

MATER FAMILIAS

SCRITTI ROMANISTICI PER MARIA ZABŁOCKA

A CURA DI

**ZUZANNA BENINCASA
JAKUB URBANIK**

CON LA COLLABORAZIONE DI

**PIOTR NICZYPORUK
MARIA NOWAK**

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Mater Familias
Scritti per Maria Zabłocka

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**SOME COMMENTS ON THE ROLE OF THE QUAESTOR
AS A PROSECUTOR IN CRIMINAL PROCEEDINGS
IN THE TIMES OF THE ROMAN REPUBLIC**

THE OFFICE OF QUAESTOR is one of the most mysterious offices in the ancient Rome. This does not only apply to the genesis of the magistrature¹ but also to the scope of authority vested in the officials during the Republic,² or even nomenclature related to it.³ The information found in some literature sources is even more puzzling as it makes references to the quaestor as an official acting as a prosecutor in criminal proceedings.

¹ Cf. K. LATTE, 'The origin of the Roman quaestorship', [in:] K. LATTE, *Kleine Schriften zu Religion, Literatur und Sprache der Griechen und Römer*, München 1968, pp. 359–366; D. CLOUD, 'Motivation in ancient accounts of the early history of the quaestorship and its consequences for modern historiography', *Chiron. Mitteilungen der Kommission für Alte Geschichte und Epigraphik* 33 (2003), pp. 93–107; J. M. COELLO, 'Los cuestores republicanos. Origen, funciones y analogías', *Klio* 96.2 (2014), pp. 502–538; P. KOŁODKO, 'The genesis of the quaestorship in the ancient Rome. Some remarks', *Legal Roots The International Journal of Roman Law, Legal History and Comparative Law* 3 (2014), pp. 269–280.

² Cf. a recent article of Viera.V. DEMENTYEVA, 'The functions of the quaestors of archaic Rome in criminal justice', *Diritto@Storia. Rivista Internazionale di Scienze Giuridiche e Tradizione Romana*, 8 (2009).

³ Quaestores parricidii, quaestor urbanus, quaestores classici – cf. A. LINTOTT, *The Constitution of the Roman Republic*, Oxford 1999, p. 135. Cf. NICOLETTI, s.v. «quaestores», *NNDI* XIV (Torino 1967), p. 616; G. WESENER, s.v. 'quaestor', *PWRE* XXIV (1963), coll. 803–806, 811–819.

The first information in this regard may be found in *ab Urbe condita*, and concerns a colourful character of Rome in the early times of the Republic, *i.e.* consul Sp. Cassius, who was appointed to the office three times (D.H. VIII 68.1).⁴ Before we find out more about the activities of this quaestor, it is necessary to present the context of the events which led to the prosecution of this official.

The course of events that preceded the accusation of the consul of *perduellio*⁵ was presented, in quite a detail, both by Livy (II 41) and Dionysius of Halicarnassus (VIII 69–80), although these presentations differ from each other in terms of several details. Both of them indicate that Sp. Cassius sought to implement an agrarian reform,⁶ which was similar in its assumptions and effects to the one implemented in the second century BC by the Gracchus brothers.⁷ Sp. Cassius and the other consul – Proculus Verginius – came into conflict on the subject of the specific arrangements regarding the agrarian reform.⁸ In order to alleviate the dispute, both the adversaries reached for various remedies. Their aim was to persuade both the senators and the plebeians into their way of thinking. Ultimately, the camel's back was broken by the proposal made by Sp. Cassius to distrib-

⁴ Cf. Th. MOMMSEN, 'Sp. Cassius, M. Manlius, Sp. Maelius, drei Demagogen der älteren römischen Republik', [in:] idem, *Römische Forschungen* 11, Berlin 1879, p. 153; O. LICNADRO, *In magistratu damnari. Ricerche sulla responsabilità dei magistrati romani durante l'esercizio delle funzioni*, Torino 1999, p. 142 footnote 9; Ch. SMITH, 'Adfectatio regni in the Roman Republic', [in:] S. LEWIS (ed.), *Ancient Tyranny*, Edinburgh 2006, p. 50; Judy E. GAUGHAN, *Murder Was Not a Crime: Homicide and Power in the Roman Republic*, Austin 2010, p. 29.

⁵ Cf. LATTE, 'The origin' (cit. n. 1), pp. 360–361; A. LINTOTT, 'The tradition of violence in the annals of the early Roman Republic', *Historia: Zeitschrift für Alte Geschichte* 19.1 (1970), p. 18; CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 99.

⁶ Livy even said that it had been the first attempt at the agrarian reform, II 41: 'tum primum lex agraria promulgata est, numquam deinde usque ad hanc memoriam sine maximis motibus rerum agitata ...'. Cf. Ch. SMITH, 'Adfectatio regni' (cit. n. 4), p. 50.

⁷ A. LINTOTT, 'The tradition of violence' (cit. n. 5), p. 18.

⁸ A wider background of the dispute, boiling down to contestation of the size of the excess land, as well as arguments of the opponents, may be found in the papers by Livius (Liv. II 41.4–9), and an even wider perspective was presented by Dionysius of Halicarnassus (D.H. VIII 78.1–5). Cf. also MOMMSEN, 'Spurius Cassius' (cit. n. 4), p. 160–161; Barbette S. SPAETH, *The Roman Goddess Ceres*, Austin 1996, p. 72.

ute the receipts from the sale of grain in Sicily among the people (Liv. 11 41.8). This offer was regarded as an attempt to buy the favour of the people for his plans regarding land distribution as part of the proposed agrarian reform. As a result, the intentions of Sp. Cassius were understood as seeking to restore the hated monarchy (Liv. 11 41.9),⁹ and accordingly, steps were taken in order to prevent it. The official was accused of attempts to restore monarchy (*a ectatio regni*),¹⁰ which, in the early times of the Roman Republic, belonged to the broad concept of *perduellio*.¹¹

However, it is worth emphasising that the preserved sources present two alternative versions of the proceedings involving the consul and a different sequence of events.¹² In *ab Urbe condita*, the following information is reported in the first place:

Liv. 11 41.9: Quem, ubi primum magistratu abiit, damnatum necatumque constat. sunt, qui patrem auctorem eius supplicii ferant: eum cognita domi causa verberasse ac necasse peculiumque filii Cereri consecravisse; signum inde factum esse et inscriptum 'ex Cassia familia datum.'

There is no doubt that after his terms of office, Sp. Cassius was convicted to death and executed. However, interestingly enough, the entire proceedings took place within the framework of the family court (*iudicium domesticum*),¹³ as evidenced by the phrase *cognita domi causa*. This

⁹ In addition, Dionysius of Halicarnassus provides information that Sp. Cassius allegedly received from *Herinci* and *Latini* (included in the agrarian reform) both money and weapons, which would confirm the return to tyranny (D.H. VIII 78.2) as a form of power attributed to kings.

¹⁰ Cf. in particular: Liv. 11 41.9; D.H. VIII 78; Cic. *Rep.* 11 60; Plin. *NH* XXXIV 15; XXXIV 30. Cf. J. M. LIBOUREL, 'An unusual annalistic source used by Dio Cassius', *The American Journal of Philology* 95.4 (1974), p. 387.

¹¹ W. OSUCHOWSKI, 'The origins of the prosecuting high treason in the Roman Republic', *Archivum Iuridicum Cracoviense* 11 (1978), p. 58; Marzena DYJAKOWSKA, *Crimen laesae maiestatis. Studium nad wpływami prawa rzymskiego w dawnej Polsce* [*Crimen laesae maiestatis. A Study on the Impact of the Roman Law in Old Poland*], Lublin 2010, p. 25.

¹² Dionysius of Halicarnassus as the first and more reliable to him, presented version of the death of the consul in which they were involved quaestors (VIII 78, VIII 79.3–4).

¹³ Extensive literature regarding *iudicium domesticum* was presented by Carla FAYER *La familia romana. Aspetti giuridici ed antiquari. Concubinato, divorzio, adulterio* III, Roma 2005,

entails that his father¹⁴ had to exercise *patria potestas* over the consul, and by imposing the death penalty on his son, preceded by flogging¹⁵ – in accordance with the customs of their ancestors (*more maiorum*), he proved that he treated the interest of the Republic as more important than that of his own family.¹⁶

It is also worth considering another equally interesting information. As Livy explained, the *peculium* which belonged to his son¹⁷ was dedicated

p. 197, n. 27. Recently about *iudicium domesnticum* – Nunzia DONADIO, 'Iudicium domesticum – riprovazione sociale e persecuzione pubblica di atti commessi da sottoposti alla patria potestas', *Index* 40 (2012), pp. 175–195.

¹⁴ The involvement of the father in the death of the son is more pronounced by Dionysius of Halicarnassus (VIII 79.1). The Greek historian points out that it was the *pater familias* who informed the senate of the doings of his son, and afterwards, became his prosecutor, and by decision of the senate in the case of Sp. Cassius, was authorised to execute the death sentence. Cf. CLOUD, 'Motivation in ancient accounts' (cit. n. 1), pp. 99–100; DEMENTYEVA 'The functions of the quaestors' (cit. n. 2).

¹⁵ More information on the subject of flogging and its role in the ancient times – cf. J. GEBHARDT, *Prügelstrafe und Züchtigungsrecht im antiken Rom und in der Gegenwart*, Köln – Weimar – Wienn 1994.

¹⁶ F. MÜNZER, s.v. «Sp. Cassius Vecellinus 90», *PWRE* III 2 (1899), col. 1751; GAUGHAN, *Murder Was Not a Crime* (cit. n. 4), pp. 28–29.

¹⁷ It would be rather difficult to accept that the term *peculium* should be linked to the institution of *peculium quasi castresne*, which was known in the Roman law, because it evolved in the practice of the late Roman Empire – cf. I. ŽEBER, *A Study of the Peculium of a Slave in Pre-classical and Classical Roman Law*, Wrocław 1981, p. 7; L. MASTRANGELO, 'Il *peculium quasi castrense*. Privilegio dei *palatini* in età tardo antica', *Revue internationale des droits de l'Antiquité* 52 (2005), pp. 261–308. More likely, considering the period in which the historian wrote *ab Urbe condita*, the information provided by Livius should be linked to *peculium castrense*, emerging since the beginning of the principate and the rule of Augustus – I. ŽEBER, *A Study of the Peculium* (cit. n.16); Jane F. GARDNER, *Being a Roman Citizen*, London – New York 1993, p. 62; Sara E. PHANG, *The Marriage of Roman Soldiers (13 BC–AD 235). Law and Family in the Imperial Army*, Leiden-Boston-Köln 2001, p. 90. The link between the term *peculium*, as interpreted by Livy, and the institution of *peculium castrese* seems justified, given the fact that Sp. Cassius held the office of consul for three tenures, and as a victorious triumphant commander, he must have had some spoils of war. On the other hand, we should remember that legal sources (*IJust.* 2.12 *pr.*) mention *peculium castrese* in the context of Augustus and subsequent emperors, therefore, it is more reasonable to assume that Livy, when writing generally on the subject of *peculium*, in fact, anticipated the emergence of an institution which was formed in his times, *ie. peculium castrese*. If we accept this assumption as correct, it will be easier for us to understand the objections by

to the goddess Ceres,¹⁸ and a part of it was used to make a statue with an inscription indicating the founders (*ex Cassia familia datum*). There is little doubt that it was *consecratio bonorum* that accompanied the accusations regarding attempts to restore monarchy (*a ectatio regni*),¹⁹ which must have been the case in the proceedings involving consul Sp. Cassius. However, certain objections may be related to the assets devoted to the goddess, taking into account the potential subordination of the consul to *patria potestas*. The only rational explanation for the confiscation of the assets of the convicted official (or as Dionysius of Halicarnassus once put it [VIII 79.3]: for utterly destroying his house and taking possession of the assets by the state,) was the consent of Sp. Cassius' father to the action taken against his son, dictated both by willingness and obligation to manifest his disapproval of the convicted consul's deeds.²⁰ Given the accuracy of such assumptions, the doubts related to the issue in question can be satisfactorily explained.

The above quotation by Livy (supplemented by the information provided by Dionysius) refers to the execution of the death sentence by the father. Let us now find out more about the alternative version of the consul's death.²¹ Once again, the starting point is a quotation from *ab Urbe condita*:

Dionysius of Halicarnassus (VIII 79.3–4) that it would be rather difficult to accept the fact that a son under the supervision of his *patria potestas* would have any assets of his own. Accordingly, the Greek historian believes that the version of the consul's death from the hands of his own father is less reliable. A slightly different opinion was presented by LINTOTT, 'The tradition of violence' (cit. n. 5), p. 20.

¹⁸ Cf. SPAETH, *The Roman Goddess* (cit. n. 8), p. 72.

¹⁹ Cf. W. LITEWSKI, *Rzymski proces karny* [The Roman Criminal Procedure], Kraków 2003, pp. 23–24.

²⁰ Cf. A. LINTOTT, 'The tradition of violence' (cit. n. 5), p. 20.

²¹ In his version, Dionysius of Halicarnassus (VIII 78.5) mentions that the former consul was thrown off the Tarpeian Rock by quaestors. R. Pesaresi raised doubts as to such a form of execution of *consecratio capitis* – R. PESARESI, *Studi sul processo penale in età repubblicana. Dai tribunali rivoluzionari alla difesa della legalità democratica*, Napoli 2005, p. 69 footnote 216. By the way, in the case of Sp. Cassius, the death sentence by throwing off the Tarpeian Rock (*consecratio capitis*) was only one of the elements confirming the reprehensible deed of which he was accused and which was proven to him. Another question which must be mentioned is the *consecratio bonorum* to the goddess Ceres. It is obvious that in

Liv. II 41.11: Invenio apud quosdam, idque propius fidem est, a quaestoribus
Caesone Fabio et L. Valerio diem dictam perduellionis, damnatumque
populi iudicio ...

It should be pointed out that Livy did not only name the two quaestors²² who persecuted the consul in the matter of *perduellio* but he also provided additional information on the conviction of the official by way of judgment passed by the assembly of the people,²³ *i.e. iudicium populi*. However, it should be mentioned that the participation of the quaestors in the proceedings, in their capacity of persecutors, may be surprising to a certain extent. While conducting a detailed investigation into this issue, Cloud²⁴ stated that between the years 491–391 BC Livy provided information on

this case, two Roman deities – Jupiter, to whom the Tarpeian Rock was devoted, and Ceres could be perceived as the beneficiaries of the outcomes of the deeds committed by Sp. Cassius. More information on the role and importance of execution by throwing off the Tarpeian Rock may be found in the article by U. VINCETTI, '*Falsum testimonium dicere* (XII tab. 8.23) e il processo di Marco Volscio Fittore (Liv. 3, 29, 6)', [in:] A. BURDESE (ed.), *Idee vecchie e nuove sul diritto criminale romano*, Padova 1988, pp. 25–34.

²² The quaestors mentioned by Livy were K. Fabius Vibulanus and L. Valerius (Potitus) – see: T. R. S. BROUGHTON, *The Magistrates of the Roman Republic* I. 509 BC–100 BC, New York 1951, p. 22. The names of the quaestors are also identified in the writings of Dionysius of Halicarnassus (VIII 77.1). However, Cicero mentions only one official – Cic. *Rep.* II 60: 'Quo in statu rei publicae Sp. Cassium de occupando regno molientem, summa apud populum gratia florentem, quaestor accusavit, eumque ut audistis cum pater in ea culpa esse conperisset se dixisset, cedente populo morte mactavit'. Given the fact that only one quaestor is mentioned by him, perhaps he referred to the quaestor personally ascribed to Sp. Cassius as the officiating consul. The weakness of this argument was disclosed by CLOUD. 'Motivation in ancient accounts' (cit. n. 1), p. 100, 16, who clearly indicates that the trial against Sp. Cassius was held after the tenure of the consul. He offers an even more intriguing interpretation of the phrase, *ie. cedende populo*, which seems to be quite reasonable.

²³ MÜNZER, s.v. 'Sp. Cassius Vecellinus 90' (cit. n. 16), col. 1750; DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2).

²⁴ Among this number, there are references only to three trials with the participation of quaestors and on a few single occasions, references to the activities of the aedile – CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 100. More consideration to the role of the aedile in the context of *iudicium populi* is given by L. GAROFALO. *Il processo edilizio. Contributo allo studio dei iudicia populi*, Padova 1989.

nineteen²⁵ criminal proceedings before the popular assembly, the majority of which (14) were proceedings with the participation of the tribune of the plebs acting as a prosecutor. Another important question which should be mentioned here is the identity of the official convening the assembly of the people. Undoubtedly, those should have been *comitia centuriata*, as the proper venue for resolving *de capite civis Romani* matters. Although Livy did not make any direct reference to them, we may as well assume that *comitia centuriata* were the type of the plebeian assembly involved in the matter. Nevertheless, identification of the official responsible for convening *populus Romanus* is even more puzzling. Although there are sources indicating that such an authority was vested in the quaestor,²⁶ we should interpret them with a high degree of prudence. It would be rather difficult to assume that Varro did in fact vest the right to convene *populus Romanus* in the quaestor. Th. Mommsen presented a more convincing approach to this issue. According to him, the right to convene *populus Romanus* by the quaestor resulted from the delegation of *imperium* by the person with the actual authority in this regard (e.g. a consul).²⁷ However, it seems that this view should be rather abandoned and more credit should be given to the thesis that in this particular case we are dealing with *contio* rather than *comitia*. This is not only due to the lack of precision of Varro's language but also to the basic function performed by *contiones*.²⁸ Such assemblies served reporting and information purposes, and they were convened by various interested parties. Their organisation did not take into account the division of the society by *curia*, *tribus* or *centuria*.²⁹ *Contiones* were regarded as the first stage of the assembly of the people, held for the purpose of pres-

²⁵ CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 100.

²⁶ Varro, *LL* VI 90: 'Circum muros mitti solitum, quo modo inliceret populum in eum locum, unde vocare posset ad contionem, non solum ad consules et censores, sed etiam quaestores, Commentarium indicat vetus Anquisitionis M'. Sergii, Mani filii, quaestoris, qui capitis accusavit Trogum'. Cf. also a recent article by R. FIORI, 'La convocazione dei comizi centuriati', *ZRG RA* 131 (2014), pp. 120–123.

²⁷ DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2).

²⁸ DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2).

²⁹ Cf. A. DĘBIŃSKI, Joanna MISZTAŁ-KONECKA & Monika WÓJCIK, *Prawo rzymskie publiczne* [The Roman Public Law], Warszawa 2010, p. 32; J. ZABŁOCKI & Anna TARWACKA, *Pub-*

entation of views, before the final voting at *comitia*. Thus, it seems that quaestors may have been able to convene a *contio*, in order to present the case entrusted to them, and afterwards, *populus Romanus* had the task of taking a substantive standpoint at the proper *comitium*, which was convened by a magistrate official vested with *imperium*.³⁰

The identification of the official authorised to convene the *comitia* is not the only noteworthy question. We should also take a more in-depth look into the next issue, *ie.* the scope of jurisdiction of quaestors in criminal proceedings.

Both Livy and Dionysius of Halicarnassus mention that a former consul, Sp. Cassius, was tried for committing *perduellio*, allegedly manifested by his attempts at restoring monarchy (*a ectatio regni*). This information becomes especially potent as it was mentioned in the context of the prosecuting authority of quaestors.³¹ It should be remembered that already in the reign of kings, two different offices were established for the purpose of prosecuting the most serious crimes – *i.e.* *duumviri perduellionis*³² involved in prosecuting offenders accused of committing *perduellio* and *quaestores parricidii*³³ with jurisdiction over offenders committing *parricidium*.³⁴ However,

liczne prawo rzymskie [The Public Roman Law], Warszawa 2011, p. 68; F. PINA POLO, *The Consul at Rome. The Civil Functions of the Consuls in the Roman Republic*, New York 2011, pp. 89–95.

³⁰ DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2).

³¹ LATTE, 'The origin' (cit. n. 1), pp. 360–361, stated that it would be quite reasonable to expect that in the case of such allegations *duumviri perduellionis*, instead of quaestors, should be involved. Cf. A. DRUMMOND, 'Rome in the fifth century II. The citizen community', [in:] F. W. WALBANK, E. A. ASTIN, M. W. FREDERIKSEN & R. M. OGILVIE (eds.), *The Cambridge Ancient History* VII 2. *The Rise of Rome to 200 BC*, Cambridge 1989, p. 194–195.

³² More information on the subject of activities of such officials in criminal proceedings is provided by B. SANTALUCIA, 'Osservazioni sui duumviri perduellionis e sul procedimento decemvirale', [in:] *Estudios de derecho romano en honor de Alvaro D'Ors* II, Pamplona 1987, pp. 1039–1055 [= IDEM, *Studi di diritto penale romano*, Roma 1994, pp. 35–48]; cf. also CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 101, n. 22.

³³ Recent publication on the subject of *quaestores parricidii* – cf. M. JOŃCA, *Parricidium w prawie rzymskim* [Parricidium in Roman law], Lublin 2008, pp. 56–70; COELLO, 'Los cuestores republicanos' (cit. n. 1), p. 512–514; P. KOŁODKO, 'The genesis of the quaestorship' (cit. n. 1), pp. 275–279.

³⁴ Cf. DĘBIŃSKI, MISZTAŁ-KONECKA & WÓJCIK, *Prawo rzymskie publiczne* (cit. n. 29), p. 162; ZABŁOCKI & TARWACKA, *Publiczne prawo rzymskie* (cit. n. 29), pp. 34–35.

this division of tasks and responsibilities was not rigid or unchallengeable since the information available in the preserved sources does not allow for a precise separation of the penal authorities of these two offices. Accordingly, Th. Mommsen³⁵ argued that assistants to consuls had the authority to prosecute at *comitia centuriata* in all matters, except for offences classified as *perduellio*, as such crimes belonged to the competence of the aforementioned *duumviri perduellionis*. If we were to accept this view as correct, it would be difficult to explain why the preserved sources link quaestors to the state treason (*perduellio*) committed by Sp. Cassius. In the case of Livy, we could try to explain the information provided by him in terms of a mistake³⁶ or an error. However, we may not discredit the other source materials³⁷ relating to the trial of the former consul – Sp. Cassius. Thus, it seems that the most convincing position was taken by B. Santalucia who argued that quaestors had been involved in conducting criminal proceedings related to all types of offence, including *perduellio*, except when the perpetrator acted in a reprehensible manner, as in such cases the competence was vested in the extraordinary magistrates, *i.e. duumviri perduellionis*.³⁸ If we agree with

³⁵ TH. MOMMSEN, *Römisches Strafrecht*, Leipzig 1899 (reprint Darmstadt 1955), pp. 155–156; *Römisches Staatsrecht* II 1, Leipzig 1887 (3 ed.), pp. 537–542.

³⁶ CLOUD, ‘Motivation in ancient accounts’ (cit. n. 1), p. 100. The fact that the historical nature and authenticity of the first decade as presented in *ab Urbe condita* is challenged in the literature should be also taken into account. It has been emphasised that the events up to 387 BC (Gaul invasion of Rome), as presented by Livy, are quite disputable and rather seem to be his anticipations – cf. J. BRISCOE, ‘The first decade’, [in:] T. A. DOREY (ed.), *Livy*, London – Toronto 1971, pp. 1–20; M. L. W. LAISTNER, *The Greater Roman Historians*, Berkeley – Los Angeles 1971 (4 ed.), pp. 65–102; G. B. MILES, *Livy: Reconstructing Early Rome*, New York 1995; T. J. LUCE, ‘The dating of the first decade’, [in:] J. D. CHAPLIN & Ch. S. KRAUS (eds.), *Livy*, New York 2009, pp. 17–48. Recently, a multifaceted book has been published on the subject of Livy – cf. B. MINEO (ed.), *A Companion to Livy*, Oxford 2015, pp. 504.

³⁷ LICANDRO, *In magistratu damnari* (cit. n. 4), p. 144, does not only question the versions presented by Livy or Dionysius of Halicarnassus, but he also believes that the version regarding participation of quaestors in the trial of Sp. Cassius is much more reliable than the one making references to the activity of his *pater familias*.

³⁸ Cf. CLOUD, ‘Motivation in ancient accounts’ (cit. n. 1), p. 101. A similar standpoint was expressed by DEMENTYEVA, ‘The Functions of the quaestors’ (cit. n. 2), who perceives *duumviri perduellionis* as extraordinary officials, appointed for the purpose of conducting the investigation, prosecuting the accused, and finally, executing the sentence. Cf. also LITEWSKI, *Rzymski proces* (cit. n. 19), pp. 26; 29; 33.

this thesis, the interpretation of the preserved source materials relating to the case of Sp. Cassius will become much more simple. Nevertheless, we should also mention another question. It would be rather difficult to assume that such broad jurisdiction vested in quaestors would not be reflected in numerous source materials pertaining to the same. The examples of activities of quaestors, described in an exceptionally small number of preserved sources, may suggest that the annalistic tradition sought to give more prominence, at the expense of quaestors, to the role played by plebeian tribunes as the prosecuting authority.³⁹ In this context, we should also remember about W. Kunkel's views.⁴⁰ According to Kunkel, the scarcity of information on the prosecuting activities of quaestors should be associated with the absence of references to their activities in general in the earlier times. The sources used by Livy and Dionysius of Halicarnassus in the preparation of their versions of the history of Rome might have contained very few facts evidencing the role of quaestors as prosecutors in criminal proceedings. Perhaps, that is why the information on quaestors appeared later than the information on the tribunes of the plebs as public prosecutors.⁴¹ However, it should be pointed out that the issue of the interrelations among tribunes of the plebs, *duumviri perduellionis* and the quaestors may not be finally resolved due to the fragmentary nature of preserved source materials.

Another trial (in the years 459–458 BC)⁴² in which quaestors played an active role, is related to a former plebeian tribune – Marcus Volscius

³⁹ It should be noted here that a few years earlier, in 491 BC, G. Marcius Corolianus was sentenced to exile, and his case was also related to agrarian matters; this time, it was the price at which the Sicilian grain should be sold to the plebeians – cf. Liv. II 34.7–12. However, interestingly enough, plebeian tribunes acted as prosecutors in these proceedings – Liv. II 35. 2–7. Cf. also CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 101.

⁴⁰ W. KUNKEL, *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit*, München 1962, pp. 34–36.

⁴¹ Cf. CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 101.

⁴² The whole trial fit in perfectly with the features of the fifth century BC and was reported in detail by Livy (Liv. III 11–14), as well as Dionysius of Halicarnassus (D.H. x 5–8). Cicero was also aware of it (Cic. *Dom.* 86). A synthetic description of the trial was presented by CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 102 and B. MINEO (ED.), VINCETTI, 'Falsum testimonium dicere' (cit. n. 21), p. 34.

Fictor,⁴³ accused of false testimony (*falsum testimonium*) submitted against Caseo Quinctius.⁴⁴ It is worth emphasising that references to this trial were only made by Livy,⁴⁵ on a few occasions, in his *ab Urbe condita*:

Liv. III 24.3: A. Cornelius et Q. Servilius quaestores M. Volscio, quod falsus haud dubie testis in Caesonem extitisset, diem dixerant. multis enim emanabat indiciis neque fratrem Volsci, 4. ex quo semel fuerit aeger, umquam non modo visum in publico, sed ne adsurrexisse quidem ex morbo multorumque tabe mensum mortuum, 5. nec iis temporibus, in quae testis crimen coniecisset, Caesonem Romae visum, adfirmantibus, qui una meruerant, secum eum tum frequentem ad signa sine ullo comaeatu fuisse. nisi ita esset, multi privatim ferebant Volscio iudicem. 6. Cum ad iudicium ire non auderet, omnes eae res in unum congruentes haud magis dubiam damnationem Volsci, quam Caesonis Volscio teste fuerat, faciebant. 7. In mora tribuni erant, qui comitia quaestores habere de reo, nisi prius habita de lege essent, passuros negabant. ita extracta utraque res in consulum adventum est.

⁴³ The preserved source materials are not consistent in terms of M. Volscius Fictor holding the office of tribune of the plebs. Livy believes that at the start of the trial, M. Volscius Fictor was already an ex-plebeian tribune (III 13.1), similarly to Val. Max. (IV 1.4), whereas Dionysius of Halicarnassus (X 7.1.) presented a contrary opinion. In science, it is assumed that the trial was held at the time when M. Volscius Fictor did not hold the office of plebeian tribune. Cf. G. NICCOLINI, *I Fasti dei tribuni della plebe*, Milano 1934, p. 19; BROUGHTON, *The Magistrates* (cit. n. 22), p. 37.

⁴⁴ Cf. R. HANSLIK, s.v. 'Quinctius 27', *PWRE* XXIV (1963), col. 1020. The reason for initiating the action against Caseo Quinctius was an event related to a brawl involving M. Volscius Fictor and his older brother who, due to some unhealed, previously incurred injuries, was badly injured once again during the fight, and subsequently died, at least this is how M. Volscius Fictor perceived this matter – compare Liv. III 13.2; Liv. III 24.3. It should be mentioned here that Caseo Quinctius was not just a common Roman – his father, L. Quinctius Cincinnatus, held the office of dictator in 458 BC, and as reported by Livy (Liv. III 29.6–7), influenced the final outcome of the trial against a former plebeian tribune – cf. BROUGHTON, *The Magistrates* (cit. 22), p. 39. Recently, the dictatorship of L. Quinctius Cincinnatus in terms of the style used by Livy in *ab Urbe condita*, has been presented by Ann VASALY, *Livy's Political Philosophy. Power and Personality in Early Rome*, Cambridge 2015, pp. 85–91.

⁴⁵ Dionysius of Halicarnassus did not have any knowledge of the trial. Cf. also CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 103 and VINCETTI, '*Falsum testimonium dicere*' (cit. n. 21), pp. 35–36.

The foregoing information indicates that two quaestors played an active role in bringing the former plebeian tribune to account – A. Cornelius and Q. Servilius, holding their respective offices in 459 BC.⁴⁶ The immediate cause which gave rise to the allegations formulated by these quaestors was the lack of connection between the death of M. Volscius Fictor's brother and the quarrel (brawl) with the participation of Caseo Quinctius, among others. M. Volscius Fictor's brother died as a result of illness developed by him, which prevented him from making public appearances. Moreover, at the time when the former plebeian tribune made allegations against Caseo Quinctius, the latter was staying outside Rome.⁴⁷ It is worth emphasising that the trial conducted before the assembly of the people did not end in M. Volscius Fictor's conviction.⁴⁸ This was due to the objection, by way of *intercession*,⁴⁹ of the plebeian tribunes,⁵⁰ although as the chronicler points out, the question of sentencing the former tribune of the plebs was rather a foregone conclusion ('omnes

⁴⁶ Cf. BROUGHTON, *The Magistrates* (cit. n. 22), p. 38.

⁴⁷ Cf. G. MACCORMAC, 'Witness in the law of XII tables', *BIDR* 76 (1973), p. 242.

⁴⁸ It should be also mentioned here that M. Volscius Fictor could have exercised his rights under private law since he had objections to the attitude of Caseo Quinctius. However, he did not exercise such rights – compare Liv. III 24.5–6, probably because he was afraid of the negative consequences of this case for himself – cf. DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2). Moreover, we cannot rule out that the failure to pursue his rights under private law was not a deliberate trick on the part of M. Volscius Fictor. The weakness of his arguments and evidence against Caseo Quinctius, in all probability, would not be favourably received by a judge in a private law procedure. Therefore, by moving the prosecution to the instance of the assembly of the people, he was given the opportunity for a more favourable outcome of the trial, especially given the ongoing struggle of classes in the fifth century BC – Caseo Quinctius was persecuted by a tribune of the plebs – A. Verginius (cf. Liv. III 11.9); BROUGHTON, *The Magistrates* (cit. n. 22), p. 38. This hypothesis does not find any direct reflection in the preserved source materials. However, it seems that this hypothesis enables us to explain why M. Volscius Fictor did not decide to pursue his action under private law. Also cf. the last comments on the techniques used by Livy in his presentation of the background of the proceedings between M. Volscius Fictor and a young representative of the patricians – Caseo Quinctius – VASALY, *Livy's Political Philosophy* (cit. n. 44), p. 83–85.

⁴⁹ PESARESI, *Studi sul processo penale* (cit. n. 21), p. 42.

⁵⁰ The tribune of the plebs was A. Verginius – BROUGHTON, *The Magistrates* (cit. n. 22), p. 38.

cae res in unum congruentes haud magis dubiam damnationem Volsci, quam Caesonis Volscio teste fuerat, faciebant'). As a result of activities of the plebeian tribunes, the M. Volscius Fictor's case and its conclusion had to be postponed until the arrival of the consuls.

One might be tempted to say that the plebeian tribunes' action was motivated by the desire to protect M. Volscius Fictor as a person holding the same office. Indeed, Livy does not provide any direct evidence to confirm this hypothesis but the perusal of the entire context of both these trials (M. Volscius Fictor vs. Caseo Quinctius, quaestors vs. M. Volscius Fictor) confirms that the mutual animosity between plebeians and patricians constituted the background for these events.⁵¹

The unresolved case of the former plebeian tribune was one of the first issues to be faced by the new consuls elected in 458 BC – L. Minucius and C. Nautius.⁵² The allegations against the former plebeian tribune were resumed by the newly elected quaestors – M. Valerius and T. Quinctius Capitolinus.⁵³ In the meantime, the internal situation in Rome became even more complex, due to the threats of the Sabines, which led to some radical measures and the appointment of the dictator (Liv. III 26 1–12). All these circumstances continued to affect the unclear legal status of M. Volscius Fictor.

The case was finally closed, once the threat of the Sabines had been averted:

Liv. III 29.6: ... confestim se dictator magistratu abdicasset, ni comitia M. Volsci, falsi testis, tenuissent: ea ne inpedirent tribuni, dictatoris obstitit metus. Volscius damnatus Lanuvium in exilium abiit.

It is worth noting that this time, in their fear of the dictator, the plebeian tribunes did not contribute to the disruption of the trial. As a

⁵¹ VASALY, *Livy's Political Philosophy* (cit. n. 44), p. 83 and next.

⁵² Cf. Liv. III 25.1. BROUGHTON *The Magistrates*, (cit. n. 22), p. 39, although the author points out that the source materials do not clearly indicate whether or not L. Minucius should be treated as an ordinary consul, or rather as a *consul suffectus*.

⁵³ Liv. III 25.3; BROUGHTON, *The Magistrates* (cit. n. 22), p. 40.

result, at the *comitium*, M. Volscius Fictor was found guilty of the alleged offence – *falsum testimonium*, and sentenced to exile.

In the literature, the penal sanction applied against the offender is the subject of many discussions. It has been rightly pointed out that false testimony (*falsum testimonium*), in accordance with the Twelve Tables,⁵⁴ which was passed a few years later, was sanctioned by death penalty by throwing off the Tarpeian Rock.⁵⁵ It would be difficult to assume that the *decemviri legibus scribundis*, while codifying the customary rules in the *Twelve Tables*, would have adopted a more stringent sanction for *falsum testimonium* than the exile described by Livy. Therefore, it seems right that the penal sanction described by the historian is a result of his imagination,⁵⁶ rather than a reflection of the prevailing law at that time. This argument is further corroborated by the view expressed in the literature, according to which prior to the establishment of standing courts (*quaestiones perpetuae*), at the *comitia centuriata*, the accused would go into voluntary exile before a verdict was issued in his case, and not after the substantive settlement of the case by *populus Romanus*.⁵⁷ We should also quote here a similar opinion, also expressed in the literature, according to which the accused was able to go into voluntary exile (*exilium voluntarium*) both before the commencement

⁵⁴ Recently, a few comments on this subject have been written by B. SITEK. 'Dowód ze świadków w świetle Ustawy XII Tablic' [The evidence of witness according to Twelve Tables], [in:] Anna TARWACKA & P. NICZYPORUK (eds.), *Noctes iurisprudentiae. Scritti in onore di Jan Zabłocki*, Białystok 2015, pp. 223–224.

⁵⁵ *XII Tab.* VIII 23 (= Gell. XX I.53): 'si non illa etiam ex XII tab. de testimoniis falsis poena abolevisset et si nunc quoque ut antea qui falsum testimonium dixisse convictus esset, e saxo Tarpeio deiceretur' (as collocated in *FIRA* I; M. H. CRAWFORD, M. HUMBERT & A. D. E. LEWIS, 'Twelve Tables', [in:] M. H. CRAWFORD (ed.), *Roman Statutes* II, London 1996, p. 692 opt for VIII 12). On the norm cf. Maria & J. ZABŁOCCY. *Ustawa XII Tablic. Tekst – tłumaczenie – objaśnienia* [The Law of XII Tables. Text – Translation – Commentary], Warszawa 2003 (2 ed.), p. 60.

⁵⁶ Cf. LATTE, 'The origin' (cit. n. 1), p. 361; G. CRIFÒ, *Ricerche sull'exilium nel periodo repubblicano* I, Milano, 1961, p. 143; VINCETTI, 'Falsum testimonium dicere' (cit. n. 21), p. 41; CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 103; DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2).

⁵⁷ Cf. CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 103; DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2).

of, or during, the criminal proceedings, and – at the latest – before the announcement of the final verdict.⁵⁸ Thus, we should rather disregard the information provided by Livy as a projection of his imagination.

There are more objections which could be raised with regard to the sanction described by Livius. The literature discusses the penalty which involved throwing off the Tarpeian Rock in terms of private and public law. K. Latte,⁵⁹ in sharing Th. Mommsen's views⁶⁰ in this regard, assumes that the implementation of the criminal procedure in the case of alleged *falsum testimonium* did not entail a public law prosecution. Quite a contrary opinion was expressed by A. Burdese⁶¹ arguing that such a penalty was rather typical of publically imposed sanctions. An even more radical view was expressed by G. MacCormack⁶² stating that throwing off the Tarpeian Rock was a penalty designed for slaves who committed the crime of *falsum testimonium* or *furtum manifestum*. Otherwise, this penalty was only imposed on perpetrators who acted to the detriment of *populus Romanus*. However, it seems that the point of view expressed by G. MacCormack not deserves to be considered. First of all, it would be rather difficult – if we accept his concept – to classify the trial against M. Volscius Fictor. The former plebeian tribune was accused of *falsum testimonium*, however, was his action really to the detriment of *populus Romanus*?

It is difficult to decide clearly whether M. Volscius Fictor committed a political crime. Despite the fact that he held the office of the plebeian tribune, Caseo Quinctius was merely a representative of the patricians

⁵⁸ M. JOŃCA, 'Exilium voluntarium jako przejaw *humanitas* w rzymskim prawie karnym okresu republiki' [Exilium voluntarium as a manifestation of *humanitas* in the Roman criminal law period of the republic], [in:] R. POPOWSKI (ed.), *Humanitas grecka i rzymska*, Lublin 2005, p. 196; IDEM, 'The scope of *exilium voluntarium* in the Roman Republic', [in:] B. SANTALUCIA (ed.), *La repressione criminale nella Roma repubblicana fra norma e persuasione*, Pavia 2009, p. 77.

⁵⁹ LATTE, 'The origin' (cit. n. 1), p. 361.

⁶⁰ MOMMSEN, *Römisches Strafrecht* (cit. n. 35), pp. 668–669.

⁶¹ A. BURDESE, 'Riflessioni sulla repressione penale romana in età arcaica', *BIDR* 69 (1966), p. 342–358. Cf. also A. MAGDELAIN, 'Le ius archaïque', *MÉFRA* 98.1 (1986), pp. 332–333.

⁶² Cf. MACCORMACK, 'Witness in the law' (cit. n. 47), pp. 242–243.

who did not hold any public office. Nevertheless, we must admit that he was a truly influential person, able to control the emotions of the crowd with his speeches (Liv. III 11.6–8). Therefore, taking into account the social context, we should perhaps consider if the dispute between these two Romans was actually a political trial. It was a dispute between two rival social groups – the plebeians represented by M. Volscius Fictor, and the patricians, whose epitome was Caseo Quinctius. In addition, we cannot disregard the personal animosity and antipathy between the two adversaries, which undoubtedly underlined their legal conflict. Thus, if we perceive this case in terms of a political trial, we have to allow for the aforementioned objections.

The above findings support the complex issues involved in the criminal proceedings between M. Volscius Fictor and Caseo Quinctius. This is associated with the involvement of quaestors in the pending case, on two occasions, and also with the penalty imposed on the convict. Hence the basic question which needs to be posed – can we treat the events reported by Livy as authentic and reliable? The answer to this question is not easy, given the numerous arguments quoted by researchers⁶³ which challenge the usability of Livy's report in supporting the idea of the prosecuting authority of the quaestors. On the other hand, discrediting the events which occurred in the period between the beginnings of the Republic and the activities of the decemviri, could lead us to the conclusion that most of the information provided by historians was a projection of imagination, or expectations, of the author.⁶⁴ Thus, it seems that the best method to resolve this dispute is to search, in the source materials, for parallel facts, and only by confronting such facts will we be able to formulate a reliable hypothesis. However, the crucial problem here is the fact that we do not always have adequate comparative materials at our disposal. Consequently, the objections related to the trial: M. Volscius Fictor vs. Caseo Quinctius remain unresolved.

⁶³ Cf. LATTE, 'The origin' (cit. n. 1), p. 361; KUNKEL, *Untersuchungen zur Entwicklung* (cit. n. 40); p. 35; VINCETTI, 'Falsum testimonium dicere' (cit. n. 21), p. 38. The opposite point of view presents DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2).

⁶⁴ Cf. CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 102, n. 28.

The last trial⁶⁵ supporting the prosecuting function of the quaestor is associated with the Roman citizen of the early fourth century BC – Marcus Furius Camillus.⁶⁶ The information relating to this trial is extremely scanty, and the most important source thereof is the one provided by Pliny the Elder in his *Naturalis Historia*.

Plin. *NH* xxxiv.13: Camillo inter crimina obiecit Spurius Carvilius quaestor, ostia quod aerata haberet in domo.

Pliny the Elder mentions quaestor – Sp. Carvilius – who was the author of several accusations against Camillus. Among these accusations, there was one, as described by Pliny the Elder, which must be considered as exceptionally reprehensible, namely the fact that the accused had brown doors in his house. Clearly, the author makes references here to the theft of public property (*peculatus*) by the conqueror of Etruscan Veii. Interestingly, the issue of the date of the trial gives rise to numerous disputes between researchers. Two dates are provided, namely 396⁶⁷ BC, *i.e.* the year of the conquest of Veii, and 391 BC⁶⁸ – the time of the war with

⁶⁵ The preserved source materials also mention the trial dating back to the middle of the third century BC, during which quaestors played quite an active role. However, it is sufficient to make references to the synthetic information on this matter described in the literature – cf. LATTE, 'The origin' (cit. n. 1), pp. 361–362; CLOUD, 'Motivation in ancient accounts' (cit. n. 1), pp. 104–105; DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2).

⁶⁶ In 396 BC, he held the office of dictator – cf. TBROUGHTON, *The Magistrates* (cit. n. 22), p. 87. The military achievements and a synthetic description of this character were presented by A. MOMIGLIANO, 'Camillus and concord', *The Classical Quarterly*, 36.3–4 (1942), pp. 111–120. Cf. recently also C. BRUNN, 'What everyman in the street used to know: M. Furius Camillus, Italic Legends and Roman Historiography', [in:] C. BRUNN (ed.), *The Roman Middle Republic. Politics, Religion, and Historiograph c. 400–133 B. C. Papers from a Conference at the Institutum Romanum Finlandiae*, September 11–12, 1998, Rome 2000, pp. 41–68; U. WALTER, 'Marcus Furius Camillus – die schattenhafte Lichtgestalt', [in:] K. J. HÖLKESKAMP & Elke STEIN-HÖLKESKAMP (eds.), *Von Romulus zu Augustus. Große Gestalten der römischen Republik*, München 2000, pp. 58–69; J. F. GAERTNER 'Livy's Camillus and the political discourse of the Late Republic', *The Journal of Roman Studies*, 98 (2008), pp. 27–52.

⁶⁷ Cf. LATTE, 'The Origin' (cit. n. 1), p. 361.

⁶⁸ CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 104. On the other hand, while

the Falerii. The precise determination which of these dates is the correct one is fairly difficult. Given the information provided by Plutarch (*Cam.* 11–13), we could assume that the brown doors were seized during the second battle led by Camillus. This thesis is supported by the research conducted by Broughton⁶⁹ who believes that the quaestor mentioned by Pliny the Elder held his office in 391 BC. If we accept these arguments, we may assume that the brown doors were stolen at the end of the first decade of the fourth century BC. However, it should be emphasised that it is merely one of the possible interpretations of the preserved source materials.

However, a more important question than the date of the trial is the indication of the reasons for the exile⁷⁰ of M. Furius Camillus. This is not an obvious question since according to the version described in the majority of the preserved source materials, the prosecutor in the trial was a plebeian tribune – L. Apuleius.⁷¹ However, we should remember that these sources predominantly relate to the events associated with the first military conflict – the war with the Veii, *i.e.* the one in which M. Furius Camillus was involved. However, this argument does not enable us to negate the version involving the participation of L. Apuleius, although it should be mentioned here that some of the source materials relating to this version of events do not make reference to any plebeian tribune as a prosecutor.⁷² Accordingly, we are not able to answer, in a clear manner,

staying neutral in this matter, DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2) points out that the criminal proceedings could have been held between 396–391 BC.

⁶⁹ BROUGHTON, *The Magistrates* (cit. n. 22), p. 93.

⁷⁰ Cf. a recent article on the subject of *exilium* in the Roman Law – J. A. BUENO DELGADO, 'El exilio en Roma. Tipos y consecuencias jurídicas', *SDHI* 80 (2014), pp. 207–222.

⁷¹ Cf. Liv. v 32.8–9; Val. Max. v 3.2a. More source materials, confirming the version with participation of the plebeian tribune, were collected BROUGHTON, *The Magistrates* (cit. n. 22), p. 93. A version regarding participation of the tribune of the plebs, instead of the quaestor, was presented by CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 103, while DEMENTYEVA 'The functions of the quaestors' (cit. n. 2) made attempts at revealing the weaknesses of his arguments.

⁷² The most important example is the passage: Cic. *Dom.* 86: 'at vero, ut annales populi Romani et monumenta vetustatis loquuntur, Kaeso ille Quinctius et M. Furius Camillus

the question who accused M. Furius Camillus of stealing the brown doors and when it happened.

However, it should be emphasised that given the previously described criminal proceedings with the participation of quaestors, in the analysed case of M. F. Camillus, there are more supporters⁷³ than opponents⁷⁴ of the concept of quaestors' involvement. One of the most essential arguments supporting the thesis that a quaestor had the authority to prosecute M. Furius Camillus, is the question of the nature of his crime. Since quaestors were responsible for the management of the state treasury,⁷⁵ a theft of public property (*peculatus*),⁷⁶ of which Camillus was accused, would have been naturally associated with their prosecuting competence.⁷⁷ The subject matter of the case in question was not an ordinary or common offence but an act against the interests of *populus Romanus*, as a whole. Thus, the office of the quaestor would be a more proper choice for

et C. Servilius Ahala, cum essent optime de re publica meriti, tamen populi incitati vim iracundiamque subierunt, damnatique comitiis centuriatis cum in exsilium profugissent', in which Cicero makes absolutely no references to L. Apulcius as a prosecutor but merely mentions, among other prominent Romans, M. Furius Camillus, as the one sentenced to exile by decision of the *comitia centuriata*. Thus, we may not utterly rule out the possibility that the role of the prosecutor at this assembly of the people was performed by a quaestor – Sp. Carvilius.

⁷³ Cf. LATTE, 'The origin' (cit. n. 1), p. 361; CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 104. DEMENTYEVA, 'The functions of the quaestors' (cit. n. 2).

⁷⁴ W. KUNKEL, *Untersuchungen zur Entwicklung* (cit. n. 40); p. 35; T. J. CORNELL, *The Beginnings of Rome. Italy and Rome from the Bronze Age to the Punic Wars (c.1000–264 BC)*, New York 1995, pp. 316–317.

⁷⁵ Cf. LATTE, 'The origin' (cit. n. 1), p. 361. Cf. also LINTOTT, *The Constitution* (cit. n. 3), p. 137.

⁷⁶ About the *crimen peculatus* cf. F. GNOLI, *Ricerche sul crimen peculatus*, Napoli 1979.

⁷⁷ The work of Dionysius of Halicarnassus (VIII 79.3) – relating to the aforementioned trial of Sp. Cassius – contain an exceptionally interesting bit of information which enables us to identify the point of contact between the prosecuting competence of quaestors and their treasury authorities. The Greek historian points out that after the death of Sp. Cassius, for instance, his assets were seized by the state. However, he does not identify any officials with authority in this respect. Accordingly, it cannot be utterly ruled out that such authority was vested in the quaestors themselves – cf. CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 102.

the prosecuting authority than the plebeian tribune. Theft of public property was an act against *populus Romanus*, accordingly, quaestor – as an official responsible for the state treasury, acting in the widely understood interest of the *populus Romanus*, would be a natural choice here. In addition, at the beginning of the fourth century BC, plebeian tribunes were responsible for protecting plebeians against the oppression and abuse of senior officials, rather than the type of crime committed by M. Furius Camillus. In the light of the above, the proposed hypothesis does seem reliable and worth considering, provided however that we bear in mind that it is merely one of the possible proposals to clarify the discrepancies in the source materials.



Summing up the previous considerations, we should emphasise that the preserved materials do not provide sufficient and precise information on the prosecuting competence of the quaestors. *Quaestores* prosecuted Sp. Cassius who was accused of attempts to restore monarchy (*a ectatio regni*), and against M. Volscius Fictor who allegedly committed the crime of false testimony (*falsum testimonium*), and finally against M. Furius Camillus who was sentenced to exile for the theft of public property (*peculatus*). Such a wide scope of competence vested in the quaestors may be quite surprising in itself, especially because finding a common ground or a contact point for these three trials is fairly difficult – as a result, the catalogue of offences requiring involvement of *quaestores* is also difficult to define. Even more objections are associated with the first trial, *i.e.* against Sp. Cassius since the accusation of *perduellio* should be rather associated with the activities of *quaestores parricidi*, as evidenced by the source materials⁷⁸ although this theory is subject of many disputes in the literature. Mean-

⁷⁸ D. 1.2.2.23 (Pomp. *l. s. ench.*): 'Et quia, ut diximus, de capite civis romani iniussu populi non erat lege permissum consulibus ius dicere, propterea quaestores constituebantur a populo, qui capitalibus rebus praessent: hi appellabantur quaestores parricidii, quorum etiam meminit lex duodecim tabularum'.

while, the search, in the preserved source literature, for even a hint of a link between the case of Sp. Cassius and *quaestores parricidi* seems utterly futile. Similar objections may be raised against the other two trials.⁷⁹ Thus, it seems that the *quaestores* mentioned in the previously discussed cases may not be, in any manner, identified with *quaestores parricidii*.

Undoubtedly, the discussed examples of the three trials clearly indicate that quaestors were involved in criminal proceedings as prosecutors. The question of whether such crimes were the only types of offence under the jurisdiction of quaestors remains open – or perhaps we are not able to reconstruct the entire catalogue of such offences because of the deficiencies in the preserved chronicles.

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⁷⁹ Cf. CLOUD, 'Motivation in ancient accounts' (cit. n. 1), p. 107, 119; L. GAROFALO, 'La competenza giudiziaria dei quaestores e Pomp. D. 1.2.2.16 e 23', *SDHI* 51 (1985), pp. 410–411; JOŃCA, *Parricidium* (cit. n. 33), p. 66.