THE DATE OF THE LEX REPETUNDARUM AND ITS CONSEQUENCES

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In two articles published in this *Journal* in 1969 and 1970, Dr. Mattingly has made a new and systematic assault on the identification of the Lex Repetundarum of the Tabula Bembina with any law of the Gracchan period, and has argued at length for its possible identity with both the recovery law of Servilius Glaucia and the law of the Tabula Tarentina.[1] The question is of importance not only for the politics of the Gracchan period, but for the whole history of the development of the only means which the Roman Republic created for the redress of wrongs which provincials suffered at the hands of Roman officers and governors, while the history of the extension of the Roman citizenship is also involved. The Lex Repetundarum (as the law of the Tabula Bembina will be called henceforth) reveals great political ingenuity in its elaborate devices of procedure, intended to eliminate the undue influence of interested parties and to secure the conviction of the guilty and the effective compensation of the injured. Whether the mind so revealed is that of Gaius Gracchus or a later politician is a matter of some moment.

The identification of the Lex Repetundarum with the law of Gaius Gracchus that changed the composition of the recovery court has come to be generally accepted in the past generation, despite the attempt of Carcopino, almost *solus contra mundum*, to revive the earlier identification with the law of Servilius Glaucia. The most positive argument has always been that the Lex Repetundarum cites the Lex Calpurnia of 149 B.C., the first of all the recovery laws, as a law which it directly supersedes, and that it also sets up a novel *album iudicum* from which senators and their kin are excluded with elaborate care. The double condition seems to point exclusively to the law of Gaius Gracchus, which was the first law after the Lex Calpurnia to introduce equestrian jurors for the court of recovery. All other arguments are subsidiary or ambiguous. To upset the case it is necessary to prove that the Lex Repetundarum contained rules or procedures that are known to have been invented only after the time of Gaius Gracchus. Mattingly in his second article endeavours to do this by a mesh of interlocking proofs. His main argument is that the procedures of ' single adjournment ' or *comperendinatio*, and of ' recovery from third parties ' or ' quo ea pecunia pervenerit ', which are known on good evidence to have been introduced into recovery law by the bill of Servilius Glaucia, can be detected in the Lex Repetundarum. He also suggests that other rules certainly contained in the Lex Repetundarum were not in operation before the date of the Lex Servilia, and that its system of rewards for successful prosecutors reflects a limitation introduced by the later law. While some of these arguments are new, others have been made before, but none of them with decisive force, though any one of them could be decisive if fairly proven. Dr. Mattingly endeavours to establish them individually by new and ingenious interpretations of the text, which combine to form a substantially new case that requires critical examination as a whole.

The first of the two articles, which is less controversial, presents a revision of the epigraphical basis on which Mommsen reconstructed the Tabula Bembina. Mattingly's thesis is that Mommsen, who assumed an average length of some 400 to 425 letters for the lines of the Tabula, overestimated their length by some twenty-five to thirty-five letters. This, however, does not have very startling results, because Mommsen's supplements do not in fact take up the space that he posited. Somewhat surprisingly, the abbreviations and alterations that Mattingly proposes do not touch the content in a manner that affects the argument about the date of the law, save perhaps in a single instance.[2] Mattingly does not question the general pattern of Mommsen's arrangement of the fragments of the Tabula. The main effect of his theory is to bring the pieces closer together laterally and so to effect

[1] H. B. Mattingly, ' Two Republican laws of the Tabula Bembina ', *JRS* 1969, 129 ff.; ' The extortion law of the Tabula Bembina ', ib. 1970, 154 ff. These are cited as a.c. (69) and a.c. (70). For the original publication of the Tabula Tarentina see R. Bartoccini, *Epigraphica* IX 1949, 3 ff. Throughout this article the term ' recovery ' is preferred to the inexact ' extortion ', which misinterprets the act defined as *capere pecuniam*. This article owes much to the lively criticism of my pupil, Mr. R. Gilbert, especially over the meaning of line 23 of the Lex Repetundarum, though the views here expressed differ from his own. It should be noted that Dr. Mattingly does not claim to have proved his case, but merely to have established its possibility.

[2] See n. 53, on the deletion of the words *in sua ceivitate* in l. 79.

some greater cohesion and certain minor improvements, both in the recovery law and in the *lex agraria* on the reverse side, and also to diminish the room for manoeuvre in supplementation.[3] Even so the remaining gaps are so extensive that no particular restoration can ever be regarded as definitive. The basis of discussion still rests in the surviving elements and not in the more or less probable supplements. Hence it is not necessary to take sides with or against the epigraphical argument in discussing the date and identity of the law.

The purpose of this paper is not to review the whole field of controversy over the Lex Repetundarum, but to examine the validity of the evidence discussed and the arguments put forward by Dr. Mattingly, and to consider where they may lead if they do not lead to his particular goal.[4] This is the more necessary in that, despite the sectional arrangement of the second paper and its sub-headings, the principal arguments are not always presented in a very coherent order and are frequently embedded deeply in substructural discussions, so that the main case does not emerge very sharply.[5] The central thesis may perhaps—if I have understood it aright—be summarized as follows, though the order of statement is very different from that of the author's. The Lex Repetundarum is not the law of Gaius Gracchus or of Acilius Glabrio or of Servilius Caepio, because those were not recovery laws, but *leges iudiciariae* concerned with the selection of 'jurors' and the management of courts. The Lex Repetundarum *may* not be the Law of Gaius Gracchus because one of its clauses echoes a provision invented by the Lex Cassia of 104 B.C., and another of them *may* have been disregarded in the trial of Papirius Carbo in *c.* 119. The Lex Repetundarum is identical with the law of the Tabula Tarentina, which is a Lex Repetundarum of Servilian date, because both have very similar clauses about the rewards of plaintiffs, and both in their last sections instruct the *praetor inter peregrinos*, instead of the praetor newly set up by the law, to do something concerned with the operation of the law. The Lex Repetundarum *can* be identified with the law of Servilius Glaucia because it *can* be shown to have contained the two known innovations of that law—the procedure of *comperendinatio*, and the clause providing recovery from third parties 'quo ea pecunia pervenerit'; it *may* also have the same arrangements for the selection of *iudices editicii* as the law of Glaucia, and it *can* be shown to have reserved its special rewards, like the law of Glaucia, for plaintiffs of Latin or Roman status. To establish all this clearly calls for great ingenuity and refinement of argument, which must now be examined in detail.

The preliminary arguments

Before he comes to grips with his main discussion Dr. Mattingly puts forward certain 'pointers'. Perhaps the frailest of these concern the Lex Cassia and the trial of C. Carbo. He suggests that the rule of Lex Repetundarum 11 and 13, debarring a person condemned in *iudicium publicum* or a *quaestio* from admission to the Senate, reflects the Lex Cassia of 104 which excluded from the Senate anyone condemned in a *iudicium populi* or any person whose *imperium* had been abrogated by the People.[6] But the identity of the two formulations is far from convincing. The Lex Repetundarum omits the main objective of the Lex Cassia, the case of abrogated *imperium*, and if wording is to be pressed the Lex Cassia is more severe that the Lex Repetundarum, since it expels sitting members from the Senate, while the latter merely forbids the censors to admit such persons.[7]

[3] Mattingly effects a valuable if minor clarification of lines 51–55 by his placing of the fragment F, but these sections on voting procedure are not involved in the chronological argument.

[4] Hence it is not necessary to repeat at length Dr. Mattingly's full account of the modern discussions, which will be cited only *à propos* of particularities.

[5] e.g. the argument about the *praetor peregrinus* (a.c. 70, 154–5) occurs in the demonstration that the Tab. Tar. law belongs to the radical legislation of *c.* 103–100 B.C. The discussion of the Lex Sempronia comes late, between the sections about *ampliatio* and *quo ea pecunia pervenerit*. The trial of Carbo, relevant to the theme of the clause *nei quis impediat*, is examined in a section concerned with *editicii iudices*.

[6] Asconius (*in Corn.* 69) gives the substance of the Lex Cassia as 'ut quem populus damnasset cuive imperium abrogasset in senatu ne esset'. *L.R.* 11 and 13 together give: '[queive] quaestione ioudicioque puplico condemnatus siet quod circa eum in senatum legei non liceat'. Line 13 continues without a break after *liceat*, with a further definition.

[7] The fact that C. Cato after condemnation for Recovery in 113 continues as an active senator until his condemnation under the Lex Mamilia of 109 is explained by the incidence of the *censura* in 115/4 and 109. The latter censors did not complete their office, cf. *MRR* i, 546; Vell. ii, 8; Sall., *B.J.* 40; Cic., *Brutus* 128.

As for the trial of Carbo in *c.* 119–117 B.C., which is not precisely identified as a recovery suit in the sources, the argument is that the praetor acted contrary to a probable clause of the Lex Repetundarum in adjourning the opening of the case in the interest of an advocate, the young orator Licinius Crassus, since the Lex Repetundarum certainly forbids outside interference or delays through the actions of other magistrates [8] in the clause *ne quis impediat*. The argument is reasonable, but in fact the Lex Repetundarum elsewhere, in the clause *de iudicio proferendo*, allows conditional discretion to the *praetor repetundarum* in altering the dates of cases already set.[9]

The arrangements described by Cicero in *pro Plancio* 41, for the selection under a previous law, vaguely dated, of what he describes as *iudices editicii*, by which the *reus* rejects so many out of the total put forward by the plaintiff, certainly closely resemble those of Lex Repetundarum 24–26. Unfortunately two of the three figures concerned are undeniably different.[10] There is no sign in the manuscript tradition of any variations or corruptions to justify the cool proposal of Mattingly that the text of Cicero should be altered to fit the figures of the Lex Repetundarum.[11] Hence it does not help Mattingly's case to identify this anonymous law with the Lex Servilia of Glaucia, through Cicero's reference to the civil strife which it caused. Mattingly admits that even if the identification is managed, the clause could have been tralatician in both laws.

The Lex Repetundarum and the Law of Gaius Gracchus

In order to remove the objection that if the Lex Repetundarum is the law of Glaucia it should have cited the Gracchan law of recovery as well as the Lex Calpurnia and the Lex Junia among the laws which it supersedes, it is argued that the law of Gaius Gracchus was not entitled or described as a *lex repetundarum*, but like the Lex Servilia Caepionis and the later Lex Plautia and Lex Aurelia, solely as a *lex iudiciaria* concerned with rules about the selection and qualification of *iudices* and the procedure of *quaestiones*, and not at all with the definition of 'extortion' and its penalties. Hence a *lex repetundarum* had no occasion to cite any of these laws.[12] So far this is a fair argument. Controversy over the composition of the juries of *quaestiones* is settled by *leges iudiciariae* which do not concern themselves with the definitions and penalties of crimes. But Mattingly proves too much for his own good. If this argument is sound, why does a *lex repetundarum*, late in the series, devote so much of its space to the basic material of a *lex iudiciaria*, the selection of *album* and *consilia*, the voting procedure, the behaviour of *iudices*? The peculiarity of our Lex Repetundarum is that it is both a law of recovery and a *lex iudiciaria*. If it is of Gracchan date this makes good sense, especially on the assumption (which Mattingly accepts) that there was no other permanent *quaestio* at that time. Either the laws of Gracchus and Caepio were comprehensive *leges repetundarum* and described as *leges iudiciariae* in the perfunctory sources because the selection of *iudices* was their contentious element, or they were *leges iudiciariae* in the narrow sense, regulating more than one *quaestio*.[13] On the first alternative, the law of Glaucia must have referred to one or other of its predecessors in the clauses about the Lex Calpurnia. On the second alternative, Glaucia should have presented, not a *lex repetundarum*, as the sources

[8] Mattingly, a.c. (70) 157. Cic., *de Or.* 1, 121, 'quod consilium dimiserat (sc. praetor)' is the basic text. For the date Cicero's 'annos natus unum et viginti' (*de Or.* 3, 74), i.e. 119 B.C., must be preferred to Tacitus, *Dial.* 34, 7, 'nono decimo aetatis anno' (121 B.C.). Hence the identification of the *anonymous* trial of *de Or.* 1, 121 with a prosecution of Carbo after his consulship in 119 is possible. Cic., *ad Fam.* 9, 21, 3 is ambiguous as to the charge, listing it with his brother's prosecution for Recovery and *maiestas*.

[9] *L.R.* 39–40: 'quam rem pr. ex h.l. egerit sei eam rem proferet . . . facito quoius deicet nomen referre . . . utei is ad se veniat aut adferatur coram eo quei postulaverit . . . quoius ex h.l. nominis delatio erit'. For the archaic meaning of *proferre, referre* cf. citations from Cato in Gell., *N.A.* 1, 23, 5; 6(7), 13, 14; also Festus 405 (289) s.v. *referre*.

[10] In *L.R.* 23–25 the plaintiff puts forward 100 names and the *reus* may reject 50. Cicero is very specific: 'cum ex CXXV iudicibus . . . V et LXX reus reiceret L referret'.

[11] The only textual query in this passage concerns 'iudicis editici*um* nomen'. Since the Lex Servilia was in force until suspended by either the Lex Plautia or the Lex Cornelia, Cicero should have been well informed about it. The Lex Plautia, which was not a Recovery law (Asconius, *in Corn.* 70), may not have touched it.

[12] a.c. (70), 160 ff. Mattingly here follows E. Badian, *Historia* XI, 1962, 208. The texts are collected in Greenidge and Clay, *Sources for Roman History*[2], 34–5, 78, 272–73. Unlike the Lex Servilia Caepionis and the Lex Aurelia, neither the Lex Sempronia nor the Lex Acilia is positively called a *lex iudiciaria* (save for Plutarch's Greek, *C. Gracchus* 5).

[13] Mattingly, a.c. (70), 161, n. 57 supposes that a *lex iudiciaria* of Gaius Gracchus provided for the existing *quaestio repetundarum* and also for any future criminal *quaestiones*, permanent or extraordinary.

consistently entitle his only bill, but both a *lex iudiciaria* which would restore the equestrian control of all courts abolished by the law of Caepio, and also a *lex repetundarum*, which would introduce the innovations of recovery procedure which he is known to have introduced. Since he followed the principle of a single comprehensive law dealing both with a particular charge or suit and with judicial procedure, it is likely that this was the method of his predecessors whose work he was cancelling or restoring: similarly Cicero describes the Lex Acilia in terms both of recovery and of jurors.[14] Hence our Lex Repetundarum so far as form is concerned may be either the Gracchan measure or the Lex Acilia (if that is distinct) or the law of Glaucia.[15] But then, unless the Lex Junia is the name of the Gracchan measure (a possibility which Mattingly does not consider) the old argument in favour of identifying the Lex Repetundarum with the Gracchan measure, as the law which set aside the Lex Calpurnia, resumes its force.

The role of the praetor inter peregrinos

The argument that most moved Mattingly to propose the identification of the Lex Repetundarum with the law of the Tabula Tarentina was drawn from the general similarity of the fragments of the clauses of the two laws concerning the rewards of successful plaintiffs, and the ease with which they can be dovetailed into each other.[16] But he cannot make this the foundation of his argument, since an opponent is entitled to dismiss this proof on the ground that the clauses are tralatician in the second document, though Mattingly endeavours to disprove that counter-argument by a paradox that will be considered later. Instead Mattingly places his main positive proof of the identity of the two laws in the fact that in the closing lines of both, after the sections about special rewards, the *praetor qui ius dicit inter peregrinos* is mentioned performing some function, which in the Tabula Tarentina is connected with the Italian and Latin Allies.[17] Since earlier in the Lex Repetundarum the role of the *praetor peregrinus* in setting up the new court is taken over after the first year by another praetor ' quei ex hac lege ius deicit ', Mattingly argues that the ' praetor peregrinus ' should not have appeared at all in the Lex Servilia if it had been preceded by the Lex Repetundarum. The two texts therefore contain the same law which first introduced the *praetor repetundarum*. This argument would have more force if it was certain what the *praetor peregrinus* was doing in this section of the law. Mattingly assumes that he is here implementing the judicial procedure itself.[18] But since this fragment comes between the sections about rewards and some arrangements about publication of the law, it could be that the *praetor peregrinus* was instructed to do something with or for the Allies, who were *peregrini*, that pertained peculiarly to his province.[19] Further, Mattingly ignores the complexity of the praetorian arrangements at this date, and confuses the issue by supposing that there was a specific annual *praetor repetundarum* created by the law. Even in the first half of the second century, before the extension of the provincial empire, it had sometimes been necessary to double the provincial duties of one or other of the six praetors.[20] By 123, and still more by 105, with the creation of new and permanent provinces in Africa, Macedonia, Asia and Gallia Transalpina, the difficulty was far greater. In one of the few years when anything is known about the functioning of a *praetor repetundarum* he is found performing a function of the *praetor peregrinus*. The Lex Repetundarum did not create a *praetor*, but a *provincia* which would be regularly assigned each year by *senatusconsultum* according to

[14] Cic., *I in Verr.* 51 is the earliest description of any of these, and should not be minimized: ' qua lege populus Romanus *de pecuniis repetundis* optimis iudiciis . . . usus est '. Mattingly does not commit himself firmly about the role and date of the Lex Acilia, which he seems to regard as a *lex iudiciaria* stemming from C. Gracchus (a.c. (70), 161). Since *I in Verr.* clearly implies that it was an anti-radical measure ' ad resistendum hominibus audacissimis ' (as Carcopino rightly noted), sponsored by the instigators of the laws of Caepio and the younger Livius Drusus, it has no place in this discussion.

[15] cf. n. 14 above.

[16] a.c. (69), 139 ff.; (70), 154.

[17] a.c. (69), 143; (70), 154–55. Lex Repetundarum 89–90 with Tab.Tar. 12: ' [quei inter per]egrinos ious deicet facito utei socium nominisque Latini omnium . . . '

[18] a.c. (70), 155: ' The fourth chapter (i.e. *L.R.* 87–90) hardly permits this explanation. The *praetor peregrinus* is introduced to implement the law forthwith '.

[19] In Tab. Tar. 13, after the initial gap of some 88 letters, there follows: ' [in c]ontione et apud senatum in sex mensibus prioribus et in sex . . . ' After a second gap there follows in line 14; ' [inc]isis fictamque apud forum unde de plano recte legi possitur '.

[20] cf., e.g., Livy 40, 44, 6; 44, 17, 10; 45, 12, 13; 16, 4.

circumstances.[21] It might well have become the convenient thing for the same man to combine the province of *repetundae* with that of *iurisdictio inter peregrinos*. Besides, we do not know what the Lex Servilia Caepionis did about the assignment of judicial *provinciae*. For a new law, supplanting that of Caepio, the peregrine praetor may have been the starting point once again. Whatever the inscrutable reference to this praetor in the two laws may mean, it clearly cannot carry the burden of proof.

Comperendinatio and the Lex Repetundarum

Dr. Mattingly restates the argument of Carcopino that the Lex Repetundarum 46–48 introduces a form of the procedure known as *comperendinatio*, which according to Cicero was first introduced by the law of Servilius Glaucia.[22] This procedure limited cases to two hearings of the evidence. Previously the jurors could demand repeated retrials by declaring at the end of each hearing a verdict of *non liquet*. The presiding praetor or Judex Quaestionis then pronounced *amplius*, and the case was heard again. The evidence affecting the Lex Repetundarum comes from the clause about the fining of jurors who persist in refusing to give a positive verdict. Where Mommsen read ' quotiens quomque amplius bis in uno *iudicio quis iudicare negarit* '—allowing a juror to demand two retrials—Mattingly prefers ' quotiens quomque amplius bis in uno *iudicio quis iudex dixerit* '. He takes this phrase to mean ' whenever a juror utters the word ' amplius ' twice in one trial '. Thus the jurors are forbidden to demand more than one re-hearing under the threat of a fine, and this amounts to a form of *comperendinatio*. This version involves two basic mistakes. Mattingly quotes Charisius for the equation of *amplius dicere* and *ampliare* or *negotium differre*, and assumes that this is identical with the juror's formula of *non liquet*. But in the Ciceronian evidence about the procedure both under the pre-Sullan system and later, it is the president, not the jurors, who pronounces the word *amplius*, when the jurors have declared *non liquet*, or *sibi non liquisse*, for which the Lex Repetundarum also uses the alternative *se non iudicare*.[23] Hence *amplius* in the Lex Repetundarum should not be assigned to the tongues of the jurors.

The second error is indicated by the fact that quotes are needed to clarify the proposed interpretation of *amplius*.[24] The use of the comparative *amplius* with a following numeral, not linked by *quam*, is so common as not to need illustration. It recurs twice in the Lex Repetundarum itself. In line 23, ' neive amplius de una familia unum ', and line 2, ' pequniae quod siet amp[lius. . . HS nummorum] ', where the comparative meaning is not disputed. There is no reason to take it otherwise in line 48, where the consecutive words can only be disjoined by an extreme disregard of normal usage. If *amplius . . . unum* in line 23, can only mean ' more than one ', despite the intervening phrase, then *amplius bis* in line 48, without an intervening phrase to ease a disjunction, can only mean ' more than twice '. The supposed ambiguity does not occur in the literary texts, which use the phrase *amplius pronuntiari* without a numeral. So the Lex Repetundarum, though it did something to check multiple rehearings,[25] did not introduce the single adjournment of *comperendinatio*, and cannot on this ground be identified with the Lex Servilia. In fact this clause did not impose an absolute veto on multiple *ampliationes*. It simply threatened the obstinate juror with a large fine if he persisted after the third hearing to demand yet another *ampliatio*.[26]

Quo ea pecunia pervenerit

Mattingly's second substantial argument concerns another procedure which also,

[21] Cf. Mattingly, a.c. (-70), 154, n. 9; 157, n. 25. C. Claudius Pulcher, *praetor repetundarum* in 95, drafts municipal laws for Sicilian Halaesa: Cic., *II in Verr.* ii, 122, with *CIL*² 1, p. 200. Mattingly infers from Cic., *pro Rab. perd.* 20–21 ' omnes praetores ', that there was a separate *praetor repetundarum* in 100. Nominally *omnes praetores praeter Glauciam* should imply the presence of *five* praetors at Rome on Dec. 10, 100 B.C. But *omnes* is stylistic throughout this passage. For the assignation of the *quaestio* jurisdiction as a province by normal *sortitio* cf. Cic., *I in Verr.* 21.

[22] a.c. (70), 159. Cic., *II in Verr.* i, 26, ' ut opinor Glaucia primus tulit ut comperindinaretur reus. antea vel iudicari primo potuit vel amplius pronuntiari '. On this see J. P. V. D. Balsdon, *PBSR* XIV, 1938, 108 f., though more stress should be laid on the normal usage of *amplius*.

[23] Cf. *Brutus* 86 (consuls); *II in Verr.* i, 74–5 (' per Neronem ', i.e. *praetorem*). For *iudices* and *non liquere*, *Caec.* 29, *Clu.* 76, 106, 131. In *L.R* 47 Carcopino properly restored ' praetor . . . ita pronun[tiato amplius] '.

[24] Cf. a.c. (70), 159, n. 40.

[25] Hence perhaps Cicero's qualification ' ut opinor ', n. 22 above.

[26] The fine was a sum of S.10,000 (*L.R.* 48), though for lesser offences the jurors were subject only to the *multa suprema* (ib. 45–6).

according to Cicero, was first introduced into the extortion law by Servilius Glaucia, with the object of allowing the recovery of monies from third parties who had benefited by the malpractices of the principal, if the principal or his securities were unable to repay in full.[27] If the Lex Servilia is to be identified with the Lex Repetundarum, this procedure must appear in the latter. Mattingly finds an allusion to it in two places, very dimly in l. 23 and less obscurely in l. 67–8. The latter line contains the clause *pequnia in fiscis obsignetur*, which deals with the storing of recovered monies by the *quaestor aerarii* pending repayment to the petitioners. The preceding lines 60–65 contain elaborate arrangements for the recovery of monies from the *reus* after the *litium aestimatio* (by the urban quaestors), and for the repayment of the plaintiffs *in toto* if the *reus* has paid in full, or for proportional repayment if recovery is incomplete. This section of the law is self-contained, and ends with the provision in line 66 that the remainder of the collected sums become public property after a lapse of five years. Next there comes a clause in ll. 66–7 dealing with the recovery of monies from the personal securities (*praedes*) given by the *reus*, if he has failed to pay in full. This is immediately followed by the clause about storing the money. The quaestor is instructed to store this money in bags, marked with the name of the presiding magistrate, the amount of the money, and the names of the persons from whom it was recovered: ' unde ea pequnia redacta siet '. From whom then has this money come ? Mattingly suggests that it is different from the recovered money mentioned in lines 62–3, and assumes without more ado that it came from third parties under the procedure of the Lex Servilia.[28] It does indeed come from third parties (in whole or part), but quite simply and obviously from the *praedes*, as explained in the immediately preceding paragraph in line 67, which links with the earlier provision for *praedes* in 57, both of which Mattingly inexplicably ignores. But it also may come from the principal, for the purpose of this clause is to instruct the quaestors of the next four years how to keep and check the unclaimed monies in the *aerarium*, acquired from *all* sources, until in the fifth year they become the property of the People.

The elimination of any reference to *quo ea pecunia pervenerit* from lines 67–8 greatly weakens the probability of their detection in line 23, where the phraseology is less promising. This section contains the list of persons who are excluded on various grounds from assignment to juries for particular cases. The list largely repeats the grounds of exclusion from the general roll of jurors, but adds some extra grounds that would not or might not apply to inscription on the roll itself, such as temporary absence from Rome or a personal connection with a particular *reus*. The new bans include the case of a person of whom it can be said: ' [. . . quod cum eo lege Calpu]rnia aut lege Iunia sacramento actum siet aut quod h(ac) l(ege) nomen [delatum sie]t '. With Mommsen's preceding supplement of ' quei . . . condemnatus est ' this clause excludes persons sentenced after normal indictment for extortion. The exclusion seems otiose, since the law in this very section has already excluded the only persons who were liable to charges of extortion,—magistrates, senators and their sons, brother and fathers, though the addition might be dismissed as due to the same excessive caution of the drafter as led him to repeat the exclusions already laid down in the definition of the *album iudicum*. Mattingly, rejecting Mommsen's supplement as too long, finds an alternative explanation by referring the phrase (completed by a colourless supplement) to operations against third parties of ' equestrian status ' under the clause *quo ea pecunia pervenerit*.[29] Under this alone, according to Cicero in 56 B.C., was it possible to sue

[27] Mattingly, a.c. (70), 162–63. Cic., *pro Rab. Post.* 8–12, 37, ' iubet lex Iulia persequi ab eis ad quos ea pecunia quam is ceperit qui damnatus sit pervenerit . . . sin hoc . . . caput . . . fuit . . . etiam ante in lege Servilia . . . '. For the procedure cf. *Clu.* 116, ' ad quos pervenisse pecuniam in litibus aestimandis statuta sit ' ; *Rab. Post.* 9, ' in litibus . . . (aestimandis) nemo appellabatur nisi ex testium dictis aut tabulis privatorum aut rationibus civitatum ' ; ib. 10, ' in litibus . . . cum erant appellati . . . statim contra dicere solebant '.

[28] a.c. (70), 163. Mattingly holds that the money *redacta* in 62 and 67 is distinguished from that ' ex hace lege in aerario posita ' in 61 and 66, and suggests that *redigere* and *redacta* are technical terms for recovery from accessories, being so used in *Rab. Post.* 37 and *ad Fam.* 8, 8, 3. But in *L.R.* 62 ' [sei is iud]ex ex hace lege pequniam omnem ad quaestorem redigere non potuerit ' refers only to the case of the *reus* unable to repay in full. The preceding clause *L.R.* 61 had dealt with the case of payment in full, and 62 follows logically, connecting with the provision in 57–58 for the seizure and sale of the goods of the *reus* who failed to give *praedes*. Besides, the monies *redacta* in 67 are summarized as *quae quomque pequnia ex hace lege ad qu[aestorem redacta erit*, suggesting money from all possible sources.

[29] a.c. (70), 163. He supplements *L.R.* 23 as ' neive eum [quem non liceat quod quom eo lege Calpu]rnia aut lege Iunia sacramento actum siet '.

an *eques Romanus* in connection with the extortion law.[30] These would be the only persons not yet excluded against whom an action could possibly lie under ' this law '. Mattingly also suggests that before the present law existed recovery from third parties was made by an ordinary civil action in which the principal sued the third parties for recovery of sums passed to them: hence the reference in line 23 to *legis actio sacramento* under the Lex Calpurnia.

Mattingly treats either phrase as referring to a successful action against a third party, as his supplements show, though he does not give a translation.[31] There are two improbabilities in his argument. The two parts of the double phrase are parallel: ' sacramento actum siet aut nomen delatum siet '. The second term is used throughout the Lex Repetundarum for the preliminary phase of an action for recovery—the laying of a plaint by the plaintiff with the praetor.[32] The first term should also refer to the opening of an action. The supplement of Mommsen assumes this. If the Lex Calpurnia used the standard form of contemporary civil action for its recuperatory purpose, then *sacramento actum siet* refers to the formal preliminary when the *sacramentum* or stake is put forward by the parties in the procedure *in iure*.[33] This would neatly correspond to the *nominis delatio* of the alternative procedure under the new law. The latter term is certainly not that used in the sole evidence for the later procedure against third parties, which according to Cicero consisted of *appellatio* during the *litium aestimatio*.[34] The second improbability lies in the suggestion that under the Lex Calpurnia the *reus* after he had been found guilty sued his associates for the return of their share in his exactions. This would amount to a suit over stolen property between thieves in a praetorian court. The basis of a property claim in civil law was an assertion of ownership, which could not apply here.[35]

If Mattingly's short-line system is accepted, and any preceding phrase about ' persons condemned for extortion ' is omitted, the doublet itself can only refer to persons against whom other actions for extortion have been initiated and are still pending at the time when jurors are being assigned to a different case. The clause could have a place in a list of exclusions that applied only in particular circumstances. But it would remain a somewhat otiose or long-stop precaution. The difficulty is somewhat eased when one remembers that despite the sharp distinction made by Cicero between senators and *equites* with reference to liability under the Lex Cornelia and the Lex Julia, the present Lex Repetundarum did not limit its suits to senators and senatorial magistrates. Recovery lay also against certain minor officials, including the *tresviri capitales* and the twenty-four elective military tribunes, and the sons of such people, the majority of whom would never secure senatorial status in the system of the pre-Sullan period.[36] It would be sensible to provide against the possibility that the name of some obscure equestrian *magistratus*, or his obscurer son, might remain undetected on the *album iudicum* when it was annually revised, and that such a person might be admitted to a jury at a time when he himself was involved in a similar charge.

Yet nagging doubt persists. The long-stop theory is unsatisfactory not in itself—there are frequent repetitions of otiose exclusions in the long chapters about the composition of *album* and *consilia*—but because any such exclusion would be out of place in this section of this list. After ' no person not living inside Rome, no person overseas, not more than one

[30] Cic. *pro Rab. Post.* 12–19, insisting that even equestrian military tribunes, *praefecti* and *comites* (13, 19) were exempt under the laws of his time (Cornelia, Iulia).

[31] His supplement *quem non liceat* must refer to the commission of a misdeed, as in *L.R.* 13, ' [iudicio publico conde]mnatus siet quod circa eum in senatum legei non liceat '. Mattingly, a.c. (70), 163, n. 69 shows his uneasiness by suggesting *deceat* or *quem censor notaverit* instead of *liceat*. But not even the censor would blame you for a possible acquittal.

[32] *L.R.* 3, 4, 7, 9, 19, 24, 25, 29, 30, 41. It is also used in 5 and 75 for the charge of *praevaricatio* brought against any of the participants, which was a separate offence. The law also uses *petitio*, *petit*, *petere*, as frequently, and *in ious educito*, occasionally (6, 19).

[33] Cf. Gaius iv, 13, 15. W. Kunkel, *Roman Legal and Constitutional History* (1966), 26 n.

[34] *pro Rab. Post.* 9–10, cited above n. 27. The *appellatio* was followed by a hearing by the same Judices, and the issue decided by the evidence given at the main trial. This was not a separate *iudicium*, cf. Cic., *ad Fam.* 8, 8, 2–3.

[35] Cf. Gaius iv, 11–21 on the older forms of *legis actiones*.

[36] *L.R.* 2, ' IIIvir cap. IIIvir a.d.a. tribunus mil. l. IIII primis queive filius eorum quoius erit '. The pre-Sullan Senate of some three hundred persons (Livy, *Ep.* 60) required the equivalent of an annual intake of some ten persons a year at the censorial revisions, i.e. the yearly crop of quaestors with a complement of ex-tribunes, only six of whom could normally hope to reach the praetorship.

from a family ', an exclusion for criminal involvement of any sort is inept. Nothing forbids a very different supplement, excluding from the jurors any person who was involved as a witness, or as an advocate of the accused, in the present case, or both if space allows : ' neive legat edatve eum quei testis erit in eam rem quod cum eo etc '., or ' . . . quei eius unde petetur causam deicet quod cum eo etc '. Elsewhere the law was concerned not to compel an advocate of the *reus* to act as a witness against him.[37] Without a similar exclusion here nothing prevented an equestrian witness or advocate of the accused from sitting as a juror in the same case. Verres managed to perpetuate a similar abuse under provincial jurisdiction in Asia, which was free from these statutory controls.[37a]

There is then no reason, either on the short-line or on the long line system of supplementation, to connect the double phrase in line 23 with the Servilian procedure *quo ea pecunia pervenerit*. Further, there seems to be no room for it elsewhere in the text, damaged though it is, unless it could be covered in about half the length of an average line which includes some 400–420 letters, or according to Mattingly's adjustment, 375–385 letters.[38] The clause *de pecunia a praedibus exigenda* uses some 260 letters in the restored text, of which half is original, without having to include a definition of a new category of persons, their liability and the appropriate procedure.[39] Mattingly notes the difficulty of fitting such a clause into the neighbourhood of lines 59–61, but does not explore the possibility of its location elsewhere. His plates and text-figures make the situation clear.[40] The lines run across the full width of the tablet. Fragmented though it is, its surviving parts cover the whole of its height at various points of longitude, and not more than about half its breadth at most points, except for the bottom lines, which are totally missing. The effect is that though so much is lost of most clauses, something is preserved of all but the briefest clauses down to the concluding section, and the order of the clauses is not in doubt—and has not been doubted even by Mattingly. His own system of revision based on a shorter line lessens the possibilities by diminishing the amount of free space on the left-hand side of the tablet.

The whole of the procedural part of the law is covered in vertical terms, and this is followed by clauses that deal with matters external to the judicial activity, such as the veto on outside interference with the court, and the rewards of prosecutors, which come in the last surviving lines. Hence any clause in the procedural part that is totally lost cannot have exceeded about half a line in length, including its rubric. What is lost altogether should be the clauses about publication and *sanctio*, and perhaps some form of the magisterial oath *in leges*, as in the surviving final lines of the Tabula Tarentina.[41] If the clause *quo ea pecunia* appeared in the Lex Repetundarum it should be sought in the vicinity of lines 60–70, which contain the arrangements for repayment. Its logical place would be lower than that within 59–60 suggested by Mattingly, since as the final resource for securing repayment it should follow the clause (66–67) *de pecunia a praedibus exigenda*.[42] But it happens that this is continuous on the surviving part of the tablet with the following clause *pequnia in fiscis obsignetur*. In the area of lines 60–70, vacant spaces of a half to a third of a line's length exist continuously on the right-hand side of the tablet. This would not seem to allow room for any missing clause approaching the length of that *de pecunia a praedibus exigenda*, and

[37] *L.R.* 33 (*de testibus*) excludes from compulsion ' queive in fide eius siet . . . [queive eius quoius ex h.l. nomen delatum erit c]ausam deicet dumtaxat unum '; i.e. one of the advocates of the *reus* is exempted from giving evidence against him. The limitation is to prevent all the *comites* of the *reus* from avoiding testimony.

[37a] Cic., *II in Verr.* i, 74; cf. the imperial rule of Ulpian (*Dig.* 2, 1, 10) forbidding magistrates to adjudicate for *sui* or *sibi*.

[38] Cf. a.c. (69), 132–33.

[39] Some clues to the content of such a clause can be gathered from *pro Rab. Post.* 8–9 and 37. It might go roughly thus : ' si tanta pecunia quanta summa litium quae aestimatae sint erint ex bonis eius exve praedibus qui dati sunt redacta non sit sive praedes non dederit reus, praetor iudexve cui ea quaestio h.l. obvenerit persequatur eos ad quos ea pecunia quam is ceperit qui damnatus sit pervenerit redigatque quod eius is qui in litibus aestimandis appellatus sit cepisse probabitur '. This reconstruction in short non-archaic spelling takes some three hundred letters, and could not be greatly reduced.

[40] For an illustration of the whole text cf. Mattingly, a.c. (69), Fig. 12, Plates vii–viii, with a.c. (70), 162. *CIL* I², n. 583.

[41] For text and photograph see Bartoccini, a.c. (above, n. 1) 7 ff.

[42] Cf. Cic., o.c. 37, ' 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 '.

certainly not for anything longer. It would seem that the only third parties considered in this law are the *praedes* to whom two sections are devoted, at the logical position in the text.[43]

Oaths in leges

If the Lex Repetundarum is to be identified with the law of the Tabula Tarentina and the Lex Servilia, it must contain the senatorial oath in *leges* which appears in the Tabula and in an extended form in three other laws attributed to Servilius Glaucia and his associate Saturninus in the period 103–100.[44] This presents no spatial difficulty, since the logical place for the oath-clause is, as in the Tabula Tarentina, at the end of the document with miscellaneous matter such as the rewards of the prosecutors. But there is an objection to the presence in the Lex Repetundarum of the detailed requirements for oath-taking and the provision of sanctions that appear somewhat briefly in the Tabula Tarentina and at great length in the Bantine fragment and the *lex de piratis*. These sought to secure the execution of their provisions by laying down heavy penalties—exclusion from the senate and from future magistracies—and in the latter two laws the exaction of severe fines, for those who impeded the law in any way or who failed to take the oaths. The oaths with their sanctions follow the substantive part of their laws and are placed in the final or miscellaneous section. But the Lex Repetundarum proceeds differently. There is a clause in lines 69–72 of which the title restored by Mommsen justly summarizes the contents: ' iudicium nei quis impediat '. This forbids any magistrate to prevent the hearing of cases or to interfere in various ways with the presiding judge, the jurors or the plaintiffs. The next three consecutive sections deal with other matters—the replacement of presidents who die in office (72–73), the termination of actions under the previous legislation (73–75), the procedure for *praevaricatio* (75), and the rewards of prosecutors (76–79). In lines 70–72 no sanctions or penalties are laid down for the enforcement of the provision *nei quis impediat*, and there is no room for them until after the clauses *de praemiis*. But in the other documents the same clause imposes the oath and its sanctions, and the procedure for enforcement.[45] It is possible that the sanction of the clause *nei quis impediat*, which is preserved virtually intact, was placed in another part of the document, but improbable, since the general arrangement of the law is by self-contained sections. And if this were so, it marks a formal difference which excludes the identification of the Lex Repetundarum with the law of the Tabula Tarentina.[46]

The method of the legislator is revealed by the whole tenor of the clause *nei quis impediat*, and by the preceding title *quaestor moram nei facito*. It excludes the use of oaths and sanction in the style of the Bantine fragment. These represent an alternative technique developed when the simple fiat of the *lex populi* was found to be inadequate, and a more summary method of law enforcement than the primitive *iudicium populi* was seen to be necessary. The arrangements of the Lex Repetundarum are thus inconsistent with a date after the full development of the later oaths and sanctions. But it remains an open question whether they are entirely inconsistent with the form of oath and sanction which appear in the Tarentine fragment. Mattingly rightly points out that far less space is available for the oath-section in this law than in the other documents.[47] Though it contains the exclusion

[43] *L.R.* 57–58, which requires the *reus* to give *praedes* after condemnation, properly precedes 58–59 *de litibus aestimandis*. Then 60–66 concern repayment arrangements, whether total or incomplete and hence needing proportionate division. After this 67 *de pecunia a praedibus exigenda* is not so out of place as it at first seems: 62–65 *de tributo* and 67 are alternatives. Penultimately 67–68, arrangements for storage pending final payment, is in its logical place. Finally 69 puts pressure on the quaestor to do his job properly: ' moram ne facito '.

[44] For the oaths in these laws see *FIRA*[2] 1, 6 and 9 c. 11–28; Appian, *B.C.* 1, 29, 130 f., for the *lex agraria*. On these cf. Mattingly, a.c. (70), 155, n. 15.

[45] Though the provision for oaths in the Tab. Tar. is relatively summary, being limited to lines 20–22, it devotes a line to penalties for not taking the oath, which are the same as in Tabula Bantina 3. Provisions for fines for other violations of the law, as in Tabula Bantina 2, are perhaps absent rather than lost. Hence the Tab. Tar differs here from the Lex Repetundarum in kind, but from the Tabula Bantina only in quantity.

[46] The provisions in *L.R.* 57 concerning the *reus* ' nisei de sanctione hoiusce legis actio ne es*to* ', may imply a general provision under ' the praetor of this law '. But in Tabula Bantina 2 and *Lex de piratis* c. 23–25 the exaction of fines is left to external powers before another praetor (' quei volet magistratus ', ' quei volet qui civis . . . liber natus sit ').

[47] a.c. (69), 142: ' The elaborate oath clauses of the Lex Bantina . . . require some 500 letters before the point of contact with the Tarentine text '. But in a.c. (70), 155 he less correctly states of the latter: ' its elaborate oath clause closely parallels those known from the Tabula Bantina . . . '.

from future magistracies and the Senate it can hardly have contained their elaborate provision for fines. Mattingly also drew attention to the evidence of the Lex Agraria of 111 for the existence of a regular magisterial oath apparently attached to a particular law, with a sanction like that of the Tabula Tarentina.[48] Its appearance in the conservative agrarian law, which sets it aside, may suggest that it was a traditional requirement, akin to a similar oath mentioned by Livy under 200 B.C., and not a recent or radical innovation.[49] Hence it is possible that the last lines of the Lex Repetundarum contained something of this sort. But the absence of any sanctions from the clause *nei quis impediat* still points to an early date in the series of extortion laws.

The clauses de praemiis

Mattingly argues from the similarities of the fragmentary clauses about the rewards of successful plaintiffs surviving from the two tablets that the two laws are to be identified.[50] He pleads that in no other known case is there such close similarity between tralatician clauses of two laws on the same subject. But unfortunately there are no other surviving instances of tralatician clauses from two such statute laws. Though Cicero refers to the general similarity of certain clauses of other laws, the only direct evidence is his statement in *pro Rabirio Postumo* 9: ' haec totidem verbis translatum est (sc. in legem Iuliam) quot fuit non modo in Cornelia sed etiam ante in Servilia '. This suggests that it was customary to transfer non-contentious clauses from earlier to later laws with minimal or no alterations. Hence even identity of language does not prove identity of the whole statute. Mattingly, however, cites similarities between certain texts of municipal legislation, of which only one is a statute law, to prove that tralatician clauses tended to *differ* in their wording. His closest parallel is provided by the comparison of a section of the Lex Mamilia Roscia, a statute law of 55 or 49 B.C., and a related passage about the alteration of boundaries in the Lex Coloniae Ursonensis of 44 B.C., which was a *lex data*.[51] Here it was a question of applying the general rule of the statute law to the particular instance of the *lex coloniae*. The only substantial alterations, which concern the identification of the *colonia*, are due to this.[52] Otherwise the two clauses show the same degree of identity as do the clauses *de praemiis* of the Tarentine and Bembine tablets, which even in their fragmentary condition show variations and omissions. Of these Mattingly can only state that ' whenever we can check the two laws over whole chapters they are identical in content, disposition, and length of sub-section, and *remarkably close in phraseology* '.[53] This approximates to Cicero's account of a tralatician clause, cited above.

[48] a.c. (69), 143, n. 87, citing *Lex agraria* 41–2: ' si quae lex . . . est quae mag(istratum) . . . inque eas leges plebeive scita de ea re . . . sed fraude sua nei iurato neive . . . '. This may be completed from line 41 above as ' [mag(istratum) q]uem minus petere capere gerere habereque liceto '.

[49] Livy 31, 50, 7. Mattingly l.c. distinguishes between this general oath taken on entering office and the new oaths to specific laws imposed on magistrates already holding office and on senators.

[50] a.c. (69), 140 ff.

[51] *FIRA*² I, 12, KL.IIII; 21, CIIII.

[52] I print a comparison of *Lex Urs.* CIV with Lex Mamilia KL.IIII. Omissions in *Lex Urs.* are marked by round brackets ( ), substitutions by double round brackets (( )), and additions by square brackets:

qui limites decumanique ((intra fines coloniae Genetivae))[a] deducti [factique] erunt quaecumque fossae limitales in eo agro erunt ((qui iussu C. Caesaris dict. imp. et lege Antonia senat. que. c. pl. que. sc.))[a] ager datus atsignatus erit, ne quis (eos) limites decumanosque opsaeptos neve quit (in eis) [in]molitum neve quit ibi opsaeptum habeto neve eos arato neve eis fossas opturato neve opsaepito quo minus suo itinere aqua ire fluere possit. si quis atversus ea quit fecerit in res sing. quotienscumq. fecerit HS ((∞[b] c.c.G.I.))[c] d.d. esto eiusque pecuniae cui volet petitio p.q. [d] (hac lege) esto '.

a, for *hac lege*; *b*, for IIII; *c*, for ' colonis municipbusve eis in quorum agro id factum erit '; *d*, this is standard throughout Lex Ursonensis. The substantial changes are solely for the purpose of applying *hac lege* or *colonis eis* to the particular case. So too in *Lex mun. Tarentini* 39–42, and *Lex Urs.* LXXVII the similarity is very close. The texts reflect a common source with two minor errors rather than variations. The former omits *privatorum* after *sine iniuria*, and the latter adjusts the title appropriately twice. Mattingly also quotes *Lex mun. Tar.* 32–36 and *Lex Urs.* LXXV on the destruction of buildings. Here the loose definition in the former, ' nisi quod non deterius restiturus erit ', is replaced by a long and precise formula, which also reflects an intermediate development in Roman law about the requirement of quorums in public proceedings: this is not tralatician at all.

[53] Notably where *L.R.* 78 reads ' militiae munerisque poplici in su[a quoiusque ceiv]itate *vocatio esto* ', Mattingly deletes the words *in . . . ceivitate* on the grounds of supposed dittography, because they do not appear in the corresponding place in Tab. Tar. 4. But something similar appeared in Tab. Tar. 3, where he admits ' [*in sua quoiusque ceivita*]te omnium rerum [*immunes*] '. The same words make excellent sense in *L.R.* also, distinguishing local from Roman exemptions; the terminology reappears in *SC de Asclepiade* (*FIRA*² I, 35, 12), cf. below n. 72.

A major difficulty arises for the theory of Mattingly in the definition of the beneficiaries of the clause *de civitate danda*. He assumes, as do many other scholars, from a passage of the *pro Balbo*, that the Lex Servilia offered the Roman citizenship only to plaintiffs of Latin status. The relevant section of the Lex Repetundarum (76–77) certainly offers the Roman citizenship to the principal non-Roman plaintiff in each successful case without further definition of status.[54] The following section (78–79) offers an alternative to the Roman citizenship to a principal plaintiff who has not held the annual magistracy of his community. This is generally interpreted to refer to the municipalities of the Latin Name, with the implication, which Mattingly (following Mommsen) writes into the text, that this alternative is offered to persons who do not wish to become Roman citizens under the terms of the previous clause.[55] The further implication of this alternative is that the ex-magistrates of such communes had already received the citizenship or its equivalent *ex officio*.[56] Mattingly, wishing to bring this part of the Lex Repetundarum into line with the Lex Servilia, needs to restrict the offer of the reward both in the first and in the second section to persons of Latin status. But there is no possibility of inserting a restrictive formula into the definition of the first section, which is well preserved. Hence Mattingly seeks deviously to show that in practice line 76–77 could only apply to persons of Latin status.[57] He suggests that the operative formula, preserved in the second section and to be restored in the first, ' [quoius opera is maxime condemnatus siet] ', refers not to the plaintiffs proper, but to the *patronus* or advocate, who represents them, and who (he suggests) could only be Latin-speaking persons of Latin or Roman status. The rewards of the law are *only* for the *patroni* and not for the petitioners at all.

The law makes provision for the allocation and approval of *patroni* in lines 9–12, 26–27. But it distinguishes clearly in these sections between the plaintiff, *is qui petit* or *is qui nomen defert*, and the *patroni* who may act for them, while the actual appointment of *patroni* takes place not before but *after* the technical *nominis delatio*, so that they cannot be the persons indicated as doing this in lines 76–79.[58] To strengthen his case Mattingly seized upon the term ' [si quis ali]eno nomine . . . petere volet ' that occurs in the midst of the long opening section about *petitio*. Assuming that these are the patroni, he imported this term into the clauses *de praemiis*.[59] But details surviving in the sections about repayment (60–63) prove that this term refers to the leaders or *legati* of groups of provincial plaintiffs, there defined as persons who present the suits either of themselves or of others, whether fellow-citizens, communes or kings: *suo parentisve . . . regis populeive ceivisve suei nomine*.[60] The plaintiffs *alieno nomine* of line 8 cannot be separated from those of line 60–63. With this context it is difficult to see how in the formula proposed by Mattingly for 76–79 the term *qui alieno nomine petit* could be taken by the public, or intended by the legislator, to mean something quite different.

Mattingly seems to assume that because the Roman *patroni* appear to monopolize rewards under the legislation of Cicero's time, the rewards must be limited to *patroni* in the

[54] ' sei quis eorum quei ceivis Romanus non erit ex hace lege alterie nomen . . . *ad praetore*m quoius ex hace lege quaestio erit detolerit et is *eo* iudicio hace lege condemnatus erit tu*m* . . . '. What follows is clarified by the next section: ' tum quei eiu[s nomen] detolerit quoius eorum opera ma[xime unius eum condemnatum esse constiterit] '. For the supplement cf. Asconius, *in Mil.* 48 (54 C).

[55] The words *sei ceivis Romanus ex h.l. fieri nolet* appear in neither version of the section.

[56] Cf. text in n. 54.

[57] a.c. (70), 167–68. See below, p. 94.

[58] ' quei ex h.]l. pequniam petet nomenque detulerit . . . sei eis volet patronum in eam rem darei praetor ad quem [nomen detulerit . . . dato dum] nei quem eorum det sciens dolo malo, etc.'. The tense of *detulerit* (76) is decisive. cf. ib. 12, ' [eor]um praetor . . . alium patronum eiei . . . [dato] '.

[59] In line 6 there survives only ' [sei quis ali]eno nomine ', followed after a gap of some 134 letters by the formula *quaestio eius praetoris esto*, etc. This is one of the main divisions of the section defining the kinds of plaintiffs admitted.

[60] In *L.R.* 63, ' [diemque edito quo . . .]quoius regis populeive nomine lis aestumata erit legati adessint '. In *L.R.* 60 the parallel to line 6 is explicit: ' [quei satisfecerit nomine su]o parentisve suei . . . leitem aestumatam esse queive . . . [satis]fecerit regis populeive ceivisve suei nomine leitem aestumatam esse sibei '. The final *sibei* indicates that the same party who has acted in the main hearing now comes to collect repayment. What else is this but a definition of *quei alieno nomine petit*? Mattingly a.c. (70), 167 admits that the advocates have no place at the settlement of claims. He sought (ib., and n. 95) to discover the *legati* in the fragmentary line 4, separate from the speakers *alieno nomine*, where he restores ' [sei quis satisfecerit . . . se legat]um esse uti peteret de ea re eius petitio . . . esto '. The Latinity of this is obscure, and the words *regis populeive nomine* would be required with *peteret*, as in 60 and 63 with *aestumatam esse*.

pre-Sullan period.[61] He makes much of the fact that following the two clauses *de praemiis* an extremely fragmentary clause in line 86 does something for a Roman citizen who initiates an action ' under this law '. He assumes as a matter of course that these are *patroni* and not plaintiffs.[62] Yet even under the Lex Cornelia Roman citizens could use the recovery law in cases involving judicial bribery, and the procedural accusations for *praevaricatio* of line 75 are likely to have been initiated by Romans.[63] Mattingly uses the Tabula Tarentina to show that these rewards were the privileges of *militiae* and *muneris vacatio*. But such minor prizes would have little attraction for the great seigneurs who later dominate the extortion court.[64] It is reasonable to suggest that this clause was construed to refer to the *patroni* in later time, though the rewards had to be remodelled in scope to satisfy the great senatorial advocates. Such rewards appear first in the legislation of Sulla.[65]

In order to improve his case Mattingly goes so far as to surmise that in the clause *de patrono cooptando* the law made it clear that only Latins or Romans could act as such. Hence lines 76–78 could only be applied to persons of Latin status.[66] All this depends upon his redrafting the various supplements with the help of the irrelevant phrase *alieno nomine*. The awkward fact remains that the clear wording of Lex Repetundarum 76–77 extends its rewards to plaintiffs of non-Roman status without further limitations, and that Mattingly's supplements would in the first place benefit an active *legatus*. And rightly so. For a principle underlies the offering of these rewards that not only Mattingly has failed to take into account. The purpose of the rewards is evidently to encourage initiative. But whose ? The whole history of the extortion procedure reveals how understandably reluctant and pessimistic were the victims of magisterial racketeering.[67] It was not Roman politicians who required a stimulus in the late second century to prosecute their feuds with their *inimici*, but the long suffering Italians and provincials, who may have well preferred to leave ill alone for fear of provoking worse. This law was exploiting in a new way a device that had been used in military contexts for the past hundred years, when it offered the Roman citizenship to any foreigner who secured the collective prosecution and condemnation of an extortionate magistrate. The offering of rewards to *patroni* would have had little practical effect under the procedural conditions which this law reveals. The so-called ' extortion court ' emerges in this bill as a State agency for the recovery of property by provincial subjects on a cash valuation. In due course it became a major tool of Roman politics, and the great advocates and politicians took over its operation. Only when they were effectively responsible for the whole conduct of a case, as is symbolized by the transfer of the provincial *inquisitio* from the plaintiffs to the *patroni*, did it become appropriate to create substantial rewards for *patroni* as such.[68]

The alternative rewards

Mattingly's views about *patroni* and *praemia* lead him into unnecessary difficulties in the interpretation of the clauses *de civitate danda* and *de provocatione danda*. He restates a logical objection raised by Strachan-Davidson, who held that since the first clause offered the Roman citizenship without restriction to all non-Romans who qualified, the second clause also should offer the alternative rewards without restriction. The beneficiaries of the two clauses should be the same. Hence Strachan-Davidson supplemented the second clause with a long formula that includes all grades of Italians and all provincials.[69] This is improbable, because the first clause has no such formula, and it is unnecessary, since the surviving words as they stand, with minimal supplementation, provide a summary in Latin

[61] a.c. (70), 166, n. 89, citing Asconius 48 (54 C).
[62] ib. 167 ad fin.
[63] Cic., *pro Clu.* 104, 114, ' qua lege in eo genere a senatore ratio repeti solet ', the plaintiff being a Roman citizen. Not enough survives in *L.R.* 75 to reveal who brings the charge of *praevaricatio*.
[64] a.c. (69), 141–42.
[65] Cf. L. R. Taylor, *Party politics in the age of Caesar* (1949), 113 f. on the rewards of the *leges Corneliae*, including promotion in senatorial standing, e.g. *pro Balbo* 57.
[66] a.c. (70), 168. But ib. n. 98 the ' effective Latin orators ', cited from *Brutus* 169, are both Italici and Latini by origin.
[67] Cf. e.g. Cic. *Div. in Caec.* 2–4, 20–21, 53–4.
[68] For the recuperatorial basis of the *lex repetundarum*, cf. my analysis in *JRS* XLII, 1952, 53 f. For the later *divinatio* and *inquisitio* see below, pp. 97–8.
[69] Mattingly, a.c. (70), 166, citing Strachan-Davidson, *Problems of the Roman criminal law* (1912) I, 147 f. The first clause is remarkably complete at the beginning (cited n. 54 above). The second clause jumps from ' sei quis eorum quei ' to ' [dicta]tor praetor, etc.'.

of every type of civic magistracy existing in Italian communes, whether Latin, Oscan, Etruscan or Greek: ' [quei eorum in sua ceivitate dict]ator praetor aedilisve non fuerint '. The probable supplement *dictator* has bemused historians with thoughts of early Latino-Roman *dictatores*. A contemporary *dictator* would be discovered more easily in the guise of an Oscan *meddix tuticus* or an Etruscan *zilc* or *zilath* than at a Latin colony of this period where the magistracies were commonly collegiate *duoviri* or *praetores*.[70] It may, however, be fairly objected that since there is no evidence that any but *populi Latini* secured any of the privileges of Lex Repetundarum 78–79 on other ground in this period, the limitation of the clause to Latini is preferable.[71]

Mattingly, assuming this limitation, presses the argument that logic requires that those who receive the citizenship should be of the same Latin status as those who secure the alternatives. Another incoherence now raises its discordant head. For if the first clause (*de civitate danda*) is limited, as Mattingly would have it, to Latini, and if the definition of the second clause means, as has been widely thought, that ex-magistrates of Latin States already received citizenship *per honorem*, then the first clause is largely otiose, since it offers citizenship to a class of persons who largely possess it already. Hence Mattingly is moved to agree with Bradeen that the second clause means only that Latin ex-magistrates secured no more than the alternative privileges of *ius provocationis* and *vacatio munerum* by holding civic office. This restores coherence to the two clauses. The first offers the Roman citizenship to principal plaintiffs of Latin status. The second allows those who have not already secured the alternatives *per honorem* to take them now in lieu of citizenship.

The force of this argument is derived from considerations of verbal logic. But it ignores the logic of historical circumstances. The apparent inconsistency can be explained very simply on the normal (or *textual*) view of the two clauses. If certain Latini had a special right of securing either the Roman citizenship or the alternative privileges *per honorem*, it was good political sense to extend this alternative privilege to other Latini to whom the citizenship was now being offered on different grounds. There was no reason in the contemporary situation to extend the second concession to non-Romans of federal status, Italic or provincial, who had never previously had any such privilege. There was good reason not to extend the *ius provocationis* in particular to people in lands outside the bounds of Italy where it could not be effectively enforced. When a generation later similar privileges were being granted in an extended form to the sea-captains of Greece and Asia who had assisted the Sullan cause, though they received the *vacationes* they did not receive the *ius provocationis*.[72] So on the orthodox interpretation of the two clauses *de praemiis*, no difficulty arises from the special treatment of Latins. The second clause merely restates a special privilege that was confined to them. It also ceases to be necessary to argue that Latins did not receive citizenship *per honorem* at this date, against the plain implication of the second clause, when Latins are not seen as the sole or even the main beneficiaries of the first clause.

For the history of the Roman citizenship the latter is a point of some importance. The true logic of line 78 has been better understood by P. A. Brunt, whom Mattingly criticizes for writing that ' strictly this only implies that such ex-magistrates had either the Roman citizenship or the privilege concerned '.[73] Precisely so in the full sense of the words. If the section is taken as a whole, with the restorations accepted by Mattingly and his predecessors, it means that the Latins who were not ex-magistrates are now to enjoy the choice previously open only to the latter. This is the plain effect of the supplement: ' si civitatem mutare nolit '. It is relevant to note the particular significance of the third privilege: ' muneris

[70] Cf. my *Roman Citizenship* (1939), 63 f., 123; and recently J. Heurgon, *Les origines de la république* (Fondation Hardt xiii, 1967), 112 f. For the survival of the *dictator* in some Latin states, *Roman Citizenship* 60 f. Compare also the formulation of the later *Tab. Her.* 83–4: ' queiquomque IIvir(ei) IIIIvir(ei) erunt aliove quo nomine mag(istratum) . . . habebunt '.

[71] Livius Drusus in 122, retrenching on the proposal of Fulvius Flaccus in 125, limits the offer of *ius provocationis* to Latins (Plut., *C. Gracchus* 9), while the Italici lack any similar advantage in 91–90 (cf. *Roman Citizenship* 128). Latins by 89 have at least the *ius c.R. per honorem adipiscendi*, and probably from *c.* 125 (below, p. 96).

[72] *FIRA*² I, 35. They receive local *immunitas omnium rerum* and *muneris publici vacatio*, and instead of the *ius provocationis* a choice between local, neutral or proconsular jurisdiction.

[73] Mattingly, a.c. (70), 167, n. 92 follows D. W. Bradeen, *Class Journ.* LIV, 1958–59, 221 f. P. A. Brunt, *JRS* LV, 1965, 90, n. 4.

poplici in su[a quoiusque ceiv]itate [vacatio] '. This was an exceptional advantage that the enfranchised Latin would automatically enjoy under the Roman rule of the incompatibility of dual citizenship.[74] The *Latinus* who becomes *Romanus* ceases to be subject to the *munera* of his former *patria*. The combination of *ius provocationis* and *muneris publici vacatio* could only be devised as the alternative to an offer of Roman citizenship. The Latinus is to receive the most advantageous of the practical benefits of an enfranchized alien while retaining his local citizenship. Lines 78–79 thus combine with the evidence of Asconius, who mentions the *ius civitatis per honorem adipiscendae* in connection with the Lex Pompeia of 89, which granted Latin status to the Celtic peoples of Gallia Transpadana, to show that this privilege existed from the Gracchan period onward, and included the offer of an alternative.[75] Such a proposal makes very good sense in the decade of the revolt of Fregellae as a sop to Latin discontent, as others have argued, and may be related to the bolder but unsuccessful proposal of the consul of 125 to combine the two alternatives in a bill of general enfranchisement.[76] Characteristically only a limited form of this proposal finally became law. The proposal makes much less sense as an innovation of 89, when there was no special reason to enlarge the content of *ius Latii* for the benefit of the quiescent Transpadani, some of whom in the past had positively objected to the Roman enfranchisement of their citizens.[77]

The Lex Servilia and Latini

The difficulties of Mattingly about *patroni* and *Latini* in lines 76–79 of the Lex Repetundarum were made inevitable, because he accepted the premise that the Lex Servilia of Glaucia limited its rewards to persons of Latin status. This view, which is widely held, is based on a superficial interpretation of a passage in the *pro Balbo*, in which Cicero mentions two advocates of Latin origin who secured Roman citizenship before the Social War through the successful prosecution of certain Roman citizens on an unspecified charge, presumably of extortion.[78] From this Cicero passes on to remark that two laws, the ' severe ' Lex Servilia and the Lex Licinia Mucia, otherwise known as a law of 95 which provided against the irregular acquisition of Roman citizenship, did not close this avenue to the enfranchisement of Latins. Hence it has been assumed that the well-known extortion law of Servilius Glaucia, current from *c.* 105 to 80 B.C., formally limited its rewards to persons of Latin status. The context is relevant. Cicero in 45–51 of this speech has demonstrated the validity of grants of Roman citizenship made by the edicts of *imperatores* to allies of federate status, whether Italic, Latin or provincial. He next demonstrates that the legislative acts of the Roman people also conferred the citizenship on federal allies.[79] He dilates upon two instances of gentry from Tibur who had been rewarded thus, whom he selects because the descendants of these two men were familiar figures in Roman society, and one of them was serving on the very jury of the Balbus case itself. They were particularly relevant to his purpose because they belonged as Tiburtines to one of the two or three surviving *populi* of early Latium, not enfranchised till 90 B.C., which unlike the *colonia Latina* of Spoletium cited in the previous section could genuinely be described as *foederati* from their origins down to the Social War.[80] He then develops the theme of the privileges of Latins in a new

[74] The controversy raised by F. de Visscher in a series of articles, from his *Edits d'Auguste* (1940), 108 ff. onwards, about the working of dual citizenship, need not be here discussed. Whatever changes developed after 50 B.C., Cic. *pro Balbo* 41–43 shows that Cornelius Balbus ceased technically to be a citizen of Gades when he became a *c.R.* in 72 B.C. under the Lex Gellia. Cicero, in *pro Caecina* 100 about the same date, asserts the rule of incompatibility firmly in a passage that is not coloured by the needs of his case.

[75] Asconius, *in Pis.* 3 ' ut possent habere ius quod ceterae Latinae coloniae, id est ut petendo magistratum civitatem Romanam adipiscerentur ' can only refer to the previously existing *coloniae Latinae*. He is well informed in the context about the historical background. Such scholars must reject *id est*, etc., while accepting what goes before.

[76] Cf. G. Tibiletti, *Rend. Ist. Lomb. Sci. Lett.* LXXXVI 1953, 45 f.

[77] Cic., *pro Balbo* 32 lists Cenomani, Insubres, Helvetii, Iapydes, ' quorum in foederibus exceptum est ne quis eorum a nobis civis recipiatur '.

[78] ib. 53–54 ' quo modo . . . L. Cossinius Tiburs pater huius equitis Romani . . . damnato T. Caelio, quomodo ex eadem civitate T. Coponius—nepotes T. et C. Coponios nostis—damnato C. Masone civis Romanus est factus? . . . accusatori maiores nostri maiora praemia . . . esse voluerunt ? '. For Mattingly's view, cf. a.c. (70), 163–65.

[79] *pro Balbo* 52, ' dabo etiam iudicum . . . dabo universi populi Romani . . . dabo iudicium etiam senatus '; ib. 53 takes this up with ' cognoscite nunc populi Romani iudicium ', meaning legislation.

[80] Cf. my *Roman Citizenship* 91. Livy 27, 9–10 excludes these from his list of Latin Colonies, pace Mattingly, a.c. (70), 164, n. 77; cf. A. J. Toynbee, *Hannibal's Legacy* (1965) i, 249, n. 3; E. T. Salmon, *Phoenix* ix, 1955, 74.

section concerning the Lex Servilia and the Lex Licinia: ' quod si acerbissima lege . . . ' Because of his chosen *exempla*, he confines himself to Latini. Mattingly and others have inferred that he knew of no Italici who had been thus rewarded. The inference is not valid.[81] Equally one might wrongly infer from the silence of this passage alone that the Lex Licinia was not concerned with Italici. Cicero was here in need not of an exhaustive list, but of good *exempla*, which he found in the two men of Tibur, present or virtually present in court before him. Hence he had no occasion to say anything at all about the standing of other *socii* in the following section, in which he noted that two conservative laws did not cancel this privilege. It is likely enough, as Mattingly suggests, that only Latin-speaking Italians would establish themselves as advocates at Rome, though it is remarkable that the instances which he cites turn out to be not *Latini homines* but *socii Italici* from Asculum and the land of the Marsi.[82] Mattingly sees the supposed check of the Lex Servilia as a malicious move against the aims of the *Italici* in the context of enfranchisement. But this issue was dormant throughout the decade of the Cimbric wars, to which Glaucia's law belongs, and in the context of the extortion law it would be extremely stultifying if the reward of successful prosecution was removed not only from *socii Italici*, but, as must then follow in Mattingly's interpretation, from provincial plaintiffs as a whole.

It is thus unnecessary to infer from the passage in the *pro Balbo* that the Lex Servilia was less generous than its predecessor in the formal definition of its clause *de civitate danda*. The concluding fragment of the Tabula Tarentina is too incomplete to settle the matter, and its lines can be restored to suit any opinion. But it is remarkable that the line which completes the provisions about *praemia* continues by instructing the praetor to do something that concerns ' all persons of the Italian allies and of the Latin Name '.[83] Whether Cicero in *pro Balbo* was speaking of the Lex Servilia of the optimate consul Caepio or of its rapid successor, the law of the radical Glaucia, hardly matters for the present discussion, since the relevant clause may have been tralatician. Dr. E. Badian has argued that the connection of the two laws cited by Cicero with ' leading citizens of great worth and wisdom ' favours the identification with Caepio's law.[84] Dr. B. Levick offers a new explanation, that the text refers solely to the action of these wise men in the Lex Licinia Mucia, by which they ' allowed the way to the citizenship under the Lex Servilia to remain open '.[85] But this interpretation ignores the strong stylistic chiasmus, which makes the two laws precisely parallel, and the exact construction of the vital phrase ' populi iussu '.[86] This indicates that there are not two but three laws under consideration in this passage. Cicero's theme in sections 53–54 is that a series of laws allowed the privilege of enfranchisement. The gist of the whole passage is that Latin persons secured citizenship under the old extortion law (' populi iussu '), and even the restrictions of the Lex Servilia and of the Lex Licinia preserved their position. But nothing is said that proves the exclusion of persons of different status from these benefits.

Divinatio and the Lex Repetundarum

A difference between the Lex Servilia and the Lex Repetundarum exists in the custom of *divinatio*. Cicero's account in his *divinatio in Caecilium* shows that the essentials of the system which operated under the Lex Cornelia in 70 existed already in the period of the two *leges Serviliae*. Under the Lex Cornelia the function of *delatio nominis* and *accusatio* was wholly in the hands of Roman *patroni* of high rank, frequently *pueri nobiles*, supported by secondary *subscriptores*, who might be more or less professional hacks of the Roman forum. These sought the right of conducting *accusationes* without special regard for the wishes of the

[81] Mattingly, a.c. (70), 164, n. 78.

[82] ib. 167, n. 98; cf. n. 66 above. It is not stated in *pro Balbo* 53–54 that the men from Tibur were *patroni* rather than plaintiffs conducting their own cases.

[83] Tab. Tar. 12: ' [is praetor . . . quei inter peregrinos] ius deicat is facito utei socium nominisque Latini omnium . . . '. Ib. 13, 14 concern publication at Rome, while 16 concerns publication in and outside Italy. So the Italici are to have their attention drawn to the fact of their exclusion from the special rewards of the law, on Mattingly's hypothesis.

[84] E. Badian, *CR* LXVIII, 1954, 101 f.

[85] B. Levick, *CR* LXXXI, 1967, 256–58.

[86] ' si acerbissima lege Servilia (A) . . . hanc . . . viam populi iussu patere passi sunt (B) neque ius est hoc reprehensum (B) Licinia et Mucia lege (A) '. Here *populi iussu* construes with *patere* and *lege Servilia* with *passi sunt*: they cannot both go with *passi sunt*. ' The *principes viri* allowed what the People had ordered—that the way should remain open ' is the effect.

provincial plaintiffs, under a provision of the Lex Cornelia which gave the power of selection to the judicial *consilium*. This settled the matter by a formal vote that either approved the request of a single intendant to initiate a prosecution or made a choice between rival intendants, none of whom was necessarily the choice of the actual plaintiffs.[87] This was the *divinatio*, which took place after preliminary notice, for which Cicero uses the term *postulare*, had been given by an intendant.[88] The decision of the *consilium*, set up by the praetor after notice of *postulatio*, authorized the approved intendant to proceed with a formal *delatio nominis* and *accusatio*, and in due course armed him with positive power to 'enquire' and collect evidence in the particular province within an agreed time.[89] Such was the system of the Lex Cornelia. Cicero cites four cases from the period about 105–100 that show that the essentials of the *divinatio* already existed at that time.[90] Two were instances of the rejection of an intendant because he had been the quaestor of the accused, and the third was precisely parallel to the situation of Cicero and Caecilius: the *patronus* chosen by the provincial plaintiffs was preferred to the self-appointed intendant who had been the quaestor of the *reus*. In the fourth case the choice was between the advocate favoured by the provincials and a private *inimicus* of the accused.[91] In all these cases the *divinatio* preceded the *delatio nominis*.

The system of the Lex Repetundarum is quite different. The clause *de patronis dandis*, which is virtually complete or of roughly certain supplementation in its operative section, assigns the appointment of *patroni* to the praetor, with no mention of the Judices or any provision for the taking of votes at this point. The *patroni* are appointed *after* the plaintiffs have made the *nominis delatio*. So too the clause *de patrono repudiando*, which deals with the rejection of a *patronus* not by the court but by the plaintiffs themselves, instructs the praetor to supply an alternative.[92]

As for the *conquisitio*, as the Lex Repetundarum would call it, though there are sizeable gaps in the relevant four sections of the law, enough survives to suggest that the method differed from that of the later accusatory system.[93] The Lex Repetundarum does not hint at any mention of the *patronus* in this connection, and though the operator is not defined in the surviving lines, the implication is that it is the recurrent *is qui petit* or *is qui nomen detulerit*.[94] Further, the compulsive force which secures the attendance of witnesses and the production of documents is the direct action of the praetor, reinforced by the threat of fines.[95] The foreign inquisitor seems to have been given no personal authority by this law,

[87] For the evidence see *Div. in Caec.* 10, 24, 47–50, 61–2, especially 10, 'si certamen inter aliquos sit cui potissimum delatio detur', and 49, 'ex illo grege moratorum qui subscriptionem sibi postularunt cuicumque vos delationem dedissetis'. cf. *II in Verr.* i, 15, 'non modo deferendi nominis sed ne subscribendi quidem cum id postularet facerent potestatem'. For the voting, *Div. in Caec.* 24, 'ceratam . . . tabellam dari'. Later, under the Lex Julia, Cic., *ad Q.f.* III, 2, 1. For opposition to the plaintiff's selection, *Div. in Caec.* 63–65; cf. *RE* v, 1234.

[88] *Div. in Caec.* 49, 62, 64; *II in Verr.* i, 15. Asconius, *in Scaur.* 17 (19C). The term, used also of *inquisitio* (*I in Verr.* 6), seems non-technical. It appears in *L.R.* 19 as a summary for the whole action of the plaintiff: 'sei deiuraverit calumniae causae non pos[tulare'. cf. ib. 41.

[89] Below, nn. 95, 96.

[90] *Div. in Caec.* 63–64, especially 'ne . . . auctoritate iudicum comprobaretur'. The cases, which are not well documented, are dated to *c.* 103–100 by the quaestorship of Gnaeus Pompeius, intendant against T. Albucius, the last of the three listed, and the reference to the Sicilian praetorship and trial of C. Servilius, the first in the list, in Diod. 36. 9 about 102 B.C. L. Flaccus, sandwiched between these two, should be the consul of 100 or that of 86, earlier in his career, since the scholiast affirms that the list is in chronological order. His would-be prosecutor may be the son of M. Aurelius Scaurus, consul in 108 and not a noted orator (Cic., *Brutus* 135). For the dating of the fourth case to *c.* 89 see *MRR* II, 33, though a post-Sullan date might better fit the reference to Achaei.

[91] *Div. in Caec.* 64, 'nuper cum in P. Gabinium . . . L. Piso delationem nominis postularet et contra Q. Caecilius peteret . . . valebat plurimum . . . quod eum sibi Achaei patronum adoptarant'. For the initiative of the Roman *accusator* in two cases *c.* 95–93 cf. Asconius 19 (21 C), citing the Lex Servilia.

[92] *L.R.* 9–10. The request for a *patronus* comes from the plaintiff, and is answered by the instruction to the praetor '[dato dum] nei quem eorum det sciens d. m. quoiei is' etc., the rest of the clause being filled with disqualifications or exceptions. The gap of some 102 letters in the operative part of the clause is largely filled by Mommsen's inevitable supplement, and allows no space for the insertion of a voting procedure. In 11–12 the restoration after *pr. quei ex h.l. quaeret alium patronum eiei quei . . .* of *sibi darei petet dato* is equally inevitable.

[93] *L.R.* 30–36 contain 'de conquisitione facienda', 'testibus ut denuntietur', 'de inroganda multa', 'de testibus custodiendis'.

[94] Cf. 30, where the correlate of '[quo]iu[s] nomen ex h.l. ad se delatum erit' must be Mommsen's 'quei ex h.l. nomen detolerit'.

[95] Cf. 31, '[iubeto] conquaeri in terra Italia in oppideis foreis concilia[boleis]'; 33, '[testimonium dice]re iubeto'; 34, 'sei qua tabulas libros leiterasve pop[licas] . . . proferre . . . [volet] . . . conquaer]ive de ea re volet apud pr. is praetor ei moram nei fa[cito]'.

whereas under the Lex Servilia, in two instances dated *c.* 95–3, the inquisitor is a Roman notable, as in later time, and the Lex Cornelia grants them what Cicero calls *vim*.[96]

The accusatory method of the Lex Repetundarum has thus been replaced by the method of the Lex Cornelia before the Social War. The changes may be attributed to either of the two *leges Serviliae*. They mark the evolution of the Recovery process into a tool of Roman politics, and may be intended for the protection either of the provincials or of the interests of the Roman State against complaisant *patroni*, or even for the defence of the governing class against the excessive malice of its enemies: the *divinatio* inhibits the malice of a presiding magistrate against *reus* or plaintiff alike.[97] The emergence of such methods would seem to exclude the identification of the Lex Repetundarum with the law of Servilius Glaucia.

The Priority of the Lex Repetundarum

That the preceding arguments against the identification of the Lex Repetundarum with the Servilian Law, and in favour of a Gracchan date for it, are more or less correct, is demonstrated epigraphically by Dr. Mattingly himself. In his first article he discusses the technical characteristics of the two sides of the Bembine tablet. He notes that the face on which the Lex Repetundarum is inscribed was carefully prepared and smoothed, while the other side which contains the Lex Agraria is of much rougher quality, and that the Lex Repetundarum was much more elegantly set out and inscribed than the Lex Agraria. Arguing that the repetition of the last surviving four sections of the Lex Repetundarum was due to the engraver's correction of his own mistakes, he concludes that the Recovery law was the earlier of the two texts, and that it was left incomplete for lack of space, rejected as imperfect, and never published. Subsequently the tablet was used to accommodate the Lex Agraria on its reverse side.[98] But since that law is firmly dated by internal consular references to the year 111, it is apparent that Dr. Mattingly has after all demonstrated that the Lex Repetundarum cannot be the law of Servilius Glaucia, for which, with the vast majority of scholars, he accepts the necessity of a date later than the Lex Servilia Caepionis of 106. All the strong arguments that have convinced most historians that the Lex Repetundarum is the Gracchan law, whether that is called a Lex Sempronia or a Lex Acilia, now recover their validity. What Dr. Mattingly has proved is not that the Lex Repetundarum is to be identified with the Lex Servilia, but that the Tabula Tarentina may include the last section of the Lex Repetundarum.

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[96] Cic., *II in Verr.* i, 16 ' vim in inquirendo tantam habui quantam mihi lex dabat '; *pro Flacco* 36 ' agenti vi legis iure accusationis ', i.e. under the Lex Iulia. For the Lex Servilia cf. Asconius, *in Scaur.* 19 (21 C).

[97] cf. Crassus' defence of the law of Caepio (*Brutus* 164): ' invidia concitatur in iudicia et accusatorum factionem contra quorum potentiam populariter tum dicendum fuit '. This suggests that the role of the *accusator* was beginning to emerge already through manipulation of the system of the Lex Repetundarum. But Crassus may have had in mind the special *quaestiones* of the period. W. Eder, *Das vorsullanische Repetundenverfahren* (Munich 1969), 164, n. 3, citing earlier discussions, notes the difference between the role of the *patroni* under the *L.R.* and under the Lex Cornelia, but probes no further.

[98] a.c. (69), 138–39. The argument may be intended to indicate that the length of the law is not limited by the height of the tablet. Dr. Mattingly now paradoxically dates the publication of the agrarian law *after* the law of Glaucia, *Latomus* 1971, 281 ff.