Mark Antony's Judiciary Reform and its Revival under the Triumvirs*

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This paper investigates the provisions and ultimate fate of Mark Antony's judiciary law, which was passed not long after 2 September 44 B.C., most likely in the period from 19 September to 8 October.[1] Antony's reform radically altered the composition of Roman juries which at the time were composed exclusively of senators and *equites*. It did so by providing for a third of all jurors in the criminal courts henceforth to be drawn from a much lower socio-economic class. One notable consequence of this law was that it even made many veterans of Caesar's legions eligible to serve on juries, a highly prized privilege.

This paper will begin by examining Antony's probable motives for proposing his law and the timing of its adoption. These and other topics related to the law present daunting challenges because Antony's judiciary legislation is known to us from only five passages in Cicero's *Philippics*.[2] Those speeches, so memorably described by Ronald Syme as 'an eternal monument of eloquence, of rancour, and of misrepresentation',[3] obviously cannot be trusted to give an unbiased, factual account of Antony's legislation because Cicero is so openly hostile to Mark Antony and all that he did. Just as Cicero cast in the worst possible light all of the provisions of the agrarian proposal of 63 B.C., which he attacked in his three extant speeches *De lege agraria*, so we can be certain that the terms and aims of Antony's judiciary law are grossly distorted in Cicero's account of them. It is a pity that we do not have a representative statement of the opposing view. It is, in part, the aim of this paper to redress the balance by trying to determine more precisely what qualifications had to be met by Antony's new jurors. And finally, and most importantly, this paper will challenge the prevailing view which holds that Mark Antony's judiciary reform was never implemented after its annulment by the Senate in early 43 B.C.[4] We shall demonstrate, on the contrary, that the Senate's action was almost certainly reversed when the Triumvirs seized power towards the end of 43 B.C. Clear and cogent evidence will be presented to show that Antony's Lex iudiciaria regulated the composition of juries throughout the Triumviral period and for several years beyond, most probably until 28 B.C., when Augustus cancelled many of the innovations introduced by the Triumvirs.

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[1] See below, p. 23 .

[2] *Phil.* 1.19–20; 5.12–16; 8.27; 13.3, 37. There is, however, a clear allusion to Antony's judiciary law in the *Epistula ad Octavianum* 8.8, a spurious work in the Ciceronian corpus: 'ille ad malorum salutem iudicia constituebat et leges ferebat.'

[3] *The Roman Revolution* (1938), 104.

[4] Cicero informs us that the Leges Antoniae were annulled by a decree of the Senate on the grounds that they were passed *per vim* and *contra auspicia*: 'leges statuimus per vim et contra auspicia latas eisque nec populum nec plebem teneri' (*Phil.* 12.12); cf. *Phil.* 13.5: 'acta M. Antoni rescidistis; leges refixistis, per vim et contra auspicia lata decrevistis.' The *terminus post quem non* for the Senate's annulment is furnished by the statement in *Phil.* 10.17 of mid-February that the consul C. Pansa was about to enact a law that was intended to be a replacement for one of Antony's previously repealed *leges*.

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1 THE AIMS AND TIMING OF ANTONY'S REFORM

Needless to say, if the Lex Antonia iudiciaria shifted the balance of power in the Roman criminal courts, it brought about a change of major significance. The struggle over the right to serve on juries was a long and bitter one. The stakes were high because the outcome of all criminal trials was decided by the majority vote of the jury, and trials were often employed as the means by which political enemies and political groups tried to settle scores and exact revenge.[5] The contest for the control of the jury courts was set in motion by a reform that was introduced in the tribunate of Gaius Gracchus (123–122 B.C.). That reform transferred the extortion court, the only standing public court at that time, from senatorial to equestrian jurors. The attempt made by the tribune M. Livius Drusus to return juries to senatorial control failed in 91 B.C., but in 81 B.C., after his victory in the Civil War, the dictator L. Sulla accomplished what Drusus had tried to do. By that time, the number of standing courts had grown to most likely seven, and for slightly more than a decade the juries in all those courts were composed exclusively of senators. The corruption of those senatorial juries, however, led to compromise legislation in 70 B.C. In that year, the Lex Aurelia provided for juries henceforth to be drawn equally from three classes: senators, *equites*, and a third group of wealthy citizens known as *tribuni aerarii*, who were virtually identical with the *equites* in wealth and social standing.[6] Finally, the last major reform just prior to Antony's was introduced by Caesar's judiciary law in 46 B.C. Caesar's innovation was to deprive the *tribuni aerarii* of the right to be jurors, leaving only senators and *equites* to serve on juries.

The casualties of politically motivated prosecutions and vendettas are too numerous and too well-known to need rehearsing.[7] Suffice it to recall the famous words attributed to Julius Caesar, when he surveyed his defeated enemies after the Battle of Pharsalus in August of 48 B.C.:

> Hoc voluerunt; tantis rebus gestis C. Caesar condemnatus essem, nisi ab exercitu auxilium petissem. (Suet., *Iul.* 30.4)
>
> They brought this on themselves; for all my great achievements, I, Gaius Caesar, would have been condemned in the courts by my political enemies, if I had not sought protection from my army.[8]

On an earlier occasion, in 56 B.C., when a tribune tried to call Caesar to account for his acts as consul in 59 B.C., Caesar managed to escape prosecution thanks to the immunity afforded him by his proconsular command in Gaul.[9] In 49 B.C., however, Caesar stood to lose that immunity, if he obeyed the Senate and surrendered his command. His enemy M. Cato was threatening to bring him to trial just as soon as he gave up his proconsulship, and the trial was expected to be conducted under the watchful eyes of armed guards after the fashion of Milo's trial and conviction in 52 B.C. (Suet., *Iul.* 30.3).

The lesson to be learned from Caesar's near catastrophe in 49 B.C. and from the fate of many politicians who were not so fortunate as Caesar cannot have been lost on Antony. The need for self-preservation was doubtless an important factor influencing Antony to introduce his reform. Although he himself was immune to prosecution in the near term

[5] For instance, Julius Caesar as consul in 59 B.C. is said to have silenced the opposition of L. Lucullus (cos. 74 B.C.) by threatening malicious prosecution (Suet., *Iul.* 20.4), and the threat of prosecution as a political weapon is a constant theme in Sallust's *Bellum Catilinae* (e.g. 20.8, 21.4, 39.2).

[6] See P. Brunt, *The Fall of the Roman Republic* (1988), 210–11.

[7] The evidence is most conveniently consulted in E. Gruen's *Roman Politics and the Criminal Courts* (1968) and in chs 7 and 8 of his *The Last Generation of the Roman Republic* (1974).

[8] Plutarch (*Caes.* 46.3) informs us, on the authority of Asinius Pollio, who was present at Pharsalus (Plut., *Pomp.* 72.4), that Caesar uttered those words in Latin and later wrote them down in Greek.

[9] Suet., *Iul.* 23.1; see *MRR* III (1986), 17; M. Alexander, *Trials in the Late Roman Republic* (1990), no. 257.

thanks to a proconsular command that was to last for five years,[10] a day of reckoning was bound to come. Cicero makes this clear in the *Second Philippic* (§115), and in the same speech (§8) he singles out two of Antony's henchmen, Seius Mustela and Numisius Tiro, who, he claims, were vulnerable to prosecution in the murder court (*inter sicarios*) for their role in employing weapons on Antony's behalf. Consequently, by packing the juries with his supporters, Antony undoubtedly hoped to provide for the day when he could no longer shield himself and his associates by means of direct intervention.[11] At the same time, Antony made his political enemies more vulnerable to attack in the courts because henceforth a third of the jurors in all criminal trials were to be drawn from a panel whose members had been handpicked by Antony himself (*Phil.* 5.15).

Cicero repeatedly gives as one of Antony's chief motives for enacting his law the need to shield scoundrels (i.e. his supporters) from prosecution.[12] In the *First Philippic*, Cicero puts this another way when he makes Antony assert that the Caesarians could not count upon their safety, unless jurors were drawn from even common soldiers who were veterans of Legion V Alaudae, the 'Larks', a legion formed by Caesar out of native Gauls:[13]

> Addo etiam iudices manipularis ex legione Alaudarum. Aliter enim nostri negant posse se salvos esse. (*Phil.* 1.20)
>
> I even include as jurors the common soldiers of the 'Larks' legion, for otherwise our partisans say that they cannot be safe from the threat of prosecution.

Behind these words may lurk a slogan to the effect that Antony's law was intended to ensure the preservation of Caesar's *acta*, as well as the interests of those who had benefited from them. The law, that is, was designed to prevent die-hard anti-Caesarians from using the courts as a weapon in their battle to gain the upper hand. Of course, since a great deal of the cash that had changed hands under Antony's regime came from the treasury of Ops, where Caesar had stored some 700 million sesterces, Cicero also alleges that the judiciary law was aimed at shielding Antony from prosecution for embezzlement.

> Scelerum magnitudo, conscientia maleficiorum, direptio eius pecuniae, cuius ratio in aede Opis confecta est, hanc tertiam decuriam excogitavit; nec ante turpes iudices quaesiti, quam honestis iudicibus nocentium salus desperata est. (*Phil.* 5.15)
>
> This third decury was the brainchild of huge wickedness, a guilty conscience, and the embezzlement of money whose account is kept in the Temple of Ops. Base jurors were not sought before all hope was abandoned for the safety of the guilty so long as jurors were upright.

Without swallowing whole all of Cicero's assertions, we cannot help but conclude that the law was viewed by Antony and his supporters as a crucial piece of legislation. First, there is the timing of the proposed legislation. On 2 September when Cicero delivered his *First Philippic*, Mark Antony's judiciary law was *promulgata* (proposed but not yet enacted). At the same time, there was also pending a second, complementary measure that gave to defendants convicted of disturbing the peace (*vis*) or treason (*maiestas*) the right of appeal to the popular assembly (*Phil.* 1.19–21). Therefore, those two bills, which were aimed at tipping the balance in the courts, were introduced sometime in late August, the month after Octavian's games in honour of Julius Caesar (20–30 July).[14] Even if those

[10] *MRR* II (1952), 342.

[11] So E. Wistrand, *Sallust on Judicial Murders in Rome* (1968), 47–51.

[12] e.g. '*nocentium* salus' (Phil. 5.15); 'ne *suorum* aliquis ... condemnetur' (*Phil.* 8.27); and 'perfugium ... *turpissimis rei publicae sordibus*' (*Phil.* 13.37).

[13] Caesar at his own expense had recruited this legion from inhabitants of Transalpine Gaul in *c.* 52 B.C., and he rewarded them later with a grant of Roman citizenship (Suet., *Iul.* 24.2).

[14] U. Ehrenwirth, *Kritisch-chronologische Untersuchungen für die Zeit vom 1 Juni bis zum 9 Oktober 44 v. Chr.*, unpub. dissertation (1971), 75–7, speculated that both judicial reforms were proposed *c.* 19 August.

games did not produce such a resounding demonstration of Octavian's popularity with the masses as Augustan propaganda later claimed,[15] nevertheless, the month of August happens to be the period when Antony was actively competing with Octavian to maintain his hold over the loyalty of Caesar's veterans, especially the ex-centurions. Under the terms of Antony's law, all members of that class are said to have gained access to the honour of serving on juries (*Phil.* 1.20), and so, one of Antony's aims in drafting his bill was quite likely to curry favour with those ex-soldiers in particular.[16]

Second, the importance that Antony placed on seeing this law enacted is attested by Cicero's allegation that the Assembly voted *contra auspicia* because the weather was inclement.

> Em causam cur lex tam egregia tamque praeclara maximo imbri, tempestate, ventis, procellis, turbinibus, inter fulmina et tonitrua ferretur. (*Phil.* 5.15)
>
> Here we have the reason why so splendid and admirable a law was passed by the Assembly despite a downpour of rain, a storm, winds, tempests, and whirlwinds, amid lightning and thunder.

Doubtless Cicero exaggerates the severity of the inclement weather,[17] but Antony's apparent insistence on pressing for a vote even in the face of real or invented ill omens on the day of the assembly demonstrates urgency on his part. We can also, thanks to this passage in the *Fifth Philippic* of 1 January 43 B.C., establish 19 September 44 B.C. as the probable *terminus post quem* for the law's adoption. It is possible to arrive at that date because the charge that Antony's judiciary law was passed *contra auspicia* finds no place in the *Second Philippic*, a work cast in the form of a senatorial speech delivered by Cicero on 19 September.[18] It appears, therefore, that the Assembly had not yet voted upon the bill as of that date.[19] If so, then Antony's refusal to let ill omens, real or invented, delay a vote can be explained by the fact that Antony had very little time in the autumn of 44 B.C. to oversee the adoption and implementation of his legislation. From 19 September 44 B.C. through to the end of the year, there were only two brief periods during which Antony was in Rome: from 19 September until 8 October, and from about the middle of November until 28/29 November.[20] Of those two periods, the more likely one for legislative action is the former since the law, already *promulgata* on 2 September, was presumably passed soon after the statutory *trinundinum* had elapsed (*c.* 25 September, at the very latest). Furthermore, fourteen of the twenty days leading up to Antony's departure from Rome on 9 October were *dies comitiales*, days on which it was lawful to meet the Assembly,[21] and

[15] See J. Ramsey and A. Licht, *The Comet of 44 B.C. and Caesar's Funeral Games* (1997), 48–57. Traces of the later, official Augustan version of Octavian's success in winning popular support at his games in July 44 B.C. may be found in Nic. Dam. 108, Plut., *Ant.* 16.3, and Dio 45.7.2–8.1.

[16] So H. Botermann, *Die Soldaten und die römische Politik in der Zeit von Caesars Tod bis zur Begründung des zweiten Triumvirats* (1968), 33. Though it is doubtless an exaggeration (see D. Magnino, *Appiani Bellorum Civilium liber tertius* (1984), 125), Appian (3.5) claims that most members of Antony's personal bodyguard were recruited from ex-centurions; Appian (3.29) also credits the officers of that bodyguard with playing the leading role in persuading Antony and Octavian to perform a public act of reconciliation on the Capitoline in the late summer of 44 B.C.

[17] The violent storm reported by Cicero is probably not to be taken at face value since earlier in the same speech (*Phil.* 5.7–8) he credits a suspiciously similar storm with vitiating passage of another of Antony's laws, his Lex agraria in June.

[18] In the *Second Philippic*, Cicero is careful to avoid reference to any events that occurred after 19 September, the fictional date of delivery: see J. Ramsey, *Cicero: Philippics I–II* (2003), 157–8.

[19] On other grounds, as well, it seems likely that the law was not passed any earlier than 19 September. For one thing, the bill was still *promulgata* on 2 September (*Phil.* 1.19), and Antony was absent from Rome during the seventeen days preceding the meeting of the Senate on 19 September (*Phil.* 5.19). In addition, the celebration of the Ludi Romani (4–18 September) doubtless made it more practical not to convene the Assembly before 19 September.

[20] On 9 October, Antony left Rome to take command of the legions that were being brought over from Macedonia to Brundisium (*Fam.* 12.23.2). He returned *c.* 10/15 November (*Att.* 16.14.2) and left Rome again for the remainder of the year when he set out on the night of 28/29 November (*Phil.* 3.24).

[21] 19–22, 24–28, 30 September and 3–6 October (*Inscr. Ital.* XIII.2, 354–5).

that period was far less chaotic than the two weeks in late November, when Antony's control over affairs was slipping badly. We know that the law was not only passed in the Assembly but also implemented to the extent that Antony drew up a list of new jurors and filed it in the *aerarium* (*Phil.* 5.15). This is a further indication that Antony viewed the swift implementation of this law as being somehow crucial to his political interests.[22]

Third, and lastly, throughout his negotiations with the Senate in the spring of 43 B.C. Antony insisted that his judicial legislation be left intact. This repeated demand shows the importance that he attached to this judicial reform. Cicero goes so far as to assert that Antony and his supporters had nothing to fear so long as juries were packed with their loyal backers:

> Postulat enim ne sua iudiciaria lex abrogetur. Quo impetrato quid est quod metuat? an ne suorum aliquis a Cyda, Lysiade, Curio condemnetur? (*Phil.* 8.27)
>
> He demands that his judiciary law not be annulled. If he gains this request, what is there for him to fear? That some one of his followers be convicted by Cydas, Lysiades, and Curius?
>
> Is etiam queritur condiciones suas repudiatas, ... ut Alaudae in tertia decuria iudicarent, id est ut perfugium scelerum esset tutum turpissimis rei publicae sordibus. (*Phil.* 13.37)
>
> He complains that his terms for a settlement have been rejected ... among them his demand that the Alaudae sit as judges on the third panel, i.e. that a safe refuge for crimes be guaranteed to the basest scoundrels in the state.

These claims concerning the protection that the Antonians expected from the judiciary law need not be viewed as mere hyperbole. If Antony's law, like the Lex Aurelia, provided for there to be seventy-five members on a jury,[23] a third of whom were to be drawn from each of three panels, then it should have been quite feasible to control the outcome of most trials. The bare minimum of thirty-eight votes needed for an acquittal could have been secured by a split of, let us say, twenty-five 'safe' votes cast by the Antonian jurors from the third panel and a mere thirteen votes out of the remaining fifty votes cast by jurors from the other two panels comprising senators and *equites*. To be able to count upon the loyal backing of one third of each jury must have provided to Antony and his followers a welcome guarantee of virtual immunity from prosecution.[24]

II WHO WERE ANTONY'S NEW JURORS?

So much for motive and timing. Next, let us try to determine who the new Antonian jurors were. Under the influence of Cicero's extremely biased account of the law's provisions, most scholars have drawn the demonstrably false conclusion that Antony's law created a

[22] So A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (1901), 449.

[23] *Pis.* 96; see the numbers collected for trials in the fifties by Greenidge, op. cit. (n. 22), 447 n. 2.

[24] The slim margins for acquittal in such trials, as, for instance, that of A. Gabinius for *maiestas* in 54 B.C. (thirty-eight votes to thirty-two: *Att.* 4.18.1) or that of M. Valerius Messalla for *ambitus* in 51 B.C. (by a single vote in each of the three *decuriae: Fam.* 8.2.1), show what a powerful advantage it would have been to Antony and his supporters to be able to count on the loyal support of twenty-five votes on each jury. Since the jurors on the third *decuria* were handpicked by Antony (*Phil.* 5.12 and 15), his influence over them must have been considerable. Presumably, it was on a par with that of Pompey, who on one occasion was able to cause a would-be prosecutor of his father-in-law to drop his case merely by revealing how much control he could exercise over the album of 360 jurors whom he himself had enrolled in 52 B.C. (Plut., *Pomp.* 55.4).

jury panel composed of ex-centurions.[25] This assumption can quite easily lead, in turn, to the further false inference that there was no census requirement for the new Antonian jurors.[26] The relevant passage on which these two mistaken notions rest is found at *Phil.* 1.20:

> At quae est ista tertia decuria? 'Centurionum' inquit. Quid? isti ordini iudicatus lege Iulia, etiam ante Pompeia, Aurelia, non patebat? 'Census praefiniebatur', inquit. Non centurioni quidem solum, sed equiti etiam Romano; itaque viri fortissimi atque honestissimi, qui ordines duxerunt, res et iudicant et iudicaverunt. 'Non quaero' inquit, 'istos. Quicumque ordinem duxit, iudicet'.
>
> But what is this third *decuria* of yours? 'It is composed of centurions,' he says. But isn't it true that under Caesar's law, and even under Pompey's and the Lex Aurelia, centurions were not excluded from jury service? 'A census requirement had to be met,' he responds. True, but that requirement applied not only to centurions but to *equites* as well. Accordingly, brave and upright centurions are serving as judges and have served. 'I'm not seeking such centurions as jurors,' he replies. 'Let everyone who has served as a centurion be a juryman.'

This text clearly states that enrollment on Antony's new, third panel was to be *open to all ex-centurions* and not just to those who had qualified under previous laws by achieving the census of an *eques*.[27] It does not, however, warrant the converse proposition, that *all jurors were necessarily to be ex-centurions.* To draw such a conclusion is to commit a fallacy of logic that results when we assume that the relation of a consequence is convertible, i.e., arguing from the premise 'if A, then B' that its converse ('if B, then A') must also be true (Arist., *Soph. el.* 5.167b1–8). For instance, starting from the true statement 'if a person holds a PhD, that person is eligible to become a university professor', it would clearly be fallacious to flip the relationship and assert that 'if a person is a university professor, that person holds a PhD'. In other words, the PhD is simply one route by which a person can enter academia and rise to the top of the profession, but that degree is by no means a hard and fast requirement. The same must have been true of ex-centurions *vis-à-vis* Antony's new jury panel. This is made clear when Cicero tells us a little later in the passage quoted above that even some common soldiers (*manipulares*) were to be enrolled as jurors, an assertion repeated at *Phil.* 5.12. And finally, in *Phil.* 5.12–15 Cicero adds the detail that Antony's panel eventually included at least some non-military persons, who are characterized derogatorily as 'gamblers, exiles, and Greeks':

[25] e.g. W. Drumann and P. Groebe, *Geschichte Roms* I[2] (1899), 84; M. Levi, *Ottaviano Capoparte* I (1933), 96; G. Rotondi, *Leges Publicae* (1912), 431; H. Hill, *The Roman Middle Class* (1952), 197; Botermann, op. cit. (n. 16), 33; A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (ed. J. A. Crook; 1972), 61; E. Huzar, *Mark Antony, a Biography* (1978), 90; Z. Yavetz, *Julius Caesar and his Public Image* (1983), 116; S. Demougin, *L'Ordre équestre sous les Julio-Claudies* (1988), 39.

Greenidge, op. cit. (n. 22), 449, is more circumspect: 'Ex-centurions were qualified by their grade, common soldiers probably by their length of service. Whether the same qualification admitted "gamblers, exiles, and Greeks" we cannot say. Perhaps certain kinds of civil as well as military service qualified for the position.'

[26] e.g. Greenidge, op. cit. (n. 22), 449, 'The class was not defined by reference to a census'; L. Keppie, *Colonisation and Veteran Settlement in Italy* (1983), 108, 'in 44 B.C. Antony included them [centurions] in his third decury of jurymen, whatever their financial status'.

[27] It was not uncommon for centurions to amass sufficient wealth to enter the ranks of the *equites*: E. Gabba, *Republican Rome, the Army and the Allies* (trans. P. Cuff; 1976), 34; T. P. Wiseman, *New Men in the Roman Senate* (1971), 74–5. The wealth of some of those soldiers is indicated by the fact that Caesar borrowed money from his centurions and military tribunes during his Spanish campaign in 49 B.C. (Caes., *B.Civ.* 1.39.3). It is also revealed by the voluntary contributions that were made by the centurions in Caesar's army at the outbreak of the Civil War, each centurion equipping a mounted trooper from his personal savings (Suet., *Iul.* 68.1).

> Antesignanos et manipulares et Alaudas iudices se constituisse dicebat; at ille legit aleatores, legit exsules, legit Graecos. (*Phil.* 5.12)
>
> Antony claimed that he had enrolled as jurors élite troopers, common soldiers, and soldiers known as 'the Larks', but instead he selected gamblers, exiles, and Greeks.

These non-centurions, both the military men and the civilians, deserve closer scrutiny. Supposedly Antony himself claimed to have drawn his new jurors from the first of these two categories. Such is the assertion introduced by the words 'se constituisse dicebat' at *Phil.* 5.12, but we must be wary of putting too much trust in a statement of this sort. It is, after all, put into Antony's mouth by his avowed enemy Cicero, who doubtless wanted to emphasize to the greatest possible extent the presence of some of Caesar's veterans among Antony's new jurors.[28]

Let us first consider the military men who were not ex-centurions. The *antesignani* were apparently an élite corps of soldiers.[29] Interestingly, they turn up only twice in the works of Cicero: here and at *Phil.* 2.71. In the latter passage, Antony is cast in the role of an *antesignanus* when he chased down and killed the fleeing consular L. Domitius Ahenobarbus at the Battle of Pharsalus. Cicero's linking of Antony's name with the *antesignani* in the *Second Philippic* and their being included among Antony's new jurors in the *Fifth Philippic*, written a few months later, cannot be mere coincidence. Cicero may also have decided to single them out at *Phil.* 5.12 because by writing 'antesignanos et manipulares et Alaudas' he formed a triad whose first member is ideally suited for bringing out the contrast with 'aleatores' at the beginning of the second triad: 'legit aleatores, legit exsules, legit Graecos'. In fact, it is doubtless Cicero's desire to produce correspondence between the respective members of the two triads that accounts for the difference in wording at *Phil.* 5.12 as opposed to *Phil.* 1.20: 'manipulares et Alaudas' but 'manipulares ex legione Alaudarum' in the *First Philippic*.[30]

Next, the veterans of Legion V Alaudae, the 'Larks', deserve scrutiny. Those ex-soldiers were, after all, native Gauls from Transalpina who had just a year or two earlier been made Roman citizens by Julius Caesar as a reward for their service in the Civil War.[31] In *Phil.* 13.3, Cicero goes so far as to call the veterans of the V Alaudae and other legions the 'seedbed' (*seminarium*) of the third decury. In fact, wherever Cicero refers to Antony's judiciary law, apart from just one passage where the law is only briefly alluded to, Cicero always includes the Alaudae among Antony's jurors.[32] Since, however, that legion was marched to Rome by Antony in early November 44 B.C.,[33] less than two months after the passage of the law, one has to wonder whether very many, or any, of those soldiers could have been free to be enrolled on a jury panel. That unit is no doubt the legion of veterans that Antony had with him at the siege of Mutina in Cisalpine Gaul (App. 3.46), and later those soldiers provided the core of the forces loyal to Antony during his forced withdrawal

[28] For this technique of distorting the aims and consequences of an opponent's law, compare some of the damaging admissions and outrageous assertions that Cicero credits the tribune Rullus with making in 63 B.C., when Cicero presents in the worst possible light the provisions of Rullus' agrarian bill (e.g., *Agr.* 2.53, 66–7, 72).

[29] *RE* I.2 (1894), 2355–6; *TLL* II.1.160–1.

[30] Various emendations have been proposed to bring the text of *Phil.* 5.12 into line with 1.20: '[et] Alaudas' (Cobet), 'ex Alaudis' (Clark), 'et <Alaudas> manipulares [et Alaudas]' (G. Magnaldi, by private communication). However, as M. Winterbottom has pointed out to me, the two 'a' words at the head of each triad, taken with the correspondence between the Gauls (*Alaudas*) and Greeks in the third spots, virtually guarantee the soundness of the *textus receptus* at *Phil.* 5.12. I thank G. Magnaldi and M. Winterbottom, as well as the following scholars, for sharing with me their views on this passage: A. Kershaw, G. Manuwald, and P. G. Walsh.

[31] See above, n. 13.

[32] *Phil.* 1.20, 5.12, 13.3, 37, but not *Phil.* 8.27.

[33] *Att.* 16.8.2. The V Alaudae, after its service in Spain in 45 B.C. (*BHisp.* 23.3, 30.7), was either demobilized in Italy (P. Brunt, *Italian Manpower* (1971), 478; Keppie, op. cit. (n. 26), 50) or designated for participation in Caesar's Parthian campaign (W. Schmitthenner, *The Armies of the Triumviral Period*, unpub. thesis University of Oxford (1958), 169–70; Botermann, op. cit. (n. 16), 181–5).

from Italy in the spring of 43 B.C. (*Fam.* 10.34.1). Therefore, the Fifth Legion, more than any other, was identified with Antony's cause, and so we can readily understand why Cicero keeps bringing up those soldiers. It was simply for shock value,[34] the mere suggestion that native Gauls were even *eligible* to become jurors under Antony's legislation being quite sufficient to damn that law in the eyes of all good, upstanding citizens. When Cicero pictured 'Larks' as future jurors in the *First Philippic*, Antony's law was still pending approval. Later, when Cicero referred to them in the *Fifth* and *Thirteenth Philippic*, the law was already, or was soon to be annulled. Therefore, it was safe enough for Cicero to credit the 'Larks' with occupying a position of prominence on Antony's new panel of jurors, even if few, or none, of them were ever enrolled in Cicero's lifetime. Cicero's failure to hold up to scorn a single Antonian juror who had a Gaulish name strongly suggests that the 'Larks' are a red herring. They should not, therefore, be allowed to distract our attention in our quest to recover the provisions of Antony's law and the character of the men who were actually enrolled on the new panel of jurors.

Let us move on now to consider the non-military appointees who are contrasted with the ex-soldiers at *Phil.* 5.12–14 and are described as *aleatores, exsules*, and *Graeci*. One receives the distinct impression that the three jurors singled out by name were the exception rather than the norm: two Greeks, Lysiades and Cydas, and one notorious gambler, Curius.[35] Significantly, Cicero fails to give us the name of a single exile who was included on Antony's list. The short list of three names appears to be all-inclusive and exhaustive because those same three names are repeated at *Phil.* 8.27. In *Phil.* 5.15, Cicero claims that he has confined himself to only those three because they were *noti*, and he would have us believe that he could name others who were 'dancers, harpists, and Antony's drinking companions' ('saltatores, citharistas, totum denique comissationis Antoniae chorum'). Such assertions, however, are the stock-in-trade of invective and must not be taken at face-value.

A closer look at the jurors who *are* named repays scrutiny and yields results on a par with the valuable contribution made by Ronald Syme roughly seventy years ago when he investigated Caesar's new senators who were said to have been recruited from soldiers, Gauls, the sons of freedmen, and even *haruspices*.[36] Of the Greeks, Lysiades (*RE* 5) without question belonged to a very distinguished family,[37] and Cydas (*RE* Kydas 1) probably did as well. Cicero mentions in the *Fifth Philippic* (13) that Lysiades was the son of the noted Epicurean philosopher Phaedrus. That philosopher was a teacher under whom Cicero had studied and whom he greatly admired,[38] and his son is presumably to be identified with the Lysiades who was eponymous archon at Athens in *c.* 51/50 B.C.[39] Apparently

[34] So Schmitthenner, op. cit. (n. 33), 169 n. 11, 170 n. 14, and J. Denniston, *Ciceronis Philippicae Prima et Secunda* (1926), 85.

[35] I confess that in my commentary, op. cit. (n. 18), 124, I put rather too much stock in Cicero's claim that Antony packed his jury list with civilians in place of soldiers. I tried to account for the apparent, unexpected shift in strategy by speculating that the postponement of the census planned in 44 B.C. (*Phil.* 2.99) might have forced Antony to look elsewhere for jurors until Caesar's veterans could be enrolled in a higher census class for which their bounties qualified them, thereby meeting the property requirement specified by Antony's law.

[36] Suet., *Iul.* 76.3, 80.2; Dio 42.51.5, 43.47.3; *Fam.* 6.18.1. R. Syme, 'Who was Decidius Saxa?', *JRS* 27 (1937), 127–37 and 'Caesar, the Senate and Italy', *PBSR* 14 (1938), 1–31.

[37] The prominence of Lysiades' family at Athens goes back to at least the third century B.C., if not earlier: A. E. Raubitschek, 'Phaidros and his Roman pupils', *Hesperia* 18 (1949), 96–8.

[38] Cicero studied with him first in Rome shortly before 88 B.C. (*Fam.* 13.1.2) and later in Athens, in the company of Atticus, in the year 79 B.C. (*Fin.* 1.16). Phaedrus at the time of his death in 70 B.C. was the head of the Epicurean School in Athens.

[39] *IG* II^2.1046. So Münzer, *RE* XIII.2 (1927), 2529–30. Since *Phil.* 5.14 attests that the juror Lysiades was a member of the Athenian Aeropagus in 44 B.C., he must have held the archonship earlier in order to have gained his membership in that body, even if we cannot be sure that he is the Lysiades who was archon in *c.* 51/50 B.C. Furthermore, it is plausible for him to have been an ex-archon in view of the prominence of his family, since in the post-Sullan period eponymous archons at Athens were elected, not appointed by lot, and they invariably belonged to wealthy families that were politically active: C. Habicht, *Athens from Alexander to Antony* (1997), 326–7.

Lysiades was a familiar figure in Rome since Cicero asserts that this newly enrolled juror from Athens will feel right at home when he judges cases in the company of his gambling companion Curius (*Phil.* 5.13).

Less certainty attaches to the Cretan Cydas of Gortyn, and Cicero handles him much more roughly than he does Lysiades, whom he may have spared out of respect for that man's father, Phaedrus. Cydas is described as a 'monster' (*portentum*), a man who was reckless, degenerate, and a scoundrel (*audacissimus* and *perditissimus*, *Phil.* 5.13; *nequissimus*, ibid. §14). It is a reasonable assumption that this juror had a connection with the family whose prominence at Gortyn is attested by a Cydas (*RE* suppl. III, Kydas 3) who commanded a contingent of Gortynian soldiers serving under the Roman general T. Quinctius Falmininus in 197 B.C. (Liv. 33.3.10) and later turns up in 184 B.C. as eponymous chief magistrate (*protokomos*) at Gortyn (Polyb. 22.15), an office that was held only by members of families belonging to a few select clans (Arist., *Pol.* 2.1272a). Cydas, the Antonian juror, seems to have been a relative newcomer to Rome since Cicero alleges that this Cretan émigré was not acquainted with Roman customs and was not even fluent in the Latin language.

Perhaps, as Ernst Badian has suggested to me, Cydas was rewarded with Roman citizenship for performing some diplomatic service for Caesar. Caesar is credited with granting Roman citizenship to physicians and *liberalium artium doctores* residing in Rome (Suet., *Iul.* 42.1), and we are told that he extended Roman citizenship to the Peripatetic philosopher Cratippus, at the request of Cicero (Plut., *Cic.* 24.7). Possibly Lysiades became a Roman citizen by a similar act of Caesar, or he may have done so thanks to Antony, if a shared fondness for gambling caused Antony and Lysiades to travel in the same circles and become friends.[40] The Cretan nationality of Cydas invites speculation that he, too, may have had a connection with Antony, in his case by way of Antony's father M. Antonius Creticus, who had campaigned against the pirates of Crete in the late seventies. In the course of that campaign, Creticus doubtless had dealings with some of the leading families on the island, including possibly that of Cydas at Gortyn. Given all of this, we can readily understand how these two Greeks found their way onto Antony's third panel.[41]

Lysiades' friend, the gambler Curius, cannot be identified with certainty, but a good candidate is furnished by the Manius Curius whose bravado, when he was accused of dicing, is reported by Quintilian (6.3.72).[42] Since the D-family of manuscripts gives Curius' praenomen as *M.* at *Phil.* 5.13, it is tempting to adopt Lambinus' easy emendation *M'*. This same praenomen appears to have dropped out of the text at *Sull.* 23, where by an odd coincidence we have another Curius, M'. Curius Dentatus (cos. 290 B.C.). Still, in the absence of conclusive evidence for his praenomen, we must also allow for the possibility that Cicero refers to Q. Curius, the *homo quaestorius* and a *notissimus aleator* (Ascon. p. 93C), who was an informer in Catiline's plot two decades earlier.[43] Curius' scrape with the law, if he is the M'. Curius whose trial is attested by Quintilian, and the *infamia* arising from a conviction (or merely from his reputation as a notorious gambler?), will explain why Cicero singled him out as a shameful example of the type of new jurors enrolled by Antony.[44]

[40] A common link is provided by Curius, Lysiades' *conlusor* (*Phil.* 5.13), for whom Antony had sufficient regard to enroll him on the third panel. Cicero repeatedly charges Antony with a fondness for gambling: see Ramsey, op. cit. (n. 18), on *Phil.* 2.56 and 104.

[41] Since Antony had no power of his own to award Roman citizenship until he became Triumvir, if either or both of these Greeks received Roman citizenship not directly from Caesar but by way of a grant from Antony, it must have been under the guise of carrying out a posthumous grant from Caesar, something that Antony is credited with doing on more than one occasion (*Phil.* 1.24 and 3.10): see E. Rawson, 'Cicero and the Aeropagus', *Athenaeum* 63 (1985), 55.

[42] So Münzer, *RE* suppl. III (1918), 265.

[43] So D. R. Shackleton Bailey, *Onomasticon to Cicero's Speeches* (2nd edn rev.; 1992), 42.

[44] A provision of the epigraphic Lex repetundarum specifically disqualified from jury service a citizen who had suffered a conviction (*FIRA* I.7.13); cf. Cic., *Clu.* 120.

Now that we have taken a closer look at the jurors who are named — none of them, be it noted, ex-centurions or even veterans of Caesar's army — let us see if we can determine what qualification had to be met by the members of Antony's new jury panel. Several important clues emerge from the text at *Phil.* 1.20 quoted above (p. 25). First, we learn that somehow *all* ex-centurions apparently met the criteria to be enrolled on Antony's new decury, but the same is not said to be true of all common soldiers (*manipulares*), although *some* of them did gain the honour of being in the jury pool. This is an important distinction made by Cicero, one that should encourage us to credit his claim that all centurions were to be eligible.[45] Next, we can safely conclude that the eligibility of ex-centurions was not based simply on their rank. This we can tell from an *a fortiori* argument introduced by Cicero later in the same passage, an argument which makes it plain that Antony's law did not open jury service to the officer corps based simply on their rank, although they were above the centurions.[46] Lastly, while it certainly is true that Antony's new jurors did not have to possess an equestrian census of 400,000 sesterces,[47] there is absolutely no explicit statement in *Phil.* 1.20, or anywhere else, to warrant the conclusion that Antony's law entirely abolished the need for jurors to meet a census requirement. On the contrary, surely Cicero would not have passed up the juicy opportunity to criticize Antony's law roundly for violating all past precedents, if it had entirely done away with the need for non-senatorial jurors to meet some census requirement, however modest. Presumably, therefore, Antony's law specified a minimum property rating that was to apply to all jurors on the new third panel.[48]

The parameters of that census requirement can be worked out by taking into consideration the following points. First, to judge from the tenor of the passage at *Phil.* 1.20, where Cicero tries his best to convey the impression that there was no census requirement, it must have been so modest as to permit the orator to treat it as though it were non-existent. Significantly, Cicero stops short of making an explicit claim that there was no requirement at all. Next, if we combine the fact that Antony's law made all ex-centurions eligible to be jurors with what we know about the size of the cash bounties paid to Caesar's ex-centurions, something very interesting emerges. We find that ex-centurions must have universally met the minimum requirement for jury service that is specified in a proposal for jury reform, one supposedly recommended to Julius Caesar in *c.* 50/49 B.C. The proposal calls for jury service to be extended to all members of the first census class, and it is found in the Pseudo-Sallustian *Second Epistle to Caesar.* This is a work cast in the form of an essay offering political advice to Julius Caesar on the eve of the outbreak of the Civil War. The fact that all ex-centurions received from Caesar in 46 B.C. a cash bounty equal to the minimum amount of wealth required to be enrolled in the first census class suggested to me a possible connection with the proposal for jury reform that we find in the *Second Epistle.* I speculated in my commentary on the *First Philippic* that the terms of Mark Antony's Lex iudiciaria may have served as the model for recommending the extension of jury service to members of the first census class.[49] The relevant text reads as follows:

[45] We should not dismiss this assertion out of hand because, as D. R. Shackleton Bailey once remarked ('The Roman nobility in the second Civil War', *CQ* 10 (1960), 253 n. 7), 'even in rhetorical moments, Cicero was not simultaneously a liar and an ass'.

[46] *Phil.* 1.20: 'At si ferretis, quicumque equo meruisset, quod est lautius, nemini probaretis; in iudice enim spectari et fortuna debet et dignitas' ('But if you were proposing to make eligible for jury duty anyone who had served in the army on horseback, a higher rank than a centurion's, you would win no one's approval because in selecting a juror regard must be given to wealth and standing').

[47] 400,000 sesterces is the figure attested in the early Empire (Hor., *Epist.* 1.1.58) and was almost certainly the benchmark in the Republic as well.

[48] One of the few scholars to reach this sensible conclusion is E. Rawson, *CAH* IX^2 (1994), 476 n. 53: 'Hardly a panel specifically for centurions, but one with a lesser property qualification, and Antony had some centurions — and new citizens who were Greeks, Cic. *Phil.* 5.13 — put on it.'

[49] op. cit. (n. 18), 123–4.

> Iudices a paucis probari regnum est, ex pecunia legi inhonestum. Quare omnes primae classis iudicare placet, sed numero plures quam iudicant. (7.11)[50]
>
> It is tyranny for jurors to be certified by a select few, and it is grossly unfair for them to be picked on the basis of wealth. Wherefore, I recommend that all members of the first census class serve as jurors, only that the number of persons serving on a jury be increased.

Although until quite recently a host of very distinguished scholars regarded the *Second Epistle* as a genuine work by Sallust,[51] today it is widely agreed to be pseudepigraphic.[52] This conclusion, however, does not by any means diminish the value of that work for the purposes of this discussion. On the contrary, the work is of potentially greater value for our investigation if it was written by a rhetorician masquerading as Sallust, because in that case it is legitimate to ask ourselves what it was that inspired the author to invent his proposal and foist it on Sallust. This question is all the more intriguing because our writer, whoever he was, seems to have had a very good grasp of Republican history.[53] On the other hand, if the essay were a genuine work by Sallust written in *c.* 50/49 B.C., then there would be no reason to suspect any connection between its recommendation for jury reform and Antony's law of 44 B.C.

Where did the forger get his idea? One thing is certain. The proposal did not spring from an *ex post facto* anticipation of a change actually made by Julius Caesar because his reform of the jury courts raised, rather than lowered, the bar for jury service. Under Caesar's Lex iudicaria of 46 B.C. all jurors were required to be either senators or *equites*. Furthermore, there was no past precedent, so far as we can tell, for permitting members of the first census class to play any role in judging criminal cases. Later, when Augustus introduced a junior panel of jurors to try lesser cases, he set the property requirement at 200,000 sesterces, which is five times greater than what was needed to be enrolled in the first census class.[54] On top of all of this, we cannot help but observe that all of the other specific recommendations addressed to Caesar in the *Second Epistle* were either adopted by Caesar,[55] or were inspired by some proposal made at an earlier stage of Roman history,[56] or were modelled on some change made later that could have been known to an author writing in the imperial period.[57] The only proposal that does not fall into one of these three categories is the recommendation for jury reform. It, however, ceases to be the exception, if it was, in fact, modelled on a reform such as Antony's, which happens to be the only one known to have opened jury service to citizens of a much lower census class. This makes Antony's law a good candidate for being the forger's model, on top of which the writer will have known that Sallust and Antony were near coevals, that both were active participants in the Civil War on Caesar's side, and finally, that one of them did, in due course, radically change the composition of Roman juries.

[50] cf. §12.1, where the author summarizes some of his earlier proposals: 'iudicia quoniam omnibus primae classis committenda putem' ('since I think that the courts should be entrusted to jurors drawn from the whole of the first census class').

[51] To name but a few: G. Funaioli, W. Kroll, E. Meyer, E. Norden, L. R. Taylor, and K. Vretska. M. Gelzer still held the view that the work was genuine as recently as the 6th edition of his biography of Caesar (1960), translated by P. Needham (1968), 183 n. 1.

[52] F. Goodyear, *CHCL II* (1982), 269. For a demonstration that the author is almost certainly not Sallust, see R. Syme, *Sallust* (1964), 318–48.

[53] For instance, he 'knowledgeably distinguishes a vulgar Postumius from the apparently extinct [and noble Postumii] Albini' (Shackleton Bailey, op. cit. (n. 45), 256).

[54] See below, n. 58.

[55] e.g. to extend Roman citizenship and found colonies (§5.8) and to increase the size of the Senate (§11.5).

[56] e.g. the revival of a proposal attributed to C. Gracchus, to have the centuries in the *comitia centuriata* vote not by highest census class first but in an order determined by lot (§8.1–3). No other source credits Gracchus with making such a proposal, but that does not mean that he did not do so: see D. Stockton, *The Gracchi* (1979), 159–61.

[57] e.g. the proposal to introduce the secret ballot into the Senate, an innovation attested by the Younger Pliny (*Ep.* 3.20.1).

The beauty of this reconstruction of the census requirement specified by Antony's judiciary law is that it accounts for all the known facts. First, such a modest census requirement will serve to explain how Cicero could easily, but misleadingly, convey the false impression that Antony's legislation imposed no census requirement at all. Cicero could deliberately suppress that provision of Antony's law because it set the bar so incredibly low. It seems, in fact, that a net worth of a mere 40,000 (or 50,000?) sesterces was all that was required for a citizen to be enrolled in the first census class,[58] an extremely paltry sum when measured against the 400,000 sesterces needed to be an *eques*.[59] On the other hand, the voters in the *prima classis* occupied a position of importance in the *comitia centuriata*, and so this will explain why Cicero refrained from denigrating all members of that class by explicitly belittling their standing. It would have been impolitic to do so.

Second, this reconstruction of the requirement that had to be met by Antony's new jurors avoids the pitfall of assuming, as most scholars do, that military service was the sole, or chief, criterion for eligibility. We can easily find room for the civilians on Antony's third panel, the two Greeks and the gambler Curius.

Third and lastly, if Mark Antony's law indeed opened jury service to all citizens of the first census class, it will explain why Cicero could confidently, and without fear of contradiction, make the explicit statement in *Phil.* 1.20 that *all* ex-centurions gained eligibility to be jurors on the new third panel. He could make such an assertion because in 46 B.C. Caesar gave a bounty of 40,000 sesterces to each ex-centurion, thereby ensuring that all of them possessed sufficient wealth to be enrolled in the *prima classis*.[60] Many common soldiers (*manipulares*) as well must have belonged to the *prima classis* to judge from the important role that soldiers are credited with playing at consular elections, which were decided in the *comitia centuriata*, where voting was heavily weighted in favour of the first census class.[61] Hence, we can account for the statements in *Phil.* 1.20 and 5.12 that Antony's law made it possible for even some common soldiers to be jurors. Significantly, Cicero stops short of asserting that all *manipulares* were to be eligible, a claim that he quite happily makes with regard to ex-centurions. The latter, as we just pointed out, were all bound to have possessed the 40,000 sesterces needed to be enrolled in the first census class thanks to their recently received bounties from Caesar.

Of course, it goes without saying that an ex-centurion or common soldier with a mere 40,000 sesterces or a bit more to his name would hardly have had the time or the inclination to serve as a juror in Rome. The primary concern of such a veteran would have been first and foremost to obtain land and settle in one of the colonies that were being founded

[58] A. Yakobson, *Elections and Electioneering in Rome* (1999), 44, with bibliography in n. 62. The minimum property requirement for the *prima classis* in the Servian census is variously given as 100,000 (Livy 1.43.1), 120,000 (Plin., *HN* 33.43), or 125,000 bronze asses (Gell. 6.13.1), which translate into a range of 40,000 to 50,000 silver sesterces, if the asses are sextantal (i.e. 10 to a denarius, 2.5 to a sesterce). This value of the as is confirmed by Polybius' figure for the *prima classis* in his day, in the second century B.C. (6.23.15): 10,000 drachmas/denarii, which equals 100,000 sextantal asses. The same requirement in drachmas is given by Livy's contemporary, Dionysius of Halicarnassus (*Ant. Rom.* 4.16.2). For convincing arguments against M. Crawford's theory (*Coinage and Money under the Roman Republic* (1985), 149–51) that in *c.* 141 B.C. the census minimum for the *prima classis* was more than doubled by a one-for-one substitution of sesterces for asses (100,000 sesterces = 250,000 sextantal asses), see J. Rich, 'The supposed Roman manpower shortage of the later second century B.C.', *Historia* 32 (1983), 312–13.

[59] See n. 47. As E. Badian once put it, 'The wealth of those people [members of the first class] was by no means outstanding. The first class ... had a property minimum only one tenth of that ... required of *equites*' ('Tiberius Gracchus and the beginning of the Roman Revolution', *ANRW* I.1 (1972), 717).

[60] According to App. 2.102, centurions received double the amount given to foot soldiers, each of whom was rewarded with 20,000 sesterces, which is the figure given also by Dio (43.21.3). The 24,000 sesterces per soldier reported by Suetonius (*Iul.* 38.1) possibly included payment of Caesar's pledge of 1,000 drachmas (= 4,000 sesterces) to veterans who were willing to sign on for the African campaign in 47 B.C. (App. 2.92): so Brunt, op. cit. (n. 6), 264 n. 109.

[61] e.g. Lucullus' soldiers at Murena's election in 63 B.C. (*Mur.* 37–8), and Caesar's soldiers at the election of Pompey and Crassus in 56 B.C. (Plut., *Pomp.* 51.5) and in support of Memmius in 54 B.C. (*Att.* 4.16.6, 17.3).

for discharged soldiers in Italy and in the provinces. Cicero, however, naturally plays up the fact that all ex-centurions and even quite a few foot-soldiers automatically gained eligibility to be jurors under Antony's law. Such statements had shock value. The point not to be missed is that Antony would have had an extremely deep pool of potential jurors upon which to draw, and his personal role in creating the list of jurors on the new panel must have ensured that the majority of the new jurors would have been loyal Antonians.[62]

III THE IMPLEMENTATION OF ANTONY'S REFORM

It is, of course, impossible to say for certain what precise qualification had to be met by the jurors enrolled on Antony's new third panel. The most that can be achieved in trying to recover that detail of Antony's legislation is a fair degree of probability of the sort that has just been established. It can, however, be demonstrated with near certainty that Mark Antony's judiciary law was reinstated after its annulment by the Senate in early 43 B.C.[63] Both Pliny (*HN* 33.30) and Suetonius (*Aug.* 32.3), who comment on certain changes made to the jury courts by the emperor Augustus, permit us to draw that conclusion and hence overturn the *communis opinio*, which dismisses Antony's law as having no further existence after its annulment.[64] The realization that Antony's law was, in fact, put into force by the Triumvirs has enormous implications for our understanding of how justice was administered in the Triumviral period. Furthermore, we gain an entirely new perspective on the nature of Augustus' reforms of the jury courts and the need for those reforms. We are able to see that they must have been aimed at reversing radical changes that had been introduced by Antony in 44 B.C. and put into effect when the Triumvirs came to power in late 43 B.C.

The prevailing modern view that the Senate's repeal of Antony's Lex iudiciaria prevented it from ever being implemented surely flies in the face of logic. Antony would undoubtedly have insisted upon the reinstatement of his annulled legislation as soon as he became Triumvir and gained the upper hand over his enemies in the Senate.[65] Throughout negotiations with the Senate in early 43 B.C., Antony put up a spirited defence of his consular legislation and demanded its continued recognition.[66] It is difficult to believe, therefore, that he would have neglected to reverse the annulment of his laws, especially since the judiciary reform appears to have been designed, in part, to court the favour of Caesar's veterans,[67] a class on whose support the power of the Triumvirs depended. Let us examine the evidence for the composition of Roman juries in the Triumviral period to see how it supports the more logical conclusion that Antony's Lex iudiciaria was reinstated late in 43, or early in 42 B.C.

First, the Elder Pliny (*HN* 33.30) informs us that at the time when Augustus made certain, unspecified changes to the composition of the jury panels, most of the jurors wore

[62] 'Hos ille demens iudices legisset, horum nomina ad aerarium detulisset', *Phil.* 5.15. Under the Lex Aurelia of 70 B.C., the urban praetor was responsible for preparing the album of jurors (*Clu.* 121), and this power could be, and apparently was, sometimes abused to stack the album of jurors with political partisans or to grant favours (*Pis.* 94). In exercising this power himself with regard to the jurors on the new *tertia decuria*, Antony possibly relied on the precedent set by Pompey, who drew up the list of 360 jurors who were to hear cases tried under his laws *de vi* and *de ambitu* passed in 52 B.C. (Vell. 2.76.1; Ascon. p. 38C.17–19; Dio 40.52.1).

[63] See n. 4.

[64] e.g., Denniston, op. cit. (n. 34), 176: 'by March 43 it [Antony's judiciary law] had been repealed (*Phil.* 13.5) and was not revived'; likewise O. Behrends, *Die römische Geschworenenverfassung* (1970), 55 n. 15; E. Badian, 'Marius' villas: the testimony of the slave and the knave', *JRS* 63 (1973), 126 n. 33.

[65] To the best of my knowledge, the only scholar to draw this logical conclusion is K. Bringmann, 'Zur Gerichtsreform des Kaisers Augustus', *Chiron* 3 (1973), 236–7.

[66] See *Phil.* 8.27 and *Phil.* 13.37, both quoted above, p. 24.

[67] See above, p. 23.

an iron ring, not gold. He also states that they were not called *equites* (as they commonly were later in imperial times[68]) but rather *iudices*.

> Divo Augusto decurias ordinante, maior pars iudicum in ferreo anulo fuit, iique non equites sed iudices vocabantur.
>
> When the late-lamented emperor Augustus regulated the jury panels, the majority of jurors belonged to the class wearing an iron ring, and they were called not *equites* but *iudices*.

The assertion that a great many jurors wore an iron ring — *maior pars* is, presumably, a rhetorical exaggeration — deserves more attention than it has received from scholars, most of whom have neglected this passage.[69] If, as is generally believed, Antony's jury law was never implemented after its annulment by the Senate in early 43 B.C., then we should expect all jurors in the age of Augustus to have worn a gold ring befitting a senator or an *eques*.[70] Those were the only two classes from which jurors were drawn after Caesar deprived the *tribuni aerarii* of the right to be jurors (Suet., *Iul.* 41.2; Dio 43.25.1).

The second piece of relevant evidence is furnished by Suetonius (*Aug.* 32.3), who states that Augustus added a fourth panel of jurors to the three already in existence.

> Ad tris iudicum decurias quartam addidit ex inferiore censu, quae ducenariorum vocaretur iudicaretque de levioribus summis.
>
> To the three panels of jurors he added a fourth which was to be called the panel of 'ducenarii' [citizens having a census of 200,000 sesterces], and it was to judge cases involving lesser sums of money.

Instead of three panels, however, we should logically expect there to have been only two at the time of Augustus' reform, if Antony's law was not in force. Two would be the expected number because, as we have just noted, Caesar caused jurors to be drawn from only two classes, rather than three: senators and *equites* only. Unless Antony's judiciary law was reinstated after its annulment in early 43 B.C., as we are arguing here, then there are only two possible explanations that can account for the existence of three panels, to which Augustus added a fourth: either (1) Caesar preserved the existence of all three panels but replaced the *tribuni aerarii* with *equites* on the third panel, or (2) some law other than Antony's reintroduced a third panel.

Explanation number two has appealed to some scholars, who have speculated that a panel of *tribuni aerarii* was reinstated sometime after Caesar's death.[71] There is, however, not a shred of evidence suggesting that any law, other than Antony's, altered Caesar's assignment of juries to only senators and *equites*. Explanation number one has also found

[68] e.g. Sen., *Benef.* 3.7; Tac., *Ann.* 3.30.1, 14.20; Suet., *Tib.* 41.

[69] As noted by E. Staveley, 'Iudex Selectus', *RhM* 96 (1953), 202, this neglect is unwarranted considering the fact that Pliny was a Roman *eques* living close to the age of Augustus.

[70] Commenting on the passage in Pliny, J. Linderski points out that jurors wearing an iron ring must have been non-equestrian and 'that jury service did not lead to the *anulus aureus*': *Roman Questions* (1995), 141. The *ius anuli aurei* was a well-established mark of the equestrian class by the age of the late Republic (C. Nicolet, *L'Ordre équestre* I (1966), 139–41), and a gold ring was, of course, also worn by senators. That both classes commonly wore a gold ring is aptly illustrated by the story told about Julius Caesar's soldiers who, when being addressed by their commander at the outbreak of the Civil War, misinterpreted Caesar's gesture with his gold ring as a promise to confer on them the *ornamenta equestria* and 400,000 sesterces (Suet., *Iul.* 33).

[71] So, for instance, T. Rice Holmes, *The Roman Republic* I (1923), 391 n. 6, and Staveley, op. cit. (n. 69), 206. Such an assumption is implicit in Linderski, op. cit. (n. 70), 141, who interprets Pliny, *HN* 33.30 as pointing up a distinction between jurors who were *tribuni aerarii* (those wearing an iron ring) and jurors who were *equites* at the time of Augustus' reform. H. Galsterer, *CAH* X^2 (1996), 400, in commenting on Augustus' introduction of a fourth panel of jurors, makes the surprisingly indefensible assertion that the '*tribuni* [*aerarii*] were removed by Caesar and reinstated by Antony'. Their reintroduction by Antony is hardly possible, however, given the near identity of the *tribuni aerarii* with the *equites* on the one hand (see p. 21) and on the other, Cicero's highly negative portrayal of the jurors on Antony's third panel.

its advocates,[72] but at least three good reasons can be given for rejecting that reconstruction of Caesar's reform. First, Cicero repeatedly identifies Antony's new panel as a *tertia decuria*, the description '*tertia*' strongly suggesting, though admittedly not proving, that the number of panels immediately prior to Antony's reform was only two.[73] Second, if there were still three panels after Caesar's reform, one of senators and two of *equites*, then Antony's law must have substituted for the *equites* on one of those two panels citizens of a much lower social standing. If that is what happened, it is extremely difficult to account for Cicero's silence on the inherent unfairness, indeed outrageousness of that substitution. The force of this argument alone, it seems to me, is virtually conclusive against there being three *decuriae* at the time of Antony's reform.

Third and lastly, if, as we are told, Caesar expanded the size of the Senate by half, from 600 to 900,[74] this increase of 50 per cent is precisely what would have been called for if Caesar collapsed the three former panels of jurors into two and wanted to keep the number of available jurors constant. Previously, there had been three panels of 300 jurors each, and so an increase by 50 per cent to 450 would cause the two new panels, one of senators and one of *equites*, to yield the same total number of jurors eligible for service.[75] Caesar's increase in the number of quaestors from thirty to forty (Dio 43.49.1) seems to indicate that he intended to maintain the enlarged size of the Senate by providing for a greater influx of new members annually through election to the quaestorship.

One final piece of evidence pointing to the reinstatement of Antony's Lex iudiciaria under the Triumvirs is furnished by the notice in the Elder Pliny (*HN* 33.30) that in Augustus' day provincials and new citizens were excluded from jury service and that even in Pliny's day, recently enfranchised citizens continued to be ineligible to be jurors.

> Iudicum quoque non nisi quattuor decuriae fuere primo, vixque singula milia in decuriis inventa sunt, nondum provinciis ad hoc munus admissis, servatumque in hodiernum est, ne quis e novis civibus in iis iudicaret.
>
> Also, at first, there were no more than four panels of jurors and scarcely 1,000 made up each panel since the right to be a juror had not yet been extended to provincials. Even to the present day, the principle has been maintained that no one who is a new citizen is to be a juror on those panels.

In the light of this passage, the surprising thing about Cicero's criticism of Antony's law is his failure to mention that it violated an existing prohibition against provincials and new citizens serving as jurors. Surely Cicero would have raised this objection to the enrolment of native Gauls who were veterans of Caesar's V Alaudae, and against Cydas of Gortyn and Lysiades of Athens, if such a ban was already in force in Cicero's day, as it clearly was later under Augustus.

Pliny is not the only extant source to attest the existence, and enforcement, of a policy in the early Empire that excluded new citizens from jury service. Suetonius (*Tib.* 51.1) informs us that this restriction caused the emperor Tiberius to oppose his mother Livia's persistent request to enrol a new citizen on one of the jury panels.

[72] e.g. Th. Mommsen, *Staatsr.* III, 535; Behrends, op. cit. (n. 64), 55 n. 15; Badian, op. cit. (n. 64), 126 n. 33; and Demougin, op. cit. (n. 25), 39 n. 99, 444.

[73] *Phil.* 1.19, 20; 5.15; 13.3, 37. Denniston, op. cit. (n. 34), 85, takes *tertia decuria* as fairly conclusive evidence that Caesar's law had previously reduced the number to two.

[74] Dio 43.47.3. Syme, *PBSR* 14 (1938), 11, questions as too high the figure given by Dio, the sole source to provide one, but Syme concludes that the number was at least 800.

[75] Just prior to Caesar's law, the size of the senatorial decury was pretty clearly 300 (*Fam.* 8.8.5; cf. Plin., *HN* 33.31). Admittedly the need to form a sufficiently large pool of jurors is unlikely to have been Caesar's sole consideration when he increased the size of the Senate, but it may well have been a factor. The previous doubling of the size of the Senate by Sulla, from 300 to 600, is generally thought to have been motivated, at least in part, by the need to staff the new senatorial juries.

> Instanti saepius, ut civitate donatum in decurias adlegeret, negavit alia se condicione adlecturum, quam si pateretur ascribi albo extortum id sibi a matre.
>
> When Livia again and again pressed Tiberius to enroll as a juror a person who had been granted Roman citizenship, the emperor said that he would do so only on the condition that he be permitted to have it noted on the list of jurors that this favour had been forced out of him by his mother.

The apparent absence of such a ban in 44 B.C. and its undoubted existence in the age of Augustus and of his successor Tiberius, point to the conclusion that it was an innovation of Augustus himself.[76] A likely context for such a reform is the year 28 B.C. when in his sixth consulship Augustus undid may of the changes made during the Triumviral period.[77] Previously, the more generous treatment of provincials by Antony's law is quite in keeping with conditions when the Triumvirs were in power. Under their regime, for instance, the Spaniard L. Cornelius Balbus made history by being the first provincial to hold the consulship when he served as suffect consul in 40 B.C. (Dio 48.32.2; Pliny, *HN* 7.136).

The debasement of juries is what we might expect to find under the Triumvirs, mirroring the condition of the Senate. Suetonius (*Aug.* 35.1) informs us that after the murder of Caesar, the size of the Senate grew to more than 1,000 members by the admission of low-born and unworthy types who gained the honour through bribery or favouritism.[78] In such a political environment, it is not unreasonable to suppose that the courts were similarly packed with jurors who, thanks to the implementation of Antony's reform, did not have to meet a very lofty census requirement. The Senate, we know, was eventually purged by Augustus, and he did this in two stages. First, in 28 B.C., the ranks were thinned by the removal of 190 members who resigned either voluntarily or in response to pressure from Augustus.[79] Later, in 17 B.C., the number of senators was reduced still further, to its pre-war figure of 600 (Dio 54.13.4). At least two pieces of evidence point to the conclusion that a similar, two-stage process of reform was implemented by Augustus in reorganizing the criminal courts.

First, Asconius (p. 20C) happens to tell us that the number of *patroni* grew to be as many as twelve 'post bella civilia ante legem Iuliam'. This statement implies that during the period following the conclusion of the Civil Wars in 29 B.C.[80] and preceding the passage of the Leges Iuliae iudiciariae, probably in 17 B.C.,[81] conditions in the courts were somehow different from what they had been previously under the Triumvirs and from what they were to become later after Augustus' legislation.[82] Second, in the two sources that mention Augustus' reform of the jury courts, Pliny (*HN* 33.30) and Suetonius (*Aug.* 32.3), we find very different portrayals of the composition of the juries immediately prior to the changes introduced by Augustus. On the one hand, in Pliny, at the time when Augustus

[76] This was suggested to me by E. Badian, and I later discovered that Bringmann, op. cit. (n. 65), 238 n. 13, reached this same conclusion.

[77] Tac., *Ann.* 3.28.2; Dio 53.2.5. I thank R. H. Martin for calling my attention to the passage in Tacitus.

[78] In the propaganda of Augustus and his supporters, Antony receives most of the blame for flooding the Senate with lowly persons (Plut., *Ant.* 15.4).

[79] Dio 52.42.1–3; cf. Suet., *Aug.* 35.1. This is the first of three *lectiones* reported in *RG* 8.2, and it was performed by Octavian in co-operation with his consular colleague in 28 B.C., M. Agrippa, both of whom had been granted *censoria potestas* (*CIL* IX.422).

[80] Marked officially by the symbolic closing of the Temple of Janus on 11 January 29 B.C. and by Augustus' triple triumphs on 13, 14, and 15 August of that year: see J. Gagé (ed.), *Res Gestae Divi Augusti* (1950), 95–6, 163, 178.

[81] For the title and content of this legislation, see S. Riccobono (ed.), *Acta Divi Augusti* (1945), 142–51. The date of its adoption is only approximate, based upon the statement in the *Digest* (48.14.1.4) that the Lex Iulia iudicaria forbade jurors and litigants in law cases to have contact with each other outside of court, and that it made violators subject to the penalty prescribed by the Lex Iulia de ambitu, which Dio (54.16.1) assigns to 18 B.C. Dio, who gives a garbled account of this provision of the Lex iudicaria in 54.18.3, reports its introduction immediately after mentioning the Ludi Saeculares of 17 B.C.

[82] I thank A. Lintott for discussing this passage with me by e-mail.

made some unspecified change in the organization of the decuries ('divo Augusto decurias ordinante'), a great many jurors are said to have worn an iron ring. This, as we have noted, indicates that those jurors were not senators or *equites*. On the other hand, at the time of the reform described by Suetonius, all of the jurors on the three already-existing panels, to which Augustus added a fourth, must have been either senators or *equites*. We can draw this conclusion because Augustus' new jurors on the fourth panel are specifically said to have been drawn from a much lower census category and to have been charged with trying only cases involving small sums of money.

It follows, therefore, that Pliny must be referring to an earlier reform, most probably in 28 B.C., when Augustus is known to have corrected many of the abuses of the Triumviral period.[83] Suetonius, by contrast, must be referring to a later period, presumably to the reforms introduced by the Leges Iuliae of *c.* 17 B.C. On the earlier occasion, it makes sense for the jurors on Antony's third panel to have been replaced by *equites* and for provincials and new citizens to have been barred henceforth from jury service.[84] Then in *c.* 17 B.C., to the three previously purged panels, which now comprised only senators and *equites*, Augustus added a fourth panel formed of citizens who had a minimum census of 200,000 sesterces, just half that required of an *eques*.[85]

We can detect a possible allusion to the earlier of the two Augustan jury reforms in Velleius Paterculus (2.89.3) when he writes:

> finita vicesimo anno bella civilia, ... restituta vis legibus, iudiciis auctoritas, senatui maiestas
>
> The civil wars were brought to an end in the twentieth year — laws were put back in force, prestige was restored to the courts, and dignity to the Senate.

Since we know that both the Senate and the laws were affected by major reforms in 28 B.C., by the purge of 190 members from the Senate and by the reversal of Triumviral abuses of the laws, it makes sense for 'restituta ... iudiciis auctoritas' likewise to refer to some specific reform of the courts. Velleius' statement concerning the restoration of governmental institutions in 28 B.C. may be compared with a claim that the author makes in another passage (2.126.2) where he credits the emperor Tiberius with restoring *gravitas* to the courts when he came to power. In this latter instance, other sources confirm that Tiberius did indeed take a personal role in combating judicial corruption during the first year or two of his reign.[86]

It is time now to draw some conclusions from our discussion of the fate of Mark Antony's judiciary legislation. The realization that Antony's law was implemented in the Triumviral period gives new insight into the composition of juries in that chaotic and lawless period. Thanks to this discovery, we can now conclude that juries must have been easily controlled by the Triumvirs. They could do so because a third of all the jurors in every criminal trial were drawn from a panel composed of loyal Caesarians, including even quite a few of Caesar's veterans. This helps explain why Octavian Caesar, as Triumvir, apparently did not feel the need to exercise routine judicial authority in Rome.[87] References to pleadings for clemency that were addressed directly to the Triumvirs are, of

[83] See above, n. 77.

[84] In written communication (26 August 2003), E. Badian remarked: 'I still think that Augustus, having returned the Senate to "decent" composition [in 28 B.C.], would be unlikely to let Antonius' disgraceful (as all the best people thought it) jury system continue for another ten years [until the passage of the Leges Iuliae in *c.* 17].'

[85] Bringmann, op. cit. (n. 65), 238 speculated that Antony's third panel was transformed by Augustus into his fourth panel of *ducenarii*, and so Bringmann collapses the two-stage process of reform that we are postulating here into one. However, this cannot be what happened because Augustus is specifically said to have 'added' (*addidit*) his fourth panel to three already existing panels, and those three panels were clearly a considerable notch above the *ducenarii*.

[86] e.g. Tac., *Ann.* 1.75.1; Suet., *Tib.* 33; Dio 57.7.6.

[87] F. Millar, 'The Triumvirate and Principate', *JRS* 63 (1973), 60–1.

course, *sui generis* and belong most probably to the first few months of their regime, when the proscriptions were at their height and all three Triumvirs were in Rome.[88] Apart from those appeals in 43/42 B.C. and the very sketchy details of Asinius Pollio's defence of L. Aelius Lamia in *c.* 42 B.C.,[89] we have no other reports of trials conducted in the standing courts for the period 42–31 B.C. We know the name of not a single defendant or prosecutor. The show trials of Caesar's assassins under the Lex Pedia of August 43 B.C. have to be left out of account because they occurred slightly before the formation of the Triumvirate and the restoration of Antony's Lex iudiciaria.

Our sources also tell us very little about legislation under the Triumvirs. Only fifteen or sixteen laws can be assigned with some degree of certainty to the years 42–31 B.C., and of that number, nearly half seem to have been passed in the first year of that period.[90] For the rest of those years, we are mostly in the dark. It is a period that later historians discretely chose to pass over in silence, and with good reason because of the horrors perpetrated by the future emperor Augustus and his Triumviral colleagues.[91] We are told that such was the brutal tyranny during those troubled years that contemporaries looked back on the dictatorship of Julius Caesar as an age of gold.[92] The contribution of this paper is all the more significant, therefore, in that it brings to light for the first time one very distinctive feature of how the courts were constituted under the Triumvirs, during an age that was so memorably summed up by Tacitus as being chaotic and entirely lawless: 'non mos, non ius' (*Ann.* 3.28.1).

This study also reveals an important side of Antony's Realpolitik that has scarcely been appreciated. It is my intention to discuss in the near future what I see as Antony's ineptness and ineffectiveness as a politician in comparison with the clever and ever adaptable Octavian. The future emperor Augustus was inclined to show much more sensitivity to the need for respecting the *mos maiorum*, so cherished by most Romans.

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[88] Quint. 5.13.5 'actiones apud C. Caesarem et triumviros'. Evidence for those proceedings before the tribunal of the Triumvirs is collected and discussed by Millar, op. cit. (n. 87), 59–60.

[89] For the probable date and the likely political nature of that prosecution, see J. André, *La Vie et l'oeuvre d'Asinius Pollion* (1949), 68–9.

[90] Rotondi, op. cit. (n. 25), 435–40, to which we can now add traces of several additional laws attested by inscriptions (e.g. V. Ehrenberg and A. H. M. Jones, *Documents Illustrating the Reigns of Augustus and Tiberius* (1955), no. 377).

[91] The reluctance of Augustus himself to dwell on events of that era is apparent in his *Res Gestae*. Of the thirty-five sections of that work, only §§1–3 concern events from 42–31 B.C.

[92] Dio 47.15.4 ὥστε χρυσὸν τὴν τοῦ Καίσαρος μοναρχίαν φανῆναι.