PRAEMIA IN THE *QUAESTIONES* OF THE LATE REPUBLIC

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THE criminal justice system of the Roman Republic lacked both a police force and a professional prosecutor. The Romans therefore depended on private individuals to police offenses against a wide variety of legal and semi-legal provisions, offenses ranging from the defacement of graves[1] or the flight of slaves (e.g., Petron. 97) to the violation of municipal bylaws[2] and serious crimes against the state. The last type of offense is the subject of this paper: in particular, crimes prosecuted before the standing criminal courts, or *quaestiones perpetuae*, in the late Republic, from the creation of the first such court by the *Lex Calpurnia de repetundis* in 149 to the effective end of Republican institutions when civil war broke out at the beginning of 49 B.C.

Various extralegal motives can explain why private Roman citizens took upon themselves the burden of reporting the wrongdoer to the authorities, and then preparing and presenting the case against him: a wrong suffered by the prosecutor or relative at the hands of the defendant, traditional *inimicitia* with the alleged culprit or his family, the desire for glory (especially if the prosecutor was a young man eager to make his name as a courtroom speaker), and patriotism.[3] Personal involvement in a case did not disqualify a prosecutor; in fact, it could be viewed as an asset, for two reasons. First, his animus against the defendant provided some assurance that he would work hard at gathering and presenting his evidence, and that he would not commit *praevaricatio*, or collusion with the defendant. Second, his personal knowledge of the case would help him gather evidence. Thus Q. Caecilius argued that he should be chosen to prosecute Verres because Verres had injured him while he was serving as Verres' *quaestor* in Sicily (Cic. *Div. Caec.* 55–60, 2 *Verr.* 1. 15). But these motives may have been insufficient—or at least Roman legislators at various times in the late Republic may have thought them insufficient—because we know that several laws expressly provided for *praemia*, or rewards, to the successful prosecutor under certain circumstances.

Actually, the phrase "successful prosecutor" needs some qualification, since it does not quite correspond to the Latin of various provisions. The

1. Noted in private inscriptions, e.g., *CIL* 6.14672 = *ILS* 8156; see T. Mommsen, *Römisches Strafrecht* (Leipzig, 1899), p. 820, n. 2.

2. Controlled by so-called *actiones populares* (actions brought by *quivis ex populo*), e.g., *Lex Iulia municipalis* (*CIL* 1^2.593 = Bruns no. 18), lines 125, 140, *Lex Ursonensis* (*CIL* 2s.5439 = Bruns no. 28), chap. CXXXII, line 31.

3. The classic statement on motives for prosecution is Cic. *Off.* 2. 49–50. See also 2 *Verr.* 3. 1.

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standard Latin phraseology is "is cuius opera maxime is [viz., reus] condemnatus erit"—"he by whose effort most of all he [the defendant] shall have been condemned."[4] The word *maxime* implies that someone selected one "winner" out of several possible candidates, at least some of the time.[5] At first glance, the *Lex Acilia* does not seem to acknowledge more than one candidate for rewards, since the *nominis delator* is always spoken of in the singular. Mommsen must be right that the *Lex Acilia* allowed for some sort of "Adhäsion" of plaintiffs, and thereby of the different charges which each plaintiff would bring, and it is possible that all these plaintiffs were *nominis delatores*.[6] The later *Lex Tarentina* (line 18), as supplemented by its editors,[7] has the plural: "[ad praeto]REM(?) DE EI[[U]]S QUEI EIUS NOMEN DETOLERINT. . . ."[8] In Ciceronian times, in fact, after one of the *leges Serviliae* on extortion had established one *nominis delator* as representative of all injured parties through the procedure of a *divinatio*,[9] the field must have been narrowed in some ways and broadened in others. There was now only one *nominis delator*. But whereas in the *Lex Acilia praemia* had been limited to *nominis delatores*, the wording of later laws allows us to believe that, wherever *praemia* were offered, several types of participants could have been eligible, certainly

4. The relevant passages are:

(a) *Lex Acilia CIL* I^2.583 = Bruns no. 10 (line 85): "TUM QUEI EIU[s nomen] DETOLERIT, QUOIUS EORUM OPERA MA[xime unius eum condemnatum esse constiterit . . .]";
(b) *fragmentum Clusinum CIL* I^2.597a = Bruns no. 25c, line 5: "[quoius o]PERA MAXUME EUM REUM [condemnatum esse . . .]";
(c) *Lex Tarentina* (line 2): "[quei eius nomen detolerint, quoi]US EORUM OPERA MAXUME . . ." (see below, n. 7);
(d) *Dig.* 29. 5. 25. 2 (Gaius on the *Lex Cornelia de sicariis*): "inde partem dimidiam ei, cuius opera convictus erit, praemii nomine se daturum praetor pollicetur, partem in publicum redacturum";
(e) *Lex Mamilia* (Bruns no. 15, chap. K.L.V.): "Et si is unde ea pecunia petita erit condemnatus erit, eam pecuniam ab eo deve bonis eius primo quoque die exigito; eiusque pecuniae quod receptum erit partem dimidiam ei cuius unius opera maxime is condemnatus erit, dato, partem dimidiam in publicum redigito";
(f) Asc. *Mil.* 54C: "Damnatum autem opera maxime Appi Claudi pronuntiatum est";
(g) *SC de aquaeductibus* (Frontinus 127 = Bruns no. 47) (11 B.C.): "Si quis adversus ea commiserit, in singulas res poena HS dena milia essent, ex quibus pars dimidia praemium accusatori daretur, cuius opera maxime convictus esset qui adversus hoc S.C. commisisset, pars autem dimidia in aerarium redigeretur. . . .

On the wording, cf. Cic. *Phil.* 8. 33.

5. We do not know whether the praetor, or the *iudices*, or the praetor acting on the advice of the *iudices*, made the decision.

6. For Mommsen's view, see *Strafrecht*, p. 723, n. 2. I have tried to show elsewhere that the law probably allowed many *petitores* to join together to present their demands in one trial ("Repetition of Prosecution, and the Scope of Prosecutions, in the Standing Criminal Courts of the Late Republic," *Classical Antiquity* 1 [1982]: 155–57). A. W. Lintott, "The Roman Judiciary Law from Tarentum," *ZPE* 45 (1982): 138, suggests that there were two uses of the phrase *nominis delator;* only one person performed the original laying of information, but several people could formally *nomen deferre*, in the sense of participating in the case as plaintiffs.

7. R. Bartoccini, "Frammento di legge romana rinvenuto a Tarento," *Epigraphica* 9 (1947): 3–29, with two plates (published 1949); G. Tibiletti, "Le leggi *de iudiciis repetundarum* fino alla Guerra Sociale," *Athenaeum* 31 (1953): 5–100; E. Schönbauer, "Die römische Repetundengesetzgebung und das neue Gesetzes-Fragment aus Tarent," *AAWW* 93 (1956): 13–40; Lintott, "Judiciary Law," pp. 127–38.

8. Tibiletti argues that this is an extortion law, Schönbauer that it is a *maiestas*-law; but there is very little in the surviving text that would allow us to decide.

9. See F. Serrao, "Appunti sui 'patroni' e sulla legittimazione attiva all'accusa nei processi 'repetundarum'," in *Studi in onore di Pietro de Francisci*, vol. 2 (Milan, 1956), pp. 498–502.

the *nominis delator,* but also the *subscriptores,* if there were any. In fact, the wording "cuius opera maxume" would have allowed a witness to receive the reward, if it was thought that the witness had made the most important contribution to the success of the prosecution.[10] The only evidence against this view is the fact that the *Senatus consultum de aquaeductibus* (above n. 4, g) specifically directs that the reward be given to the accuser ("accusatori daretur").

I. THE MOMMSEN/TAYLOR VIEW

Mommsen's view of these *praemia* has held the field among specialists since it was first presented in his *Strafrecht.*[11] He maintained that one principle applied to all the statutes which established *quaestiones,* and that according to this common principle the prosecutor was allowed to move one step up the ladder of social status if the convicted defendant had been of a higher status.[12] This view has received wider currency from L. R. Taylor's presentation of it in her general work on the politics of the late Republic.[13] She specifically argued that, as a result of his successful prosecution of Verres (pr. 74) in 70 B.C., Cicero received the *toga praetexta* (the mark of curule status) and the right to speak among the *praetorii* in the Senate.[14] The evidence, however, does not adequately support the existence of this general principle, or of any other general principle regarding *praemia.* Rather, it seems much more likely that the *praemia* "fit the crime"—that *praemia* were used when they were likely to bring a particular crime to light and the criminal into court.

It is important to emphasize that each *quaestio* was established by its own statute: one for extortion, one for treason, one for an admittedly broad group of trials which had something to do with homicide, and so on. There was no one judicial law which regulated all the courts.[15] Therefore, if any general principle applied to all *praemia,* it must have been embodied in similar clauses included separately in each of these statutes: we do not have any record of a general law *de praemiis,* parallel to the *Lex Aurelia* of 70 B.C. which regulated juries in all the *quaestiones* (Asc. 67C). Of course, the Romans might have written the same sort of clause regarding *praemia* into all statutes which established *quaestiones.*

10. If this is the case, then even after the introduction of the *divinatio,* courts could choose the recipient of the reward. *Contra,* J.-L. Ferrary, "Recherches sur la législation de Saturninus et de Glaucia," *MEFRA* 91 (1979): 111. See Lintott, "Judiciary Law," p. 138.

11. *Strafrecht,* pp. 504–11. See also his *Römisches Staatsrecht,* vol. 3[3] (Leipzig, 1887–88), pp. 642–43, 971.

12. ". . . To the successful prosecutor a higher civil status is granted, and, in particular, precisely the status of the condemned man is granted, if the convicted man is deprived of such by the sentence. Therefore, the prosecutor succeeds to exemption from military service for himself and his successors, if he is a citizen; to the tribe of the condemned man, if this is higher in rank than that of the prosecutor; to a higher ranking in the Senate, if the convicted man had precedence to the prosecutor in this respect" (*Strafrecht,* p. 509).

13. *Party Politics in the Age of Caesar* (Berkeley and Los Angeles, 1949), pp. 112–16.

14. It should be noted, however, that she did not claim that this enhanced status allowed him to run for consul as if he had actually held the praetorship.

15. See M. T. Griffin, "The 'Leges Iudiciariae' of the Pre-Sullan Era," *CQ* 23 (1973): 108–26.

An ideal opportunity to do so was provided by Sulla's sweeping judicial reforms and replacement of previous courts by *quaestiones* established through at least six *leges Corneliae*. The evidence, however, speaks against such a view, as I will now try to show by an examination of the passages adduced by Mommsen and Taylor.

"Pro Balbo" 57

The *locus classicus* in support of Mommsen's view is *Pro Balbo* 57:

> Obiectum est etiam quod in tribum Clustuminam pervenerit; quod hic adsecutus est legis de ambitu praemio minus invidioso quam qui legum praemiis praetoriam sententiam et praetextam togam consequuntur.

Mommsen and Taylor drew two conclusions from the passage. First, they inferred that Balbus was able to enter the Clustumine tribe because the man whom he had successfully prosecuted had belonged to that tribe, and Balbus took his place. They relied here on the parallel with lines 76(83)–78(85) of the *Lex Acilia:*

> DE CEIVITATE DANDA. SEI QUIS EORUM, QUEI CEIVIS ROMANUS NON ERIT, EX HACE LEGE ALTEREI NOMEN [. . . ad praetor]EM QUOIUS EX HACE LEGE QUAESTIO ERIT, DETOLERIT, ET IS <eo> IUDICIO HACE LEGE CONDEMNATUS ERIT, TU[m eis quei eius nomen detolerit, quoius eorum opera maxime unius eum condemnatum esse constiterit, . . . sei volet ipse filieique, quei eiei gnatei erunt, quom] CEIVIS ROMANUS EX HACE LEGE FIET, NEPOTESQUE [tu]M EIEI FILIO GNATEIS CEIVEIS ROMANEI IUSTEI SUNTO [et in quam tribum, quoius is nomen ex h. l. detolerit, sufragium tulerit, in eam tribum sufragiu]M FERUNTO INQUE EA<m> TRIBUM CENSENTO, MILITIAEQUE EIS VOCATIO ESTO, AERA STIPENDIAQUE O[mnia eis merita sunto.]

Neither the passage from the *Pro Balbo,* however, nor the extant clauses of the *Lex Acilia* (if we omit Mommsen's supplements) actually show that the successful prosecutor took the tribe of the condemned man; they merely indicate that some sort of change of tribe was allowed as a reward. Admittedly, the word "EA<m>" could indicate that the text had previously mentioned "that tribe to which the convicted defendant had belonged," or words to that effect. It is possible, then, that Balbus took the tribe of his victim, and that this was the Clustumine tribe. But it is also possible that he was given a choice of tribe, and that he chose the Clustumine tribe, perhaps because his patron Pompey belonged to it.[16] Balbus' choice, if he did have one, might conceivably have also been influenced by his adoption by Theophanes of Mytilene (Cic. *Balb.* 57; cf. *Att.* 7. 7. 6), who had recently received citizenship from Pompey (Cic. *Arch.* 24).

16. Balbus' former tribe may have been the Palatina, an urban tribe (L. R. Taylor, *The Voting Districts of the Roman Republic: The Thirty-five Urban and Rural Tribes,* Papers and Monographs of the American Academy in Rome, no. 20 [Rome, 1960], p. 21), and his move to a rural tribe, the Clustumine, would therefore be an advancement. There is, however, considerable debate whether the Clustumine tribe and seven others were "punitive," that is, tribes into which Italians enfranchised after the Social War were dumped. See, most recently, W. V. Harris, *Rome in Etruria and Umbria* (Oxford, 1971), p. 240. If that were the case, then Cicero's comment might be ironic, asking why anyone would object to a move into such a lowly tribe.

From the *Pro Balbo* Mommsen and Taylor also inferred that the successful prosecutor gained the rank in the Senate which the condemned defendant had held. According to this interpretation, Cicero would have picked as an example someone who prosecuted a defendant of praetorian rank (who, having curule status, could wear the *toga praetexta*). In support of the Mommsen/Taylor thesis it can be said that this would be a likely example, since Cicero might have been thinking of an ex-governor prosecuted for extortion, and most governors were of praetorian rank. On the other hand, there is no obvious reason why the praetorian rank and *toga praetexta* could not simply have been the rewards which one law or some laws offered, regardless of the defendant's rank. More importantly, the very fact that the reward which Balbus received under the law *de ambitu* is said by Cicero to be "minus invidiosum" than the reward of those "qui legum praemiis praetoriam sententiam et praetextam togam consequuntur" implies that there were different kinds of rewards associated with different laws. We must, however, examine four pieces of information (two laws and two *testimonia* on a trial) which Mommsen and Taylor also used to support their interpretation.

Laws

Two of these passages relate to specific laws which could possibly offer useful parallels, in spite of the fact that both were passed a few years after the end of the Republic. The charter which established a Spanish colony of Urso in 44 B.C. allowed a decurion who successfully prosecuted another decurion *de indignitate* to speak in his place in the local Senate (*Lex Ursonensis* [*CIL* 2s.5439 = Bruns no. 28], chap. CXXIIII). Mommsen concluded that the charter here was following Republican practice (as it and other municipal charters often do on other points). Other clauses in this law make it clear, however, that the *indignitas* trial at Urso performed a function which at Rome the censors performed, that is, ridding the Senate of unworthy members. The *duoviri* could accept charges of *indignitas* against a decurion (not necessarily from a fellow decurion) for any reason other than freedman status (chap. CV), presumably for causes like those listed at length at the end of the *Lex Iulia municipalis* (*CIL* 1^2.593 = Bruns no. 18, lines 108–125). Condemnation in a court was probably one cause of *indignitas,* but only one. If the prosecutor was a decurion of lower rank than the condemned man, then he took his ex-colleague's place.[17] Although this provision may very well reflect a Republican precedent, it would be dangerous to extrapolate from this reward for prosecuting a crime which inherently has to do with the internal regulation of a senate to prosecution of all crimes in general, especially since the Roman Republican constitution, unlike the law of Urso, provided for censors to expel unworthy senators. The other law said to substantiate Mommsen's view of *praemia* is the *Lex Pedia* of 43

17. For a clear illustration of ranks in a local senate, see the *album* from Canusium, *CIL* 9.338 = *ILS* 6121.

(Dio 46. 49. 3–4), which provided for the prosecution of Caesar's assassins. Here, however, not only the rank (τιμή) of the condemned man is promised to the successful prosecutor but also his magistracy itself (ἀρχή). The *Lex Pedia,* then, offered an additional and more substantial reward than did any prior Republican law of which we know. For that reason, it is difficult to use the *Lex Pedia* as a safe guide to earlier laws. However, one cannot rule out the possibility that the *Lex Pedia* offered the same reward of rank as previous laws, while creating a new practice of granting the office itself. In conclusion, while both the *Lex Ursonensis* and the *Lex Pedia* support the concept that some Republican laws allowed for advancement in rank as a reward for successful prosecution, neither law unequivocally corroborates the notion that such advancement followed automatically from successful prosecution under any criminal law whatsoever.

Imperial accounts

Two imperial authors, Memnon and Dio, describe a trial whose outcome Taylor used as support for her theory. In 67 or soon thereafter, M. Aurelius Cotta (cos. 74) was successfully prosecuted by C. Papirius Carbo (tr. pl. ?67) for misappropriation of the booty from Heracleia Pontica. (Valerius Maximus [5. 4. 4] merely refers to the subsequent *inimicitia* between the two families.) Memnon (59. 3–4 in *FGrH* III B 434) reports what appears to be a debate in the Senate, in which it is decided that Cotta should suffer loss of his *latus clavus* (i.e., senatorial status) rather than exile. Dio (36. 40. 3–4) says that the Romans were very anxious to discourage bribery (δωροδοκεῖσθαι) and therefore both punished the guilty and rewarded accusers. As an example, he cites the Romans' grant of consular honors to Carbo, although he had previously held no office higher than that of *tribunus plebis.* Taylor assumed that this reward was automatically granted according to the provisions of the criminal law under which Cotta had been prosecuted.[18] But the fact that the reward was apparently a subject of senatorial debate implies that the reward was not automatic, and was not decreed by the courts. Perhaps it was granted by a decision of the consuls in determining the order of speaking.[19]

18. *Party Politics,* p. 114.

19. The views of H. E. Russell, "Advancement in Rank under the Roman Republic as a Reward for the Soldier and the Public Prosecutor" (Ph.D. diss., Bryn Mawr, 1950), should be mentioned. While attempting (pp. 75–77) to explain the oddities in individual careers on the basis of the Mommsen/Taylor thesis, she extends the thesis by suggesting that advancement in rank would allow the recipient to run for the following office in the *cursus honorum.* The attempt is unsuccessful. The fact that Hortensius spoke in the Senate on behalf of Africa in 95 (*De or.* 3. 229) does not show that he was already a senator at age nineteen; he was speaking apparently as a representative for a delegation from Africa, not as a senator. The possible conflict between Caelius' birthdate of 82 (Pliny *HN* 7. 165) and his tribunate in 52 is not resolved by his prosecution of the consular C. Antonius in 59 (see *Pro M. Caelio Oratio*[3], ed. with comm. by R. G. Austin [Oxford, 1960], app. 1, pp. 144–46). In any case, Pliny's date for Caelius' birth should be dismissed (see G. V. Sumner, "The lex Annalis under Caesar," *Phoenix* 25 [1971]: 247–48, and *The Orators in Cicero's "Brutus": Prosopography and Chronology* [Toronto, 1973], p. 146). Iuventius' motive for prosecuting Plancius, the *laus aedilitatis* (Cic. *Planc.* 79), refers to the fact that he had been defeated by Plancius for the aedileship, and may have hoped to gain it by removing the successful contender. Finally, we can better explain the quick rise of L. Licinius Lucullus to the praetorship of 78 "legis

"Spolia," "crescere," and "praemia"

Taylor further developed Mommsen's thesis on the basis of five passages in which Cicero refers to the advantages which can accrue to the prosecutor. The question is whether these refer to formal rewards granted by a provision in a law or to less institutionalized forms of profit (see also below, p. 30). Taylor held that these passages, which use the metaphors of "growth" and "spoils," referred to formal rewards granted under the criminal laws of the post-Sullan period. An examination of these passages, however, makes Taylor's interpretation appear unlikely; they seem instead to point to rather vague benefits, the *tanta praemia eloquentiae* of *Pro Caelio* 46. Two passages (Cic. *Rosc. Am.* 83, 2 *Verr.* 5. 173) use the word *crescere* in the sense "to advance in wealth, power, popular esteem, etc." (*OLD*). It is clear in both passages that *crescere* is being used in a very general sense. In *Pro Balbo* 54 and 2 *In Verrem* 1. 21, Cicero uses the word *spolia* to refer to the profit which a successful prosecutor can receive. Only in the first of these passages, where there is an explicit comparison between the warrior and the orator, does the word *spolia* refer to legal *praemia*. In the second, where the same comparison is implied, Cicero is referring simply to the prestige which he expects to gain when he has crushed Verres in the courts.

A similar metaphor, the *exuviae* of a warrior *iacens* and *spoliatus*, occurs in *Pro Sulla* 50:

> Quid est quod iam ab hoc expetas? Honos ad patrem, insignia honoris ad te delata sunt. Tu ornatus exuviis huius venis ad eum lacerandum quem interemisti, ego iacentem et spoliatum defendo et protego.

Cicero is referring to the successful prosecution of Sulla (consul-designate for 65) at the hands of the elder and younger Torquatus in 66 on a charge of *ambitus*.[20] Taylor interpreted this passage to mean that the younger Torquatus received consular honors for the prosecution of Sulla. But there is a logical objection to this interpretation. Sulla had reached the rank of praetor but never consul, only consul-designate; according to Mommsen's thesis, therefore, Torquatus should have received praetorian

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praemio" (*Acad.* 2. 1) by reference to his relationship with Sulla than to the prosecution of C. Servilius at the end of the second century or beginning of the first century. We do not know what *lex* granted this *praemium*, nor for what services to the state. In any case, Cicero's point is not that Lucullus skipped any of the steps in the *cursus honorum*, but rather that he was allowed to become praetor immediately (*continuo*) after his aedileship. On this point, see E. Badian, *Studies in Greek and Roman History* (Oxford, 1964), p. 141, and Sumner, *Orators*, p. 114; *contra* J.-M. David, "Promotion civique et droit à la parole: L. Licinius Crassus, les accusateurs et rhéteurs latins," *MEFRA* 91 (1979): 144, n. 37.

20. I believe that the younger Torquatus served as *subscriptor* rather than as *nominis delator*, and that his father was the *nominis delator*. Cicero's statement (*Fin.* 2. 62) that he participated in the prosecution does not outweigh the explicit statements of Asconius (75C) and Dio (36. 44. 3) that the elder Torquatus prosecuted; and, in one passage (*Sull.* 49), Cicero's description of the prosecution, while emphasizing the younger Torquatus' role, implies that both Torquati participated. A possible parallel is to be seen in the prosecution of Murena in 63, where Ser. Sulpicius Rufus (*RE* 95, pr. 65) served as *nominis delator* and his son(?) (*RE* 96) as *subscriptor*. If, however, anyone participating in the prosecution was eligible for a *praemium* (above, p. 21), it does not matter for this discussion which of the two roles the younger Torquatus performed.

rank.[21] The passage can be better understood if we interpret it differently, by emphasizing the distinction between the office (*honos*) and the signs of that office (*insignia*): the prosecution brought consular honors to the family in the sense that it had allowed the elder Torquatus to gain the office (*honos*) of consul through the removal of his competitor,[22] after a century in which the Manlii Torquati, an old patrician family, had been unable to achieve this rank. In this sense, the consular *insignia* were brought back to the younger Torquatus; after the death of his father (by 50 B.C.), they may have been hanging in the atrium of his house, along with the *imago* of his father with a *titulus* listing his honors (Livy 10. 7. 11).[23]

II. A PRAGMATIC VIEW OF "PRAEMIA"

The preceding analysis has been negative; it has attempted to show that the evidence does not support Mommsen's thesis, accepted by Taylor, that all statutes establishing *quaestiones* awarded *praemia* according to a common principle. But a positive conclusion about *praemia* can also be reached. A comprehensive survey of the evidence for *praemia,* as we shall see, reveals one outstanding fact, namely, that most of this evidence pertains to offenses involving electoral bribery. I propose that provisions for *praemia* were included in a criminal statute when they were thought to be useful or necessary in repressing the crime or crimes against which that statute was directed.

Praemia were useful or necessary when the other motives for prosecution noted above were insufficient to assure that a prosecutor with a good knowledge of the facts would come forward. The well-informed prosecutor would normally be the victim of the crime, or someone closely associated with the victim. Now in the case of electoral bribery there was a victim, in the sense that a defeated candidate who had competed with the prospective defendant had lost his election bid at least partly because of his opponent's illegal campaign practices. But this defeated candidate might be as much in the dark as anyone, and might therefore not be a suitable prosecutor, at least not without help from people who did have inside knowledge. On the other hand, in any case of electoral bribery there would probably be many who had distributed bribes and far more who had received bribes. These would be the people with the best knowledge of the offense(s). But they had no motive to prosecute or testify: far from being victims of these offenses, the recipients of the bribes had certainly benefited, and the distributors, or *divisores,* had probably benefited. *Praemia* would therefore be useful or necessary to induce these

21. Taylor did not make it plain whether she thought that the younger Torquatus received praetorian or consular *insignia.*

22. See F. Münzer, "Manlius (80)", *RE* 14 (1928): 1203.

23. See T. P. Wiseman, *New Men in the Roman Senate, 139 B.C.–A.D. 14* (Oxford, 1971), p. 107; also Mommsen, *Staatsrecht,* 1: 442–47; K. Schneider, s.v. "imagines maiorum," *RE* 9 (1914): 1097–1104. The right to display *imagines* was limited to those whose gentilician ancestors had held consular office (Polyb. 6. 53; Cic. 2 *Verr.* 5. 36, *Fam.* 9. 21. 2).

people to bring their evidence to court. Or, to put the matter differently, the prosecutor's role was not only to present the case but to bring information, that is, to serve as an informer.[24] Since informers are primarily needed to combat either victimless crimes[25] or crimes of which the victim does not have special knowledge, we should expect provisions for *praemia* to appear most often in the laws which were intended to repress such crimes. This is precisely what we find in the Republican *quaestiones*.

Bribery laws

Evidence connecting *ambitus*-laws generally with *praemia* is plentiful. Change of tribe under one of the *ambitus*-laws prior to 56 B.C. (the date of the *Pro Balbo*) has already been noted (above, p. 23). Three passages show that the prosecutor who had previously been condemned for bribery could achieve a kind of pardon if he successfully accused someone else of the same crime. In the years between the prosecution of Oppianicus by Cluentius (74 B.C.) and the prosecution of Cluentius by Oppianicus' son (66 B.C.), P. Popillius and Ti. Gutta were successfully indicted by unknown prosecutors who themselves had been convicted of *ambitus*, and the result was a full pardon ("in integrum restitutos") (*Clu.* 98). Modestinus, commenting on the *Lex Iulia de ambitu* of Augustus, confirms that this kind of pardon (but no longer a reward of money) was still available (*Dig.* 48. 14. 2). Dio (40. 52. 3–4) gives the most explicit (if also somewhat puzzling) account of this sort of provision, belonging in this instance to the *Lex Pompeia de ambitu*. According to Dio, two convictions of any magnitude were sufficient to bring pardon; alternatively, the same reward would also be granted for one conviction on a charge greater than the one on which the prosecutor himself had been convicted. How the magnitude of the crime was supposed to have been measured is left unclear. In general, Cicero describes the *ambitus*-laws as being characterized by very great *praemia* ("tantis praemiis," *Clu.* 115)—a statement which not only points to the connection between *ambitus* and *praemia* but also suggests that *praemia* played a more significant role in some laws than in others (see above, p. 24).

24. Above, p. 20. The *nominis delator* may have originally been an informer: see W. Kunkel, "Untersuchung zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit," *ABAW* 56 (1962): 60.

25. This is true in modern systems of criminal law. Thus, informers are now used in the United States primarily in the investigation and prosecution of prostitution, gambling, and narcotics: see G. R. Stone, "The Scope of the Fourth Amendment: Privacy and the Police Use of Spies, Secret Agents, and Informers," *American Bar Foundation Research Journal* (1976) #3: 1237. The use of informers in English law developed greatly in the sixteenth century for victimless crimes such as smuggling: see G. R. Elton, "Informing for Profit: A Sidelight on Tudor Methods of Law Enforcement," *Cambridge Historical Journal* 11 (1954): 149–67, and M. W. Beresford, "The Common Informer, the Penal Statutes and Economic Regulation," *Economic History Review* ser. 2, 10 (1957/58): 221–37. In general, positive formal rewards do not now play an important part in the American use of informers, who seem to have personal motives for their activity and who mainly seek from the state a secure guarantee of anonymity (the "informer privilege"). The U.S. government, however, does offer informers a reward of up to ten percent of additional taxes, penalities, and fines collected as a result of their information (IRS regulation § 301.7623-1.c.).

Some grants of *praemia* are attested for specific historical figures. We know of three prosecutors who were certainly granted *praemia* for prosecutions either *de ambitu* or *de sodaliciis*. The first is Balbus (above, p. 23); in addition, two prosecutors were awarded a *praemium* for the conviction of Milo in 52 B.C.: Appius Claudius under the *Lex Pompeia de ambitu* (he refused it), and P. Fulvius Neratus under the *Lex Licinia de sodaliciis* (Asc. 54C). Furthermore, it is likely that P. Cornelius Sulla (cos. des. 65) was attempting to regain his status when he prosecuted Gabinius *de ambitu* in 54 (Cic. *Att.* 4. 18. 3, *QFr.* 3. 3. 2); and according to Appian (*BCiv.* 2. 24), after his conviction in 52 under the *Lex Pompeia de ambitu* C. Memmius was planning to prosecute Metellus Scipio (cos. 52), probably to regain his status. (He did bring charges, along with another prosecutor, but let the case drop [Dio 40. 53. 2].) In support of the hypothesis that *praemia* were used to encourage the distributors and recipients of bribes to inform on the candidate who had supplied the bribes, it would be helpful to be able to point to specific individuals who did just that. Such individuals would most likely be men of no great consequence, who appear either as prosecutors or possibly[26] as witnesses. There are a few names which fit this description: the *index* Cn. Nerius *Pupinia tribu* (*monetal.* 49, *q. urb.* 49?), who prosecuted P. Sestius (tr. pl. 57) in 56 (Cic. *QFr.* 2. 3. 5); a witness whom Nerius brought forth called Cn. Cornelius Lentulus Vatia (*RE* 241);[27] the *eques* (and *monetal.*?)[28] L. Cassius Longinus, who served as *subscriptor* against Plancius in 54 (Cic. *Planc.* 58); and a P. Fulvius Neratus, who prosecuted Milo in 52 (Asc. 54C).[29] But we do not know enough about the activities of these prosecutors and witnesses to say that they had been involved in bribery operations.

Extortion laws

The pragmatic spirit which appears to have informed the laws *de ambitu* and *de sodaliciis* is even clearer in the *Lex Acilia de repetundis*. This Gracchan law offers three types of reward: to the non-citizen who is not of Latin status, citizenship and immunity from military status (*militiae vacatio*), or merely the right of appeal (*provocatio*) and *militiae vacatio*, if the non-Roman receiving the reward so chooses;[30] and to the Roman

26. Above, pp. 21–22.

27. Possibly tr. pl. 68? See D. R. Shackleton Bailey, *Two Studies in Roman Nomenclature*, American Classical Studies, no. 3 (Chico, Cal., 1976), pp. 31–32.

28. See M. H. Crawford, *Roman Republican Coinage*, vol. 1 (Cambridge, 1974), p. 440, and C. Nicolet, *L'ordre équestre à l'époque républicaine (312–43 av. J.-C.)*, vol. 2 (Paris, 1974), pp. 829–30.

29. The only other mention of him is in Cic. *Flac.* 46, as a *lectissimus homo*.

30. Mommsen, *Gesammelte Schriften, Juristische Schriften*, vol. 1 (Berlin, 1905), pp. 62–63, connects this clause with Latins because dictator, praetor, and aedile (mentioned here apparently because they would have received Roman citzenship) are Latin magistrates; for the desire to receive *provocatio* but not citizenship, see Val. Max. 9. 5. 1. But consideration should be given to the attempt of D. W. Bradeen, "Roman citizenship *per magistratum*," *CJ* 54 (1958/59): 221–28, to revive a view of A. Rosenberg, "Die Entstehung des sogennanten Foedus Cassianum und des lateinischen Rechts," *Hermes* 55 (1920): 347–48. Bradeen argues that local magistrates, and not only Latin magistrates, are excluded here not because they had automatically received citizenship by virtue of their magisterial status (and thereby had received the

citizen, some other reward which does not survive in the extant text (*CIL* 1^2.583 = Bruns no. 10, lines 76[83]–87).[31] In other words, the law offers whatever is necessary to induce the injured party to come to Rome and present his case.[32] This sort of reward was continued, although only for Latins, according to one of the two *leges Serviliae de repetundis* (*Balb.* 54).[33] It is hard to say whether witnesses, as well as prosecutors, were receiving rewards under extortion laws in Cicero's time. It was a *topos* that a witness should not be believed because he had been influenced by a reward ("praemio adductus," Cic. *Part. orat.* 49), but it is difficult to gauge whether these are formal legal rewards or merely some sort of advantage. The rewards which the Sardinians expected to acquire for evidence given against Scaurus in 54 ("spe commodorum praemiorumque," Cic. *Scaur.* 36), when he was tried under the *Lex Iulia de repetundis,* may include formal *praemia,* but could be merely extralegal advantages promised by Ap. Claudius Pulcher (cos. 54), who, according to Cicero, masterminded the prosecution (cf. Cic. *Phil.* 3. 7 "commoda, honores, praemia").

Laws "de vi"

At least some laws *de vi* appear to have offered *praemia.* Cicero implies that if C. Cornelius (*RE* 19), the conspirator of 63, had given testimony against Sulla which was self-incriminating, he would have received a customary reward ("quod praemii solet in indicio,"[34] *Sull.* 51). Also in the

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provocatio included in citizenship), but because they had merely gained *provocatio* itself as a result of holding local office. This view is supported, at least for the period before 89 B.C., by H. B. Mattingly, "The Extortion Law of the *Tabula Bembina*," *JRS* 60 (1970): 166–68; *contra*, A. N. Sherwin-White, "The Date of the Lex Repetundarum and its Consequences," *JRS* 62 (1972): 95. Sherwin-White, "The Lex Repetundarum and the Political Ideas of C. Gracchus," *JRS* 72 (1982): 29–30, maintains that citizenship and *provocatio* were offered only to non-citizens who were *socii* and *nominis Latini,* and that other non-citizens could receive the right to choose the tribunal before which their lawsuits would be heard.

31. Sherwin-White ("Date of the Lex Repetundarum," p. 94) successfully refutes Mattingly's view ("*Tabula Bembina*," p. 167) that rewards were offered to Roman *patroni* who aided the plaintiffs, arguing instead that the rewards were designed to encourage provincials to prosecute. He accepts the proposition that the *leges Corneliae* introduced the sort of reward which Taylor outlines; see also David, "Promotion civique," p. 140, n. 21. In his latest article ("Political Ideas," p. 20), Sherwin-White suggests that the Roman recipients may have sometimes been *cognitores* acting on behalf of a foreigner *alieno nomine.*

32. The rewards which the Senate and People provided in 186 B.C. to the two main informers, "quod eorum opera indicata Bacchanalia essent" (Livy 39. 19. 3), are comparable to the later provisions of the *Lex Acilia.* To P. Aebutius were granted freedom from military service and freedom from holding the *equus publicus,* which his father had held (Livy 39. 9. 2). The mistress of Aebutius, the freedwoman and courtesan Hispala Faecenia, received rights which raised her to the status of a respectable free woman: *datio, deminutio, gentis enuptio, tutoris optio,* the right to marry a free man without censure, and the protection of present and future consuls and praetors. Furthermore, each received a reward of 100,000 *asses* (Livy 39. 19. 3–4; cf. *SC de Bacchanalibus, CIL* 1^2.581 = Bruns no. 36). These rewards were approved by the Senate and an assembly (*concilium plebis*), and rewards for other informers were left to the discretion of the consuls.

33. Whether it was Glaucia's law or the earlier law of Caepio which made this change is a subject of much dispute: see E. Badian, "Lex Servilia," *CR* 4 (1954): 101–2; *contra,* B. Levick, "Acerbissima lex Servilia," *CR* 17 (1967): 256–58; A. N. Sherwin-White, "Date of the Lex Repetundarum," p. 97. Essential is the discussion of F. Serrao, "Appunti sui 'patroni'," pp. 497–502. See also Ferrary, "Législation," pp. 123–24.

34. Some manuscripts have "iudicio."

aftermath of Catiline's conspiracy in 63, L. Vettius revealed information in order to obtain immunity from prosecution for himself (Dio 37. 41. 2 ἐπ' ἀδείᾳ). Three years later, Vettius was planning to turn informer if found guilty on a charge of *vis* (Cic. *Att.* 2. 24. 4)—perhaps with the hope of a pardon like that granted by the *ambitus*-laws to those convicted of bribery. It should be noted, however, that this was apparently an investigation to be carried out before a *quaestio extraordinaria,* allowing Vettius to bring evidence against the defendants and providing for "praemia amplissima" (*Vat.* 26). The rewards open to Vettius may therefore have been atypical. Rewards were offered in 63 for informers against the Catilinarians (Cic. *Cat.* 4. 10). It should be noted that Cicero claims that Milo prosecuted Clodius *de vi* in 57 "nullis praemiis" (Cic. *Sest.* 89)—a testimony to the potential invidiousness of *praemia,* and the presumed purity of prosecutors not motivated by them (see above, p. 24).

Homicide

We know of one sort of monetary reward offered by a law which established a *quaestio.* According to the *Lex Cornelia inter sicarios et de veneficiis,* someone who informed on slaves who had killed their master received five *aurei* for each slave convicted; this money would be taken from the victim's estate unless that were insufficient, in which case public funds would be used; ten *aurei* was the reward for each slave convicted who was to be freed by his master's will (Gaius *Dig.* 29. 5. 25). The logical candidates for such rewards would be slaves, and conceivably the reward might have been enough to allow a slave to buy his freedom. These provisions suggest that not only different laws, but individual clauses of a given law, could offer different rewards. It seems probable that the sort of person most likely to inform against this sort of criminal would be induced to do so by a monetary reward, rather than a political reward such as a change of tribe.

III. CONCLUSION

Praemia played different roles in different Roman criminal laws. They may not have figured at all in some measures, and in others they may have played a role of which we are ignorant. In still other laws, their role may have been minor. We do know that rewards were very important in laws relating to electoral malpractice. The rewards themselves varied: money, *provocatio* and *militiae vacatio,* citizenship, pardon, and promotion in senatorial rank. These *praemia* were not determined by the relative status of the prosecutor and the defendant, according to a single, uniform principle embedded in all criminal laws. Rather, each law, and in some cases each section of a law, offered *praemia* when—and probably only when—it was necessary to do so in order to encourage a suitable individual to come forward and serve as prosecutor; and the *praemia* varied according to the

needs of the kind of person likely to serve. In their criminal laws the Romans drafted provisions for *praemia* not according to an abstract principle, but pragmatically: not only the punishment, but the rewards, too, fit the crime.[35]

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