

THE *LECTIO SENATUS* AFTER SULLA

The censorship has often been denied a place in Sulla's reforms. Hofmann believed that Sulla abolished the censorship¹). Mommsen²) deemed Sulla's abolition of the censorship *de facto* rather than *de iure*; even today we are told that Sulla robbed the censorship of its "Daseinsberechtigung"³), partly through the automatic recruitment of *quaestorii* to the senate⁴). In an important article which has not received the attention it warrants, Gabba exposed the weaknesses in the prevailing view. No ancient text can be adduced in support of the notion that Sulla undertook

1) F. Hofmann, *Der römische Senat zur Zeit der Republik*, Berlin 1847, 70. He was followed by L. R. Taylor, *Party Politics in the Age of Caesar*, Berkeley 1949, 52, 200 n.7.

2) T. Mommsen, *Römisches Staatsrecht*, Leipzig ³1887-88, II. 336 nn.3-4, III. 970.

3) T. Hantos, *Res publica constituta: die Verfassung des Dictators Sulla* (Hermes ES 50), Wiesbaden/Stuttgart 1988, 24.

4) To the scholars cited by E. Gabba, *Il ceto equestre e il senato di Silla*, *Athenaeum* 34 (1956) 135 n.2, we may now add Hantos 25.

a *de iure* or a *de facto* abolition of the censorship⁵), and some extant texts belie the thesis⁶).

In what follows I take it as established that Sulla abolished neither the censorship nor the *lectio senatus*. Yet it might be thought that Sulla, intentionally or not, did indeed lessen the censors' freedom of action in the *lectio*; quaestors now had the right to sit in the senate after their year of office and to be preferred in the next *lectio*⁷), and the number of quaestors was now raised to twenty. In a study of the censorships from 70 to 50 B.C., Astin writes: "The selection of new members was now to a considerable degree predetermined by the very close association between tenure of a junior magistracy and membership of the senate, greatly reducing the scope of the censors' discretion"⁸).

Astin has shown that the censorial power to appoint new senators was purely formal by Cicero's day; the censors were so without initiative in this part of the *lectio* that Cicero could envision a senate recruited directly from the magistracies, and censors left with the power of expulsion alone (Cic. Leg. 3.27). Objection may be made to Astin on only one point: the word "now." It is not clear that the diminution of censorial discretion in the *lectio* was due to Sulla's dictatorship⁹). The *plebiscitum Atinium*, passed late in the second century¹⁰), made *tribunicii* provisional senators pending the next *lectio*, whereupon they would either be excluded from the curia or added to the senatorial roll. Mommsen and his adherents failed to notice that the *plebiscitum Atinium* and the *lex Cornelia de XX quaestoribus* were proportional: under the former, ten *tribunicii* were recruited to a senate of 300; under the latter, twenty *quaestorii* to a senate of 600. One would have to go back

5) Cf. Gabba, Senato di Silla 135. The passages cited by Hofmann are discussed by P. Willems, Le Sénat de la République romaine: sa composition et ses attributions, Louvain 1878–85, I. 409–10, 415.

6) As Gabba (Senato di Silla 135 n. 4) noted, mention of an abolition of the censorship would have strengthened Cicero's argument at Arch. 11. In spite of the tendentious context, any abolition of the censorship or the *lectio senatus* is ruled out by Cic. Pis. 10, where we are told that the *indiciū notioque censoria* had endured for 400 years, until the consulship of Piso and the tribunate of Clodius.

7) E. Gabba, Note Appianee, Athenaeum 33 (1955) 218–25, argued that both tribunes and quaestors had these rights at least since 180, but the usual view holds that the quaestors first received them in a law of Sulla; cf. T. P. Wiseman, New Men in the Roman Senate, 139 B.C.–A.D. 14, Oxford 1971, 97–98. – Historians denominate these rights with the phrase *ius sententiae dicendae*. I have argued elsewhere that the expression is of imperial date: The Origin of the Phrase *ius sententiae dicendae*, Hermes 121 (1993) 206–210.

8) A. E. Astin, Censorships in the Late Republic, Historia 34 (1985) 176; cf. id., Cicero and the Censorship, CPh 80 (1985) 236. In these judicious and capable discussions, Astin has combated the depiction of the late republican censorship as a moribund institution.

9) Since Astin has been at pains to establish that the censorship of the late Republic was more vigorous than previously realized, my argument in fact reinforces his own work.

10) The date cannot be fixed with precision; strong arguments can be made for an upper terminus of 123 B.C. (Mommsen, III. 858, 862), for ca. 119 (Willems, I. 230–31), and for 131 (Astin, The Atinii, in: Hommages à Marcel Renard, Brussels 1969, II. 34 n. 1, 38). For us it is enough to note that a *terminus non post quem* of 102, established by Willems (I. 231–32), is still secure.

further in history, before passage of the Atinian law, to find a time in which censors made many co-optations on their own authority.

Sulla's law was not radical in its method of recruitment to the senate, nor was it radical in the number of men recruited as a proportion of the whole. We may properly ascribe motives to Sulla, but when doing so we should remember that his lack of regard for the tribunate was patent, and that his hostility to the censorship is merely hypothetical. It seems all but certain that the real purpose of the *lex Cornelia de XX quaestoribus* was not the destruction of the censorship, but the abrogation of the *plebiscitum Atinium*¹¹). It is certain that the *lex Cornelia* did nothing to lessen the freedom exercised by censors in the *lectio*.

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11) R. Syme (Sallust, Berkeley/Cambridge 1964, 28) assumed that Sulla's measures against the tribunate included repeal of the Atinian plebiscite. Wiseman (98) believed that Sulla might have kept the Atinian law in force, and Astin (Censorships 181 n. 17, 188) assumed that it was operative in Cicero's day; Syme believed that the law came into force again in 70. But the Atinian law would have been otiose in Cicero's day. Non-senators might have held the tribunate in the period 80–75 B.C., when higher offices were barred to ex-tribunes; after that point, the tribunate was held after the quaestorship (cf. G. V. Sumner, *The Orators in Cicero's Brutus: Prosopography and Chronology*, Toronto 1973, 7). Even if the *plebiscitum Atinium* had remained on the books, it would not have recruited senators during Cicero's political career, since men elected to the tribunate already belonged to the senate (unless they had been expelled from the senate as *quaestorii*).