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On the Rogatio Livia de Latinis

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The Classical Quarterly / Volume 5 / Issue 02 / April 1911, pp 115 - 118

DOI: 10.1017/S0009838800019479, Published online: 11 February 2009

Link to this article: http://journals.cambridge.org/abstract_S0009838800019479

How to cite this article:

M. O. B. Caspari (1911). On the Rogatio Livia de Latinis. The Classical Quarterly, 5, pp 115-118 doi:10.1017/S0009838800019479

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give their name to the whole force, were too few to reduce perceptibly the fighting strength of their own nation in Campania. Indeed, by drafting large numbers of Campanians into their expeditionary army, they diverted the energies of their restless neighbours into a suitable channel, and correspondingly diminished the pressure of the Sabellian stocks upon their own nation.

Lastly, this explanation, while upholding the authority of Diodorus, restores the shaken credit of Thucydides. Diodorus could well represent the brigade as a Campanian one, for, regarded from the standpoint of numbers, it was essentially Campanian. And, again, Thucydides was sufficiently justified in calling it Etruscan, for the Athenian officers no doubt had no direct intercourse with the troopers, but only knew the force through its Etruscan officers. If a modern historian can fairly describe the Hanoverians and Hessians who fought at the Brandywine or at Waterloo as an English force, Thucydides might well be allowed to call the composite Etrusco-Campanian army Etruscan for short. Certainly this would be no more misleading than others of his brachylogies.

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ON THE ROGATIO LIVIA DE LATINIS.

WAS the above-named bill, which was brought forward in 122 B.C. by the tribune M. Liuius Drusus, and provided that the Latins should under all circumstances be exempt from the penalty of scourging,¹ duly passed by the Roman Assembly and entered upon the statute-book?

This question has not yet received any conclusive answer in histories of Rome. Ihne² and Peter³ refrain altogether from discussing it; Mommsen,⁴ Greenidge,⁵ and Heitland⁶ assert or imply that Drusus' measure was made law, but do not argue the point; Lange,⁷ Zumpt,⁸ and Long⁹ take the opposite view, and adduce some evidence in its favour, but can hardly be said to establish their case beyond dispute.

¹ Plut., *C. Gracchus*, ch. 9: ὅπως μὴδὲ ἐπὶ στυγέρας ἐξῆ τινα Λατίνων πάβδοις αἰκισσασθαι.

² *History of Rome* (Engl. Transl.), IV, p. 473.

³ *Geschichte Roms* (ed. 1870), II, p. 39.

⁴ *History of Rome* (Engl. Transl., ed. 1894), p. 365.

⁵ *History of Rome*, p. 243.

⁶ *The Roman Republic*, II, 310.

⁷ *Römische Altertümer*, III, p. 44.

⁸ *Das Kriminalrecht der römischen Republik*, bk. II, p. 77.

⁹ *The Decline of the Roman Republic*, I, p. 276.

A further investigation of this problem may serve to bring it nearer to a definite solution.

1. The *Rogatio de Latinis* formed part of a batch of proposals, of which one at least was almost certainly sanctioned by popular vote. When Liuius Drusus the Younger brought forward his project for the establishment of new colonies, he represented it as a scheme *already confirmed by the people*, and merely waiting to be carried into effect.¹ The reference can hardly be to any other measure than the elder Drusus' colonial law, which was promulgated on the same occasion as the proposal concerning the Latins. The enactment of the former thus affords presumptive evidence for the simultaneous ratification of the latter.

2. The fact that Drusus' measures were not intended as a serious project of reform, but were merely a device for outbidding Gracchus in popular favour, does not warrant the conclusion that they never got beyond their first reading. However unversed in high politics the voters in the comitia may have been, they must be credited with a knowledge of the difference between giving notice of a motion and putting it to the vote. Moreover, Drusus proclaimed his intention of moving popular reforms, not once, but frequently.² Hence to drop a scheme of legislation to which he was committed by repeated pledges would have been a suicidal policy on his part: such barefaced fraudulence, instead of luring the people into the confidence of the Senate, would have confirmed them in their mistrust of the nobility and their allegiance to Gracchus.

Nor yet can it be supposed that the bill was rendered abortive by Gracchus' veto.³ His enemies had selected their issue so carefully as to preclude his using this weapon, for by interfering with such specious benefactions as Drusus was offering to the discontented classes Gracchus would have compassed all the more directly his estrangement from his former clients. In the absence of documentary evidence in favour of this view, of which there is none, it cannot be admitted as a valid explanation.

On general considerations it is therefore preferable to assume that the *Rogatio de Latinis*, like the rest of Drusus' measures, was enacted as well as projected.

3. There are two ancient texts which may be brought to bear upon the problem.

(a) Sallust, *Bellum Iugurthinum*, ch. 69, § 4: 'Turpilius iussus a Metello causam dicere postquam parum sese expurgat, condemnatus uerberatusque capite poenas soluit; *nam is ciuis e Latio erat.*'

The accepted rendering⁴ of the italicized clause in this passage is 'Turpilius was a Latin.' This would clearly prove Drusus' measure to have been in abeyance in 108 B.C., and accordingly these words of Sallust have

¹ Appian, B.C. I. 35, § 156.

² Plut., *C. Gracchus*, ch. 9; ὁ Λιβύιος ἀεὶ δημηγοροῦν.

³ Lange, *loc. cit.*

⁴ Edd. Jacobs (1857), Capes (1866), Hinzpeter (1867), Guibert (1892), Opitz (1897).

been quoted in disproof of the Rogatio de Latinis having been carried.¹ But the above interpretation breaks down on several grounds :

- (i.) Appian² calls Turpilius a Roman.
- (ii.) The expression 'ciuis e Latio' as equivalent to 'Latinus' is not Latin.³ It is not even sense, for it contains a contradiction in terms. 'Ciuis' in legal parlance invariably implies *Roman* citizenship, and Roman franchise was incompatible with 'ius Latinum.' Either Turpilius was a 'ciuis' or he was a 'Latinus': he could not have been both at the same time.
- (iii.) The meaning of the traditional version does not suit the context. The fact of Turpilius being a Roman would explain nothing, for granted that Latins were liable to be scourged, so also were Romans while on military service.⁴

The only translation consistent with Latin idiom and coherence of thought on Sallust's part is as follows: 'Turpilius had acquired Roman citizenship in exchange for Latin rights.' The use of *ex* = 'in exchange for' is well established, and the abbreviation of 'ius Latii' into 'Latium' is not without parallel.⁵ On this showing, the Lex Liuii was in force at the time of the Jugurthine War, for if Turpilius had remained a Latin he would not have been scourged.

(b) Cicero, *Ad Atticum*, V. 11. 2: 'Marcellus foede in Comensi. Etsi ille magistratum non gesserit, erat tamen Transpadanus.' The reference here is to a scourging inflicted in 51 B.C. by the consul M. Claudius Marcellus upon a burgess of Nouum Comum.

The relevance of this incident may be disputed by those who regard the victim of the outrage as a Roman citizen.⁶ But it is certain that Cicero considered him a Latin. The word 'Transpadanus' is synonymous with 'Latinus,' for in Cicero's days the characteristic feature of the Transpadanes' status lay in their possession of Latin rights and their exclusion from the

¹ Zumpt and Long, *loc. cit.*

² *De Rebus Numidicis*, ch. 2: Τουρπίλιον ἄνδρα Ρωμαῖον.

³ The only known instance of this collocation is in the *Lex Malacitana*, ch. 53. But a document drawn up in a provincial town, at an age when the historic distinction between Romans and Latins was fast becoming blurred, can hardly be quoted as evidence of ordinary Latin usage.

⁴ Zumpt (*op. cit.*, pp. 66-67) admits that there is no evidence in favour of the theory that Roman soldiers were ever exempted from liability to scourging. The coin of Porcius Lacca (Hill, *Historical Roman Coins*, no. 36, p. 68) cannot be adduced as testimony, for the appellant there portrayed is ostentatiously clad in a toga—i.e. he is not a soldier.

⁵ Pliny, *Hist. Naturalis*, III. §§ 7, 30, 135; Tacitus, *Historiae*, III. 55.

⁶ Thus Mommsen, *History of Rome*, V. 132,

179. This theory has the countenance of Suetonius, *Diuus Iulius*, 28, § 3, Strabo, p. 213, and Plutarch, *Iulius Caesar*, 29, who assert or imply that Nouum Comum was a colony with full rights of Roman franchise. Appian III. 26 allows that Caesar's colony had only Latin rights, but states that Marcellus' victim was an ex-magistrate, and therefore a Roman. But it is grossly improbable that Marcellus should have ventured to scourge a Roman citizen in Rome. Such a violation of the well-established Laws of Appeal would have greatly damaged the party of constitutional purists with which Marcellus was making common cause, and the memory of Cicero's punishment for his far more excusable action in executing the accomplices of Catiline should certainly have had a deterrent effect upon Marcellus. It would seem that later tradition improved upon the details of the story by way of making it more sensational.

Roman franchise which all other Italians then possessed; and the distinction between the status of ex-magistrates and others is only relevant in the case of a man of Latin birth.

Granted, therefore, that Cicero argued the case as if the scourging had been inflicted on a Latin, what conclusions can be drawn from this passage regarding the legal validity of Drusus' measures? Clearly not those indicated by Zumpt,¹ who assumes that Marcellus was acting within his rights, and accordingly infers that Drusus' scheme for the protection of the Latins had not become law. This hypothesis ignores the positively indignant tone of Cicero's comment. The epithet 'infamous' is far too strong to have been applied to a mere mistake in policy, as though Cicero's criticism were only levelled at Marcellus' hastiness in provoking Caesar, and made no reflection upon the validity of his dealing. The violence of Cicero's denunciation requires for its explanation nothing short of a positive infringement of the law—a kind of offence which often called forth unmeasured denunciation from this author. Now, the only known law which Marcellus could have set at naught by scourging a Latin is the *Lex Liua* of 122 B.C. Hence it may be inferred from Cicero's text that Drusus' bill had been duly enacted.

It will thus be seen that all the available evidence is in favour of the *Rogatio Liua de Latinis* having become law.

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¹ Zumpt, bk. II. p. 77.