

The Classical Review

<http://journals.cambridge.org/CAR>

Additional services for *The Classical Review*:

Email alerts: [Click here](#)

Subscriptions: [Click here](#)

Commercial reprints: [Click here](#)

Terms of use : [Click here](#)



The Porcian Coins and the Porcian Laws

A. H. J. Greenidge

The Classical Review / Volume 11 / Issue 09 / December 1897, pp 437 - 440

DOI: 10.1017/S0009840X0005188X, Published online: 27 October 2009

Link to this article: http://journals.cambridge.org/abstract_S0009840X0005188X

How to cite this article:

A. H. J. Greenidge (1897). The Porcian Coins and the Porcian Laws. The Classical Review, 11, pp 437-440 doi:10.1017/S0009840X0005188X

Request Permissions : [Click here](#)

THE PORCIAN COINS AND THE PORCIAN LAWS.

ALTHOUGH coins are of very great value in the reconstruction of the foreign department in the constitutional history of Rome, there are not many which throw light on points of detail connected with the legal changes in the city itself. Hence the interest attaching to the two well-known types struck by members of the Porcian house. They record a revolution of some kind in the criminal law effected by the coiners or their forefathers; they preserve the memory of an extension of the right of appeal or of the prohibition of a magistrate to scourge a citizen—both of them changes vaguely indicated by our literary authorities and attached to the names of Porcii. But here our direct knowledge ends. Neither the coins nor the laws can be dated; the types of the former are indeterminate and no literary authority tells us the exact work accomplished by the latter. The explanations hitherto given by modern authorities of the correspondence of the two are vague and seem to me to be, on historical and legal grounds, unsatisfactory. Although it is almost impossible to establish certain conclusions where direct evidence is so slight, I shall venture to suggest a hypothesis as to the result effected by at least one of these laws which, while it is the only one which fits the symbolic representation on the most significant of the coins, is also in harmony with the few literary notices of the Porcian legislation.

If we appeal first to the coins, we find that one of the types may be briefly dismissed as wholly indeterminate. It is furnished by *denarii* which contain the legend *Roma* with the triumvir's name 'M. Porc[us] Laeca'; on the reverse is Liberty holding a cap and sceptre and crowned by Victory, in a *quadriga* galloping to the right. The coin cannot be dated, and all that we can say is that this type is an obvious allusion to some Porcian law or laws which either extended the *provocatio* or prohibited some kind of punishment from being inflicted on the citizen.

But the other type goes into some detail and gives us a vivid picture of the working of some great protective law. This too is furnished by *denarii* which contain the legend *Roma* with a 'P. Laeca' as the triumvir. But the reverse shows us a warrior clad in a cuirass, armed with a sword and accompanied by a lictor who carries the *fasces*. The warrior stretches out his hand over the head of a citizen clad in the *toga*.

The citizen, with upraised hand, appears to be uttering some word or words. Below we read *provoco*.

The usually accepted explanation of this type is that given by Cavedoni (*Ripostigli*, p. 121). He sees in it an allusion to the extension of the right of *provocatio* by which it was granted to Roman citizens even in the face of military command (*imperium militiae*). Mommsen, who accepts this explanation, interprets 'military command' in its widest and undoubtedly its truest sense to mean command outside the mile-limit of civic jurisdiction—that is, command in the provinces as well as in the army; the law here commemorated limited the emperor's capital jurisdiction by submitting the threat of executing such jurisdiction to appeal (Mommsen, *Staatsrecht*, ii. p. 117; Mommsen-Blacas, *Histoire de la monnaie Romaine*, ii. p. 365). The same explanation is adopted by Babelon (*Monnaies de la République Romaine*, ii. p. 369), if by 'military authority' he means the universal authority of a pro-magistrate; his words are: 'the *denarius* of P. Laeca alludes to the connection of these laws with the military authority, the omnipotence of which they attempted to restrain.' Stevenson in his *Dictionary of Roman Coins* (s.v. Porcius Laeca, p. 642), was more cautious. He thought indeed that the coin recalled the memory of the Porcian law which 'gave on appeal (*provocatio*) exemption from the ignominious punishment of scourging'; but he continues: 'this exemption was confined in its operation to towns and cities. Soldiers on duty were still left entirely dependent on the will of their commander-in-chief.' This explanation contains more elements of truth than that of any commentator that I have seen. It shows a recognition of two facts forgotten or ignored by those who have dealt recently with the question. These are (1) that the Porcian law could not have forbidden scourging simply but could only—following the analogy of other laws connected with the *provocatio*—have submitted the threat of such scourging to appeal; (2) that capital punishments continued to be inflicted by Roman generals on their soldiers to the latest period of the Republic (*C.R.* x. p. 228). He gives no evidence for the further view that the 'exemption was confined in its operation to towns and cities.' It may have been a conclusion from the fact that the Porcian coin represents the appellant

citizen as clad in the *toga*. It was a natural conclusion but one not warranted by historical evidence, which seems to show that the proconsul claimed the right of life and death over Roman citizens within his domain down to a late period of the Republic (*C.R.* x. p. 229), and it is an explanation which is not rendered inevitable by the situation depicted on the coin.

The crucial difficulty presented by this picture is to understand what relations of jurisdiction could exist between a general in a cuirass and a citizen in a *toga*. The dress of the victim excludes the idea of military jurisdiction on a campaign; the garb of the threatening commander is inconsistent with the idea of jurisdiction within Rome: while the idea of ordinary provincial jurisdiction—if even we suppose that a proconsul usually went about his judicial business in fighting garb without even veiling his cuirass with the *paludamentum*—must be set aside in face of the historical evidence which shows that such jurisdiction continued to be unlimited. We must go elsewhere for a situation which will bring an *imperator* and a *civis* face to face. The situation may be found by a discovery of the probable evil which one at least of the Porcian laws was meant to meet.

The three Porcian laws mentioned by our authorities seem at first sight to have resulted in rather a complex piece of legislation; but a closer examination reveals a unity of purpose that does not appear on the surface, and this unity may be reflected in the not unfrequent mention of a single 'lex Porcia' as though it embodied the spirit of the whole Porcian legislation.

One provision of these laws seems, if the passages describing it are literally interpreted, to have but a slender connection with our subject. Two passages in Sallust's *Catiline* seem to say that a lex Porcia extended the theory and practice of *exsilium* by permitting exile after, and not merely before, condemnation by the people, and thus preparing the way for the place held by voluntary banishment in the *quaestiones perpetuae*.¹ In this change the lex Porcia was assisted by 'other' laws. The change itself, though important in its consequences, was slight in so far as it did not alter the funda-

mental character of *exsilium*: and consequently we need not be surprised that it is not dwelt on by Cicero and our other authorities, who treat exclusively of the relations of these laws with the *provocatio* and the punishment of scourging.²

It is, however, just possible that we have in this passage a somewhat careless reference to a law bearing on the *provocatio*; for a law allowing the appeal, and therefore permitting voluntary exile during the hearing of the appeal, might, without much straining of language, be said to grant *exsilium* to the condemned. The statement would harmonise still further with everything else that we know about the Porcian legislation if we could adopt Mommsen's interpretation that *damnatis* here refers to condemnation by a magistrate.³ It would then be a statement, not of the immediate effect of the law—the *provocatio*—but of its ultimate effect—*exsilium*.

Secondly we are told that 'leges Porciae' attached an adequate sanction to laws enjoining the *provocatio* (*Cic. de Rep.* ii. 31; *Liv.* x. 9).

Thirdly we hear of a lex Porcia which abolished scourging in some form not precisely specified by our authorities (*Cic. pro Rab.* 3, 8; 4, 12).

The two latter provisions are not necessarily identical; for the language of Cicero in more than one passage, as well as that of Livy, appears to show that a Porcian law attached a fresh sanction to the *provocatio* when employed against capital jurisdiction as well as against the penalty of scourging. Yet their close connection may be gathered from the passages where these aspects of the Porcian legislation are described—a connec-

² If this interpretation be accepted, the law in question appears to have been considerably later than at least the first lex Porcia which dealt with the *provocatio*; for the theory of *exsilium* here stated differs from that with which Polybius was familiar (vi. 14).

³ Mommsen in *Neue Jena'sche Literatur-Zeitung*, 1844, p. 258. The acceptance of this interpretation of Mommsen's by no means proves the truth of his main contention in this article, viz. that the condemnation by a magistrate and *provocatio* were invariable elements in a *judicium populi*. The procedure of the *provocatio* and that in an ordinary *judicium populi* were probably distinct. The distinguishing point was that the condemnation by a magistrate existed only in the first. The points of contact between the two processes were (a) the formalities of the trial before the people, (b) the possibility of *exsilium* (see *C.R.* ix. p. 6). A final proof that the *provocatio* played no part in a *judicium populi* is furnished by the fact that women could be the subjects of a *judicium populi* (*Gell.* iv. 14, 2), although they did not possess the *provocatio* through not having *communio comitiorum*.

¹ Sallust, *Cat.* 51, 21. 'Sed, per deos immortales, quam ob rem in sententiam non addidisti, uti prius verberibus in eos animadverteretur? an quia lex Porcia vetat? at aliae leges item condemnatis civibus non animam eripi sed exsilium permitti jubent. §§ 40. tum lex Porcia aliaeque leges paratae sunt, quibus legibus exsilium damnatis permissum est.'

tion which shows that no Porcian law made the scourging of a citizen as such illegal, but merely submitted the threat of such punishment to appeal. In the order of what may be called the legal value of these passages they may be classed as follows:—

(1) Cic. *de leg.* iii. 3, 6; ‘magistratus nec oboedientem et noxium civem multa, vinculis, verberibus coerceto, ni par majorve potestas populusve prohibessit, ad quos provocatio esto.’

(2) Cic. *de Rep.* ii. 31, 54; ‘neque vero leges Porciae, quae tres sunt trium Porcium, ut scitis, quidquam praeter sanctionem attulerunt novi.’

(3) Liv. x. 9; ‘Porcia tamen lex sola pro tergo civium lata videtur: quod gravi poena, si quis verberasset necassetve civem Romanum, sanxit. Valeria lex (of 300 B.C.), quum eum, qui provocasset, virgis caedi securique necari vetuisset, si quis adversus ea fecisset, nihil ultra quam improbe factum adjecit.’

(4) Cic. *pro Rab.* 3, 8; ‘de civibus Romanis contra legem Porciam verberatis aut necatis.’

(5) *Ib.* 4, 12; ‘Porcia lex virgas ab omnium civium Romanorum corpore amovit; hic misericors flagella rettulit. Porcia lex libertatem civium licitori eripuit: Labienus, homo popularis, carnifici tradidit.’

(6) Cic ap. Ascon. in *Cornel.* p. 77. ‘Etiam haec recentiora [i.e. later than the second secession and the creation of ten tribunes 449 B.C.] praetereo: Porciam principium justissimae libertatis’ etc.

In (1) and (2) Cicero speaks as a lawyer, as might be expected from the juridical character of the works in which the passages occur. From these statements we gather that scourging was always formally a part of the *coercitio* of a Roman magistrate and that the ‘leges Porciae’ or the ‘lex Porcia’ (if we assume that it was only one of these laws that protected the back of the citizen) merely added a sanction to a provision which already allowed an appeal from a threat of *verbera*. The passage of Livy (3) is still more explicit on this point. The contradiction implied in speaking of a law, which prohibited both scourging and death, as passed *sola pro tergo civium* is only apparent; for the death referred to is the execution *more majorum* so vividly described in later times to Nero (Suet. *Ner.* 49). It was death by the axe or by the rod—death, in short, as inflicted by the *fusces*—that alone deserved mention in the early laws of appeal; for they were aimed against the *coercitio* of the magistrate with *imperium*. Perhaps in early times the sacral penalty inflicted by the

tribunes—the death from the Tarpeian rock—could be met only by the *intercessio*; but in any case it was not against tribunician but against consular violence that these numerous laws were aimed. And this dual conception of the protection of the citizen’s person—from death by scourging as well as from the penalty of scourging—makes it extremely improbable that the *virgis caedi* of the third ‘lex Valeria’ can refer only to the latter. The passages from Cicero and Livy [(1), (2) and (3)], taken in combination, show that scourging in both forms had already been prohibited by law—a prohibition that was ineffective until a Porcian law or laws had added an efficient sanction. From this point of view the ‘lex Porcia’ might well be called the *principium justissimae libertatis* [passage (6)].

One of the already-cited passages from Sallust’s version of Caesar’s speech on the execution of the Catilinarian conspirators also contains an implication that a ‘lex Porcia’ prohibited scourging. The analogical argument employed is a stronger one if the prohibition was merely against scourging inflicted by a magistrate without appeal than if the law prohibited this punishment absolutely. For the death penalty against which Caesar is arguing in this speech is the death penalty inflicted by administrative decree of the magistrate. ‘Why,’ he asks, ‘violate the *provocatio* in one particular while you respect it in another?’¹

Of the remaining passages [(4) and (5)], which are taken from Cicero’s speech *pro Rabirio*, the first is wholly indeterminate; it might refer equally well to the absolute and to the conditioned prohibition of scourging. The second seems to contain a more distinct reference to an absolute prohibition; but two considerations are sufficient to obviate the necessity of this interpretation. One is that Cicero is speaking here not as a lawyer but as a pleader; this citation of the ‘lex Porcia’ may be parallel to the equally effective and perhaps equally pointless parade of laws protecting the life of the citizen which is made in the Verrines (v. 63). And, secondly, if Cicero means to imply that the death penalty—and therefore death by scourging—was ever abolished in Roman law, the rhetorical antithesis which we find in this passage is wholly false from a legal point of view. If, indeed, we adopt the view that a Porcian law granted exile after condemnation and suppose that it is this

¹ It was possibly to avoid the appearance of consular *coercitio* that the Catilinarian conspirators were strangled.

provision which is referred to by Cicero, there is rather more point in the passage; but even so it would not contain a valid legal argument: for, unless the condemnation meant is 'condemnation by the magistrate, the stage at which the law would be effective had not yet been reached in the trial of Rabirius. A higher element of truth in the passage—one which, because it is true, vitiates Cicero's argument—is the statement that the 'lex Porcia' *libertatem civium lictori eripuit*. This indeed it did. Both the 'lex Valeria' and the 'lex Porcia' saved the citizen from the lictor as the instrument of magisterial 'coercitio.' It is such salvation that is symbolised on our Porcian coin.

A further, although, it must be admitted, rather unsatisfactory item of evidence in favour of the view that the punishment of scourging was not abolished in Roman law may be drawn from certain words of Seneca (*de ira* 3, 12) and Festus (p. 234 Müller), which imply that, at the time of M. Porcius Cato (consul 195 B.C.) certain laws inflicted scourging as a *poena*.¹

Whether such laws (if they ever existed) continued on the statute-book until later times is unknown. All that can be gathered from these passages is that Cato, as a typical member of the Porcian house, spoke against the penalty of scourging.

Lastly, if the 'lex Porcia' had absolutely prohibited the scourging of a citizen, the people would, by this act of legislation, have adopted a method of asserting the citizen's rights and limiting the magistrate's power completely different from that which they usually pursued. Such a law would have violated the two leading principles of Roman protective legislation. These principles were the limitation of the power of the magistrate without the limitation of that of the people, and the security for the authority of the people and for the occasional imposition of a justifiably severe penalty by taking from the

magistrate the right to execute and not the power to sentence.

Granting that the evidence is in favour of the view that the 'lex Porcia' commanded the observance of the *provocatio* in cases where scourging was threatened by a magistrate, the next stage of our interpretation will be to determine in what department of administration this means of *coercitio* is found.

It is found, so far as the coercion of the Roman citizen not actually on military service is concerned, chiefly, perhaps solely, in connection with the levy (*dilectus*). In the disensions of 471 B.C. Publius Volero denied his liability to serve. The only safeguard at this time was the *appellatio* to the tribunes. It was made but they would not listen, and the consuls ordered him to be stripped (Liv. ii. 55). In the middle of the fourth century the chief complaint made against Manlius, on his abdication of the dictatorship, was 'acerbitas in dilectu—laceratione corporum lata—partim virgis caesis, qui ad nomina non respondissent' (Liv. viii. 4). It was such acts of violence that the third 'lex Valeria' and the 'lex Porcia,' so far as they took cognisance of scourging only, were meant to stop.

And here, I think, we have our explanation of the Porcian coin. The imperator in military dress is conducting the *dilectus*; the man in the *toga* is an unwilling recruit; he has been dragged to the magistrate's presence for the traditional means of summary coercion to be applied; but the 'lex Porcia,' commemorated by this coin, has enabled him to utter the magic word *provoco*.

The date of this particular coin, which is wholly uncertain, but is perhaps of the close of the second century B.C., has little bearing on the question under discussion. It must be far later than the prohibition of scourging in the military levy. But the family coins reproduce very ancient history, and any member of the Porcian house may have depicted the most dramatic event of the public life of his ancestors which the family records could recall.

A. H. J. GREENIDGE.

¹ Seneca, *de ira*, 3, 12. 'Pro scapulis cum dicit Cato significat injuria verberum (Festus "pro injuria verberum"); nam complures leges erant in cives rogatae, quibus sanciebatur poena verberum.'