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E.H.L.N.R

By E. Badian, Harvard

Abbreviations of common words and phrases (sometimes quite long ones) are ubiquitous in Latin inscriptions, public and private, at all periods and at all levels. As Professor Gordon has recently put it: "Perhaps no other language shows so many abbreviations in inscrs. [sic!] intended for public view."[1] Ancient scholars, like their modern successors (though often less competently), compiled lists of them, giving their expansions: best known, perhaps, Probus' collection known as Litterae Singulares (IV 272f. K.). Our own generation, living in an age when acronyms whose meaning (let alone their precise expansion) is only vaguely (if at all) known to most people abound[2], will be more prepared than our predecessors were to sympathize with the Romans who, even if highly educated, could not always be certain what those letters stood for.

A well-known anecdote in Gellius (X 1, 6f.) delightfully illustrates what might occur even in the highest circles, and the delicate social problems that might result. He quotes Tiro as reporting that Pompey asked Cicero which of two forms it would be correct to inscribe on his Temple of Victory: *consul tertium* or *consul tertio.* We are told that *doctissimi uiri* had disagreed on this. Cicero knew the answer, but he advised Pompey to write *TERT.,* in order to avoid giving offence to those important men whose grammatical ignorance might otherwise be exposed. The reason for the uncertainty is not difficult to see: such inscriptions were normally abbreviated, and Romans were accustomed to seeing III. Pompey no doubt wanted the full form as more imposing. It is interesting that Gellius in fact saw III engraved on the Temple. He thought it due to a restoration.

Gellius also tells us that Varro, in his Disciplinae, later[3] treated this point. It is interesting that Varro chose the deliberately absurd alternative *praetor quartum/quarto* as his illustration. Perhaps the anecdote about Pompey's question had by then become the talk of the town, so that tact and loyalty to Pompey made its use undesirable. But at the very least, Varro's choice shows that he was careful to avoid giving offence, just as Cicero had advised Pompey

1 Arthur E. Gordon, *Illustrated Introduction to Latin Epigraphy* (1983) 207.

2 Not many people, even among those constantly using it, would be able to say precisely what RADAR stands for. And most Americans, if offered a multiple choice in a test, would probably make NASDAQ a sheikdom on the Persian Gulf: again, even those familiar with it would not always be able to offer the precise expansion.

3 On the date of that work, see H. Dahlmann, in RE Suppl. VI col. 1255 – clearly long after Pompey's death.

to be. M. Agrippa, if we may trust his restorer (as we probably should), had no such scruples: his Pantheon was inscribed *M. AGRIPPA L.F. COS. TERTIVM FECIT*. The contrast between the abbreviation of *consul* and the expansion of the numeral is striking, but we might well not have known how to interpret it, as we do not know what to make of many instances of grammatical and epigraphic variety that we observe and that will often have had a meaning to contemporaries. Fortunately, in this case we have enough of the background to appreciate the display of correctness and of social assurance by the powerful parvenu, who did not worry about giving offence.

I

The abbreviation *E.H.L.N.R* is usually thus found in inscribed laws of the Republic: it is so common that there is no need to cite instances. But what do the letters stand for? The fact is that the Romans (even contemporary Romans) apparently did not know for certain. Probus is little help. He lists *E.H.O.L.N.R* (which we have not so far found) and explains it as *eius hac omnibus lege nihilum rogatur* – if our texts have it right, which is perhaps unlikely. (He returns to it in the context of a longer group of letters, which we shall note later on.) The first time we actually find the formula, in *Lex Repetundarum* (CIL I^2 583) line 77, at least part of it (we cannot tell how much) was written out in full: *nihilum rogato* survives. This version appears to be supported by the sole actual quotation of the phrase in a literary work: Frontinus, De Aqu. II 129 (near end), quotes the whole phrase, in what he assures us is a verbatim transcription of the *Lex Quinctia* of Augustan date. In fact, we have it quoted twice over: the first time, the Monte Cassino manuscript (fortunately accessible in Herschel's photograph) reads *hac lege nichilum rogatio,* the second time *eius hac lege nichilum rogato*[4]. We can be reasonably certain that Frontinus twice wrote *eius hac lege nihilum rogato,* and that this was what he found in the law.

The form of the last word here documented was accepted, and vigorously defended, by Mommsen in his edition of the *Lex Repetundarum* (CIL I, p. 71). He takes it as equivalent to a passive future imperative – the form that grammar books, but (I think) no actual ancient authors, would write *rogator.* For this he refers to Madvig's discovery[5] of the extreme rarity of this passive form, which seems to be found only in deponents, and is even there often replaced by an

4 Editors of Frontinus, not familiar with the phrase, have not spotted the fact that ⟨*eius*⟩ has dropped out and must be inserted before *hac* in the first citation. It is to be hoped that this will now be done.

5 Opuscula Academica[2] (1887) 595f. Herschel restored the form *rogator* in Frontinus, following other editors and failing to read Madvig. Being one that is never found, it would certainly easily be corrupted. But we have no right to posit it here at all. Neue, *Formenlehre* III^2 214ff., in a

active (e.g. *utito*). Madvig suggested that, in *Lex Rep.* line 77, where we find *censento* inserted among a string of imperatives addressed to men gaining citizenship under the law, it should be taken to mean "let them be enrolled". The suggestion is attractive and worth entertaining, though perhaps not actually required. The passage certainly well documents the avoidance of the supposed future imperative passive constructed by grammarians on the model of deponents; but whether the active form could be simply substituted for it with identical meaning (i.e., in this instance, whether this is the way the Roman reader would understand the phrase) is less certain. It is equally likely that the form was avoided by addressing this injunction to the censors, awkwardly but intelligibly: "let them enrol (these men)."[6] Mommsen, however, not only unreservedly accepted Madvig's interpretation, but used this "parallel" to "prove" that our *rogato* should be accepted, and interpreted in the same way. (Madvig himself, it should be noted, had not mentioned *rogato* in this phrase, although he must have known it.)

Mommsen was apparently concentrating so hard on grammar and palaeography that he failed to notice that the meaning he postulated will not do. As we shall see in detail, the phrase abbreviated by these letters invariably refers to what precedes (either in its clause or in the law as a whole), and so any future imperative ("let nothing [hereafter] be proposed") is inappropriate. In fact, what would be required is a *past* imperative[7]. Since the language did not properly possess such a form, an alternative was needed. But it is going much too far to posit that an injunction which, in actual meaning, was clearly phrased to refer to the parts to follow could be taken as applying, with total legal clarity, to what preceded it. Whether the error in the *Lex Repetundarum* was a scribe's or engraver's (there are, of course, many others) or the legislator's, we cannot

collection of a hundred or more quotations from all periods of Latin, has not a single example of this form except in deponents. (Cf. also p. 212.)

6 Romans would not be too surprised by a change of a subject in a legal text, odd though it may seem to us. We have it more than once in the Twelve Tables, on which Roman students were brought up; e.g., strikingly, *Tab.* VIII 12 (Bruns-Gradenwitz), *si nox furtum faxit, si im occisit, iure caesus esto.* David Daube, in his usual iconoclastic and erudite way, tried to argue that these changes of subject are nothing of the kind (*Forms of Roman Legislation,* 1956, 57–61): he thinks the constructions are really impersonal, and he translates *si in ius uocat*: "Wenn es zu Gericht ruft." With due respect to an eminent scholar, I find this a little difficult to believe. Let us suppose, in our example (which he does not discuss), that the meaning was: "If there has been a committing of theft at night, if there has been a killing of him, let him be justly killed." The "of him" now has no logical (let alone grammatical) antecedent, and we still end up by having a personal phrase (i.e., a change of subject) at the end. I doubt whether laws were ever written in such a way. But in any case, I think we can be quite sure that in the 2nd century B.C. phrases such as these would be taken by Romans not aware of modern historical linguistics as involving changes of subjects.

7 Cicero seems at times to be aware of this. Note the form of his (indirect) allusion to the import of the usual *exceptio* in Clodius' law (*Dom.* 106): *si quid ius non esset rogari, ne esset rogatum.*

tell. The *Lex Quinctia* suggests that, somewhat later at any rate, *rogato* could be thought to be correct – but again, we cannot tell whether by legislators or by those who wrote or engraved their laws. In view of what we have seen regarding the difficulty that even educated Romans had in expanding *cos. III,* this need in any case not surprise us.

The only other relevant expansion known to me from an inscribed law occurs in the *Lex Antonia de Termessibus* (II 30): *eius hac lege nihilum rogatur.* That form seems unexceptionable, and it has a good chance of being correct. It proclaims that nothing in the law "is proposed" (or "is being proposed") contrary to the existing institutions specified.

However, Cicero seems to present an equally acceptable alternative. In his defence of Caecina (Caec. 95) we learn that Sulla had apparently written the usual *exceptio* into his laws: the Dictator who aimed at restoring the Republic obviously aimed at acting with strict legality, and this *exceptio* (so Cicero tells us ibidem) was found in all Roman laws. This is how Cicero, apparently changing nothing but the direct speech form, gives us the text of Sulla's law: *si quid ius non esset rogarier, eius ea lege nihilum rogatum.* The conditional clause will soon occupy us. For the moment, we are concerned with the principal clause, which, by using the archaism *nihilum,* stresses its claim to authenticity (as indeed the conditional clause does by using *rogarier*). What Cicero is rendering must be *eius hac lege nihilum rogatum. Rogatum,* at the end of a law, is perfectly acceptable, and the fact that Cicero was accurately informed in the case of Pompey's dilemma perhaps gives him additional credibility. Yet as we have seen, the *rogatur* of the *Lex Antonia* makes equally good sense. It is possible (and it ought at least to be suggested, though we cannot check) that each may be right in its place: that *rogatur* fits (where we find it) into the middle of a law, with the present covering both what precedes and what is still to come, at least in so far as something in the remaining text might (inadvertently) be worded so as to supersede the institution or privilege prima facie just excepted, whereas *rogatum* might be the right form at the end of the law, the whole relevant text of which precedes it. If this seems too complicated, let us remember that *praetor quartum* and *praetor quarto* are both correct, each (as Varro tried to explain) in its proper place, but that they were readily confused until the correct distinction was almost forgotten. Apparently Varro did not discuss our formula; had he done so, the appearance of *rogato* in an Augustan law would have been much less likely, and we might even be able to decide between the *Lex Antonia* and Cicero[8].

8 It has been suggested to me by a colleague that the uncertainty may be due to doubt as to how to change the presumed subjunctive of the *rogatio* (*uelitis iubeatis ut* ...) when the law was engraved, since subjunctives would usually become future imperatives. The point is worth considering, on the assumption that the phrase was normally written out in full in the *rogatio.* (It would, of course, work only if the form was *rogetur.* If it was *rogatum sit,* the theory

But it was not only the final letter that caused difficulties. The first letter of the formula (E) was also variously interpreted. That the E stands for *eius* must here be regarded as certain, if anything in this field can be so regarded. Yet, whether the fault should be assigned to scribes and engravers or to legislators, this correct form seems to occur just twice in expanded epigraphic texts, and it is heavily outnumbered by the erroneous *ex* (six instances) and approached by the absurd *eum* (once). Let us look at the facts.

The occurrences of *eius* that I have noted are in *Lex Agraria* (CIL I^2 585) line 34 and in *Lex Antonia* (CIL I^2 589) II 30 – the passage that also gave us the plausible *rogatur*. *Lex Agraria* also shows the erroneous *ex,* which must be due to confusion with the common phrase *ex h(ac) l(ege)*, and which, if taken as correct, would mean that nothing is proposed "in accordance with this law", instead of the required sense (given by *eius*) that "with regard to this matter (just mentioned)" nothing is proposed. Of course, *eius,* as we have seen, is decisively confirmed by Cicero (not to mention Probus, who does not count for much). It is a salutary warning that we can see an expansion so patently wrong taking over from the correct one and practically overpowering it: *ex* seems to have a monopoly in texts of the Caesarian period – which suffices to make it certain that that competent and interested grammarian did not personally draft any of those texts, or at least did not see them in their final form. We find *ex* in the *Lex de Gallia Cisalpina* (CIL I^2 592) II 24; in the *Fragmentum Atestinum* (CIL I^2 600) 9; in the *Lex Ursonensis* (CIL I^2 594) III 2, 28 (ch. 95); and in the Table of Heraclea (CIL I^2 593) 76. But for Cicero's evidence, we might well have wondered whether this mistaken form had by that time come to be popularly accepted as correct, without regard to meaning. Fortunately, at least one of these documents, the Table of Heraclea, stands convicted of mere carelessness (in this as in much else) by also once offering *eum* (line 52).

As we have seen, *ex* occurs sporadically as far back as our evidence goes. One pre-Caesarian occurrence of it has only become known fairly recently, in a fragment that is (as we shall see) important for other parts of our formula. This is the new fragment of the *Tabula Bantina* (on which see further p. 211f. below), where *ex* is found in line 4 of the Latin text. What is peculiarly interesting is that here the phrase is written out in full, in deliberately archaic form: *ex hace lege.* This unique error shows that the mistake in the expansion was not due to mere

collapses.) However, it is unlikely that it was normally written out, and in the only *rogatio* preserved (as far as I know), the *Lex Gabinia Calpurnia,* it is abbreviated. Interestingly, Nicolet and his team made no attempt to introduce a dependent construction – and I think they were essentially right, even if grammatically wrong. We must also remember that there was uncertainty between infinitive and subjunctive subordination in *rogationes* (illustrated in the same *rogatio*), and that, on the other hand, our legal inscriptions are full of subjunctives that have been quite correctly treated. I suggest that, in *rogationes* as in laws, the formula was normally abbreviated, wholly or largely, and that in both cases there would be uncertainty on how to expand.

haste: whoever was ultimately responsible for it clearly thought he was using the correct form. And we shall see that the expansions in this document are unlikely to be due to the whim of a local scribe or engraver. If we may take the *Lex Agraria* as showing that in such circles mere confusion was widespread, the Bantia text might lead us to consider that the situation we see reflected in the Caesarian texts was already taking shape around 100: at least the scribes at the Roman archive, and possibly upper-class legislators, did not know any more about the true meaning of these letters than some educated men in Cicero's day knew about *consul tertium.*

The Bantia fragment, in fact, leads us to another group of letters that may have been interpreted in different ways. It is possible that, in this case as well, we may arrive at a correct answer. In any case, it will appear that here we cannot blame the Republican sources for any uncertainty we face. But this is best considered in connection with the second part of our investigation: the actual use of these *exceptiones.*

II

As we have already noted, the phrase we are investigating occurs in two distinct uses. At the end of a particular clause (naturally much the more common use, and especially so in our epigraphic examples), it seeks to ensure that certain arrangements hitherto in force shall not be superseded. At the end of the whole law, it is meant to ensure that any part of the law that is for some religious reason (I deliberately avoid specification) inadmissible shall be invalid. Whereas the former is normally clear and readily applied, the latter must have led to an orators' paradise of legal disputes, as we can see even from our very limited evidence. It was on those grounds that Cicero helped to get part of a Sullan law invalidated during Sulla's lifetime (though obviously after his withdrawal from power), and it was on those grounds that he tried, i.a., to attack some of Clodius' legislation aimed at him[9]. Oddly enough, until recently we knew no example of this use in any epigraphic text. As a result, it has not yet been fully digested by scholars working in this field.

As it turns out, one instance has in fact been known, but not recognised, for over a century. We shall come back to it later, as it can most easily be rescued from misunderstanding after we have looked at the other, more recent, examples.

The first examples preserved beyond misunderstanding on engraved texts were discovered early this century. But – such is often the fate of important documents – they had to wait a long time for adequate publication. It was apparently in 1907 that the *Lex Gabinia Calpurnia* dealing with Delos was

9 Cic. *Caec.* 95; *Dom.* 106.

discovered. The letters specifying the *exceptio* at the end were not completely preserved, but the law as a whole, in its Latin form, is more complete than any other epigraphic law we have, and it has now at last been fully edited, with an adequate commentary[10]. What survived, in the crucial place, was *S.S.S.E.Q.* [-----] *N.R*: enough for at least an approximate reconstruction with the help of Probus. He lists the *litterae singulares S.Q.S.S.E.Q.N.I.S.R.E.H.L.N.R,* which he expands: *Si quid sacri sancti est quod non iure sit rogatum, eius hac lege nihil rogatur.* Hence the formula in the law from Delos was soon restored: *S(i) S(acrum) S(anctum) E(st)* etc., with the slight adaptation made necessary by the absence of Probus' first Q.

Oddly enough, the latest editor overlooked the fact that, just about the time when this law was discovered, another law came to light that showed the formulaic letters in full; though it had to wait even longer for publication[11]. According to the first editor, it was as early as 1909 that a fragment of a Republican (*repetundae*) law was discovered at Tarentum, which, through vicissitudes not very satisfactorily explained, finally achieved its editio princeps only in 1947[12]. At the end, it very satisfactorily shows, in a new line and paragraph, just as at Delos, the letters *S.S.S.E.Q.N.I.S.R.E.H.L.N.R.* The early editors of the *Lex Gabinia Calpurnia* had restored it correctly. It is not often, in the field of epigraphy, that scholars earn the reward of such confirmation, and they deserve to have it recorded.

The precise expansion, of course, is still open to debate. As we have seen, Probus' version of the letters is slightly different from what has been found, and his own expansion, here as elsewhere, must at least in part be conjecture (or perhaps learned communis opinio in his day), rather than direct tradition going back to correct Republican interpretation – which, as we have already seen, was at no time easy to obtain. *S(i) S(acrum) S(anctum)* was a good conjecture for the first three letters, with or without Probus' *Q,* which would only change the case. Nicolet now offers a variant: *S(i) S(acro) S(anctum).* This has respectable support in a passage in Cicero: in Pro Balbo 32f., Cicero quotes, precisely, *si sacro sanctum est.* The passage is misinterpreted by Nicolet[13], who thinks that this is a *sanctio* (his term for what the Latin authors call an *exceptio*) which "figurait

10 Cl. Nicolet et al., *Insula Sacra,* Coll. de l'Ecole française de Rome 45 (1980). A greatly improved text appears pp. 149–150, with older versions reprinted pp. 145–148, and the history of the stone pp. 1–3. (Note, however, that the last few lines of the new text diverge from the version proposed in the detailed discussion in the body of the book.)

11 Nicolet writes that the formula is not known in "aucune source épigraphique jusqu'ici" (p. 9) and proceeds to list the literary sources. He does not refer to the Tarentine law, and, although he knows the new Bantia fragment (p. 10 n. 3 – see below for its importance here), he does not seem to have consulted it on this point.

12 Epigraphica 9 (1947) 3ff. The history of the tablet is set out at the beginning, and the editor at once gave all the proper references, including one to the *Lex Gabinia Calpurnia.*

13 Nicolet 9–10 with n. 3.

dans certains traités"; and he goes on to claim that Cicero confines the formula to treaties ratified by the People or passed at its orders.

We do not know anything like this formula from any surviving treaty, and where we can check, there appears to be no room for it. In any case, Cicero never claims that it was included in any treaty. In fact, as we have seen, in Pro Caecina 95 he explicitly says that it was found in all Roman *laws* (see p. 206 above). The text around the Pro Balbo passage is unfortunately corrupt, and scholars from Pantagathus to recent editors have emended palaeographically, without remembering Cicero's statement about the use of the formula and without much thought for Cicero's own argument in this passage. The corruption must be eliminated[14], but that is only indirectly relevant to what Cicero says regarding our formula here. I quote the relevant part of s. 32, fortunately free from major corruption and perfectly clear: *ac sicubi esset* (a prohibition on conferring citizenship in the treaty with Gades) *lex id Gellia et Cornelia ... sustulisset. 'exceptum', inquit, 'est foedus, si quidem sacro sanctum est'*[15]. The prosecutor is alleged to claim that the *exceptio* at the end of the *Lex Gellia Cornelia* which excluded what was *sacro sanctum* thereby excluded the treaty with Gades, since it belonged to this category. (He clearly was not charged with saying anything about such an *exceptio* in the *foedus* itself.) This seems to support the resolution of our letters, against Probus, as *S(i) S(acro) S(anctum) E(st)*: in fact, Cicero later quotes the words of the law as *si quid sacro sanctum est,* which shows that Probus' *quid* might be included, whatever the correct resolution of *S.S.* As to the latter, we unfortunately cannot fully trust Cicero here, for he has a case to make. He at once proceeds to pour ridicule on the notion he has put in the prosecutor's mouth, that the treaty with Gades was *sacro sanctum.* He might have found that task more difficult if he had adopted Probus' resolution, *si quid sacri sancti est,* for the *foedus* (whatever its form), although patently not *sacro sanctum,* might well be argued to fall under the looser categories of *sacrum* or *sanctum.* It is a pity that, in his concise rendering of Sulla's law in Pro Caecina 95, Cicero omits these particular words: it would be interesting to see whether he in fact maintained, against Sulla and Cotta, that Roman citizenship was *sacro sanctum* – or how he could have argued this. It is to be suspected that in Sulla's law, at least, Probus' version was adopted – or that it could be used by an orator expanding the abbreviated formula when it suited him. We must suspect that, just as we have seen great uncertainty, at this time, over the expansion of other letters in this formula, so these very important ones could also be differently interpreted.

14 For an attempt, see Appendix to this article.

15 *si quidem* has often been emended to *si quid,* because of the wording of the law as Cicero later quotes it (see below). But Klotz long ago showed, in a long discussion, that the point is different here and that it should be retained: indeed, nothing marks the words here used out as a quotation from the law. Cousin, in the Budé text, retains the reading without showing any awareness of the debate, and totally mistranslates the passage concerned.

Quite possibly, the original meaning had been lost beyond firm recall. Probus' form, at any rate, must essentially be conjecture.

That there was some difficulty about the next group of letters, and that Probus is here most likely to be wrong, can actually be demonstrated; though it seems not to have been noticed. For *Q.N.I.S.R,* in the Delos law, Nicolet, like his predecessors and also editors of the Tarentine law, follows Probus in expanding *quod non iure sit rogatum.*

Cicero's quotation of Sulla's law should suffice to make us distrust this. As we have seen (p. 206), he quotes it as *si quid ius non esset rogarier.* It is now clear that the subordinate clause has been abbreviated by the orator, with the group of letters referring to sanctity (whatever the precise form) omitted, no doubt for simplification. Nonetheless, the archaic infinitive clearly claims authenticity for that part of what is quoted. And Cicero once more quotes that clause, this time without the archaism (which Clodius probably did not use), when he refers to Clodius' law concerning himself at De domo 106: *si quid ius non esset rogari.* Could the formula in fact read: *si quid ... non ius sit rogari*? In view of these substantially identical quotations by Cicero, the question ought to have been asked by restorers of late Republican epigraphic texts. Perhaps, in view of Cicero's failure to give the complete text of the *exceptio,* it could not have been conclusively answered. Perhaps it now can.

An answer came to light in the tiny fragment of the Bantia law that we have already referred to[16]. Here, as the editors at once saw, we have a piece that fits in at the very end of the Latin law; and although they did not comment on the wording, this is what we find in line 4 of the Latin: *IOVS SIET ROGARE EX HACE LEGE N.* When discussing the last part of this, we had to reject the correctness of *ex.* But there is no reason to think that what precedes was (as it would have to be if not authentic) wholly made up; for it both makes sense and approximately fits in with Cicero. Whether the infinitive should be active or passive, we probably cannot decide. Cicero's passive is certainly grammatically correct, and the suspicion that he may have corrected epigraphic practice (which might be based on a more archaic usage, when the Classical rule had not yet been formed) is perhaps allayed by what we have already noted: his deliberate use of the archaic *rogarier* when quoting Sulla's law. I think we may take it that *rogari* (whether or not in the archaic form: that, like other archaisms, was no doubt optional) was the correct expansion, and that the Bantia text is here guilty of a minor error (not as bad as the major one over *E.H.L*!) while preserving the structure of the phrase. But that, at present, must be left as perhaps a minor uncertainty. The outline of the wording, and the intention of the clause, should at any rate be clear. It does not deal with procedural illegality, and it has nothing to do with attempts (such as that of Clodius in 58) to entrench

16 D. Adamesteanu and M. Torelli, *Il nuovo frammento della Tabula Bantina,* ArchClas 21 (1969) 1–17.

certain laws or clauses[17]. It refers, quite strictly, to certain matters regarding which – whether because they were protected by being *sacra* or *sancta,* or whether because a *sacrum* had provided that no law regarding them should be introduced – *religio* prevented the introduction of certain types of legislation. The obvious example would be a bill to depose a tribune of the Plebs. The formula guaranteed that such a law, or part of a law, should ipso facto be invalid, even if in all respects properly passed and not explicitly invalidated later.

For all we know, of course, the formula may go back for centuries, and we may some day pick it up in a law of the early or middle Republic. But it is at least worth pointing out that our sources, although duly recording the outcry and horror caused by Tiberius Gracchus' deposition of his colleague, nowhere mention any claim that his law was ipso facto invalid because of this formula: we might at least have expected Cicero to mention it somewhere, and indeed it ought to appear in the record of contemporary opposition: it is surprising that T. Annius, famous for the *sponsio* that discomfited Tiberius (Plut. Ti. Gr. 14f.), did not bring up this obvious point. I think that, while admitting that new evidence may disprove it, we are entitled to suggest that the formula was invented, or at least made a necessary concluding portion of *all* laws (as we are told in Caec. 95 it then was), as a consequence of Tiberius' action, in order to provide a legal safeguard against any repetition of it. This is the obvious conclusion from our recognition of the correct form of the text: it was not a question of what was *iure rogatum* (which might well – though it need not – mean procedural defects), but of what it was *ius rogari.* Of course, the enforcement of such a clause would ultimately depend on power rather than on legality. But no more so than all laws; and this does not deprive laws of their moral suasion or of their importance[18].

A tailpiece remains. I have alluded (p. 208f. above) to an instance of such a clause which was known, but not recognised, long ago. Perhaps it could not be until the laws we have been discussing had come to light. The great Mommsen was here less happy in his conjectures than the successive editors of the *Lex Gabinia Calpurnia.*

17 These are the suggestions made by Nicolet (9–10 with n. 2), where the formulae cited are in fact different.

18 The last line of the new Bantia fragment survives in part: enough to show that another formula of this sort was introduced. What we have (p. 207f. of article) is]*ṃagis in hance legem in eo magistratu e*[. It is simple to restore this, in accordance with one variation of the formula (see below), as *quo*] *ṃagis in hance legem in eo magistratu e*[*x hace lege iouret,* since the law provides for an oath apparently to be sworn by all senators and magistrates. Here, with *e.h.l.n.r.* inevitably added, someone appears to be exempted from this oath. Further speculation would take us too far, except that we might note that the *exceptio* might be merely technical, for any who might be prevented by *religio* from taking such an oath. (See, e.g., Livy 31, 50, 7f.: a *flamen Dialis.*)

A fragment of a law found at Tuder (the *Fragmentum Tudertinum,* as it is generally called) was edited by Mommsen in CIL I 1409, since at the time it was thought to be a part of a Republican law. Later this view was abandoned, with the unfortunate consequence that Lommatzsch had to omit it from the second edition of that volume, so that it has had little critical scrutiny that I can discover. Both the beginning and the end of all the lines are broken off; in fact, a considerable part of each line appears to be missing. But at the bottom of the fragment we find the letters *H.L.N.R.*

Mommsen, who (we must remember) at the time had not a single example on stone or bronze of the concluding *exceptio* that we have been discussing, not unnaturally took the letters to be another example of what had been known for centuries (we shall soon look at it in more detail): the statement at the end of a *clause* in a law that exempts certain institutions from being affected by the law. He duly noted a lacuna between the last words of our text before these letters and the actual letters; but he tried to bridge the gap by constructing a sentence that joined these four letters to what preceded, along the well-known lines we have noted. He must have known, but did not properly consider, Plate XXXV in Ritschl's superb volume of illustrations to the Corpus volume, where it is clear beyond doubt that the four letters are separated from the preceding text by a whole line that, to us, is blank. Most of that line, no doubt after a few initial words to complete the preceding text, must have been left deliberately blank. Inspection further shows that the letters themselves are partly centred; i.e., the group of which they are part, and which we can now proceed to reconstruct, did not start at the beginning of a line but with some indentation on the left – as we now know it normally would. Gradenwitz, in his edition of Bruns, although he claims to be loyally following Mommsen, in fact did not follow him at this point in his no. 32, but at least partially made the epigraphic facts clear by the way he set out the printed text. Yet this seems never to have been followed up. It should be clear that the fragment concludes with the group of letters we have come to know, placed just as they normally are: [*S.S.S.E.Q.N.I.S.R.E.*]*H.L.N.R.*

III

The use of the clause for which our letters stand to mark a limited *exceptio* – to make clear that certain arrangements or institutions are not to be superseded by the present law – offers fewer technical difficulties. We have already looked at the wording. The fact that we have dozens of examples, and that they have in part been known for centuries, has left no substantive problems that seem to demand attention.

What is new and exciting is that the clause has now (for the first time, as far as I am aware) turned up in a Greek translation. It appears in column III of the law discovered at Cnidus and given a preliminary publication, with what will be clear (in the light of the history of other documents we have been discussing)

was exceptional and meritorious speed, in the Journal of Roman Studies vol. 64 (1974)[19]. The clause in fact appears twice, within a few lines (III 16–27), which must be quoted in full:

16 οἵτινες δῆμοι ἅ τε ἔθνη ὅταν τοῦτον τὸν νόμον ὁ δῆμος κυρώσηι βασιλεῖ βασιλεῦσιν δήμοις τε πρὸς οὓς φιλία συμμαχία τῶι δήμωι Ῥωμαίων ἐστὶν φόρους προσόδους τε στρατιώτας τε τελῶσιν ἐν τούτωι τῶι νόμωι οὐκ ἠρώτηται.

22 στρατηγὸς ἀνθύπατός τε ὁ{ς} τὴν Ἀσίαν ἐπαρχείαν διακατέχων οὗτος ὧι ἔλασσον Λυκαονίαν διακατέχηι ὧι τε ἔλασσον τούτου ἡ ἐπαρχεία Λυκαονία καθὼς καὶ πρῶτον [sic] τοῦτον τὸν νόμον κυρωθῆναι ὑπῆρχεν ἐν τούτωι τῶι νόμωι οὐκ ἠρώτηται.

The editors at once recognised that this was a translation of the clause we have been examining[20]. They also had no difficulty in correcting some obvious errors in the Greek[21]. We might note, incidentally, that the translation gives us no certain help in deciding between *rogatur* and *rogatum,* though it mercifully eliminates *rogato.* The true Greek perfect might be used to render either form, though it is perhaps more likely to be a rendering of a Latin perfect. Two additional errors, not noted by the editors, might as well be corrected. In the first clause, after φιλία συμμαχία, τε has dropped out before τῶι. (This is in accord with general usage in this text and is palaeographically much more likely than that καί has been lost.) And at the beginning of the second clause, στρατηγὸς ἀνθύπατός τε cannot be correct. The Latin must have been *praetor proue consule,* which is correctly rendered elsewhere in this text (see II 13). The translator misread *VE* as *QVE,* particularly easy after *PRO.* However, these errors are venial, compared with what we are about to discover.

The editors express some uneasiness about the first of these clauses; yet they surprisingly found the second clause even more awkward in its phrasing, even though, except for obvious slips (see above), it can be shown to be perfectly straightforward and correct Latin. In fact, a translation (to some extent, like all such, exempli gratia) naturally imposes itself: *praetor proue consule qui Asiam*

19 Indeed, the errors in transcription and commentary are a small price to pay for the benefit of having a preliminary text available. Unfortunately, definitive publication has been slow. Many textual suggestions have been made and many theories regarding detailed interpretation advanced, but there is still no authoritative text to decide on the merits of the suggestions and to permit solid interpretative work.

20 But they quote the Latin in a form never found and suggesting that they were not familiar with the evidence on this formula: *eius hace lege nihilum est rogatum.* This no doubt helps to explain their difficulties over the two clauses of the law containing the formula, and their failure to notice the omission pointed out below.

21 In the second clause the translator seems to have started with the intention of giving a literal translation of the Latin relative clause and then switched to a participial construction; hence the erroneous sigma in the article must be removed. They also very plausibly suggest that the odd πρῶτον is an engraver's mistake for πρὸ τοῦ in his draft. And cf. n. 24.

prouinciam obtinebit is quo minus Lycaoniam obtineat quoue minus ei Lycaonia prouincia sit sicut ante hanc legem latam fuit e.h.l.n.r. The editors' translation and comments here seem to be at cross purposes (perhaps there were some differences of interpretation among the collaborators), and this presumably accounts for the difficulty they felt. The translation runs as follows (emphasis added): "The Praetor or Proconsul who *governs* the province of Asia *governs* Lykaonia, and the province of Lykaonia *is under his government,* just as before the passage of this law, and he is not affected (in this matter) by this law." This is all the more strange, since the obvious injunctive force of the law is recognised in its other provisions. The comment is similarly confused. The standard technical use of *prouincia* (which is better not translated as 'province') is duly noted[22], but they then proceed to state that "a part of a province, here described as an ἐπαρχεία, is later called a διοίκησις". The latter term may, for all we know, have been in use in that sense even around 100 B.C., but it is irrelevant here. The situation envisaged is one where the commander assigned Asia as his *prouincia* has regularly been, at the same time, assigned Lycaonia as a *prouincia* as well; and this is to continue, unaffected by the law. The common device of abundans cautela makes doubly sure that the point is clearly made.

So far so good. But the form of this clause ought also to have alerted the editors of the text to the way in which the formula we have been discussing functions, and to the grammar associated with it, even if they were at that point not very familiar with it. The clause perfectly illustrates what will be obvious to those who know the parallel texts: since the formula states that the law does not detract from an existing state of affairs or institution, it is preceded by *quo minus* (that state or institution should end). In eleven cases where any text at all survives, *quo minus* duly precedes the formula, as indeed it does in the two instances in Frontinus' *Lex Quinctia.* In three other cases it is securely restored.

There can at times be cases (though they are unusual) where something (normally a consequential innovation) is to be *prevented,* rather than something existing maintained; those cases call for *quo magis,* which we sometimes find by itself (e.g. Lex Agr. line 12 and Tab. Her. line 158) and sometimes together with *quo minus,* nicely illustrating the reverse parallelism (e.g. Lex. Urs. III 2, 26). As we have seen, the last line of the new Bantia fragment appears to offer a similar case, whatever the precise interpretation. The formula was never used, and is indeed inconceivable, without the *quo minus* or (occasionally) *quo magis* construction.

But this surely compels us to reconsider the first of the two clauses (starting III 16) quoted above from the Cnidus law. Where is the proper construction? It is certainly not to be found in the text as we have it. The editors were right to feel some qualms about this clause, although it is a pity that they were more worried

22 Contemporaries accustomed to the *prouincia urbana* or *inter peregrinos* regularly allotted to praetors, or to (e.g.) the *prouincia Numidia* during the Jugurthine War, would feel no difficulty or ambiguity in this phrase.

about the second one, which in fact reveals the error in the first: the obvious fact is that the *quo minus* part has dropped out in the text as we have it[23].

It is always hazardous to suggest major errors in Greek translations of Latin texts, where we do not have the original. Those who will not see do not recognise them, and there is usually no proof except familiarity with the idioms. Fortunately, in this case, there is proof; and since so many scholars have worked on the law, it really ought to have been spotted before. The Greek relative ὅστις is always, in epigraphic as in any other Greek prose, followed by an indicative, unless it is accompanied by ἄν, thus becoming generally prospective in function. As can easily be checked, this is strictly observed in all cases in the present law. In this case and in this case only, we have a subjunctive (τελῶσιν) following οἵτινες. It is surely obvious that the subjunctive is the miserable remnant of the ὧι ἔλασσον clause which sense and grammar require. It may with great plausibility be conjectured that the οἵτινες originally governed τελοῦσιν, and that, as so often in palaeography, the similarity between the two forms, possibly separated by about a line in the original, has led to the disappearance of the first of them and all the words between them[24]. It is impossible, of course, to guess precisely what is missing: precisely how explicit the repetition of the words was. But in view of the practice of Roman laws in such cases, we may probably take it that the repetition was pretty well complete: as we have seen, the following clause, concerning the commander in Asia, shows that those who drafted this law did not take any chances over clarity and comprehensiveness. I cannot suggest a plausible equivalent for τελεῖν: the only Latin word that occurs to me, to fit *tributa, uectigalia* and *milites,* seems to be *dare.* Let us therefore conjecturally reconstruct something like the following for the original wording: ... *qui populi ... tributa uectigalia milites dant* [*dare solent*?], *ei populi ... quo minus post hanc legem latam eidem regi eisdem regibus populisque tributa uectigalia milites dent e.h.l.n.r.* The sense, though of course not the wording, may be taken as assured.

Detailed attention to an abbreviated formula too often taken for granted has led us, as epigraphic investigation often does, into byways of Latin grammar, law and even social history, with a secure emendation in an important new Greek text as an unexpected bonus. A great deal more could have been said at

23 The Delphi version almost certainly did not share this error (indeed, one would not expect it to) and preserved the general structure of the *exceptio.* The editors note (p. 212) a long gap at this point (Delphi B lines 3–4) and look for something to "fill the gap": it ought instead to have alerted them to the implications of the subjunctive in the Cnidus text and to the general nature of what the formula requires.

24 We might, at this point, compare an error duly noted by the editors: the omission of a word through *homoeoarchon* (plus general similarity between the words); though in this case the words followed each other, so that nothing else was lost. In the second of the clauses, ὑπάρχηι has clearly dropped out and must be restored, presumably after ὑπῆρχεν.

various points. But it is best, as the best of Roman legislators do, to keep to the main points and try to make sure that they are clear.

Appendix*

Cicero, Pro Balbo 33

In section 32 Cicero has argued that the fact (allegedly cited by the prosecutor against Balbus – it is a little hard to believe!) that certain treaties excluded the award of Roman citizenship to citizens of the other contracting party implies that it is permitted by all other treaties, which do not have this provision; moreover, even if there were such a provision in the Gaditane treaty, the *Lex Gellia Cornelia* would have overridden it. Next, the prosecutor is made to object that *foedera* as such are excepted under the law, since a *foedus* is *sacro sanctum* (see n. 15 above). Cicero prepares his retort to this with some personal invective: the prosecutor, he claims, has renounced his native Gaditane ("Punic") citizenship and so does not know Punic law, while he has been debarred (by conviction, although we cannot tell precisely how) from consulting Roman laws. (I.e. – the points that Cicero wants to implant in the jurors' minds – the man is Punic by birth, which is not a recommendation of character, and a convicted felon.) It is here that we have a sentence that, as printed in our texts, makes no proper sense. The beginning of section 33 reads as follows: *quid fuit in rogatione ea, quae de Pompeio a Gellio et a Lentulo consulibus lata est, in quo aliquid sacro sanctum exceptum uideretur?*

The last clause, as thus printed, is emended, and the text we have essentially goes back to Pantagathus. The trouble with it is that, as it stands, it is a rhetorical question implying that there was *nothing* in the law that could give the impression of excepting what was *sacro sanctum.* (Reid, in his edition with commentary [1890] makes it clear that it is indeed generally thus understood, by his comment [p.106] that *quicquam* would have been expected for *aliquid,* as well as by his general discussion. He rightly points out that Madvig's proposed deletion of *sacro sanctum* produces less sense rather than more.) This is patently false – and we must stress "patently". Cicero is not above a little *suppressio ueri* and *suggestio falsi,* but in this case this particular trick would have been impossible; for not only does Cicero himself almost at once seem to admit that the words *si quid sacro sanctum est* occurred in the law, and to show that they do not help the prosecutor's case, but it was known to everyone that *all* laws contained this *exceptio*: as we have seen, Cicero himself states this in Caec. 95.

Cicero himself, therefore, cannot have intended to deny that the *Lex Gellia Cornelia* contained this *exceptio.* The printed text that makes him imply this cannot be correct. To find out what is wrong, we must first look at what is in the manuscripts. The last clause apparently reads, in the best of them: *in qua aliquid sacro sanctum exceptum uideretur.* (Others add *aliqua* after *in qua,* presumably spun out of what precedes and follows.) It is the emendation of *in qua* to *in quo* that has produced the false implication: it transfers the reference of the relative from the law as a whole to *quid.* In fact, as we have suggested, *in qua* is made plausible on technical grounds, by the fact that in some manuscripts the nonsensical *aliqua* developed out of it. It must at least be an *old* reading. If *in qua* is retained, of course, the question is prima facie no longer a rhetorical one, implying a negative answer, but a bona fide question (though still, of course, rhetorically used) as to the content of the law in which this clause (by no means denied as such!) seems to appear. Only a trivial change is needed to restore perfect sense: I would read: *quid fuit in rogatione ea ... in qua aliquid sacro sanctum exceptum uidetur?* Which means: "What *was* there in the law passed by Gellius and Lentulus regarding Pompey, in which something sacrosanct appears to be excepted?"

* I should like to thank my colleague D. R. Shackleton Bailey for discussing this passage with me. He should in no way be taken as agreeing with my suggestion.

In this form, we need no longer expect *quicquam* for *aliquid*; we can (as we have seen) account for the later development of the intrusive *aliqua*; and, above all, we have the sense required and not a sense excluded by the context and by general considerations. For as we saw, Cicero has just made it clear that the prosecutor, as a convicted felon, is unable to consult the laws. The consideration of what there actually *was* in the law (*quid fuit in rogatione*) follows quite naturally upon this. He goes on to show that what was there was the words *sacro sanctum,* and to prove that they are irrelevant to the prosecutor's case. Of course, this is all a lawyer's trick: a way to bring in the invective about the prosecutor's birth and character. For the prosecutor knew quite well that these words appeared in the law, and he based his case on them. Both the invective at the end of section 32 and this sentence at the beginning of 33 could have been omitted, in strict logic. But cases are not argued in strict logic – certainly not by Cicero. He seizes his chance to say that the prosecutor was not allowed to *leges inspicere,* and pretends to do it for him, even though the inspection, of course, in the end produces nothing that the prosecutor did not know in any event. His unnecessarily indirect approach to the close "inspection" of *sacro sanctum,* to which he now proceeds, has allowed him to play upon powerful prejudices in the minds of the jurors.