*. It breached the equestrian dominance of the courts in the second year of the Social War. In the first year all trials except those under the Lex Varia were suspended, and Q. Varius and Cn. Pomponius—' whose home was the *rostra* '—seem to have harried the nobles together.[54] In the second year the nobles had their revenge, when Q. Varius was found guilty under his own law and retired into exile. Badian argues cogently that this was inconceivable unless the juries had already been changed by the Plotian law. Cn. Pomponius could also be put on trial now with some prospects of success, though it is clear that he managed to escape condemnation and survived till Sulla's return.[55] Cicero evidently thought that the Lex Plotia brought a real improvement in the standard of justice. We could imagine him declaring ' lege Plotia populus Romanus de maiestate optimis iudiciis severissimisque iudicibus usus est.' And this would have been quite consistent with the fact that the Lex Plotia was a *lex iudiciaria*.

The second revealing Ciceronian passage is *I in Verrem* 15, 45. Cicero recalls the wild enthusiasm and applause that greeted Pompey's frank expression of his views on the extortion court: ' cum dixisset populatas vexatasque esse provincias: iudicia autem turpia et flagitiosa fieri: ei rei se providere et consulere velle.' There was an implied promise here. Cicero could have gone on to frame it in such terms as these: ' fore ut nova lege populus Romanus de pecuniis repetundis optimis iudiciis severissimisque iudicibus uteretur.' The promise was, significantly, fulfilled by the *lex Aurelia iudiciaria*.[56]

What Cicero says of the Lex Acilia, then, is consistent with its having been a *lex iudiciaria*, a statute that changed the composition of the juries and more generally regulated court-proceedings. To this extent, like the Lex Plotia, it would have derogated from the statute governing a particular *quaestio*. It is true that most historians disagree with Mommsen, and prefer Fraccaro's view that a general jury-law is inconceivable in the time of C. Gracchus. But is this quite certain ? Even if there was then only one permanent *quaestio*, Gaius may well have envisaged the gradual addition of others or the creation of extraordinary courts, as in the past, by tribunician action.[57] The Gracchan jury-panel seems in fact to have been used for the Mamilian commission in 109 B.C., perhaps also for the trial of the Vestals five years earlier.[58]

Badian has raised the very interesting possibility that there was no ' Lex Sempronia ' on the court or courts at all. Without Plutarch (*C. Gracchus* 10) we could have assumed that Carthage was founded under a Lex Sempronia rather than under the Lex Rubria. No good authority actually terms the judicial legislation a Lex Sempronia. Gaius doubtless inspired it, as he did the law on Carthage, but there is no reason why he should not have chosen to work through a fellow-tribune (Acilius).[59] I would add a further instance. Pompey's hearers in 70 B.C.—and the uninformed reader of *I in Verrem* 15, 45—might be

[52] Cicero imagines that he is delivering *II in Verr.* I after the legal adjournment. Hortensius claims that he has defeated ' the *intention* of the *comperendinatio* procedure ' by his chosen tactics (Balsdon, p. 110). Cicero counters by telling Verres to imagine that he was being tried under the Lex Acilia. What would happen ? There would be only one *actio*, even though the jury was free to ask for adjournment. They would be ashamed not to reach a verdict straightaway, when called on by him to vote—' testibus editis ita mittam in consilium ut, etiamsi lex ampliandi faciat potestatem, tamen isti turpe sibi existiment non primo iudicare.' This seems to be a valid interpretation of a passage that has caused much difficulty (Balsdon, 108–13).

[53] *Historia* XVIII (1969), 465–75.

[54] Cic., *Brutus* 89, 304 f. and 90, 308 and 311.

[55] Badian, o.c. (n. 53), 475; Cic., *Brut.* 90, 308 and 311.

[56] See Greenidge and Clay[2], 272 f. for the sources.

[57] Mommsen, *Ges. Schr.* I, 21; Fraccaro, *Opuscula* II, 255 ff.

[58] See Cic., *Brut.* 34, 128 (*Gracchani iudices*); Badian, *Hist.* XI (1962), 208.

[59] See Badian, o.c. (n. 58), 205 f.; Livy *Epit.* LX and Vell. II, 7.

excused for thinking that the reform of the courts was going to come through a Lex Pompeia. We know in fact that it was the work of a praetor, L. Cotta.[60]

The essence of the Gracchan legislation anyway was the change from senatorial to equestrian juries. There is no independent evidence for major overhaul of the extortion law.[61] The man who drafted the Lex Bembina had no more need, I submit, to cite the Gracchan legislation than the Lex Servilia Caepionis. On this ground, then, it is not permissible to reject out of hand identification of the epigraphic law with Glaucia's.[62]

V. THE CLAUSE *QUO EA PECUNIA PERVENISSET*

The process of reclaiming a magistrate's ill-gotten gains from his accessories, senatorial and equestrian, went back to Glaucia.[63] It was a kind of appendix to the main trial, and was invoked only if no sureties were provided and the sale of a man's goods failed to realize the total of the *lis aestimata*. This is clear from Cicero *pro Rabirio Postumo* 13, 37: 'itaque si aut praedes dedisset Gabinius aut tantum ex eius bonis quanta summa litium fuisset populus recepisset, quamvis magna ad Postumum ab eo pecunia pervenisset, non redigeretur.' Cicero further argues that no one was pursued under this clause who had not been named by witnesses in the trial itself and established as an accessory at the *litis aestumatio*. Even so, this *praeiudicium* did not necessarily lead to a man's condemnation in the supplementary hearing, when it occurred. All that the praetor could do in that event was to declare *non redigam*.[64]

Now if the Lex Bembina is Glaucia's law the *quo ea pecunia* clause must somewhere have appeared in it. As Mommsen argued, the place to look—if we go by Cicero—is in lines 59–61. But nothing of it survives there, and only a brief clause of this nature can have been lost in the lacuna. Many scholars find this negative evidence conclusive.[65] I would set against it certain suggestive traces in the preserved text around this area. The law first provides that the condemned man shall provide sureties or have his property sold, the proceeds going into the treasury. Then the trial jury assesses the total *lis* at a rate of double restitution. If sureties are given or the money placed in the treasury suffices, repayment can be full and prompt. But what happens if the total exceeds the funds raised by sale of the property? In Glaucia's law, as we have seen, the praetor must reclaim from named accessories. Some may be acquitted, and he will have to enter *non redigam*. The total needed may still not be reached. This, I think, is where we find the suggestive traces. Line 62 may be read thus: '[De tributo indicendo ∞ sei iud]ex ex hace lege pequniam omnem ad quaestorem redigere non potuerit, tum in diebus x proxsumeis, quibus [quae potue]rit redacta erit, iudex quei eam rem quaesierit queive iudex ex hace lege fac[tus erit . . . tributum indeicito . . . diemque edito . . .]'. The day may be as much as 100 days ahead, and when it comes round the praetor proceeds to a proportionate distribution of what money is available to all claimants. The money 'brought in' (*redacta*) may thus stay in the treasury for over three months. Line 67 f. ensures that it is properly recorded and safeguarded meanwhile: 'quae quomque pequnia ex hace lege ad q[uaestorem redacta erit . . . is quaestor facito in fiscis siet fiscique obsignentur singulisque fiscis inscribatur] quis praetor lites aestumaverit et *unde ea pequnia redacta siet* quantumque in

[60] Cotta seems to have taken a very active part in the movement for reform (Cic., *II in Verr.* III, 96, 223).

[61] Scholars clearly feel that C. Gracchus *cannot* have been content with reform of the juries (as Caepio in 106 and Pompey in 70 B.C.). As Mommsen put it (*Ges. Schr.* I, 21), 'nec fieri potuit, quin lata lege Sempronia iudiciaria repetundarum quaestio universa retractaretur novaque et prioribus severior de ea lex perferretur . . .'. But such feelings are not evidence.

[62] On the other hand I would not pretend to have proved that the law *was* Glaucia's. One text that needs further study is the mysterious couplet of Lucilius (573 M):

Calpurni saeva lege in Pisonis reprendi
eduique animam in primori⟨s fauc⟩ibus naris.

This comes from Book XX, which Marx plausibly dated 107 B.C. (*Lucilius* I, XLIX and II, 212 f.) If the Lex Bembina is the Lex Acilia, the Calpurnian law will have been repealed by the Junian *c.* 125 B.C.—it would have long ceased to be very topical by the time Lucilius penned these lines. I hope to investigate this puzzling allusion elsewhere.

[63] Cic., *pro Rab. Post.* 4, 8 f.

[64] See *pro Rab. Post.* 4, 9 to 5, 12; *pro Cluentio* 41, 116; *ad fam.* VIII, 2, 4.

[65] Mommsen, *Ges. Schr.* I, 49; Eder, o.c. (n. 9), 189, n. 1. Between d 7 and e 16 and d 9 and e 18 the lacunae are of *c.* 215 and 210 letter-spaces respectively (Mommsen's figures less 35), but essential supplements require *c.* 50.

eo fisco siet.' This money seems to be deliberately distinguished from the money ' quae ex hace lege in aerarium posita erit ', (lines 61 and 67), which represents the proceeds from the sale of the condemned man's property.[66] In view of the technical use of *redigere* in *pro Rab. Post.* 13, 37 and *ad fam.* VIII, 2, 4, it is tempting to identify the *pecunia redacta* as the money recovered from accessories. As for the *pecunia in aerario posita*, I would compare Cicero's ' si . . . tantum ex eius bonis quanta summa litium fuisset *populus recepisset* '.

There is an earlier passage of the law (lines 21–3) which turns out to be extremely relevant on close inspection. The prosecutor is required to choose 100 jurors from the whole panel for presentation as a list to the accused. There are several categories of exclusion. Among them are all lower magistrates and all men of senatorial rank, who strictly should not be on the main panel anyway. They are followed by a mysterious group *queive l(ege) Rubr[ia . . .*, who have been variously identified as senatorial or equestrian.[67] Next come those temporarily absent from Rome or overseas. Both these groups are obviously equestrian, fully-qualified jurors who happen not to be available. This must be true of the succeeding clause, by which more than one of one family is barred. The men excluded are as good jurors as any.[68] In this context the final group excluded should also be equestrian. I would restore the clause as ' neive eum [quem non liceat quod quom eo lege Calpu]rnia aut lege Iunia sacramento actum siet aut quod h.l. nomen [delatum sie]t '. The principle seems to be that mere involvement in an extortion process made a man ineligible. He would be suspect as a juror.[69] The vital point, however, is that the Bembine law allowed *delatio* against men of equestrian rank. Previously it must have been left to the condemned man, if he wished, to recover moneys by civil action (*legis actio sacramento*) against such accessories. This clause has been misapplied to the extortion process as a whole and the senatorial *reus*, giving rise to a long controversy.[70] Now it was Glaucia who first made it possible for an equestrian accessory to be involved in a subsequent hearing before the trial jury: as Cicero puts it, ' reus ex ea causa, quae iudicata est, redundat '.[71] Lex Bembina 23 looks like good evidence that the law did in fact include the chapter under discussion.

VI. REWARDS FOR SUCCESSFUL PROSECUTORS

The orthodox view is that the Lex Bembina offered Roman citizenship to all successful non-Roman prosecutors, whereas in Glaucia's law the grant was restricted to Latins. Some believe that the restriction was actually made by Caepio.[72] Now Caepio's law belongs in 106 B.C., but opinions differ widely on the date of Glaucia's tribunate. Glaucia was senior to Saturninus, and had been a senator since the censorship of 108 B.C. His law derogated from Caepio's *lex iudiciaria* for the crucial extortion court, restoring equestrian juries. There was no better occasion for this than in 105/4 B.C., just after Arausio. The gratitude of the equestrian order went to Glaucia—not to Saturninus, who established equestrian juries for his *quaestio maiestatis* in 104/3 B.C. In 102 B.C. Numidicus, as censor, wanted to exclude both Glaucia and Saturninus from the senate, and this is surely best

[66] The restorations in *CIL* I^2, 583, 57–68 are fairly well guaranteed by context and the parts preserved. See also the translations and commentary of E. G. Hardy (*Six Roman Laws* (1911), 26–9) and Eder (o.c. (in n. 9) 209–17).

[67] Mommsen, *Ges. Schr.* I, 53; Tibiletti, o.c. (n. 6), 32 f.; Eder, o.c. (n. 9), 180 f.; Carcopino, o.c. (n. 37), 220–6 (equestrian).

[68] Line 23: ' [queive reipublicae causa ?] aberit, queive trans mare erit; neive amplius de una familia unum.' Mommsen read: ' [queive ab urbe Roma plus . . . passuum] aberit.'

[69] Mommsen's 67-letter lacuna between A and B must be reduced by 35. For *liceat* one might perhaps read *deceat*. Another possibility is to restore ' neive eum [quem cens(or) notarit quod quom eo lege Calpu]rnia aut lege Iunia . . . '. Compare line 28, where the lacuna must again be halved and where I would read: ' [q]uei pequniam ex h.l. capiet, eum ob eam rem, quod pequniam ex h.l. ceper[it, nei quis cens(or) notato neive senatu ? mo]veto neive equom adimito neive quid ei *ob* eam rem fraudei esto. ∞ ' I do not really think that Cic., *pro Cluentio* 42, 119 and 43, 121 should be used to exclude the idea of censorial *nota* in line 23.

[70] For my interpretation, compare what Cicero says about how Roman citizens had to recover moneys extorted from them: ' civibus cum sunt ereptae pecuniae, civili fere actione et privato iure repetuntur; haec lex socialis est ' (*div. in Caec.* 5, 17). For the controversy over *peregrini* and *legis actio*—based on this one passage of the Lex Bembina—see the good summary in Eder, o.c. (n. 9), 67–71.

[71] *pro Rab. Post*, 5, 11. His client, however, was being illegally arraigned on a main extortion charge—or so he claims.

[72] See Mommsen, *Ges. Schr.*, 61 and 19 (Glaucia); Luzzatto, *Epigrafia* 367 and Badian, *CR* LXVIII (1954), 101 f. (Caepio).

explained if *both* had already passed legislation unpalatable to the Metellan faction.[73] These are the grounds for an early dating of the Lex Servilia Glauciae, and I think that they are strong. For a tribunate in 101 B.C. there is only the very dubious support of a muddled passage of Appian.[74] Piganiol, indeed, has ascribed the extortion law to Glaucia's praetorship, and some good scholars have supported him.[75] But the words of Cicero in *Brutus* 62, 224 should be decisive: ' is ex summis et fortunae et vitae sordibus in praetura consul factus esset, si rationem eius haberi licere iudicatum esset. nam et plebem tenebat et equestrem ordinem beneficio legis devinxerat.' The shift of tense to *devinxerat* implies a date for the law before 100 B.C.

On the orthodox view, then, citizenship was open to all peregrine prosecutors as a reward from 122 to 106 or 104 B.C. Now Balbus's prosecutor in 54 B.C. (*pro Balbo* 8, 19) contended that no member of a *civitas foederata* could become a Roman citizen unless his community formally subscribed to the enfranchising bill—' nisi is populus fundus factus esset '. It is in the context of this argument that we hear of the Lex Servilia and the grant to Latin prosecutors. Cicero categorically denied the premise. He cited numerous grants of citizenship to *foederati* by Roman generals, none of which had ever been successfully challenged in the courts.[76] Then he passed on to citizenship as a reward for prosecution. The whole section is extremely interesting and must be quoted almost in full, with salient phrases underlined (23, 53–24, 54):

> ' cognoscite nunc populi Romani iudicium multis rebus interpositum atque in maximis causis re ipsa atque usu comprobatum. cum Latinis omnibus foedus esse ictum Sp.Cassio Postumo Cominio consulibus quis ignorat ? quod quidem nuper in columna ahenea meminimus post rostra incisum et perscriptum fuisse. quo modo igitur L.Cossinius Tiburs . . . damnato T.Caelio, quo modo ex eadem civitate T.Coponius . . . damnato C.Masone civis Romanus est factus ? an lingua et ingenio patefieri aditus ad civitatem potuit, manu et virtute non potuit ? anne de nobis trahere spolia foederatis licebat, de hostibus non licebat ? an quod adipisci poterant dicendo, id eis pugnando adsequi non licebat ? an accusatori maiores nostri maiora praemia quam bellatori esse voluerunt ?
>
> quod si acerbissima lege Servilia principes viri ac gravissimi et sapientissimi cives hanc Latinis, id est foederatis, viam ad civitatem populi iussu patere passi sunt neque ius est hoc reprehensum Licinia et Mucia lege, cum praesertim genus ipsum accusationis et nomen et eius modi praemium quod nemo adsequi posset nisi ex senatoris calamitate neque senatori neque bono cuiquam nimis iucundum esse potest, dubitandum fuit quin, quo in genere iudicum praemia rata essent, in eodem iudicia imperatorum valerent ? num fundos igitur factos populos Latinos arbitramur aut Serviliae legi aut ceteris quibus Latinis hominibus erat propositum aliqua ex re praemium civitatis ? '

Cicero's improper equation of the later Latins with *illi antiqui Latini* (*pro Balbo* 28, 65) of the Cassian treaty has been duly noted and stigmatized as ' rhetorical malpractice '. The later Latins were not *foederati*, but enjoyed a varying selection of special *iura*—which for Tibur included the *ius exilii*, shared with such federate communities as Naples and Nuceria.[77] It is fascinating to see how Cicero moves on in his argument almost with relief to the grants of citizenship to the priestesses of Ceres at Rome (ch. 24, 55). These were mainly Greeks from Naples or Velia—*foederatarum sine dubio civitatum* ! Why indeed did Cicero become involved in this slightly dubious argument about the Latins ?

On the orthodox view of the Lex Bembina, it would seem that Cicero could easily have made a better case by appealing to it rather than the lex Servilia. But what he needed perhaps was an actual grant of citizenship to a non-Latin that had been tested and confirmed. And one could argue that there had been none between 122 and 106 or 104 B.C.[78] He therefore had to fall back on the ' Lex Servilia '. But which Lex Servilia is in question ?

[73] See Appian, *BC* I, 28, 126; Cic. *de Orat.* II, 48, 199 and *Brut.* 62, 224. For 103 B.C. as the date of the Lex Apuleia see the arguments of Last, *CAH* IX, 160, n. 4; Broughton, *Magistrates . . .*, I, 563 and 565, n. 4; Schönbauer, o.c. (n. 2), 106 and 114.

[74] Appian, *BC* I, 28, 127 (Glaucia presides as praetor over tribunician elections !). Niccolini (*Fasti . . .* 195 ff.), among others, accepts this but makes Glaucia tribune. So too does Broughton, o.c., 571 and 573, n. 2.

[75] See Piganiol, *CRAI* 1951, 52 ff.; Serrao, o.c. (n. 51), 501; Tibiletti, o.c. (n. 6), 83 ff.; Badian, *Hist.* XI (1962), 205.

[76] *pro Balbo* 8, 20–4 and 20, 46–23, 53.

[77] See Sherwin-White, *Roman Citizenship*, 92 f.; Schönbauer, o.c. (n. 2), 102 f. For Tibur's *ius exilii*—also enjoyed by Praeneste—see Polyb. VI, 14, 7 and Sherwin-White, o.c., 118 f.

[78] Had there not even been a grant to a Latin that was worth quoting ?

Badian has ingeniously argued that it was Caepio's. He interpreted the passage beginning ' quod si acerbissima lege Servilia . . . ' as meaning that Caepio and his distinguished supporters left the door open just for the Latins, but closed it for the rest; herein lay the ' bitterness ' of his law.[79] Subsequently, Dr. Barbara Levick restated the traditional view with new arguments. The Lex Servilia must be Glaucia's, to which the epithet *acerbissima* is wholly appropriate; Cicero does not say that the *principes viri* actually sponsored a restrictive law. The passage can thus be naturally interpreted in a very different sense from Badian's: the leaders of senatorial policy left this unpopular clause of Glaucia's harsh law untouched and did not challenge it in the Lex Licinia Mucia of 95 B.C.[80] I think that essentially this must be right.

Dr. Levick, however, went further. Holding that the Lex Bembina was Gracchan, she could not believe that Glaucia narrowed a formerly wide grant. The fault lay with those *sapientissimi cives* in 95 B.C. ' We are still perfectly free ', she wrote, ' to assume that they deprived non-Latins of the same right, i.e. that Glaucia was no less generous than Glabrio and transferred the relevant clause unaltered from the Lex Acilia to his own bill, but that his law was later modified. ' I suppose that it would be also possible to argue that Glaucia's bill was amended in this sense immediately after his fall and that the grants to the Latins were not contested in the courts after the passage of the Lex Licinia Mucia.[81] Either way there will be no objection on this ground to recognizing the Lex Bembina as the Lex Servilia Glauciae.

But is this theory of amendment really consistent with Cicero's language in the *pro Balbo* ? In particular, we should note his final point: ' num fundos igitur factos populos Latinos arbitramur aut Serviliae legi aut ceteris quibus Latinis hominibus erat propositum aliqua ex re praemium civitatis ? ' Those who followed the lead of the Lex Servilia limited *their* grants likewise to Latins—and it is worth enquiring what laws Cicero has in mind. The Lex Apuleia de maiestate was quite possibly one.[82] Saturninus had good reason for holding out rewards to Latin prosecutors—or informers ?—since the threatened nobles had relied on Latin and allied support against the Mamilian *rogatio* in 109 B.C. That time the *plebs* had proved irresistible, but Saturninus would have been wise to take the warning.[83] This may well explain the otherwise rather puzzling re-use of a copy of his law at the Oscan community of Bantia. Bantia is barely a dozen miles from Venusia, whose culture was strongly influenced by Oscan elements. It was indeed the only Latin colony that went over to the insurgents in the Social War. I would suggest that the Latin law was set up in this Latin colony, which it directly concerned through the clause on citizenship. The passage of the bronze tablet to Bantia and its re-use there for an Oscan law is quite comprehensible in the circumstances of the 80's.[84] That Glaucia and Saturninus limited their generosity to Latins may seem surprising at first; but it is worth recalling that the Pirate Law specifically protected the interests of Roman citizens and Latins only.[85]

' But the Bembine law offered citizenship to all successful peregrine prosecutors.' If we reject Dr. Levick's theory about Glaucia, the orthodox dating must apparently

[79] *CR* LXVIII (1954), 101 f.

[80] *CR* LXXXI (1967), 256–8. She thinks that the *neque* between *passi sunt* and *ius* ' links two statements about the same law ' (p. 257).

[81] On p. 258 Levick sees ' an attempt to detach the Latins from the rest of the allies ' in this presumed tampering with Glaucia's bill; and the Lex Licinia Mucia itself was ' an act designed precisely to crush their hopes (sc. ' the allies ') and prevent them agitating.' Legal challenge was the procedure adopted both in 95 B.C. and after the Lex Papia in 65 B.C. See Cic., *pro Balbo* 21, 48 and 23, 52.

[82] As Schönbauer argues in o.c. (n. 2), 111 with 114 ff. He was, of course, identifying the Lex Tarentina—which does have such a clause—as Saturninus' bill.

[83] Sallust, *Jug.* 40: ' huic rogationi . . . occulte per amicos ac maxume per homines nominis Latini et socios Italicos impedimenta parabant. sed plebes incredibile memoratu est quam intenta fuerit . . . '

[84] For Venusia see *RE* VIII A. coll. 892 ff. and Appian, *BC* I, 39, 175 with 42, 190 and 52, 229. For this identification of the Lex Latina Bantina, see my p. 154 and nn. 3 and 4. The new fragment shows conclusively that the Latin text was inscribed first (Torelli, *Arch. Class.* XXI (1969), 2 f.). Stuart Jones (*JRS* 1926, 171, n. 3) argued that Bantia, bound by a *foedus iniquum* to ' conserve ' the *maiestas P.R.*, was required to adopt the latest definition of it—and Sherwin-White (*Roman Citizenship*, 122) concurred. This was very hypothetical.

[85] *SEG* III, 378 (= *FIRA* I, n. 9), B 6: ὅπως πολῖται 'Ρωμαίων σ[ύμμαχοι] τε ἐκ τῆς 'Ιταλίας Λατῖνοι τά τ[ε ἑαυτῶν . . . πράσσωσιν . . .?]. Compare the clause from an *SC* about Ambracia in 187 B.C. (Livy XXXVIII, 44, 4): ' portoria . . . caperent dum eorum immunes Romani ac socii Latini nominis essent.' Similarly in 180 B.C. the praetor Duronius (Livy XL, 42, 4) ' adiecit multis civibus Romanis et sociis Latini nominis iniurias factas in regno eius (*sc.* Gentii) '.

stand.[86] It is surely time to submit the epigraphic text to a more rigorous examination than it has usually received at this point.

The relevant chapters of the Lex Bembina may be tabulated thus:

I. Reward of citizenship to successful non-Roman prosecutors

'De ceivitate danda ∞ sei quis eorum quei ceivis Romanus non erit ex hace lege alteri nomen [. . . *c.* 70 . . . . . ad praetor]em, quoius ex hace lege quaestio erit, detolerit et is eo iudicio hace lege condemnatus erit, tum . . .'.

II. Offer of provocatio to those who decline citizenship

'De provocation[e vocation]eque danda ∞ sei quis eorum quei [. . . . . *c.* 70 . . . . quei eorum dicta]tor praetor aedilisve non fuerint, ad praetorem, quoius ex hace lege quaestio erit, [ex hace lege alterei nomen detolerit et is eo iudicio hace lege condem]natus erit, tum . . .'.

III. Rewards to successful Roman prosecutors

'[sei quis cei]vis Romanus ex hace lege alte[rei nomen ad praetorem, quoius ex hace lege quaestio erit, detolerit et is eo iudicio hace lege condemnatus erit, tum . . .]'.

I have restored what is necessary to reveal the basic and almost certain structure.[87] Most scholars assume that any *peregrini* could both prosecute and win the rewards—and some have drawn important conclusions from this on the changing character and role of the *patroni* in the extortion process.[88] Now on the normal view it is hard to understand the long lacuna in the first chapter. Why should the clause not have run simply 'sei quis eorum quei ceivis Romanus non erit ex hace lege alterei nomen ad praetorem, quoius ex hace lege quaestio erit, detolerit'? It would then perfectly balance the chapter on the Roman prosecutor.[89]

Chapter II is rather anomalous, as usually understood. Mommsen restored its opening as 'sei quis eorum quei [nominis Latini sunt . . .]'. It would seem that, while all successful peregrine prosecutors were offered citizenship, only Latins were allowed any option if they wished to decline. Strachan-Davidson saw this point clearly. He noted the long lacuna, and restored it so as to include both the other *peregrini* and the Latins: 'sei quis eorum quei [in amicitia dicione potestate P.R. sient, sociumve nominisve Latini exve XII coloniis quei eorum dicta]tor praetor aedilisve non fuerint . . .'. Once again his instinct was surely right. The beneficiaries of Chapter II should be the same as those of Chapter I.[90]

Strachan-Davidson unconsciously exposed another anomaly of the normal view. He held that the exception made in this chapter for Latin magistrates was 'wholly superfluous'. 'What is the sense,' he asked, '. . . of excluding persons who, being Roman citizens already, were sufficiently debarred from either accepting or declining it?' It was therefore a clear case of inept and clumsy draftsmanship.[91] Should we not rather be prepared to challenge

[86] My version of her theory would allow Glaucia to be the *originator* of prosecutors' rewards—rather than a man who took over verbatim previous arrangements.

[87] For the first two chapters, the two versions (76/83 and 78/85) help to establish both text and the lacuna length; for the third we have only line 87. The lacuna between e 32 and d 24 in line 76 (of *c.* 78 letters) and between e 34 and d 26 in line 78 (of *c.* 83 letters) must be considered slightly 'elastic', since we do not know the exact shape of the lost fragment E. There is *some* control for the first in line 83, where the gap between the existing C and D fragments can be reasonably computed as *c.* 136 letters; this breaks down into 63 letters of certain supplement + 73. See the table in *CIL* I², 583 (p. 442) with my fig. 12 and Pl. VII in *JRS* LIX (1969), 136.

[88] See F. Serrao, o.c. (n. 51), 473–511.

[89] In my composite text of Chapter III (*JRS* 1969, 141)—using the Lex Tarentina—I read 'quei ceivis (better 'sei quis ceivis'?) Romanus ex hace lege alte[rei nomen ad praetorem, quoius ex h.l. quaestio erit, detolerit et is eo ioudicio condemnatus erit, tum ipsei libe]risque eius . . .'. Was the *quoius eorum maxume* clause omitted by mistake by the Tarentine engraver, or did it not apply to the Roman prosecutor with his *subscriptores*? But note what Asconius says (39 and 54 C) of the trials of Milo *de vi* and *de ambitu*: 'accusatores . . . Appius maior et M. Antonius et P. Valerius Nepos . . . damnatum autem opera maximi Appi Claudi pronuntiatum est . . . illa quoque lege accusator fuit eius Appius Claudius, et cum ei praemium lege daretur, negavit se uti. subscripserunt ei in ambitus iudicio P. Valerius Leo et Cn. Domitius Cn. f.'. Whether non-Roman or Roman, only one prosecutor was to get the reward in any one case.

[90] Strachan-Davidson, o.c. (n. 24), I, 147–50. Despite this Mommsen's view (*Ges. Schr.* I, 62 f.) prevails—as in Eder, o.c. (n. 9), 225.

[91] o.c. (n. 24), 151. See my n. 27 for another passage where he detected clumsy drafting—unjustifiably, I think.

the basic assumption, that ex-magistrates in Latin towns became Roman citizens in the second century ? This clause of the Lex Bembina ought not to be nonsense. What it really shows is that the higher Latin magistrates acquired the right of *provocatio* through holding office and so could not opt for this as an alternative reward. Asconius' evidence on the Lex Pompeia of 89 B.C. proves nothing for the earlier period—and it has been very reasonably suggested that it is anachronistic even for the Transpadane region before Caesar. There too, perhaps, the ex-magistrate enjoyed no more than *provocatio*.[92] However that may be, the opening of Chapter II may now be restored somewhat as follows: ' sei quis eorum quei [ceivis Romanus non erit . . . *c.* 36 . . . quei eorum ceivis Latinus dicta]tor praetor aedilisve non fuerint . . . '.[93] Chapters I and II now match formally and in content and neatly balance Chapter III. But in the first two we are faced with a baffling missing clause of apparently varying extent.

For possible help on its content we must, I think, go back to the beginning of the law. The detailed arrangements about *nominis delatio* are fragmentarily preserved in lines 1–12. The first group allowed to lodge a prosecution are those who claim for themselves, their parent or the person to whom they, their parent or son are heirs; later they are also to be found staking their claim for restitution after the *litis aestimatio*.[94] Next come the accredited representatives of a king, a people or a *civitas*. They are also found staking their claims later, and we should surely read in line 4: ' [. . . sei quis satisfecerit . . . se legatu]m esse ut peteret '.[95] There follows a provision for a secondary *nominis delatio*, if the first attempt fails for some reason.[96] Then come the suggestive traces *eno nomin* in line 6, which led Mommsen to his plausible restoration: ' [. . . sei quis ali]eno nomin[e . . . . *c.* 32 . . . ex h.l. petere nomenque deferre volet, de ea re eius petitio nominisque delatio esto,] quaestio eius pr. esto . . . '. This will be the *patronus*, who either offers himself or is asked by the injured parties to take the case. They may not, of course, be able to find a *patronus* themselves, and so the law proceeds (9 ff.) to instruct the praetor to assign *patroni* to those who ask him when laying their accusation.[97] Serrao argues from this clause that the plaintiffs did not need *patroni* at all and could prosecute directly. This is obviously true. But it is reasonable to suggest that only Latin-speaking Italians were likely to do this. For the rest the advantages of working through reliable *patroni* were self-evident.[98]

The *patroni* have no place at the settlement of assessed claims. But it is, I think, for them, and not for the *peregrini* who decide to prosecute directly, that the rewards are designed. This is surely true of the Roman citizens in Chapter III. They will be *patroni* either chosen by the injured parties or assigned them by the praetor. Indeed it is interesting to note that the praetor seems limited to Roman citizens in his choice.[99] Was there any

[92] This view of the Lex Bembina clause was first put forward, to my knowledge, by A. Rosenberg in *Hermes* LV (1920), 347 f. D. W. Bradeen then argued the case comprehensively (*Class. Journ.* LIV (1958/9), 221–8)—conclusively, I believe, for the period before 89 B.C. For Asconius' evidence see *in Pisonian.* 3 C. P. A. Brunt (*JRS* LV (1965), 90, n. 4) judiciously took a middle line on the Lex Bembina: ' Strictly this only implies that such ex-magistrates had *either* the Roman citizenship *or* the privileges concerned.' The judgement will be unexceptionable, if we omit the phrase from *either* to *or*.

[93] Bradeen (o.c., n. 26 on p. 227) offers two restorations similar to mine, both including other *peregrini* and opening: ' sei quis eorum quei [ceiveis Romani non sunt . . .] '. His instinct for the formal balance seems sound. I am less happy about his suggestion of *[quei] eor.* for *[dicta]tor*.

[94] In line 3 we find ' [quo]ive ipse parensve suos filiusve suos heres siet ', in line 60 *filiusve suos* is omitted: in line 62 the formulae are lost in the lacuna.

[95] In line 60, note ' queive . . . [sa]tis fecerit regis populeive ceivisve suei nomine litem aestumatam esse sibei ' and in line 63 ' [aut] quoius regis populeive nomine lis aestumata erit legati adessint '. Mommsen restored line 4 as ' [sei quis deicet praetorem nomen ex h.l. non recepisse utei delatum esset, neque iudicium ex h.l. ita datu]m esse utei peteret ' (see *Ges. Schr.* I, 48). Eder (o.c. (in n. 9) 158) simply repeats this, with comment on the variant views of Klenze and Rudorff.

[96] See Mommsen (*Ges. Schr.* I, 48 f.) and Eder (o.c. in n. 9, 158 n. 4 and 160) for comments on the very difficult line 5. All that we have of it is ' [. . . ? iud]icata erit aut quoius nomen praevaricationis caussa delatum erit aut quoium nomen ex h.l. ex reis exemptum erit: seiquis eius nomen a[d praetorem ? . . .].'

[97] Compare the clause of the praetor's edict (*Dig.* III, 1, 1, 4: Ulpian) ' si non habebunt advocatum ego dabo '.

[98] For Serrao's view, see o.c. (n. 51), 497 ff. The clause runs ' quei ex h.l. . . . detuler*it*, quibus eorum ante k.Sept. petitio erit, sei eis volet sibei patronos in eam rem darei . . . '. No *patroni* were needed for the more expeditious process after Sept. 1st (line 7 f.). Cicero (*Brut.* 46, 169) records effective Latin orators of *c.* 100 B.C. from the Marsi and Asculum Piceni.

[99] This seems proved by the listed exceptions—no close relative of the accused, no *sodalis* or colleague, no patron or client, no senator degraded for condemnation in a public trial, no *iudex*, no man already acting as a *patronus*. See Eder, o.c. (n. 9), 164 f. with n. 3.

comparable limitation on the choice of the parties themselves? Or could they pick any suitable Latin-speaking Italian?

We should not be misled here by the phraseology of line 76/83. It is conceivable, I believe, that in line 6 the law made it clear that only Romans or Latins could offer themselves or be chosen as *patroni*. In the rewards section the main object was to distinguish between the non-Roman and the Roman *patronus*. What kind of non-Roman was involved had, on this view, been defined earlier, and became explicit anyway with the exception made in Chapter II. There would, perhaps, be political sense in not spelling out too clearly yet again the special privilege of Latins over other allies, when a formula such as 'those non-Romans eligible to be *patroni*' would serve. I would like to restore the opening of Chapters I and II somewhat as follows: 'sei quis eorum quei ceivis Romanus non erit, quibus ex hace lege alieno nomine petundi nominisque deferundi ius erit . . . '. On this hypothesis, the engraver may have slipped up in line 76 with his typical negligence—the phrase *ex hace lege alterei nomen* should have come after the second *erit*, not the first.[100] In Chapter II we see that this phrase is held up still longer, till after *quaestio erit*. I would offer this new restoration for that passage: 'sei quis eorum quei [ceivis Romanus non erit, quibus eorum h.l. alieno nomine petundi nominisque deferundi ius erit, quei eorum dicta]tor praetor aedilisve non fuerint, ad praetorem, quoius ex hace lege quaestio erit, [ex hace lege alterei nomen detolerit . . .] '.[101]

In either case, it can, at least, no longer be claimed that the rewards section proves positively that the Lex Bembina cannot be Glaucia's law, even if it were *quite* certain—and I think it at least highly possible—that the latter rewarded only Latins. Those who find this section of my argument unacceptable have still to face the consequences of Dr. Levick's theory, that Glaucia originally offered rewards to other *peregrini* also, but that his law was subsequently amended and the grant restricted to Latins.

VII. CONCLUSION

In this paper I have drawn attention to some evidence suggesting that the Lex Bembina has been dated considerably too early. I have then examined one by one the four main arguments used to establish the orthodox Gracchan dating and to rule out Glaucia. I think that they will no longer look quite so conclusive, and that an identification of the Tabula Bembina with Glaucia's law must once more be seriously entertained. In particular I would stress the important new factor introduced by the Lex Tarentina—now that we can see more certainly how much overlap there is between it and the Lex Bembina. Finally, it may be worth noting two intriguing verbal echoes of latter's text. First, according to Cicero, Glaucia used to advise the people to listen very carefully to a law's first chapter: 'si esset DICTATOR, CONSUL, PRAETOR, MAGISTER EQVITVM ne laboraret.' This formula appeared, very early on, precisely in the Lex Bembina.[102] Secondly, in line 12 the positive qualifications for the jury-panel open tantalizingly with 'quei in hac civit[ate . . . 64 . . .] '; the drafter then passes on to the *dum ne quem* clauses that recur in line 16. The first phrase can surely be restored as 'quei in hac civit[ate liber natus siet] ', which is translated in the Pirate Law of 100 B.C. as ὅστις ἐ[ν] ταύτηι τῆι πολιτείαι γ[ε]γενημένος ἐστὶν ἐλεύθερος.[103] We must await with interest the discovery of further fragments of the Lex Bantina; they could enable us to see rather better just how much the formulae of the Lex Bembina shared with the texts of undoubted very late-second-century legislation.[104]

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[100] The repetition of these chapters shows that they were badly bungled (see my article in *JRS* 1969, 138 f.). In Chapter I my supplement *quibus . . . erit* takes up only 55 spaces of the *c.* 70 allowed by Mommsen, but his estimate of the lacunae in lines 76 and 83 *may* be too generous (see n. 87). For the structure of the clause as I restore it—a definition of civic status followed by a clause of legal limitation ('those eligible to sue')—compare *SEG* III, 378 (= *FIRA* I, no. 9: the Pirate Law), C, 23: ὅστις ἐ[ν] ταύτηι τῆι πολιτείαι γ[ε]γενημένος ἐστὶν ἐλεύθερος, ὅσοις κατὰ τοῦτον τὸν νόμον χρήματα ἐναιτήσει⟨ν⟩ καὶ κρίνεσθαι ἐξῆι ('quibus ex h.l. pecuniam petere in iusque inducere licebit'?).

[101] My restoration for the lacuna between *quei* and *tor* gives 92 letters for Mommsen's estimated 83.

[102] See *pro Rab. Post.*, 6, 14; Lex Bemb. 2 (restored), and 8.

[103] *SEG* III, 378 (= *FIRA* I, no. 9), C 23.

[104] Adamesteanu holds out hopes of further excavation at the find-spot of *CIL* I², 582 and the new fragment, and this could well recover more pieces of the text. See o.c. (n. 16), 1.