

FYS 100-10, Persuasion and Law in Antiquity/Background on Roman Courts

W. Smith, *A Dictionary of Greek and Roman Antiquities*, London, 1872, pp. 649-650 (parenthetical comments are the course instructor's):

As many of those who were tried in the quaestiones perpetuae (a type of court) belonged to the class of the Optimates (the "aristocratic" faction in Roman politics), it often happened that the Judices (Latin *iudex*, plural *iudices* refers to a judge though the Romans called what we call "jurors" judges also) acquitted those members of their own body, who would have been convicted by impartial judges. Accordingly a struggle arose between the popular party (when a 19th century British author uses this term be careful, he means the party of those rich and influential upstarts who are not born from old families) and the Optimates, whom the popular party wished to exclude from the office of Judex. The laws which relate to the constitution of the body of Judices are called Judiciae, whether these laws related only to this matter, or made rules about it and other things also. The first lex which excluded the Senators from the Album iudicum selectorum was a Lex Sempronia of C. Gracchus, B.C. 123, in accordance with which the judices were taken only from the Equites (the non-noble, but usually economically powerful class in Rome). This arrangement lasted above forty years, and gave satisfaction to the popular party; but it did not work well in all respects, because the magistrates in the provinces favoured the rapacity of the Publicani (so-called "tax collectors" -- Roman provincial taxing was organized in a very laissez-faire manner at this time) in order to keep on good terms with the Equites, to which class the Publicani belonged (Cic. *Verr.* III.41). A Lex Servilia Caepionis B.C. 106 is said to have repealed the Sempronia Lex; but this Lex Servilia was itself repealed by a Lex Servilia Glauciaepetundarum, probably in B.C. 104. This Lex is said to have given the Judicia to the Equites, and consequently it either repealed the Lex of B.C. 106 indirectly, or it may merely have confirmed the Lex Sempronia; for the real nature of the Lex of B.C. 106 is hardly ascertainable. There is a passage in Tacitus (Ann. XII.60) in which he speaks of the *Serviliae* leges (Latin word for law = *lex* plural *leges*) restoring the Judicia to the senate. The Lex Servilia of B.C. 104 excluded from the function of Judices every person who had been tribunus plebis, quaestor, triumvir capitalis, tribunus militum in one of the first four legions, triumvir agris dandis assignandis (preceding are various important offices in Roman government/military), who was or had been in the senate, who was infamis (publicly disgraced), every person who was under thirty or above sixty years of age, every person who did not live in Rome or in the immediate neighbourhood, every father, brother, or son of a person who was or had been in the senate, and every person who was beyond seas. The Praetor (Roman equivalent of Attorney General) who presided in this Quaestio, was to choose 450 judices, from whom the Judices for the particular case were to be taken by lot (Fragmenta Legis Serviliae Repetundarum, &c. C. A. C. Klenze, Berlin, 1825, 4to.).

The attempts of the tribune M. Livius Drusus the younger had no result [Leges Liviae]. A Lex Plautia B.C. 89 enacted, that the Judices should be chosen by the tribes, five by each tribe, without any distinction of class. The Optimates triumphed under L. Cornelius Sulla, who by a Lex Cornelia B.C. 80 enacted that the Judices should be taken exclusively from the Senators. But a Lex Aurelia (B.C. 70) enacted that the Judices should be chosen from

the three classes — of Senators, Equites, and Tribuni Aerarii (Vell. II.32). The Tribuni Aerarii were taken from the rest of the citizens, and were, or ought to have been, persons of some property. Thus the three decuriae of Judges were formed; and it was either in consequence of the Lex Aurelia or some other lex that, instead of one urn for all the tablets, the decuriae¹ had severally their balloting urn, so that the votes of the three classes were known. Dio Cassius (XXXVIII.8) ascribes this regulation to a Lex Fufia, and he says that the object was that the votes of the decuriae might be known, though those of individuals could not, owing to the voting being secret. It is not known if the Lex Aurelia determined the number of Judges in any given case. A Lex Pompeia passed in the second consulate of Pompey (B.C. 55), seems to have made some modifications in the Lex Aurelia, as to the qualification of the Judges; but the new provisions of this lex are only known from Asconius (commentator on Cicero's speeches who wrote under the emperor Claudius), who explains them in terms which are very far from being clear. The Lex Pompeia de Vi, and De Ambitu (B.C. 52) determined that eighty judges were to be selected by lot, out of whom the accuser and the accuser might reject thirty. In the case of Clodius (B.C. 61), in the matter of the Bona Dea, there were fifty-six judges. It is conjectured that the number fixed for a given case, by the Lex Aurelia, was seventy judges.

¹ A *decuria* means a group of 10 men in Latin, but had come to mean the panels of Senators in a jury. Through the Lex Aurelia Judiciaria (70 BC) these panels were drawn from three distinct census classes and thus *decuria* comes to mean the panel on the jury of a specific class. As the laws also stipulated that there be 70 members of the jury, approximately 23 men would be selected from each class to make that class' *decuria* on the jury which would consist of three *decuriae* each with its own voting urn.