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The Genesis and the Dating of the *lex Flavia municipalis*

Ph.D. Theses

Summary

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I.

The *lex Irnitana* found in 1981 and published for the first time in 1986 has given a considerable boost to the research of the municipalisation of Spain and the municipal charters in general. This law is not only the most significant municipal charter, but it is because of its discovery and by its perusal that a considerable number of the small fragments found before and after the discovery of the *lex Irnitana* can be completed and integrated to the whole text and, therefore, interpreted. In addition to this circumstance, many fragments were identified during the quest of the lost parts of the *lex Irnitana*.

After all there is a peculiar dichotomy in the research of the *lex Irnitana* and the other Flavian municipal laws. On the one hand, the new information acquired from the recently discovered fragments enhanced our knowledge concerning the municipal administration and confirmed or refuted earlier hypotheses based on the *lex Salpensana*, *lex Malacitana* or *lex Ursonensis*. On the other hand, the scholars often repeat the achievements of the 19th century – which correspond to the then available evidences, but frequently disagree with our new sources – in connection with the genesis and the dating of the Flavian charters. This dichotomy originates from the fact that the new fragments provide material to further investigations promising novel achievements, for example, concerning the municipal jurisdiction due to its complete description in the *lex Irnitana*. Thus, it is understandable that the scholars focused on new data, and not on working with and rectifying the old – and at that time right – achievements.

In most cases, the ambiguous dating and the unclear relationship between the Flavian charters did not cause major problems. However, after the intensive research of the 1980s and the 1990s, several theories appeared in the last decade based on the literature without proper knowledge of the texts of the charters. Therefore, the anomalies about the genesis and the dating of the charters generated more serious mistakes and misunderstandings. It is sufficient to refer to Torrent's monograph of 2010, in which the author has set up a false chronological order of the charters making no distinction between the traditional – and wrong – dating of the *lex Malacitana* and the *lex Salpensana* and the new and right one of the *lex Irnitana*. In addition – purely on the basis of the literature, without an actual examination of the texts – he wrongly denied the existence of a common model. Such a mistake as Torrent's is not unique, especially concerning the dating and the relationship of the texts of the charters. This is a

good indication that the authors' vague hypotheses (e.g. about the *lex Iulia municipalis*) often override the factually examined data (effective similarity of the texts).

Consequently, my dissertation is a study that resolves discrepancies and fills a number of gaps in the research of municipal law, since I ask and examine the questions which should have been dealt with for thirty years. However, what ensures the timeliness of the work is that the results of the study will refute some pullulating theories which often and increasingly recede from the close philological examination of the sources.

II.

The first chapter lists the key features of the surviving fragments, in particular, the average length of the lines and the arrangement of the columns to see that some fragments can be excluded from the Flavian texts on the basis of their physical characteristics. The catalogue clarified misunderstandings circulating in the literature, such as false length of lines or incorrect identifications. I proved that the curious "*ley modelo*" could be a model text in fact and that Mommsen's conjecture in the chapter 27 about the intercession of the quaestors is correct in spite of the *communis opinio* of the editors of the *lex Irnitana*.

The second chapter is intended to clarify the question of the existence of a model text. The existence of the common model is rejected by some authors on the ground that there is too much difference between the wordings of certain charters and there was not a centrally issued general *lex municipalis*. The latter opinion is incorrect because the model text was not necessarily a general public law, since it is also possible that the law of the first town has become a common model for the other towns. (Although, it should be noted that the Flavian municipal charters are clear examples of a territorial general law.) The debate in the literature concerning the character of the model text – *lex data* or *rogata/lata*, both of which occur in the text – appears to be completely barren, as some parts of earlier laws have certainly been used in the formulation, so it is still uncertain whether this *rogata/data* duality is due to the issue of the law in two stages, or due to the fact that the drafter of the Flavian model used different kinds of earlier republican models. The number of differences is not relevant in this matter, because there can be numerous differences in the case of a common model due to copying errors or lifting abbreviations. The inexistence of a unique common model and the unifying effect of a common tradition could only be justified if the wording is different, the meaning is similar and the drafting is grammatically correct in the parallel places. Nevertheless, there are

not equivalent text versions, but in the case of differences one (or none) of the versions is good, while the others are always wrong. Therefore, the existence of a common model text is a fact, yet its exact legal nature is disputable nonetheless.

The third chapter discusses the existence of a common model of Vespasian's rule. The approximately datable fragments are engraved under Domitian based on the emperors' list. Since the granting of *ius Latii* that ultimately led to the issuing of the *lex Flavia municipalis* occurred even at the beginning of Vespasian's reign – but probably not during his censorship as the *communis opinio* holds – and the surviving fragments of the charters are at least ten years younger than the granting of *ius Latii*, some scholars believe that the Flavian municipal law was originally issued by Vespasian. So it is the result of chance that the surviving copies belong to the reign of Domitian. In fact there is no direct evidence that such a Vespasian's law ever existed. Indeed, the uniformity of the elements of the names of Titus and Domitian suggests that their names have not been subsequently incorporated into single charters on the spot, but has been included in the common model. Obviously, this common model can be a revised version of the law of Vespasian as well. However, the only argument for the existence of a municipal law of Vespasian is that the edict granting *ius Latii* left unanswered numerous questions concerning the local administration. Therefore, the law was issued by Vespasian to regularize the administration of the towns concerned. It is a complicating factor, though, that the law mentions several times a preceding municipal organization with magistrates, *decurions*, that is, solely on the basis of the edict it can be assumed that the municipalisation has certainly started by that time. The main problem is that the law was certainly not issued to regularize the thus far vague administration of the towns concerned, since in comparison with the other municipal charters and with the main themes such as the elections or the jurisdiction, the Flavian law alludes to the Roman practice instead of much frequently providing detailed prescriptions. These detailed prescriptions had to be issued in a law in order to regularize the maladministration of cities. Additionally, it is understandable and plausible that some little villages (Villo, Irni) gained their own charters ten years later, but the same was very improbable in the case of Malaca, which was a busy port town.

In the fourth chapter I endeavour to reconstruct how the single charters reached their destinations. The scholars believe that committees travelled around the towns and locally adapted the model text to the local conditions, or the towns sent an embassy to the emperor or to the governor, and the staff centrally drew up the single charters according to the data provided by the legates. However, since the places of the variable data were left blank in the

model text, and these data were figures or the name of the city, I see no reason why each town would have needed individual decisions. The edict determined the towns in question, therefore, it did not have to be decided which town could get charters. The local tradition determined the name of the town and the number of decurions. The penalties and the value of suits could also be determined on the basis of predetermined criteria, for instance, according to the population of the town. Thus, the model text was sent to the governor or to the major towns of the province, accompanied by a regulation which specified what type of numbers should be applied to which towns. The towns simply copied the text and supplemented with their data and the corresponding numbers. This practice is also supported by "*ley modelo*" and other Spanish sources (SC de Cn. Pisone patre and Tabula Siarensis) as well.

The final chapter investigates the actual date of the drafting of the model text. Mommsen's argumentation appears mostly in the literature: since the text refers to elections hold on the basis of Domitian's edict and the elections of 81 were held in the middle of the year, that is, before Domitian's accession to the throne, the first elections held by Domitian's edict were in the middle of 82. Thus, this date is the *terminus post quem* of the text. D'Ors and some other scholars refute this hypothesis, because the future tense in the text can imply that the drafter referred to those elections which were held after the issuing of the text, but before its arrival to the destination. However, scholars hitherto disregarded the fact that the ample text of the *lex Irnitana* implies not only elections held by Domitian's edict, but also accessions to office, additionally not by future tense, but by *praesens perfectum*. Moreover, the *communis opinio* of the literature should also be revised which assumes that the accession to office was at 1 July in the towns. Since I refuted this opinion and the accession was at 1 January in the cities of Spain, the new *terminus post quem* is 1 January 83.

Concerning the *terminus ante quem* I examined if Domitian's missing Germanicus title could be used to dating the text of the municipal law. The lack of this title cannot date the singular charters, but the model text. The solid *terminus ante quem* of the assumption of this title is 31 December 83 and not August 83, as some scholars argue, thus the *terminus ante quem* of the model text is 31 December 83.

III.

1. The *terminus post quem* of the engraving of the *lex Irnitana* is 11 November 91, but the engraving of the other charters cannot be dated exactly despite of the opinion of

the literature. Mommsen's conjecture in the chapter 27 is correct, therefore, the municipal quaestors had the *ius intercedendi*. Furthermore, a considerable amount of the so-called common errors are due to differences of the orthography or the abbreviations, and not to the errors of the common model, although, there are common errors as well.

2. The so-called „*ley modelo*” was a real model, but it was used as a model *de iure* only, the copyists *de facto* rescribed their own charters from a specimen written on papyrus or wax tablets deposited in the archives of the provincial capital or other important towns. The differences among the length of lines, number of columns and number of line of columns in different charters show that there was no standardization in this respect in Flavian Spain.

3. D'Ors' interpretation on the fragment of Duratón is wrong because of the arrangement of the corner of the tablet, therefore, it is unverified if it was a fragment of a Flavian charter. Stylow's interpretation and complementation about a fragment published in 2007 is very ambiguous likewise. If the fragment does not belong to a Flavian municipal charter, the complementation is fictitious. If it belongs to a Flavian municipal charter, the complementation based on the length of the line is unproved. Therefore, it can be of the reigning period of Domitian, not only of Galba, Titus or Vespasian.

4. The Flavian municipal charters had a common model called *lex Flavia municipalis*. This name is a modern one, and its legal interpretation is disputable, although, it is fact that it was a model text, but the name *lex Lati* seems to be too general. The differences between the charters are due to the lapse of pen, abbreviations and orthographical anomalies. Deliberate mutations occur in the case of the name of the towns in question and some figures only, their place, however, was left vacuous in the model.

5. The CIL II 1610 is dated from 75 A.D., but it reflects an office created in 74 A.D. by an edict granting *ius Latii* actually. Therefore, the date of 75 A.D. appearing in the literature is false, and this inscription suggests that the donation of *ius Latii* by Vespasian (and Titus?) could not be in 73/74 during their censorship, because there is too short time between the edict issued in 73/74 and the office-bearing in 74. The beneficium in the inscriptions and the edictum in the charters are the edict of Vespasian granting *ius Latii* and the edicts of Titus and Domitian approving the original edict of Vespasian.

6. Some municipal organizations with magistrates and decurions were established by the edict before the formal granting of the charters. The opinion that the Flavian municipal law was issued by Vespasian is unprovable. The argument that the issuing of the law was very

urgent after the granting of *ius Latii* to consolidate the operation of the new *municipia* is wrong, because the charters often allude to the Roman practice instead of providing clear description. Therefore, the law was entirely awkward to clarify the problems which emerged after the granting of *ius Latii*, and, what is more, it was only suitable to integrate the existing operation of *municipia*.

7. During the adaptation of the law to the local properties of the *municipia* there is no need to the individual decisions of a committee or the staff of the imperial chancellery or the governor. The towns in question were able to fill the gap of the model law with the help of their own tradition (e. g. the number of *decurions*) and the pre-established terms.

8. The individual charters cannot be dated (except the *lex Irnitana*), but the *lex Flavia municipalis* (the model text) can be dated by the elections held by the edict of Domitian – the accession to the office indeed –, and by the lack of the *Germanicus* title of Domitian. The date of the municipal elections and the accession to the office was not generally determined during the principate in spite of the *communis opinio*. But the accession to the office probably was on the 1st of January in Flavian Spain and the elections were held in September or October. The *terminus ante quem* of the assumption of the title *Germanicus* is subsequently 31 December 83. Therefore, the Flavian municipal law was drafted in 83 A.D.

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