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Elections, Campaign and Bribery in Ancient Rome

Słowa kluczowe: wybory, korupcja, ambitus, quaestiones perpetuae, ius publicum

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Streszczenie

Wybory, kampania i korupcja w Starożytnym Rzymie

Tematyka tego artykułu dotyczy w kolejności: (I.) wyboru konsulów i kampanii wyborczej w ubiegłym wieku Republice. Następnie (II.) dokonano analizy roli stowarzyszeń (*collegia*) w kampanii wyborczej. Wreszcie (III.) omówiono postępowanie karne w wieku Cyncerona ze szczególnym uwzględnieniem postępowania karnego w sprawach o korupcję, czyli *ambitus*.

Summary

Elections in Rome in the Age of the Republic were considered just as important, and voters were as much manipulated in Rome of the time as nowadays. Manipulation was nevertheless easier, than nowadays because of the process of elections. The rule of the aristocracy against the masses, and especially the popular assembly was ensured institutionally. And as votes were cast within *centurie*, they could continue to make use of all means of manipulation arising from the *centuria* system against the masses. The cam-

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paign took one year, so albeit anybody could enter the elections (subject to meeting the above conditions), actually only those had any chance who did not make a living by working, earning wages, but had their own property. In this paper we shall survey the order of the election of *consules* and election campaign in the last century of the Republic. (I.) After that we analyse the role of associations (*collegia*) in the election campaign. (II.) Finally, we shall discuss order of procedure of criminal procedure in Cicero's age with special regard to the criminal procedure in the cases of bribery, i.e. *ambitus*. (III.)

I.

In the age of the Republic of Rome there were four popular assemblies (*comitia curiata*, *comitia centuriata*, *comitia tributa*, *concilium plebis*); however, in the last century of the Republic only *comitia centuriata*, which elected *magistratus maiores*, including *consules*, and *comitia tributa*, which elected *magistratus minores*, had any practical significance. According to tradition, the assembly of *centuriae* was formed by King Servius Tullius, however, his operation can be proved from the middle of the 5th century only. Originally, this *comitia* operated in accordance with a division defined in terms of military companies (*centuriae*); later, however, this military character faded². Based on *censors'* property estimate, citizens constituted one hundred and ninety-three *centuriae*: cavalry *centuriae* and foot *centuriae*, the latter divided into *classes*, which were originally distributed as follows. Knights, who were over *classes* amounted to eighteen *centuriae*; based on the *census* their property had to exceed one hundred thousand *asses*. Citizens ranked into *classes* constituted five classes: eighty *centuriae* with property over one hundred thousand *asses*, twenty *centuriae* with property over seventy-five thousand *asses*, twenty *centuriae* with property over fifty thousand *asses*, twenty *centuriae* with property over twenty-five thousand *asses* and thirty *centuriae* with property over eleven thousand *asses*. Below the *classes* the five unpropertied *centuriae* were placed: *fabri* and *cornices*, each of which had two cen-

² T. Nótári, *Római köz- és magánjog*. (Roman Public and Private Law), Szeged 2011, p. 58.

turiae, and *proletarii* that had one *centuria*. After 215, the representation of the first class decreased from eighty to seventy *centuriae*, which was divided into thirty-five *iuniores-centuriae* (encompassing citizens in age groups between eighteen and forty-six years) and thirty-five *seniores-centuriae* (encompassing citizens in age groups between forty-seven and sixty years). Before the elections, one of the *iuniores-centuriae* was selected by a draw so that it should be *centuria praerogativa*, i.e., it should vote first, as it were to indicate the final outcome of the voting³. (As a matter of fact, the most propertied *centuriae* did not contain one hundred persons, while the number of persons in *centuriae* that did not have any property amounted to several thousands.)

Voting took place *per centuriae*; first, the more propertied voted, after that, the poorer, finally – in theory – unpropertied people that constituted a significant part of the population. Although citizens' votes had equal value, votes were aggregated *per centurias*, and this way eventually each one *centuria* embodied one *yes* and *no* vote depending on the majority of votes cast within the *centuria*. It should be mentioned that counting of the votes did not take place upon voting had been terminated but continuously, that is – by a logical twist that seems peculiar but served political interests – they continued voting only until the *centuriae* that cast their votes reached a rate of voting over fifty percent. So, for election victory it was sufficient if more than half of the one hundred and ninety-three *centuriae* voted „properly”: eighteen votes of the knights and eighty votes of the first class were more than half of the votes of all *centurias*. (Later, when the weight of the first class somewhat decreased, it was sufficient if twenty *centuriae* of the second property class joined the knights and the first class.) The first ninety-eight *centuriae* amounted to a fraction of the entirety of citizens only, thus, election was far from representing the decision of the majority of citizens⁴. It was far from all of the citizens who took part in the election because the site of voting, the

³ Ibidem, p. 59; Gy. Németh, *Választások a köztársaságkori Rómában*. (Elections in Republican Rome), [in:] Gy. Németh, T. Nótári, *Hogyan nyerjük meg a választásokat. Quintus Qullius Cicero – A hivatalra pályázók kézikönyve*. (How to win elections? Quintus Tullius Cicero: *Commentariolum petitionis*), Szeged 2006, p. 138; Gy. Németh, T. Nótári, *Választási kampánystratégia az ókori Rómában*. (Strategy of Election Campaigns in Ancient Rome), „Jogtudományi Közlöny” 2006, 61/7–8, p. 268.

⁴ Gy. Németh, *Választások a köztársaságkori...*, p. 138; Gy. Németh, T. Nótári, *Választási kampánystratégia...*, p. 268.

Mars field could take seventy thousand citizens, and the total number of citizens several times exceeded this number in the 2nd century already. Poorer layers who lived in the countryside mostly did not travel to Rome for voting because the time of election of *consules* fell on the second half of July, that is, the period of reaping of barley and harvesting of beans; so, the election was decided by the votes of the most propertied, also due to this circumstance under this peculiar order of voting⁵.

The person controlling the election, after his speech (*contio*), announcement of the names of the candidates and prayer addressed to gods, opened voting; then, took a seat on the *sella curulis* set up beside the voting bridge. Voters, who lined up *per centurias*, were given a wax covered piece of wooden board, on which they wrote the initials of the name of the candidate preferred by them; then, they cast their board in the ballot-box (*cista*) set up at the other end of the wooden bridge. After one *centuria* had cast their votes, votes were aggregated in the ballot counting chamber, and candidates' names were written down, marking the *centuriae*' decision by scores beside their names. Once two candidates had reached fifty percent plus one vote of the ballots of *centuriae*, voting was discontinued and was proclaimed conclusive. The institution of campaign silence was unknown in the Republic of Rome, so, agents tried to campaign for their candidate even at the gate of the bridge. If it was foreseen that the result of voting would be unfavourable for the ruling class, they tried to influence the outcome sometimes by rather powerful intervention, for example, the voting bridge collapsed „accidentally”, or *augurs* stated that they were seeing ill omen⁶ – in both cases election was declared void or postponed by several days, which provided sufficient time for turning public feeling⁷.

In relation to election campaign, it is absolutely necessary to mention *Commentariolum petitionis*, written in 64 B.C., the oldest campaign strategy document that has been preserved for us, in which Quintus Tullius Cicero, Marcus Tullius Cicero's younger brother, gives advice to his elder brother on how Marcus can win *consul*'s elections, that is, how he can rise to the

⁵ G. Laser, *Quintus Tullius Cicero – Commentariolum petitionis*, „Texte zur Forschung” 75, Darmstadt 2001, p. 16.

⁶ Plut. *Cato min.* 42.

⁷ Gy. Németh, *Választások a köztársaságkori...*, p. 145.

highest position of the Roman Republic. It is rather dubious if Quintus published – could have published – this work after it had been possibly revised by Marcus, in which he outlines the organisation and management of the election campaign since he explores the details of the fight for votes with relentless honesty. Günter Laser sums up the core of Quintus's writing as follows: in order to obtain the *consul's* office the applicant should not shrink back from any tricks, false promises, lies, pretence and approaching/flattering any group that fits the purpose⁸. The exploration of this uninhibited opportunism and manoeuvring was in no way in the interest of the ruling class of the late Republic, and it would have put especially Marcus Tullius Cicero in an unpleasant situation since he could not have shielded himself from the shadow of the suspicion that – especially as a *homo novus* – he was able to win *consulatus* because he used all these tools in practice⁹.

As a matter of fact, Marcus was not lacking knowledge of the process of applying for offices either, however, it can justify Quintus's effort to sum up relevant experience that he had also applied for minor offices (*magistratus minores*), and so he could add his personal observations to his brother's strategy¹⁰. The plural used in sentences with more personal tone¹¹ also indicates that the writer of the letter might have had a direct relation with the addressee. As a matter of fact, the *Commentariolum* was not published by Marcus either in 64 or later since by doing so he would have allowed to have an insight into his own political intentions and opportunism, but the charges against Antonius and Catilina gathered in these notes he could use with clear conscience and comfortably in his later oration, *In toga candida*¹². Quite openly, Quintus explores his brother's far from favourable situation in applying for the *consul's* office. In the eye of the nobility he is considered *homo novus*¹³, who is not backed either by a proper group of *clientes*, or sufficient financial support; while his competitors, Antonius and Catilina are abound-

⁸ G. Laser, *Quintus Tullius Cicero – Commentariolum...*, p. 5.

⁹ Ibidem, p. 5.

¹⁰ Ibidem, p. 7.

¹¹ Cf. *Comm. pet.* 56.

¹² R. Till, *Ciceros Bewerbung ums Konsulat. (Ein Beitrag zum commentariolum petitionis)*, „Historia” 1962, 11, p. 317; G. Laser, *Quintus Tullius Cicero – Commentariolum...*, p. 6.

¹³ *Comm. pet.* 2, 13.

ing in all these¹⁴. Although the term *homo novus* was never defined exactly, it was used in a dual sense: as a narrower denotation it meant all of those who did not have any *consul* among their ancestors; in a wider sense it denoted those whose forefathers, even if not having obtained the highest rank, did obtain some office or were allowed to be the members of the *senatus*. The *optimates* used this term contemptibly since for them it meant only the *parvenu*; however, Cicero declared about himself quite proudly that he had obtained all possible offices at the youngest age permitted by law, although he did not come from the aristocracy of the *senatus*. A similar thought can be read in *Pro Murena* too¹⁵.

For Marcus his own character and view of life must have meant a disadvantage too since being a Platonist it was alien to him to apply pretence (*simulatio*) indispensably necessary for application¹⁶, and to make friends with people in order to adjust to voters¹⁷. His key weapon was his oratory skills that helped him to make himself popular among the people (*popularis*)¹⁸; on the other hand, he had to beware of appearing a people's party politician since it was not the urban masses (*urbana multitudo*) that would decide the outcome of the election¹⁹.

II.

In what follows it is worth surveying what role associations played in election campaign, which sheds light on the operation of one of the important tools of Clodius's politics to be discussed in the next chapter, as associations were established not only for the sake of influencing the election. The associations founded by private persons, usually called *collegium*, held together the communities providing protection and assistance for persons living at the same settlement and belonging to the same religious cult but were primarily not

¹⁴ *Comm. pet.* 55.

¹⁵ *Cic. Mur.* 17.

¹⁶ *Comm. pet.* 1, 45.

¹⁷ *Comm. pet.* 42, 45, 54.

¹⁸ *Comm. pet.* 2, 55.

¹⁹ *Comm. pet.* 52.

meant to serve everyday political fights²⁰. To cover their expenses certain associations claimed admission fees (*capitulare*) or regular monthly membership fees (*stips menstrua*)²¹, which of course limited the number of members; that is, most often the members of the *collegia* were from the wealthier layers of urban common people (*plebs urbana*), traders, craftsmen, ship owners and not from simple labourers²². If an association, which did not claim any membership fees, was not able to finance its expenses from its own resources, it could rely on the generosity of its leaders, or a *patronus* but if it engaged a conduct which was contrary to the maintainer's intentions, then it could lose the support²³. The political significance of *collegia* increased during periods of applications for *magistratus*; however, even then it was enough for the applicant to win over the leading personalities of the *collegium* to his goals, the rest of the members obediently followed the opinion leaders²⁴.

Clodius's activity added a peculiar element to the political operation of certain associations. Clodius definitely raised the number of *collegia* that did not claim any membership fees and brought together the scum of the city, which highly shocked Cicero²⁵. The maintenance and „representation” expenses of these associations were most probably covered by Clodius himself, and in return the members could express their gratitude to their *patronus* in several ways and forms; consequently, in theory Clodius could easily mobilise masses²⁶. These *collegia* led by Clodius were actually gangs operated by keeping the appearance of legality but used as tools to raise riots; and it was not in the interest of decent citizens to risk their reputation, proceeds and life – by closing their shops and leaving their daily jobs – for the sake of

²⁰ E. Kornemann, *Collegium.*, [in:] *Paulys Realencyclopädie der classischen Alterthumswissenschaft* I–XXIV und I A–X A, Suppl. I–XV. Neue Bearbeitung von G. Wissowa, W. Kroll, K. Mittelhaus und K. Ziegler. Stuttgart–München 1893–1978. IV, 1. 1900, p. 380; G. Laser, *Populo et scaenae serviendum est. Die Bedeutung der städtischen Masse in der Späten Römischen Republik*, Trier 1997, p. 102.

²¹ Marci. D. 47, 22, 1; CIL 14, 2112.

²² F.M. Ausbüttel, *Untersuchungen zu den Vereinen im Westen des Römischen Reiches*, „Frankfurter Althistorische Studien” 1982, 11, p. 42. ff.

²³ G. Laser, *Populo et scaenae serviendum est...*, p. 103.

²⁴ *Comm. pet.* 30.

²⁵ Cic. *Pis.* 9.

²⁶ G. Laser, *Populo et scaenae serviendum est...*, p. 104.

Clodius²⁷. Later, Clodius made efforts to use the *collegia* maintained by him as a kind of private army²⁸, which were, looking at their „results”, sufficient for Clodius achieving his short-term plans and disturbing the privacy of the public for a short while, but for seizing power for a longer period (which was perhaps not included in Clodius’s intentions) both financial resources and proper motivation were missing. After Clodius’s death, the *collegia* lost their impact produced on political events; nevertheless, later on the leaders of the State were very careful in their ways with associations²⁹.

The question arises what proportion of the population the institution of the *clientela* covered and as part of that what services the *clientes* were obliged to provide for their *patronus*; and to what extent the wider masses could be manipulated and mobilised through the *clientela*. Since the early period of the Republic the relation between the *patronus* and the *cliens* had been based on mutual trust (*fides*), under which patricians, having outstanding authority (*auctoritas*), dignity (*dignitas*) and wealth (*vires*), and later plebeians undertook to protect citizens in need of and asking for protection³⁰, as well as travelling aliens (*hospites*) in the form of various benefits and favours (*beneficia*, *merita*) both financially and before the law³¹. In spite of their dependant relation to their *patronus* the *clientes* preserved their personal freedom, and were not compelled to waive their right to political activity or participation in public life; what is more, their patrons promoted them to do so³². In addition to expressing esteem (*reverentia*) and gratitude (*gratia*) the *clientes* were obliged to provide several services for their *patronus*³³. So, for example, they arranged for accommodation for their patron or his friends³⁴,

²⁷ Cic. *dom.* 13, 54, 89; *ac.* 2, 144; Sall. *Cat.* 50, 1; *Iug.* 73, 6.

²⁸ Cic. *Mil.* 25; *red. in sen.* 33; *Sest.* 34, 85; *Pis.* 11, 23.

²⁹ G. Laser, *Populo et scaenae serviendum est...*, p. 105. f.

³⁰ J. Spielvogel, *Amicitia und res publica. Ciceros Maxime während der innenpolitischen Auseinandersetzungen der Jahre 59–50 v. Chr.*, Stuttgart 1993, p. 10; G. Laser, *Populo et scaenae serviendum est. op.cit.*, p. 111; Cic. *Brut.* 97; *Rosc. Am.* 5, 58; *Verr.* 2, 4, 41, 80; *Quinct.* 2, 34; *Cluent.* 51, 109; *Caecin.* 57; *Mur.* 10; *Planc.* 75; *Scaur.* 26; *Phil.* 6, 15; *fin.* 4, 56; *Comm. pet.* 2.

³¹ Cic. *Rosc. Am.* 106; *Cat.* 4, 23; *Sest.* 10; *Cato* 32; *Liv.* 3, 16, 5; 4, 13, 2.

³² J. Spielvogel, *Amicitia und res publica. Ciceros op.cit.*, p. 11; G. Laser, *Populo et scaenae serviendum est...*, p. 112.

³³ *Liv.* 3, 44, 5; 57, 3.

³⁴ *Liv.* 39, 14, 3.

shared the payment of penalties³⁵, supported their *patronus* in court proceedings³⁶, during the period of applying for or fulfilling offices they provided spiritual and financial support for their patron³⁷, in danger they undertook to protect him personally³⁸, as a foreign *cliens* they supplied goods to the *patronus*³⁹, and preferably they informed as many people as possible about the generosity of their patron⁴⁰. On the grounds of all the above, the *clientes* were in many cases meant to articulate the *patronus*'s interests and views to the wider masses clearly and efficiently⁴¹. Although the *clientela* provided an essential basis of support for the *patronus*, the citizens fulfilling *patronatus* were far from relying only on *clientes* in search of tools that could be used for their political purposes since the attachment of the *clientela* was of ethical rather than legal nature, on the one hand, and the *clientes*, pursuing their own occupation, could not always be available to the *patronus*, on the other.

The social significance of the *clientela* depended to a great extent on the social position of the *cliens*, and, therefore, the *patronus-ingenuus* (free-born citizen) relation and the *patronus-libertus* (freedman, liberated slave) relation must be clearly separated from each other. A part of free-born *clientes* belonged to a social and economic layer identical with or similar to that of the *patronus*, and needed the *patronus*'s support only for the sake of strengthening their own position, or for obtaining an office⁴² – in this case the *clientela* meant friendship between persons of equal rank (*amicitia*)⁴³. These *clientes* belonged to the higher *census* class, and so at the *comitia centuriata* and in a provincial *tribus* they could articulate their opinion and advance their *patronus*'s interests as competent persons⁴⁴. As a matter of fact, not all free-born citizens belonged to the wealthier layers, and they turned to the *patronus* primarily for urgent legal or financial help, but they could

³⁵ Liv. 38, 60, 9.

³⁶ Liv. 3, 58, 1.

³⁷ Plut. Cic. 8, 2.

³⁸ Sall. Cat. 19, 5; 26, 4; Liv. 23, 3, 2.

³⁹ Cic. Att. 1, 20, 7; Liv. 4, 13, 2.

⁴⁰ G. Laser, *Populo et scaenae serviendum est...*, p. 113.

⁴¹ Cf. *Comm. pet.* 17.

⁴² Cic. *off.* 1, 122. sk.

⁴³ Cic. *Lael.* 26.

⁴⁴ *Comm. pet.* 29.

hardly return the favours did to them as due to the peculiar features of the Roman election system they did not have the opportunity to cast their votes and these votes were not evaluated unless the elections were expected to produce a dubious outcome⁴⁵. Compared to the latter, the applicant for the office appreciated the support of men with greater prestige much more; so, for example, the support of the leaders of *collegia (principes)*, who in the given case did not constitute a part of the *clientela* but produced major influence in their association, district and their entire place of living, and had considerable impact on changes in the morale of voters⁴⁶.

The representation of the institution of salutation (*salutatio*) casts interesting light on the applicant's social relations: saluters from lower layers of society (*salutatores*) visited several applicants on the same day (*plures competitores*), so the conduct engaged by them during the election could not be considered secure and stable (*communes/fucosi suffragatores*). Therefore, the *patronus* applying for the office ought to have appeared grateful to them, and had to praise their activity both to their face and in front of their friends as by doing so he could expect them to leave their other *patroni* and become firm and committed voters (*proprii/firmi suffragatores*) – the applicant was not supposed to bring up his suspicion arising or proved regarding their loyalty, and against his better conviction he had to assert his trust in them⁴⁷. The *patronus* could never be absolutely sure of the support and gratitude of *salutatores* for they could compare the goods and benefits received from him to the allowances granted by other applicants they had also visited, i.e., economically independent citizens seemed more secure voter's base. The endeavour to recruit and hold inconstant *salutatores* and *clientes* becomes understandable when one considers that the *patronus* applying for an office could produce the appearance of popularity and influence by having a lot of people crowding around him during salutation⁴⁸. More important and more respectful *salutatores* were allowed to have a word directly with the *patronus*; their presence made the masses aware that the applicant was worthy of

⁴⁵ G. Laser, *Populo et scaenae serviendum est...*, p. 115.

⁴⁶ *Comm. pet.* 30.

⁴⁷ *Comm. pet.* 42. 35.

⁴⁸ G. Laser, *Populo et scaenae serviendum est...*, p. 117.

more extensive support⁴⁹. The *salutatio* provided opportunities for the applicant for gathering information on the morale and desires of common people, which their close circle of friends (*amici*) did not provide insight into; consequently, the *patronus–cliens* relation served mostly exchange of information. The relation between the *patronus* and the freedmen developed somewhat differently: their relation remained closer even after liberation but this relation was based as much on the requirements of moral standards as on the requirements of legal norms; in 118 in his *edictum* Rutilius Rufus limited the range of services that could be demanded by the *patronus*⁵⁰, but a freedman was not allowed to take legal action against the *patronus*⁵¹, and it was only Augustus's *lex Aelia Sentia* that formulated statutory sanctions against ungrateful freedmen⁵².

Accordingly, the *clientela* made up of free-born citizens and freedmen cannot be considered uniform in terms of the strength of their attachment to the *patronus* since it was exactly due to the moral nature of the attachment that the *patronus* did not have any legal means to collect outstanding claims and unfulfilled obligations. Although a *patronus* deceitfully acting against his *clientes* became the object of the contempt of society, this did not mean that he was deprived of his rights. Servius's commentary quoting the text of the Twelve Table Law attached to the relevant locus of Vergil's *Aeneis*⁵³ – which asserted that the *patronus* deceiving his *cliens* should be damned (*sacer*) – implied ethical offence and not criminal law facts. In this case the term *sacer* presumably did not mean a person who was to be sacrificed to gods and could be killed freely⁵⁴ but a person who engaged guilty, that is, despicable conduct⁵⁵; Servius most probably followed the tendency of the late period of the Republic of Rome that idealised Roman past⁵⁶. Even if we presume close *patronus–cliens* relations regarding the archaic age, the significance of

⁴⁹ *Comm. pet.* 30.

⁵⁰ Paul. D. 38, 1, 1.

⁵¹ Cf. Cic. *Att.* 7, 2, 8; Suet. *Claud.* 25, 1.

⁵² Paul. D. 37, 14, 19, 1.

⁵³ Serv. in Verg. *Aen.* 6, 609.

⁵⁴ Fest. 467; Dion. Hal. 2, 9–11; 10, 3; P. Brunt, *The fall of the Roman Republic and related essays*, Oxford 1988, p. 403.

⁵⁵ Plaut. *Poen.* 88; Verg. *Aen.* 3, 57.

⁵⁶ G. Laser, *Populo et scaenae serviendum est*, op.cit., p. 120.

clientelae dramatically diminished by the 3rd century B.C., and owing to the growth of the number of citizens we can no longer reckon with stable *clientelae* during Sulla's rule of terror, much rather ad hoc *patronus-cliens* relations organised for specific purposes should be presumed under which fulfilment of moral obligations was no longer of great account⁵⁷. If there had been no mobility of such a great extent within and between *clientelae*, then the *patroni* and applicants for offices would not have been compelled – even at the expense of *ambitus* – to recruit *clientes*⁵⁸. *Clientes* from lower layers of society became important to the *patronus* not so much for getting their votes – which sometimes they were not even allowed to cast in the elections – much rather for their capacity to mediate the opinion of the masses to him, which helped him to prepare for what opinion they would like to hear from him in public appearances⁵⁹.

With the loosening of the *patronus-cliens* relation, or owing to the fact that the *cliens* would seek a *patronus* that represented his interests better, and the *patronus* would seek *clientes* in his environment who had more considerable influence and so had greater capital of relations, this process reached the stage where the lower layers of society, which constituted a considerable part of *clientes*, were able to produce direct influence on political leaders. A grand entourage represented the acknowledgement of the politician and his legitimisation by the citizens⁶⁰, whereas a decreasing number of people forced him to revise his views entertained so far⁶¹. On the other hand, it was just due to the unstable and unreliable nature of the *clientela* that in the last century of the Republic applicants for offices relied, in addition to their *clientes*, on their relatives, friends, neighbours in the district, their freedmen and slaves when compiling the urban accompaniment – this diversity enriched not only the spectacular entourage but opened roads to each layer of society and created relations for the applicant⁶². So the *clientela* was only one of the means of po-

⁵⁷ P. Brunt, *The fall of the Romani...*, p. 32; G. Laser, *Populo et scaenae serviendum est*, op.cit., p. 121.

⁵⁸ *Comm. pet.* 40. 47.

⁵⁹ *Cic. Rosc. Am.* 19. 96; *De orat.* 3, 225; *Sall. Iug.* 71, 5.

⁶⁰ *Dion. Hal.* 2, 10, 4.

⁶¹ G. Laser, *Populo et scaenae serviendum est...*, p. 124.

⁶² *Cic. Cluent.* 94; *Mur.* 69; *Rosc. Am.* 93; *Phil.* 6, 12; 8, 26; P. Brunt, *The fall of the Romani...*, p. 415. f.

litical fight, and far from being the only or the most important one⁶³, all the more as Livy's description asserts that the purpose of the *clientes* taking action before the court of justice was not to raise sympathy with the defendant much rather to prevent a larger mass from getting together⁶⁴.

III.

Just as the election of magistrates was a necessary part of the order of the state of the Republic of Rome, in these elections election fraud/bribery (*ambitus*) played a part too. Very soon after the making of the Twelve Table Law, in 432, the first statutory provision was published, which prohibited for applicants to call their fellow citizens' attention to themselves with specially whitened clothes made shining. In accordance with Roman terminology, it was always only *ambitus* that violated legal order, *ambitio* did not; the latter was often used in the sense of *petitio*, its meaning was sometimes undoubtedly pejorative but it never became a legal term.

From the second half of the second century we know of the existence of two acts that sanctioned *ambitus* – they are *lex Cornelia Baebia* from 181⁶⁵ and an act from 159⁶⁶, but their content is not known. In the age between C. Gracchus and Sulla, the system of *quaestiones perpetuae* was already quite extended. The first news provided on a lawsuit specifically on the charge of *ambitus* is dated to this period: in 116 one of the *consul*'s offices for the year of 115 was won by a *homo novus* Marcus Aemilius Scaurus, who was charged by his rival having lost the election, P. Rutilius Rufus with *ambitus*. In turn Scaurus did the same against Rufus; otherwise both of the accused – who were prosecutors at the same time – were acquitted⁶⁷. The existence of *lex Cornelia de ambitu* made by Sulla is somewhat disputed⁶⁸, our understanding of *leges Corneliae* is not complete since there are two sources on these

⁶³ G. Laser, *Populo et scaenae serviendum est...*, p. 125. f.

⁶⁴ Liv. 2, 35, 4.

⁶⁵ Liv. 40, 19, 11.

⁶⁶ Liv. *epit.* 47.

⁶⁷ E.S.P. Gruen, *Roman Politics and the Criminal Courts 149–78 BC*, Cambridge 1968, p. 120–122.

⁶⁸ W. Kunkel, *Quaestio*, [in:] *Kleine Schriften*, Weimar 1974, p. 61.

acts available. First, Cicero's speeches; secondly, the writings of the lawyers of late principate, which are known only in the form bequeathed in the *Digest*. Cicero refers to these acts only to the extent his interests manifested in the given speech, that is, the rhetorical situation makes it necessary; so in no way does he make an effort to be exhaustive as it is not his duty. The lawyers of the principate dealt with only those acts of Sulla that remained in force after Augustus's reforms. The following reference, however, gives ground for considering the existence of *lex Cornelia de ambitu* possible. It asserts that in earlier ages the convicted were condemned to refrain from applying for *magistratus* for ten years⁶⁹. The aforesaid *lex Cornelia* can be hardly the *lex Cornelia Baebia* from 181 since between his speech delivered in defence of Publius Cornelius Sulla and *lex Cornelia* more than ten years had passed, and as in this period other laws sanctioning *ambitus* were also made, it cannot be supposed that the extent of punishment would have remained the same⁷⁰.

In the periods after Sulla, *quaestio de ambitu* was usually headed by a *praetor*, so for example in 66 C. Aquilius Gallus fulfilled the office of *praetor ambitus*⁷¹. On the laws following this stage, information is supplied by Cicero in *Pro Murena*. At the request of C. Cornelius *tribunus plebis*, in 67, *lex Calpurnia* was born⁷², what can be known about its sanctions is as follows. It contained expulsion from the *senatus*, banning from applying for offices for life (contrary to the ten years' term defined under *lex Cornelia*) and certain pecuniary punishments⁷³. A *senatus consultum* from 63 emphatically sanctioned a part of the acts regulated under *lex Calpurnia*; so for example, the act of recruiting party adherents for money upon the reception of the applicant in Rome; the act of distributing a great number of free tickets and seats for gladiators' games; and the act of hospitality to an excessive extent⁷⁴. This *senatus consultum* probably interpreted and specified the afore-

⁶⁹ Schol. Bob. *ad Cic. Sulla* 5, 17.

⁷⁰ Th. Mommsen, *Römisches Strafrecht*. Leipzig 1899, p. 867.

⁷¹ Cic. *Cluent.* 147.

⁷² Cic. *Mur.* 46; Dio Cass. 36, 38, 39.

⁷³ Cic. *Mur.* 47; M. Jehne, *Die Beeinflussung von Entscheidungen durch „Bestechung“: Zur Funktion des ambitus in der römischen Republik.*, [in:] Jehne, M. (Hrsg.): *Demokratie in Rom? Die Rolle des Volkes in der Politik der römischen Republik*. Hermes Einzelschriften 96. Stuttgart 1995, p. 66. f.

⁷⁴ Cic. *Mur.* 67. See G. Laser, *Quintus Tullius Cicero – Commentariolum...*, p. 14. ff.; p. 22. ff.

said law⁷⁵. The events of the year 64, however – primarily the increasing losses of Antonius and Catilina – made it necessary to make a new law. This law became *lex Tullia* enacted in 63, supported by all the candidates applying for the *consulatus* of the year 62, which threatened with ten years' exile as a new punishment, and took firmer action against distributing money, and punished absence from legislation due to alleged illness. Furthermore, it banned the arrangement of gladiators' games during two years before applying, with the only exemption from such ban being an obligation to do so as set forth in a last will and testament⁷⁶. That is how the law wanted to prevent paying money directly to voters, and intended to limit the number of the entourage of the applicants (as an increasingly great entourage almost appearing to be a triumphal procession might have suggested sure victory to voters).

In the legal terminology of the age of the Republic the term „*quaerere*” indicated a body, which was operated under the control of the *magistratus*, consisting of *iudices*, and was to adjudge certain crimes. In what sense does the activity denoted by the verb *quaerere* apply to the operation of the court, or its specific elements? Most often *quaerere* denotes the activity of the *magistratus* controlling *quaestio*, sometimes that of *iudices*⁷⁷, however, it is not used for the parties' activity in the lawsuit. It is unclear what the function *quaerere* originally covered. Theodor Mommsen supposed that as part of the *quaerere* activity the *magistratus* controlling *quaestio* addressed questions to the defendant and the witnesses regarding the case. It is hard to prove this assumption because descriptions are available only from the periods after Sulla, and in this epoch the role of the *magistratus* and the *iudices* were rather passive, the way the lawsuit was conducted was controlled by the parties. Thinking of the criminal proceedings of the archaic age it is hard to imagine – knowing the complicated structure of the Roman order of procedure of this age strictly adherent to form – that the *magistratus* was free to address questions to the parties.

Furthermore, *quaerere* can be explained in two other ways: this term was used to denote the investigation conducted by the *quaestio* on the case, or the question of the *magistratus* controlling the *quaestio* addressed to *iudices* re-

⁷⁵ Adamietz 1989. 25.

⁷⁶ Cic. *Mur.* 5.

⁷⁷ Th. Mommsen, *Römisches Strafrecht...*, p. 187.

garding the defendant's guilt. The first interpretation fits the order of procedure used in the 1st century B.C., but cannot be applied – as Mommsen's assumption cannot be either – to the legal order of the archaic age. The latter interpretation can be seen as fully corresponding to the early order of procedure, and can be brought into harmony with the sources of the 1st century, if it can be supposed that the original meaning of the word had obscured, and that is why certain loci refer to *iudices* as the subjects of *quaerere*⁷⁸. It is in this sense *quaestiones perpetuae* can be postulated from the 2nd century using Cicero's formulation⁷⁹. These forums can be called permanent because at the beginning of the official year the *praetor urbanus* made a list enumerating the name of the members of the courts of justice typically assigned to adjudicating specific crimes, which was in effect throughout the year, so there was no need to set up new courts of justice in each case. In addition to *quaestiones perpetuae*, or *ordinariae*, there were *quaestiones extraordinariae* (although this term does not occur in sources), which were usually set up to adjudicate cases with heavier political weight.

Several hypotheses have been made in the literature to explain the origin and development of the procedure of *quaestio*⁸⁰, and for a long time it was supposed that this form of procedure evolved not earlier than the 2nd century, so, for example, Mommsen discovered the analogy of the *recuperator* procedure in it⁸¹, and Hitzig tried to explain it with influence produced by Greek judicial process⁸². However, taking the fact into account that both *lex Calpurnia* from 149 regulating *quaestio repetundarum*, the oldest form we have knowledge of, and *lex Acilia repetundarum* included provisions on the typical Roman legal institution *sacramentum* in action⁸³, then this theory becomes groundless. A drastically new and still prevailing result was attained by Wolfgang Kunkel, who believed that the Romans strictly separated the institutions of *coercitio* and *iudicatio* right from the outset; and – contra-

⁷⁸ W. Kunkel, *Quaestio*, [in:] *Kleine Schriften...*, p. 35.

⁷⁹ Cic. *Brut.* 106.

⁸⁰ See J. Lengle, *Römisches Strafrecht bei Cicero und den Historikern*, Darmstadt 1971, p. 25. ff.

⁸¹ Th. Mommsen, *Römisches Staatsrecht, I–III*, t. I, Berlin 1887–1888, p. 182.

⁸² H.F. Hitzig, *Die Herkunft des Schwurgerichts im römischen Strafprozess*, Zürich 1909, p. 41. f.

⁸³ *Lex Acilia* 23.

ry to Mommsen's interpretation – the option of *provocatio ad populum* referred only to the latter. The scope of *comitialis* adjudication covered crimes of political nature, while other kinds of crime were assigned to the scope of *iurisdictio* by the *magistratus*, which meant nothing else than adjudging the case under the *quaestio*⁸⁴.

At the turn of the 3rd and 2nd centuries, in the organisation of the state having assumed the form of an empire, penal *iurisdictio* exercised solely by the *magistratus* and the popular assembly no longer seemed to be properly efficient because an institution system set for frameworks of a city-state could not be expected to survey matters increasingly extensive both in terms of territory and complexity and especially to judge them competently. For these reasons, more and more often they reached back to the legal institution of *quaestiones extraordinariae* applied earlier sometimes in judging political crimes⁸⁵. Livy gives an account of a case, which can be accepted as authentic, where originally they wanted to roll up a conspiracy in Capua – for this purpose a special *dictator* was elected, then, the control over the proceedings was taken over by the *consuls* – however, soon suspicion was cast on organisations set up in the city of Rome, suspicious of corrupt practices⁸⁶ and the investigation was conducted thereafter following this track⁸⁷. Initially, similar kind of punitive court of justices were set up much rather for suppressing organising activity of the unruly allies⁸⁸, however, from the first half of the 2nd century more and more often they used this legal institution also for investigating the cases of former Roman *magistratuses*. Initially, the *quaestio extraordinaria* was set up in each case by a *senatus consultum*, later on, this could be done by a *plebiscitum* too, yet, the senate continued to draw certain cases to its own powers⁸⁹.

The *quaestio* was chaired by some *magistratus*, who announced the judgment of the *consilium iudicum*; so, in the case of these *quaestios* it is

⁸⁴ W. Kunkel, *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit*, München 1962, p. 21. ff.

⁸⁵ W. Kunkel, *Quaestio*, [in:] *Kleine Schriften...*, p. 46.

⁸⁶ Liv. 9, 26, 9.

⁸⁷ Liv. 9, 26, 6. f.

⁸⁸ Liv. 10, 1, 3; 28, 10, 4; 29, 36, 10. sk.

⁸⁹ See Liv. 39, 41, 5; 40, 37, 4; Cic. *Lael.* 37; Val. Max. 4, 7, 1.

possible to speak about regular *iudicium publicum*. However, regarding all the matters that the accounts describe it should not be forgotten that they came into the limelight in relation to deeds or persons that aroused public interest, and presumably that is why the senate took great care to investigate and set the form of imposing sanction on them. As regards judging crimes of perpetrators from lower layers of people, not carrying any political significance, it is hard to imagine that in each case a *senatus consultum* or as well *plebiscitum* adopted specially for this reason would have dealt with them; it is more probable that they were decided by the *tresviri capitales*, who could proceed ex officio or on the grounds of reporting⁹⁰.

On the setup and order of procedure of *iudicia publica* prior to A. C. Gracchus very few data have been preserved, but the following can be established with tolerable certainty: in the event of *quaestiones extraordinariae* constituted in some cases by *senatus consulta* and *plebiscita* the participants of the *quaestio*, as a matter of fact, had to be gathered again in each case, the head of the procedure (*quaesitor*) was appointed by the *senatus*. Presumably the *senatus* also had its say in selecting the members, but could also entrust a *quaesitor* to do so. A permanent list of *senators* eligible for being members in the *quaestio* most probably did not exist; all the more as the number of *senatores* was too low to make it possible to set up several lists⁹¹.

In view of the above it becomes clear that *quaestio extraordinaria* was nothing else but a committee established by the *senatus* to investigate a particular case, which selected and delegated members from its own staff, whose composition was thus determined fairly arbitrarily, allowing ample ground for entertaining political sympathy and antipathy disguised in law. In the development of the legal order it must have become an aim to create *quaestiones perpetuae*, that is, to set up lists including names of citizens who could be nominated and elected members of *quaestiones* that would stay in effect during the entire official year. This was, however, prevented by the low number of nominees since at that time the *senatus* consisted of only three hundred persons, and the lists would have needed to include a multiple of the

⁹⁰ Cic. *Caecil.* 50; Cic. *Cluent.* 39; Ps.-Ascon. in Cic. *Caecil.* 50. *Apud tresviro capitales ad columnam Maeniam fures et servi nequam puniri solent.*

⁹¹ W. Kunkel, *Quaestio*, [in:] *Kleine Schriften...*, p. 51.

headcount necessary for conducting the proceedings. In theory there were two ways to eliminate this obstacle: either by raising the number of the members of the *senatus*, or by terminating the privilege setting forth that only citizens ranked among *senatores* were allowed to elect a member of the *quaestio*. During the times unsuccessful attempts were made on three occasions to raise the number of the members of the *senatus* to six hundred persons, which later only Sulla managed to achieve for no other way did he see it possible to ensure the legislative monopoly of the *senatus*⁹². From the decades between C. Gracchus and Sulla sources report on the existence of a *quaestio perpetua de veneficiis* with full certainty, and the existence of *quaestiones perpetuae* can be assumed with great probability also in the event of crimes endangering the stability of public life (*ambitus*⁹³ *crimen maiestatis*, *peculatus*⁹⁴). *Quaestiones* were chaired by the *iudex quaestionis*, which office was established most probably by C. Gracchus.

The date of creating *quaestio de sicariis* and *quaestio de veneficis* is not known; however, they certainly existed before 130 because at that time L. Cassius Longinus (*consul* in 127) provably fulfilled the chairman's office of *quaestio de sicariis*⁹⁵. According to the general view, Sulla merged these two courts of justice (*quaestio de sicariis et veneficis*)⁹⁶; yet, for example, Lintott presumes that they continued to operate separately⁹⁷. Nevertheless, this does not seem to be probable because in this case the two states of facts would have been regulated also by Sulla in two separate acts⁹⁸. At a locus Pomponius refers to Sulla's court of justice purportedly set up for investigating *par(r)icidium*⁹⁹; however, competent literature agrees with the point that *par(r)icidium* also fell within the powers of *quaestio de sicariis et veneficis*, and Sulla

⁹² Cf. Plut. C. Gracch. 5; Liv. perioch. 60.

⁹³ Val. Max. 6, 9, 14; Plut. Mar. 5, 3.

⁹⁴ Plut. Pomp. 4, 1; Cic. Brut. 230; Val. Max. 5, 3, 5.

⁹⁵ Auct. ad Her. 4, 41.

⁹⁶ See B. Santalucia, *Diritto e processo penale nell' antica Roma*, Milano 1998, p. 146.

⁹⁷ A.W. Lintott, *The quaestiones de sicariis et veneficis and the Latin lex Bantina*, „Hermes” 1978, 106, p. 127.

⁹⁸ P. Sáy, *A lex Cornelia de sicariis et veneficis. (The lex Cornelia de sicariis et veneficis)*, „Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica” 2001, 19, p. 303.

⁹⁹ Paul. D. 1, 2, 2, 32.

did not set up an independent *quaestio de par(r)icidio*¹⁰⁰, as it is proved by the *oratio, Pro Roscio Amerino*, analysed by us. Gruen presumes the existence of an independent *quaestio de par(r)icidio* before Sulla¹⁰¹; however, Cloud convincingly refutes this hypothesis, and points out that murder of relatives – depending on its means and form of committing – was to be judged before the *quaestio de sicariis* or *quaestio de veneficiis*¹⁰².

Sulla's jurisdiction reforms kept and renewed the system of *quaestiones perpetuae* to the extent that only persons ranked among *senatores* were allowed again to participate in the *quaestio* as jurors, and in 81 he stipulated the order of procedure in a law. From these laws no more have been preserved by sources, i.e., Cicero's speeches and the writings of the jurists of the period of the Roman empire, than what served their own purposes. That is, what can be discerned from the orators' arguments regarding the process of the proceedings, and what continued to be in effect in the period of Augustus and in later legislation since the lawyers of the classical age of jurisprudence were mostly not interested in legal history. In the mirror of the above, we have sure knowledge of the existence of Sulla's laws creating the following permanent *quaestiones*: *de sicariis et veneficiis*¹⁰³, *lex Cornelia testamentaria nummaria*,¹⁰⁴ *lex Cornelia de iniuriis*¹⁰⁵, *lex Cornelia maiestatis*¹⁰⁶, *lex Cornelia repetundarum*¹⁰⁷. Concerning the existence of *lex Cornelia de ambitu* some doubt might arise; and no source on the existence of a possible *lex Cornelia de peculatu* is available¹⁰⁸.

Although several registers have been preserved with the list of the members of the *quaestio*, their composition, the form of assembling them, they

¹⁰⁰ B. Santalucia, *Diritto e processo penale...*, p. 148.

¹⁰¹ E.S. P. Gruen, *Roman Politics and the Criminal...*, p. 261. f.

¹⁰² D.J. Cloud, *Parricidium: from the lex Numae to the lex Pompeia de parricidiis*, „Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung” 1971, 88/1–66, p. 41. ff.

¹⁰³ Coll. 1, 3, 1; 12, 5; Cic. *Cluent.* 148; Marci. D. 48, 1, 1. 3, 1; Marci. D. 48, 8, 1 pr.; Gai. D. 29, 5, 25 pr.–1.

¹⁰⁴ Cic. *Verr.* 2, 1, 108; *nat.* 3, 74; Paul. 5, 25; Inst. 4, 18, 7; D. 48, 10.

¹⁰⁵ Ulp. D. 47, 10, 5 pr.–5; Paul. 5, 4, 8; Inst. 4, 4, 8.

¹⁰⁶ Cic. *Pis.* 50; Tac. *ann.* 1, 72.

¹⁰⁷ Cic. *Rab.* 9; *div. in Caec.* 17.

¹⁰⁸ W. Kunkel, *Quaestio*, [in:] *Kleine Schriften...*, p. 62.

mostly lack any systematic structure and are hard to survey, and give detailed account of cases that for some reason do not meet the usual order of procedure; so, they do not entitle the author to draw conclusions from them with full certainty with a view to answering the above questions. A point of reference is provided by the epigraphic material on the establishment of *quaestio repetundarum* introduced by C. Gracchus; yet, it cannot be considered the prototype of *quaestiones*¹⁰⁹. Accordingly, the names of the potential members of *quaestio repetundarum* were included in a list consisting of four hundred and fifty persons to be compiled by the *praetor peregrinus* within ten days from entering into office on the grounds of the *census* from the range of citizens who belonged to *ordo equester*. The members of *quaestio* who were to adjudge the given case were selected from this list – read out by the *praetor* before the *contio* and confirmed by taking an oath on its authenticity – as follows. First, the accused was obliged to name all the jurors with whom he were kin or brothers-in-law, or maintained fiduciary relation as a member of the same *sodalitium* or *collegium*. Then, in twenty days the prosecutor selected one hundred from the four hundred fifty jurors who were not allowed to maintain the above relations with the prosecutor (*editio*). After that, in forty days the accused was allowed to reject fifty from the one hundred designated jurors (*reiectio*). The fifty persons so produced constituted the jury of the *quaestio repetundarum*. Since only the *lex repetundarum* gives an account as a creditworthy source of the order of procedure of this period, the author can only presume that in the periods before Sulla the other *quaestiones* operated also on the grounds of the *editio* and *reiectio* principle¹¹⁰.

Through Sulla's legislation the exclusive right of participation in the *quaestiones* was restored to the order of *senatores*, and by that the range of potential jurors significantly narrowed, which did not allow the exercise of the *editio-reiectio* principle widely exercised formerly by the parties. Thereafter, jurors were selected on the basis of *sortitio*, and the parties' right of rejection became very limited. The key sources on the order of procedure of this period are provided by Cicero's speeches. He handled certain procedural issues in detail in several *orationes*, those against Verres and the one de-

¹⁰⁹ Cf. Cic. *Verr.* 2, 1, 26.

¹¹⁰ W. Kunkel, *Quaestio*, [in:] *Kleine Schriften...*, p. 69.

livered in defense of Cluentius. The members of the *quaestiones* were designated on the grounds of the register of *senatores* which was divided into ten *decuriae*, where each *decuria* included the names of sixty *senatores*, of whom those who fulfilled some magistrates were not eligible as potential jurors; so, one *decuria* provided approximately forty–fifty *senatores*. Each of these *decuriae* was assigned at the beginning of each official year to a specific *quaestio*¹¹¹, and in specific lawsuits it was from them that jurors were selected by drawing lots¹¹². Although both of the parties had the option of *reiectio*, albeit, within a narrow scope, an accused not belonging to the order of *senatores* was allowed to reject three, an accused belonging to the order of *senatores* was presumably allowed to reject somewhat more jurors.

The *quaestio* established from the *decuria* of the *senatus* through *sortitio* and *reiectio* had a much lower headcount than those before Sulla's time. The composition of this body possibly further changed when any of them died, or did not take part in the work of the *quaestio* for reasons established and approved by law, in these cases the headcount was completed from another *decuria* of the *senatus*¹¹³. One of the most clearly observable cankers of Sulla's *quaestiones* was liability to be bribed, which was enhanced by the low number of members. That is what made L. Aurelius Cotta *praetor* enact *lex Aurelia iudiciaria* in 70, which terminated the legislative monopoly of the order of *senatores*, and ordered to compile the list of jurors from each of the orders of *senatores*, *equestres* and *tribuni aerarii*. Cicero reports that in this age three hundred *senatores* were allowed to act as jurors. The lists were compiled at the beginning of his year of office by the *praetor urbanus*, most frequently he took over his predecessor's list after having made necessary amendments. In particular lawsuits – as it can be ascertained from quite limited number of sources – the jurors were selected not from the list of nine hundred but from the chapters thereof divided into specific *quaestiones*.

¹¹¹ Cf. Cic. *Verr.* 1, 158; 2, 2, 79; *Cluent.* 103.

¹¹² See Cic. *Verr.* 1, 16.

¹¹³ Cic. *Verr.* 2, 1, 158.

It is a fact however – as Joachim Adamietz’s witty and quite to the point remark reveals – that the actual limits of *ambitus* were determined by nothing else than the confines of the financial possibilities of the candidates¹¹⁴.

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¹¹⁴ J. Adamietz, *M.T. Cicero, Pro Murena*, Darmstadt 1989, p. 27. Letztlich fand der *ambitus* eine wirkliche Grenze nur in den beschränkten finanziellen Möglichkeiten der Kandidaten.

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