

## The Contents of the *lex Cincia* (204 B.C.E) and Tacitus' Intent

This paper critiques Tacitus' historical method and the reliability of the legal information he transmits. I hope to benefit from audience comments on the usefulness and persuasiveness of my thesis.

The suicide of the *eques* Samius in the house of the orator and delator Publius Suillius, in 47 C.E., is a unique event in the *Annales* (Tac. *Ann.* 11.5): nowhere else in the work does a man commit suicide in the *domus* of another who is responsible for his misfortune (Samius is mentioned nowhere else.) Samius owes Suillius a huge legal fee for defending him and has discovered that Suillius has been colluding with the accusers in Samius' case. Immediately after the suicide, Tacitus writes that the Senate invoked against Suillius a clause of the *lex Cincia*, a plebiscite of the year 204 B.C.E., forbidding orators to accept payment for pleading a case. Tacitus describes the plebiscite as *qua cauetur antiquitus ne quis ob causam orandam pecuniam donumue accipiat*.

This passage and two others in the *Annales* are the only evidence, which names the *lex*, for a clause forbidding *aduocati* from earning a fee *ob causam orandam*. Although a number of other sources are adduced by scholars in discussing an *ob causam orandam* clause in the *lex Cincia*, none of them explicitly states that clause was in the *lex*. According to all the other sources that specifically name the *lex Cincia*, the *lex* (with some exceptions) forbid unrelated individuals to make gifts to each other. In Livy 34.4.9 the intent of the law was to prevent powerful individuals from exploiting their inferiors by forcing them to make "gifts." Other prohibitions against advocates' fee-taking, although associated with or ascribed to the *lex Cincia* by modern scholars, are only connected to that *lex* by modern inference. Indeed, the many sources that are used to illuminate the *ob causam orandam* clause do not mention the *lex Cincia*;

scholars argue from the restriction on fee-earning *to* the contents of the *lex*, not vice versa. (The sources are collected at Casavola [1960] at 9-21, and at Curchin [1983], throughout.). A prominent example of this is Cicero, *ad Atticus* 1.20.7, a letter that mentions a gift of books to Cicero from one Cincius (E.g., Shackleton Bailey (1965) ad loc. cit.). But there is nothing in Cicero's letter about the provision of legal services. The passage is most likely a joke about genuine gifts (of books) rather than payment for services; only an inference from a supposed *ob causam orandam* clause leads to the latter interpretation. The *lex Cincia* may be mentioned because of the pun on the name of the donor Cincius.

Scholars of Roman law acknowledge that the rule in Tacitus, which forbids advocates from taking fees, must have been separate in language and enforcement provisions from the better-attested prohibition against making gifts (which is known from sources from Livy onwards). I go further and suggest that, despite Tacitus, there is no reason to suppose an *ob causam orandam* clause was to be found in the *lex Cincia*. Instead, Tacitus may actually be referring to the Senate's reaction to the fiction of, or a real, gift made from Samius to his patronus Suillius. (It would be a fiction if the Senate had recast the orator's fee as an actual gift in order to satisfy the terms of the *lex* outside of Tacitus.) In order to convey his disgust at the delator Suillius' abuse of his social position Tacitus may have juxtaposed the suicide and the invocation of the *lex Cincia* against Suillius. It is well-known that Tacitus can compress chronologies and change the emphases of his sources to express his own judgments of events (See, e.g., Potter [2012] at 132-38; Syme [1958 at I: 386-96]). The juxtaposition of these two events could be taken as commentary on the social phenomenon that Suillius represents.

## Bibliography

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