

Roman Towns and Their Charters: Legislation and Experience

M. H. CRAWFORD

WHEN THE ENFRANCHISEMENT OF ITALY in and after 90 BC confronted the Roman élite with the need to provide for municipal statutes for perhaps half the communities of Italy, they had at least two and a half centuries of experience to draw on. And it is in my view possible to show that the statutes which emerged drew on a remarkably uniform model. Some of this uniformity was directly imposed by legislation; much of it was more likely the result of the fact that the men who drew up the charters in the 80s and 70s BC were few in number and shared their experience with each other. My wish in this paper is to follow the story of the interplay of legislation and experience from the late Republic through the age of revolution and the early Principate, concluding of course with the Lex Flavia. The story of course also inevitably moves from Italy to Spain.

The mere acquisition of a municipal statute, of the rules by which the community was to live, is itself in the Roman world an essential part of becoming a city. But it is additionally the case that communities often went through the two processes, of acquiring a charter and a monumental urban centre, at the same time or in the same period. One has only to think of Cingulum, which in 49 BC abandoned the Republican cause for Caesar, despite the fact that, as Caesar remarked, T. Labienus 'had organized its constitution and monumentalized it at his own expense' (*de bello ciuili* I, 15, 2); or of the classic article of E. Gabba, 'Urbanizzazione e rinnovamenti urbanistici nell'Italia centro-meridionale del I sec. a.C.', revealing the scale of urban renewal precisely in the period in which the new *municipia* of Italy were also acquiring their municipal statutes.¹ Nor should we forget that these statutes normally contained chapters which dealt with the urban framework itself.

The veteran colonization of the triumviral age and the reign of Augustus of course forms the third great period of generation of charters for

communities under the umbrella of Rome, after those of the Latin colonies of the years either side of 300 BC and of the new *municipia* of the 80s and 70s BC. But there is just enough evidence to show that the last few years of the Republic and the early Principate also witnessed the creation of new constitutions for communities which had long been Roman, without any colonial foundation being created. There is the case of Cingulum, in Picenum, Roman at least since the Social War, whatever it may or may not have possessed in the way of urban organization: the activity of T. Labienus perhaps dates from the years between his tribunate in 63 BC and his arrival in Gaul in 58 BC, though he could have acted through agents at any time in the 50s BC. And a well-known letter of Cicero of 46 BC records that in that year his son and his nephew and a close friend called M. Caesius held the triple aedileship of the Volscians, *constituendi municipi causa*, 'to organize the constitution of the *municipium*' (*ad fam.* XIII, 11 = 278 SB, 3). Arpinum had been a Roman community with the vote since 188 BC; we do not know when it became a *municipium*, then or after the Social War. In 46 BC or earlier, Cereatae Marianae, which had been part of Arpinum, became an independent community and presumably acquired a municipal statute: two *Ilviri* solemnly record the paving of 164 feet of road for the princely sum of 5 denarii, 3 asses, in beautiful letters of the middle of the first century BC (*CIL* I², 2537 = *ILLRP* 466 = *Imagines* 198). And Veii was constituted as a *municipium* by Augustus, *Municipium Augustum Veiens*; the division of the population into *intramurani* and *extramurani* perhaps perpetuates in a vestigial fashion the existence of some form of organization of the territory, which provided an administrative framework before the constitution of the *municipium* and which was superseded by it.²

There is yet another factor which ensured a continuing need for municipal statutes: some communities even in this period ceased to exist as independent communities and were incorporated in other cities, such as the Sullan Colonia Urbana, *nuper attributa* to Capua (Pliny, *NH* XIV, 62).

New epigraphic evidence now allows us to see that a whole series of Italian municipal or colonial charters belongs in the Augustan or Julio-Claudian period. The fragment built into the décor of the main courtyard of the Palazzo Medici-Riccardi in Florence has been known since Blume's *Iter Italicum* of 1827. But with persistence and the aid of a chair lent by the puzzled Carabinieri on duty hard by I have been able to see substantially more than was read by Blume or Mommsen. There is a completely unpublished fragment of what is probably a similar text on display in the Museo Nazionale di Fiesole. A fragment dealing with the *subsignatio praediorum* of an unknown colony came to light because the Capo Custode of the Museo del Bargello happened to have opened the drawer in which

it is kept a few days before I turned up looking for something completely different. And a photograph of two fragments of the charter of Susa jumped out of the page at me while I was browsing on Christmas Eve — with a glass of brandy in my hand that I nearly dropped — through a book on the Porta Savoia kindly sent me by a friend in Turin. Given this epigraphically attested activity, it would not be surprising if the Augustan period had seen a process of systematization of the material of which such texts are composed.

Two major legislative texts relating to local government belong to the 40s BC, the *Tabula Heracleensis*, probably of 45 BC, and the *Lex de Gallia Cisalpina*, probably of 42 BC. The second half of the former contains regulations for membership of the local senate and for office-holding in *municipia*, colonies, prefectures, *fora* and *conciliabula* of Roman citizens; for local censuses in *municipia*, colonies and prefectures in Italy; and for *municipia fundana*. It seems to me possible, though of course unprovable, that the second half of the *Tabula Heracleensis* forms part of a *Lex Julia municipalis*, perhaps that attested at Patavium in AD 69.

The *Lex de Gallia Cisalpina* contains the end of a chapter on *operis noui nuntiatio*, chapters on *damnum infectum*, *pecunia certa credita*, and other loans, and the beginning of a chapter *de familia erciscunda diuidunda*. Since the last four chapters all begin with a phrase that limits their application to Cisalpine Gaul, our text has always been taken as part of a statute which laid down the rules of the Roman civil law for that region.

In between these two texts there lies of course the *Lex Coloniae Genetivae*, from Urso, of 44 BC. And it allows us to formulate at once the principal problem that faces us. There is very considerable continuity from the earliest to the latest of the texts that we have that are designed either for a single community or, as in the case of the *Lex Flavia*, for a specific group of named communities: the *Lex Osca Tabulae Bantinae*, which I believe to reproduce part of the statute of a Latin colony of the years either side of 300 BC, the *Lex Tarentina*, the *Lex Coloniae Genetivae*, the *Lex Flavia*. The statutes are made up of chapters drawn from a wide variety of sources, chapters which even in the limited material we have are regularly transferred from one statute to another, chapters which are often imperfectly adapted to the context in which we find them. Such development as we can see comes between the *Lex Coloniae Genetivae* and the *Lex Flavia*; but it is a change in organization. The organization of the *Lex Coloniae Genetivae* is better than some of its critics have supposed; but no-one would claim that it is a miracle of order. On the other hand, the *Lex Flavia* falls into clear blocks of material: it probably began with the definition of the citizen body, passed to religious affairs, then

magistrates and their powers in matters of manumission and *tutela*, decurions, elections, general and financial administration, jurisdiction.

I shall return to the question of who was responsible for the organization of the material which is evident in the Lex Flavia. But what I should like to emphasize at this stage is that the four texts I have just mentioned are the same kind of text. And they are worlds apart from the Tabula Heracleensis and the Lex de Gallia Cisalpina. These are clearly drafted *ex novo*; and what we have of each of them is clearly the work of someone who thought of each of them as a whole. Whoever drafted ll. 83–163 of the Tabula Heracleensis or Chs. XIX–XXIII of the Lex de Gallia Cisalpina clearly had the whole of their structure in their head at one moment, rather than wandering round a supermarket of chapters for statutes and picking one here, one there.

Not only that. The fact that there is continuity from the Lex Osca Tabulae Bantinae to the Lex Flavia already suggests that the Tabula Heracleensis and the Lex de Gallia Cisalpina represent a deviation from the high-road along which municipal statutes developed. And in fact both of them are texts whose substantive contributions were in large measure abandoned by those who came after. (I leave out of account here the Falerio Fragment and the Este Fragment, which are too short to permit secure conclusions in this context.)

There is inevitably a timeless quality to the surviving chapters of the Lex de Gallia Cisalpina: they contain rules of the Roman civil law. Nonetheless, they reflect the period in which they were drafted in the range of powers attributed to local magistrates, of imposing interdicts and stipulations. But what is striking is that the approach represented by these chapters is abandoned in the Lex Flavia. Whereas the Lex de Gallia Cisalpina has complex and separate rules for the relationship of local to higher jurisdiction in cases of *pecunia certa credita* and other loans, the Lex Flavia opts for a single chapter on all aspects of the limits of local jurisdiction.

In the case of the Tabula Heracleensis, it is possible to point to a number of innovations, which mark the careful incorporation of reflections about the nature of politics and administration in the late Republic, yet which seem not to survive in later law. Let me begin with the ban on serving criers, ushers or undertakers holding local office or serving in local senates (ll. 89–97, 98–107). As Cl. Nicolet has observed, this has nothing to do with the social status of the professions, but is the result of the fact that these men made a living by entering into contracts with municipalities, colonies and prefectures, presumably mostly their own. The clause is designed to prevent a clash of interest. Moreover, a similar clause relating to scribes in Rome is probably to be attributed to a statute of P. Clodius

in 58 BC; and a remark of Cicero shows that similar concerns were in the air in 55 BC (*pro Rabirio Postumo* 13).

Ch. 31 of the Lex Flavia, dealing with the selection of decurions, is incomplete; and Ch. 54, dealing with the election of magistrates, simply excludes 'whoever shall be in such a position that it would not be lawful for him to be a decurion or *conscriptus* if he were a Roman citizen'. Now it is theoretically possible that this is a reference to the clause of the Tabula Heracleensis that I have just described. But I do not think so. For Ch. J adopts a quite different and incompatible approach: it does not exclude from office or membership of the local senate men who might undertake contracts; rather it excludes from contracts a magistrate or his relative or his staff.

A second example. The Tabula Heracleensis assumes — and another clause elsewhere in the statute that is not preserved may have prescribed — that local magistrates will enter office on 1 January. Yet already in 34 BC, the Fasti Venusini show local magistrates entering office in July.³ The Tabula Heracleensis also carefully prescribes that local censuses in Italy should be held to coincide with censuses in Rome. But there is no evidence that this co-ordination of local and central censuses survived beyond 29–28 BC.

On the other hand, two major innovations of the late Republic, the one not certainly present, the other not present in the Tabula Heracleensis, do survive: (1) voting by written ballot in local senates; and (2) *praefecti iuri dicundo*.

Voting by written ballot appears explicitly in 44 BC in the Lex Coloniae Genetivae, Chs. 97, 130 and 131. The Tabula Heracleensis seems to use indifferently either *sententiam dicere* (ll. 96 and 125) or *sententiam dicere ferre* and cognate turns of phrase (ll. 106–7, etc.). The latter is compatible with voting by written ballot, but does not demand it. As we have seen, the second half of the Tabula Heracleensis probably represents part of a statute of late 45 BC. Given that it is highly unlikely that there was further legislation on local government between that date and the point in 44 BC at which the charter of the Colonia Genetiva Ursonensis was drafted, voting by written ballot must have been introduced either by the statute of which ll. 83–163 of the Tabula Heracleensis forms part or earlier. On balance, I incline to think that it was introduced earlier and that the Tabula Heracleensis uses language that is compatible with it.

When and why was voting by written ballot in local senates introduced? Remember that it was never used in the Roman senate in the Republican period. As E. Gabba has observed,⁴ it must after 70 BC have been evident to all that the Roman assemblies no longer had any claim to represent the Roman population of Italy. And in fact, beginning in 63 BC, we can

observe the use of decrees of local senates to inform the senate at Rome of the views of the Italian élite. Sent to Rome, these decrees played a significant part in decision-making at Rome. I suspect, therefore, that an attempt was made in the 50s BC to ensure that these decrees could not be passed under the pressure of improper influences.

What of *praefecti iuri dicundo*? Such evidence as there is suggests that the constitutional mechanism devised for the replacement of regular magistrates, in charters drafted in the years which followed the enfranchisement of Italy, was that of the *interrex*. This archaizing revival was an ephemeral one. But the problem is that the first Roman charter to mention either *praefecti* or *interreges*, the *Lex Coloniae Genetivae*, contains a care-free mélange of chapters which contain the one and chapters which contain the other. I suspect that *praefecti* only caught on gradually in the period between the Social War and Caesar. They are systematically assumed in the *Lex de Gallia Cisalpina* of 42 BC.

We are at this point faced with the problem of when the work was done which led to the relatively organized structure of the *Lex Flavia*, of which I have already spoken. Was it undertaken in connection with the grant of the *ius Latii* to Baetica (and not Spain, in my view) by Vespasian? Or was it all done much earlier?

One preliminary point. Given the scale of veteran settlement between 41 BC and the middle years of the reign of Augustus, one would expect Augustus to have had to occupy himself with a variety of consequential problems. And we know that he had to occupy himself with the problems that arose when part of the territory of a community was assigned to the colonists of a neighbouring colony: in edicts (Hyginus, 82–3 Thulin), but also and much more interestingly in an *<o>ratio de statu municipiorum* (Frontinus, 7 Thulin). And the Agrimensores clearly later believed that there was a general statute of Augustus, which defined the limits of assignation as the limits of cultivation, *qua falx et arater ierit*, a general statute which could be varied by the founder of a colony (Hyginus, 73 Thulin; Hyginus Gromaticus, 164 Thulin). Overall, of course, Augustan interest in the *municipia* of Italy, as well as in his colonies, emerges from the scale of the building activity undertaken by him and by members of his family. And it is worth remembering the suggestion of M. Torelli that it was Augustus who revived both the Etruscan League and the office of VIIIvir for Trebula Mutuesca.⁵

Innovations which are certainly Augustan are few. First, age limits in general. It seems that in the Republican period the minimum age for senators and jurors, both in Rome and in local communities, was 30. (The age of 20 at Urso is anomalous.) There is good evidence that Augustus lowered it in both cases to 25 for Rome; given that we find this figure in

the Lex Flavia, it seems reasonable to suppose that it was prescribed for local communities also by Augustus (Lex Flavia, Chs. 54 and 86).

Second, eligibility for jury service in particular. The Narbo altar of AD 11 records that Augustus 'iudicia plebis decurionibus coniunxit' (*CIL* XII, 4333 = *ILS* 112). Rather than taking this with H. Dessau to refer to a general establishment of concord, we should suppose that Augustus extended jury service from the local senators to the wider population. It seems likely that in many smaller communities the governing class will have been very small: it is noticeable that the Tabula Heracleensis is much less restrictive in the qualifications for senators and office-holders in *fora* and *conciliabula* than in *municipia*, colonies and prefectures. This leads me to doubt whether there could ever have been a rule applied to all subordinate communities in the Roman world limiting jury service to senators. Rather, such a rule existed at Narbo, perhaps from the moment of its foundation in 118 BC, by men who are unlikely to have been sympathetic to the equestrian extortion court established at Rome by C. Gracchus. The problem is then whether Augustus extended to Narbo a rule which already existed prescribing decurions and non-decurions as jurors or whether he was himself responsible for the rule. Given his interest in the reform of the judicial *decuriae* at Rome, the latter alternative is perhaps the more probable.

Third, local senates as courts. Ch. 66 of the Lex Flavia, the Malaca copy now completed by the Irni copy, clearly shows the senate of a Latin *municipium* acting as a court. There is no evidence for such a state of affairs anywhere in the Republican period, now that Ph. Moreau has shown, against U. Laffi, that in the *pro Cluentio*, 41 and 125, Cicero is referring to a decision of the senate of Larinum, not to a judgment. It is of course true that Cicero uses the word *iudicare*. But the context makes it clear that the word is not being used in a technical sense, just as Barry Cunliffe or Simon Keay might have said to himself, 'I judge the colloquium on the whole, though not the last paper, to have been a success'. Similarly, Ch. 96 of the Lex Coloniae Genetivae refers to a decision.

Of course, the designation of local senates as courts might have taken place at any point between the end of the Republic and the Flavian period. But given that we know, despite the uncertainty of how and when, that the senate at Rome became a court during the reign of Augustus, it would be in my view perverse to doubt that the innovation in the context of local government is Augustan also.

I pass to cases where the age of revolution or the reign of Augustus provides no more than a *terminus post quem*. Two relate simply to a change which probably took place at some point between Caesar and the Flavian period.

Arguments from silence are of course always hazardous. But the proportion of the text preserved makes it unlikely that the practice of voting on oath was known to the Lex Coloniae Genetivae. It does occur, on the other hand, in the Lex Flavia (Ch. 79).

The second change is the abandonment of the complex description of those present in a community as *municipes* or *coloni*, followed by *incolae*, *hospites* and *adventores*, in favour of the simpler *municipes* or *coloni*, and then *incolae*. The longer list is characteristic of communities which acquired charters in the generation after the Social War, but then disappears. The form *coloni* and *incolae* indeed appears on the Narbo altar.

It has also been clearer than ever since the discovery of the Irni copy of the Lex Flavia that this contains a large number of chapters which derive from legislation of Augustus. Ch. 91 refers to the Lex Julia, *quae de iudiciis priuatis proxime lata est*, 'which is the most recent to have been passed about private cases'. There are other rules also which reflect the legislative concerns of the Augustan age, notably the rights given to those with children in Ch. 56 and Ch. B, dealing respectively with a tie between contestants for office and the order of precedence for voting in the local senate. Ch. 67 probably draws on the Lex Julia peculatus, Ch. 71 on the Lex Julia de iudiciis publicis, Ch. 74 on the Lex Julia de collegiis, Ch. 75 on the Lex Julia de annona, Ch. 81 on the Lex Julia theatralis. It is also possible to argue for the existence of a further Lex Julia which is not directly attested, but which is reflected in the Lex Flavia. A chapter prescribing the circumstances in which a building may be demolished appears in substantially the same form in the Lex Tarentina, the Lex Coloniae Genetivae and the Lex Flavia. In the last, a new provision appears, Ch. 62, making it clear that the rigour of the law only applied in the case of a building which the owner was not in any case going to restore within a year. In the account in Livy of the rebuilding of Rome after the Gallic sack (V, 55, 3), the community allowed free access to stone and timber, provided that people gave security that they were going to finish the building within the year. No sane person will suppose that Livy had access to the text of legislation of 390 BC; and it seems to me reasonably certain that Livy is reconstructing the events of that year by making use of the legislative material of his own day.

None of this proves, however, that it was in the Augustan age that the text we know as the Lex Flavia was put together. And we should not forget that it is in any case a text which allows for the incorporation of a small number of traditional features of an existing community: the size of the local senate in Ch. 31 and the arrangement of seating at games in Ch. 81.

In order to resolve the question, we need to explore the use by the

first despot of Rome, Augustus, of the term 'public'. Much idle controversy has surrounded the question of whether or not Augustus claimed to have 'restored the republic' and if so what he meant by this claim. Down to Caesar, the term 'public' was used indifferently to refer to the affairs of Rome or those of a subordinate community, whether a Roman colony, a Latin colony or a Roman *municipium*. It is of course this fact that explains the transfer from Roman practice to local law, first no doubt to Roman colonies, as in the case of Puteoli, and then after Sulla more widely, of the vocabulary of *praedes* and *praedia*. By the time we get to Ulpian, and the early third century AD, the position, at any rate in theory, is different (*Digest* L, 16, 15): 'The goods of a subordinate community are wrongly called public; for only those things are public which belong to the whole Roman people'. When did this change occur and why?

It certainly occurred between the time of Caesar and the *Lex Coloniae Genetivae* on the one hand and the *Lex Flavia* on the other hand. At some point and at someone's behest, a draftsman went through the relevant clauses and replaced 'publicus' and its cognates, in reference to the affairs of the community, with 'communis' and its cognates, not with one hundred per cent accuracy, but very nearly. One would expect such a move near the beginning of the Principate, rather than later; and it was Augustus who was responsible, I think.

Let me explain why. In an article which I have already mentioned, E. Gabba has shown how, as Republican institutions ceased to function, decrees of the councils of the communities of Italy came to the fore as expressions of public opinion. Naturally, when Cicero refers to them, he refers to them by way of the word 'publicus' and its cognates. The corollary of the shift of usage which I have been describing would have been that the term 'publicus' should no longer have been employed.

It will not come as a surprise to you to be reminded that when Augustus wished in his *Res gestae* (Ch. 9) to describe the prayers for his health offered by the communities of Italy, he described them as being offered *municipatim*, by *municipia*. This unbeautiful, if correct, adverb is otherwise used only once in the whole surviving body of texts in Latin, by Suetonius (*Caes.* 14), clearly echoing the passage of the *Res gestae* I have just mentioned. There seems little doubt that Augustus coined the word, because he did not wish to use the term 'publice' for the act of a subordinate community. We can in my view be reasonably certain that the dating of the standard local charter, roughly in the form we have it, is Augustan, though I do not think that Augustus ever passed a *Lex Julia municipalis* through the *comitia*. And whatever Augustus may or may not have done to the *res publica populi Romani*, he certainly invested it with the empty dignity of uniqueness.

NOTES

1 *SCO* 21 (1972), 73–112 = *Italia Romana* (Como, 1994), 63–103. The legislative texts discussed here, with the exception of the *Lex Flavia*, may be found in M.H. Crawford (ed.), *Roman Statutes* (London, 1995); for the *Lex Flavia*, see now F. Lamberti, *Tabulae Imitanae* (Naples, 1993). Journal abbreviations are those of *L'Année philologique*.

2 E. Gabba, *Ath* 76 (1988), 203–4 = *Italia Romana*, 145–7, 'Municipium Augustum Veiens'.

3 See Th. Mommsen, in *CIL* X, 1 (1883), p. 90; *Inscriptiones Italiae* XIII, 2, pp. 60–1.

4 *RSI* 98, 3 (1986), 653–63, 'Le città italiche del I sec. a.C. e la politica' = *Italia Romana*, 123–32.

5 *RFIC* 99 (1971), 489–501, 'Per la storia dell'Etruria in età imperiale'.

M. H. CRAWFORD, *Fellow of the British Academy*

Department of History, University College London, Gower Street, London, WC1E 6BT

Roman towns and their charters: legislation and experience

There is very considerable continuity from the earliest to latest of the texts that we have that are designed either for a single community or, as in the case of the Lex Flavia, for a specific group of named communities. The late Republic and the Triumviral period witnessed the creation of legislation of a different kind in the shape of the Tabula Heracleensis and the Lex de Gallia Cisalpina. The paper explores the relationship between these texts and the sequence of charters that goes from the late fourth century BC to the Flavian period and seeks to explain why the innovations of the late Republic and the Triumviral period had little impact on the development of charters thereafter.

Ciudades Romanas y sus leyes municipales: legislación y experiencia

Entre las leyes municipales creadas para una comunidad individual o, como en el caso de la Lex Flavia, para un grupo específico de comunidades, existe una fuerte continuidad desde las más antiguas hasta las más tardías. La época trado-republicana y triunviral vio la creación de una legislación distinta, como la de la Tabula Heracleensis y la Lex de Gallia Cisalpina. La ponencia analiza la relación entre estos textos y la secuencia de leyes que va desde el siglo 4 a.C hasta la época flavia e intenta explicar por qué las innovaciones de la época tardo-republicana y triunviral tuvieron un impacto tan mínimo sobre el desarrollo de las leyes posteriores.