

L. CAPOGROSSI COLOGNESI and E. TASSI SCANDONE (EDS), *LA LEX DE IMPERIO VESPASIANI E LA ROMAE DEI FLAVI. ATTI DEL CONVEGNO, 20–22 NOVEMBRE 2008*. Rome: “L’Erma” di Bretschneider, 2009. Pp. x + 387, 22 figs. ISBN 9788882655266. €180.00.

Who said that there was no comfort or reassurance in the world? In the late autumn of 2008, as the world economy headed for meltdown, twenty people met in Rome to read each other papers on the Lex de imperio Vespasiani, under the auspices of the forty-eight people making up the Comitato Nazionale per le Celebrazioni del Bimillenario della Nascita di Vespasiano. Did Berlusconi take time off from his pressing assignments to discuss the birth of Vespasian with his Minister of Culture?

Of the resulting volume, the first two-thirds deal with the Lex, the last third with aspects of the Flavian Principate. Except that tucked away at the end (357–67) is an account of the ‘restauro’ of the tablet, that should have been at the beginning, and to which none of the papers seems to have paid any attention. (It is perhaps symptomatic of a lack of interest in the visual that the photograph of the text of the Lex is too small and very poor: the photograph in Bruns’ *Simulacra* already showed what could be done.)

As is well known, the surviving tablet of the Lex begins in mid-sentence, and there must originally have been at least one more tablet to the left. In a carefully argued paper, Christer Bruun concludes, in my view rightly, that it is at least as difficult, if not more difficult, to argue that Cola di Rienzo in 1346/7 invented those elements of the Lex that do not correspond with anything on the surviving tablet, as to suppose that he had access to a or the preceding tablet. What has become clear, with the possibility of looking at the back of the tablet for the first time since 1575/6(?), is that it was manufactured with two mortises on the back to enable it to be fixed to a tablet to the left, presumably in a single frame, not to be displayed separately in its own frame. Obviously this does not prove that that is what Cola had; but it does prove that at the beginning of its life our tablet was fixed to another tablet to the left. It is worth adding to the points that Bruun makes, that, if Cola saw two tablets fixed together, it is perfectly intelligible that his eye should have gone first to the top of the second tablet, rather than beginning by trying to sort out where the preamble ended and substantive text began. I am encouraged to believe that the Lex began with a normal preamble by the experience of indexing it: unlike the statute honouring Germanicus, the Lex de imperio Vespasiani is fully within the linguistic continuum of Republican legislation. And if the preamble included the information that the statute had been passed *de senatus sententia*, as well as the record of the vote, one might suppose that when Cola got to the preamble, that encouraged him to make so much of the Senate and people in his exposition: nothing in the text as preserved would have encouraged him to do so (it may be that the frescoes he had painted gave prominence, like his exposition, to both Senate and people, and that these underlie the account of Zabarella).

A. Collins argued in 1998 that the aspects of the Lex not to be found on the surviving tablet are to be explained as follows: when Cola made his speech to the people of Rome in 1346, he inserted into his account (some of) the powers he intended to have himself granted (in 1347, as it turned out). J.-Y. Boriaud rightly draws attention to the many implausibilities of this hypothesis, and suggests rather that it was the Chronicler who retrojected material from the grant of 1347 into the speech of 1346. But even on the Collins/Boriaud count, of the five elements in the speech not to be found on the surviving tablet of the Lex de imperio Vespasiani, only two figure among the powers of 1347; and in my view there is only one, since ‘imponere gravezze’ means to impose taxes, not to punish.

In the first of a pair of papers discussing the history of the study of the Lex (the second, by Jean-Louis Ferrary, covers the sixteenth to eighteenth centuries, with their discussions of the Lex Regia, to which I come briefly in a moment; he includes also a discussion of the entertaining figure of Martin Schoock, who held that the tablet was a forgery), Marco Buonocore is puzzled that there is no record of anyone looking at the Lex between Cola and 1409. This gap is now in part filled by L. Calvelli, *Ath.* 99 (2011), 515–23, drawing attention to the inspection of the Lex by Francesco Zabarella in 1397/8. And there is something else that emerges from being able to look at the back of the tablet, namely that at some point it was stood leaning against a wall, presumably sloping, face inwards, with the result that bits of plaster dropped onto the back; and that at some point a half-hearted attempt was made with a hammer to break it into pieces (it is again symptomatic of a lack of interest in the visual that there is no enlarged photograph showing details of the bits of plaster).

It would hardly have been wise after the fall of Cola for anyone to try making anything of the Lex; and as the Avignon decades lengthened, who cared? Zabarella was a canon lawyer from Padua, and the first Roman copy, in 1409, should presumably be seen as a small part of the beginning of the

stirrings that restored Rome to its centrality to the Papacy, culminating in the physical return in 1417. Was the tablet in fact invisible and unprotected for much of the period after Cola; and at some point restored to view largely because of a belief in the magical significance of the text, supposedly the sentence pronounced by Pontius Pilate against Jesus?

A further large step beyond the article by Buonocore has been taken by Calvelli in J.-L. Ferrary (ed.), *Leges Publicae* (2012), 593–625, providing for the first time a proper account of the relevant bits of the texts of Odofredus and Magister Gregorius, both earlier than Cola, both of whom have been taken as having seen the Lex before him (Calvelli also documents other material believed to have been preserved on the Lateran, including the tablets of the Covenant). The two surviving MSS of Odofredus have different texts, neither of which is the same as that of the printed editions from 1504 onwards; I do not think that it is possible to establish a text with security or even plausibility, or that anything more underlies Odofredus than a dim recollection of a difficult document of some kind at the Lateran, which he combined with his curious interest in the last two of the Twelve Tables. (Antonio Agustín seems to have understood Odofredus to have said that the text of which he spoke was displayed upside down; contra Calvelli, pp. 613–14, which way up the text was when it was leant against a wall back to front, is of no relevance to that interpretation.)

The problem with Gregorius is similar: there is one surviving MS, which does not have the same text as that excerpted by Ranulf Higden. Gregorius, however, at any rate in the MS version, claims autopsy: ‘I read *plura*, but I understood *pauca*.’ Calvelli has shown that he was looking for *potiora legis praecepta*, the important precepts of the law, because that is what Thomas Aquinas had told him to expect, adding to what has long been realized, namely that he had been led by Horace to expect something *prohibens peccatum*, forbidding sin, just like the Twelve Tables. Given that that was what he was expecting, and if he saw the Lex de imperio Vespasiani, no wonder he thought that all that boring detail about Vespasian was so many aphorisms, that never got round to giving you the *integrum sensum*, complete meaning, of the definition of Isidore (4.10.1). The fact that Gregorius spoke of a *tabula* is of course as neutral as in the case of Cola, as to whether there were in fact two tablets in a single frame.

On the two core questions, of whether the missing beginning of the Lex mentioned the tribunician power, *imperium*, and the position of *pontifex maximus*, and of whether it is the Lex Regia of Vespasian, the volume represents every point on the spectrum of opinion, without much evidence of dialogue between the participants, from Dario Mantovani (the tablet bears the Lex (Regia) de imperio Vespasiani) and Francesco Lucrezi (there never was a Lex Regia and our tablet does not bear the Lex de imperio Vespasiani) by way of Carlo Venturini (there was a Lex Regia, but the Lex de imperio Vespasian is not it). More importantly, Mantovani here amplifies his argument of 2005, on the clauses of the Lex that do not cite precedents, that they do not confer a power, but regulate the effects of an act of the emperor.

Three further points. Barbara Levick and Mario Pani attach much weight, following John Scheid, to the fact that the Arval brethren celebrated only the (*comitia* for) the *tribunicia potestas*, to deny that there could ever have been a single piece of legislation that conferred all his powers on the emperor. But the brethren were educated men; and if they shared Tacitus’ view, that the *tribunicia potestas* was the *summi fastigii uocabulum*, the name of supreme rule, why should they have bothered to mention anything else?

Carlo Lanza returns to the view of André Magdelain that in the phrase [*a*]uctoritate [*omnibus praestiti*], *auctoritate* is a causal ablative, apparently unaware that the phrase is in any case a back translation from the Greek, that Magdelain had already made the argument, and that Last had mounted a devastating critique of it. (The two most recent editions of the *Res Gestae*, by Scheid and Alison Cooley, both translate the word correctly, ‘in authority’, though both Magdelain and Last have disappeared from Cooley’s bibliography, Last from Scheid’s.)

But the most disturbing thing about the volume is that, as far as I can see, everyone just assumes that *ex usu rei publicae* means the same as *e re publica*, in the interests of the state (Mantovani, pp. 127 (n. 5 with a *damnatio* of the attempt by Mariano Malavolta to rewrite the Latin of the clause in question), 161; Lucrezi, p. 164; Pani, p. 203; Lucio De Giovanni, p. 221). Are we really supposed to believe that, just after writing *e re publica*, our draftsman was so nonchalantly incompetent as to write *ex usu rei publicae* to convey the same idea?

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