

A Closer Investigation of the Expulsion Law of M. Junius Pennus, 126 BCE

One of the few facts recorded in the sources about the year 126 BCE – and indeed one of the few facts recorded at all about the three year period immediately following the death of Scipio Aemilianus in 129¹ - involves the tribune M. Junius Pennus, who is mentioned in Cicero's *Brutus* as holding office when Lepidus and Orestes were consuls and thus serving in 126². This Pennus was – again according to Cicero, in his *De officiis* – one of those who behaved badly and contrary to the way humans ought to treat each other by preventing foreigners from being allowed to use the city and expelling them from it³. Presumably he did this according to a law, and it just so happens that Festus reports that C. Gracchus wrote about a law of Pennus⁴ in language containing words like *stultitia* and *avaritia*.

It therefore seems that in 126 the tribune M. Junius Brutus put forward a law which apparently expelled foreigners, one which attacked by a prominent statesmen when it was passed (Gracchus) and remembered as unwise and excessive decades later (by Cicero). These impressions notwithstanding, specifics about the law are decidedly few: the sources are silent as to its provisions and why it was passed. Cicero does contrast it with the law passed by the consuls Crassus and Scaevola, which he states (both here⁵ and elsewhere⁶) was designed to expel foreigners attempting to usurp the *civitas*, which may mean that it was not designed just to expel those but was a broader measure which thrust out *all* foreigners. If this is the case, there remains the question of why Pennus would choose to promulgate and pass such a law.

The fact that the next year would see M. Fulvius Flaccus attempt to pass a bill extending franchise to the Italian Allies has been taken by some modern historians to be more than coincidental; according to these scholars, the would-be *lex Fulvia* would undoubtedly have enjoyed the support of these Allies, and the *lex Junia* was designed to get them out of Rome or prevent them from going there so that they might not attempt to vote to pass it illegally⁷. However, there are some problems with this construction. One of these is timing: there are indications that Pennus, tribune of 126, passed his law early in that year⁸, well before Flaccus was elected consul and even before the latter started his candidacy. Thus, Pennus may not have known about the intention of Flaccus to propose law whose illegal passage he is held to have been trying to thwart. Furthermore, foreigners pretending to be citizens to vote illegally would certainly qualify as

¹ For whose paucity see Greenidge and Clay's still-serviceable *Sources for Roman History*, p. 18-20.

² *Fuit enim M. Lepido et L. Oreste consulibus ... tribunus Pennus* (28.109)

³ *Male ... qui peregrinos urbibus uti prohibent eosque exterminant, ut Pennus apud patres nostros ... sane inhumanum est* (3. 47)

⁴ *C. Gracchus in ea quam conscripsit de lege Penni* (according to Müller); Festus p. 286.

⁵ *Nam esse pro cive, qui civis non sit, rectum est non licere, quam legem tulerunt sapientissimi consules Crassus et Scaevola* (loc. cit.)

⁶ *Pro Balbo* 48-49; see also Asconius 67-68.

⁷ So Baldson (p. 100), stated more explicitly by Badian in *Foreign Clientelae* (p. 176-177) and later (1970, p. 388-389).

⁸ A difficulty noted by Stockton, p. 94-95.

“pretending to be a citizen when not a citizen”, something which Cicero says is “rightly not allowed” in his discussion of the *lex Licinia Mucia*; yet this law is deliberately contrasted by the orator with the law passed by Junius.

This presentation will take a closer look at what is known and what is believed about Pennus and his law, one which probably ought not to be connected to Fulvius Flaccus (for reasons presented already and for others which will be discussed). Such a disconnection will essentially do away with one of the only explanation for the *lex Junia*, or at the very least cause it to be modified: as will be argued, the law of Junius may very well be connected with the activity of Flaccus, but not perhaps in precisely the way that has already been described. Instead, the connection may be different, a conjecture which will be explored.

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