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ИМ. П.Г. ДЕМИДОВА
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The functions of the quaestors of Archaic Rome in criminal justice[1]

The question about the functions of the Roman quaestors of the archaic time in criminal justice needs special examination for several reasons: firstly, to study the early forms of criminal procedure in Rome, secondly, to investigate the problem of origin of the republican magistracy of quaestors (and, accordingly, its evolution).

The antique tradition calls the quaestors who took part in the prosecution of the Roman citizens either *quaestores* or *quaestores parricidii*. Now we shall abstract away from the question of the time of appearing *quaestores parricidii* and "quaestors in general" as it is the subject of separate analysis, we shall only note that ancient authors date their appearance either back to the royal period or to the early Republic but in any case, within the Roman archaic.

The notion *quaestores parricidii* for the early times quaestors is used in the first place by Pomponius (*Dig.* I.2.2.23) and Festus (P. 247.19 L) and indirectly also by Ioannes Lydus (*De mag.* 1.26). Duncan Cloud, having done the analysis of this text by Ioannes Lydus, came to the conclusion that it was not the translation of Pomponius, as the researchers supposed before, but the lawyer Gaius[2]. These ancient authors giving such designation of the position indicate by the very name of the officials their functions in judicial-investigating sphere. Other ancient authors do not give the attribute *parricidii* at the mention of quaestors but connect their original activities with this sphere – Ulpianus (*Dig.* I.13.1.1–4). Still other ancient authors also without giving this attribute provide information about various functions of the quaestors of archaic Rome including their competence in criminal procedure: Varro *L.L.* V. 81, 90–92), Dionysius of Halicarnassus (VIII. 77.2–78.5), Cicero (*Resp.* II. 60), Titus Livius (II. 41. 11; III. 24. 3–7); Pliny the Elder (*N.H.* XXXIV. 13).

Theodor Mommsen understood by quaestors magistrates with broad competence that originally combined the functions both in the financial sphere and in the area of criminal procedure. He thought that *quaestores parricidii* was the name of quaestors

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[1] Paper delivered at the Fifth International Conference "Diritto romano pubblico e privato: l'esperienza plurisecolare dello sviluppo del diritto europeo" (June 2009, Suzdal – Moscow).

[2] *Cloud J.D.* Parricidium: from the lex Numae to the lex Pompeia de parricidiis // Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. R.A.1971. Bd. 88. P. 19–4.

when they were engaged in criminal and legal activities[3] but in every way he emphasized the identity of criminal and financial quaestors.

The point of view of Mommsen was also accepted, with some variations, by many other researchers including such prominent experts in antiquity as Gaetano De Sanctis, Pietro De Francisci, Heinrich Siber, Francesco De Martino[4].

Ernst Herzog saw the functions of *quaestores parricidii* in prosecuting for nonpolitical criminal offences covered by the notion *parricidium* and prosecuted by tacit or positive law[5]. With *lex Valeria de provocatione* quaestors as he thinks started prosecuting before people and passing sentence. E. Herzog like Th. Mommsen considered *quaestores parricidii* to be identical to *quaestores aerarii* but their competence of treasurers he thinks could appear only after the First Punic War. Herzog noted that before the procedures in *quaestio* there were no other permanent authorities in the area of criminal procedure and therefore it is not clear how the court of criminal law in the Roman state that was combined with the position of a treasurer in primitive times staying in close liaison could play such a limited role. Herzog emphasized that there were no other explanations but the fact that it was a nonpolitical procedure[6].

Mommsen's approach to this question was shared in principle by Bernhard Kübler[7]. But he, like E. Herzog, thought that the original objective of quaestors' activity was to investigate complicated crimes and such quaestors were called *quaestores parricidii*, later they were given the treasury to be managed.

Otto Karlowa supposed that *quaestores parricidii* acted as kings' assistants in the investigations of murder cases, later they were transformed into a state authority with amended functions. After it happened, the attribute to the name of their position expressed in the genitive case (*parricidii*) was omitted[8].

Wolfgang Kunkel distinguishing sharply (following Kurt Latte[9] and Kurt Von Frits[10]) between *quaestores parricidii* and *quaestores aerarii* emphasized that *quaestores parricidii* had only judicial functions; he traced *quaestores parricidii* to *quaesitores* of the late Republic and even likened *quaestores parricidii* to the late republican *quaestio*[11].

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[3] *Mommsen Th*. Römisches Staatsrecht. 3. Aufl. 1952. Bd.2.1. S. 525–527.

[4] *De Sanctis G.* Storia dei Romani. Vol. 2. Firenze, 1964. P.405–406; *De Francisci P.* Primordia civitatis. Roma, 1959. P.618–619; *Siber H.* Römisches Verfassungsrecht in geschichtlicher Entwicklung. Lahr, 1952. S. 95–97; *De Martino F.* Storia della costituzione Romana. Napoli, 1958 (1972). P. 231–233.

[5] *Herzog E.* Geschichte und System der römischen Staatsverfassung. Leipzig, 1965. Bd.1. Abt. 2. S. 78, 815–816.

[6] Ibid. S. 816–817.

[7] *Kübler B.* Geschichte des römischen Rechts. 2-Aufl. Darmstadt, 1979. S. 97–99.

[8] *Karlowa O.* Römische Rechtsgeschichte. Leipzig, 1885. Bd. 1. S. 257.

[9] *Latte K.* The Origin of the Roman Quaestorship // Transactions and Proceeding of the American Philological Association. 1936. Vol. 67. P.24–33.

[10] *Фриц К. фон*. Теория смешанной конституции в античности: Критический анализ политических взглядов Полибия. СПб., 2007. С. 398–399.

[11] *Kunkel W.* Untersuchungen zur Entwicklung der römischen Kriminalverfahrens in vorsullanischer Zeit. München, 1962. S. 37–45.

Along the same lines Ernst Meyer thought that *quaestores parricidii* were not a public position but the penal of judges that dealt with murder cases in the forms similar to civil procedure[12].

We shall present other interpretations of quaestors' competence in judicial-investigating sphere as well as the conclusions of the authors mentioned in a broadened and more concrete way parallel to giving concrete evidence of sources.

According to Festus (P. 247.19–24 L)[13], *quaestores parricidii* dealt with criminal cases and called the murderer of any citizen *parricida* not only the father's murderer. Meanwhile Festus refers to the law of Numa Pompilius that had given the status of a parricide to the citizen's murderer.

In connection with the information presented by Festus some essential questions arise: 1. What is the meaning of the law of Numa? 2. Can the prosecution for a murder be considered a public act during the Roman archaic times?

K. Latte made the following observation: the notion "*parricida*" has to do with the murder of a free man and the law of Numa is the attempt to limit the notion of a murder to a calculated murder. If a man killed another man by accident according to the law of Numa he had to give the deadman's relatives the head of a sheep at the public meeting. The killer still dealt with the deadman's family and not with the state authorities. A public meeting was necessary to give publicity to the agreement. Public servants interfered only to investigate if it was a *parricidium* that is if this murder was a calculated act. To this effect *quaestores parricidii* were appointed and according to Latte the meaning of the word seemed to corroborate this idea. Thus, Latte noted that we got rid of the anomaly of public prosecution for the murder in such an early period[14].

W. Kunkel asserted that we should act on the premise that the whole criminal law and criminal procedure of the time of the Laws of XII tables with the exception of *perduellio* and serious sacral delicts rested on the principle of private retribution and private prosecution[15]. In this system the state's function was only to concern about keeping the rules and responsibility for retribution set by it, in other words – a judicial function. Kunkel thought that we should look for *quaestores parricidii* here. The German Romanist wrote that they either formed the court themselves or headed it. Being the judges in a private prosecution procedure *quaestores parricidii*, in his opinion, explained the family their right for private retribution when it was in force.

Duncan Cloud thinks that the aim of the law of Numa was to liken the murderer of a Roman citizen to the murderer of a relative in order to regulate or abolish family vendetta, this law is the addition of those who kill a citizen with premeditated malice to the category of murderers[16]. "Although they are called parricide quaestors, their

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[12] *Meyer E.* Römische Staat ubd Staatsgedanke. Zürich und München, 1975. S. 38–39.

[13] Parrici<dii> quaestores appellabantur, qui solebant creari causa rerum capitalium quaerendarum. nam paricida non utique is qui parentem occidisset, dicebatur, sed qualemcumque hominem indemnatum. ita fuisse indicat lex Numae Pompili his composita verbis: si qui hominem liberum dolo sciens morti duit, paricidas esto.

[14] *Latte K.* The Origin of the Roman Quaestorship... P. 24–25.

[15] *Kunkel W.* Untersuchungen... S. 43.

[16] *Cloud J.D.* Parricidium... P. 3,4,12.

field is not parricide but murder (Festus, Gaius) or more vaguely capital crimes (Festus, Pomponius)"[17]. At the same time Duncan Cloud pays attention to the fact that the research of Y. Tomas[18] shows that there was nothing in the linguistic data to suppose that in the early Latin *parricidium* ever meant something else in addition to "paricide", "father-murder" or perhaps "parent-murder". According to Claud we must make a supposition including two positions: "1. *parricidium* has to mean not the murder of a parent or possibly close kinsman but the murder of any citizen. 2. *parricidium*, having now acquired the meaning "murder of a citizen" acquires yet another meaning – "capital offence"[19]. Analysing antique reports Claud notices that if it was a homicide by misadventure a criminal had to give a sheep to the closest relatives of a deadman to sacrifice a sheep instead of a criminal, that is a sheep was not a financial compensation but "a substitute" of a criminal.

Pomponius (*Dig.* I.2.2.22–23)[20] indicates that quaestores parricidii were in charge of grave criminal cases (*propterea quaestores constituebantur a populo, qui capitalibus rebus: hi appellabantur quaestores parricidii*), that can be understood, with the evidence of Festus, as any murder cases and as any capital crimes. Therefore Claud has reasons to focus attention on two questions[21]: 1. Did the parricide quaestore have any function with regard to forms of killing other than parricide 2. Did they have anyr function with regard to offences otherthan killing?

Cloud thinks the first question has a little more definite answer. If the law of Numa is actual, if *parricidas* is the archaic form of *parricida*, the parricide quaestors really dealt with all the cases of illegal murders of a Roman citizen. The law says: henceforth, the one who kills a free man with malice will be considered to be a parricide. If Festus connects the law with *quaestores parricidii* correctly, the law involves the enlargement of their role. But the law of Numa does not corroborate the interpretation that *quaestores parricidii* dealt with any grave crimes: they dealt exactly with killers and not with any criminals – the subjects of capital crimes. Therefore, Cloud thinks that it is more difficult to answer the second question more definitely.

Let us agree with the understanding of the discussed law of Numa as the law that established the amenability for a premeditated murder of a Roman citizen, a man who committed this crime being given a status of a patricide. Latte's position corroborated by Cloud seems to us more convincing.

But we are still not sure if we can consider the prosecution for the murder a public act in the Roman archaic period. Was the prosecution for the murder by the state the anomaly in the early Republic? In other words, is it possible to support the opinion of W. Kunkel that criminal quaestors were the judges in the private

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[17] *Cloud D.* Motivation in Ancient Accounts of the Early History of the Quaestorship and its Consequences for Moderrn Historiography // Chiron. 2003. Bd. 33. P. 108.
[18] *Tomas Y.* Parricidium // MEFRA. 1981. Vol. 93. P. 643–715.
[19] Ibid. 111–112.
[20] A detailed source study analysis of this fragment is given by Luigi Garofalo: *Garofalo L.* La competenza giudiziaria dei "questores" e Pomp. D.1.2.2.16 e 23 // Studia et documenta historiae et iuris. 1985. Vol. 51. P. 409–423.
[21] *Claud D.* Motivation... P. 116–118.

prosecution? Taking into account the fact that in the antique tradition "the very words they use are drawn from the language used of the presiding magistrate"[22], there is some ground for such an opinion. But Cloud mentioned that the associations of the late Republic "*quaestio* and *quaesitor* (in the sense of "president of a court"), it would hsve been natural for antiquarians to hypothesize a period when quaestors had been in charge of courts dealing with capital offences". Therefore such interpretation of the activity of *quaestores parricidii* from the point of view of a British historian is "little or no independent value". "However, total scepticism about the parricide quaestors", Cloud emphasizes, "is misplaced; though the antiquarian accounts of their function are probably the product of intelligent guesswork". This reasoning seems to us correct. But it is still only a "negative" argument weakening the position of Kunkel but not supporting the concept about participation of quaestors in the public prosecution of murderers.

The substantiation of this, we think, is in the connection between the early quaestors' functions and the law of provocation which came to us from antique records, and the *lex curiata de imperio* we also know about it from ancient writers. According to Pomponius the reason for introducing the position of criminal quaestors was the operation of the law of provocation to the people's assembly concerning the decisions about the life and death of citizens. The fact that Pomponius connects this law with consuls does not contradict anything. Modern researchers (S. Tondo, B. Santalucia, L.L. Kofanov and others) think that the provocation appeared as early as in the kings' epoch and the *lex Valeria* of the early Republic established the right of appeal to people concerning the decisions of the republican holder of imperium. Not in an evident cause-and-effect relation but in one fragment and uniform logic, Plutarch (*Pop.* XII) and Ioannes Zonaras (VII. 13.3) inform of the law of Valerius Poplicola of provocation and about introducing quaestors. Ioannes Lydus[23] mentions the parricide quaestors as the judges of the murderers of citizens with all evidence connecting their activity with the application of the law of provocation.

Let us also pay attention to the fact that the Laws of XII tables at the same time mentioned criminal quaestors (*Dig.* I.2.2.23) and allowed to sentence to death a Roman citizen only in *comitiatus maximus* (*centuriatu*s) – Cic. *Leg.* III.19.44. Therefore, criminal procedure based on the law of provocation and the statement of criminal and legal activities of quaestors were fixed in one IX table of the decimviral laws.

Mentioned by the tradition connection of the early quaestura with *lex de provocatione* makes it possible for us to consider Th. Mommsen's approach to be more surely argued. He considered the functions of quaestors in the Roman criminal procedure in the unity with his understanding of this legal procedure as magistrative-comitial. Without supporting the opinion of the prominent German specialist in Roman studies concerning the identity of *quaestores parricidii* and *quaestors aerarii* we think that he was right that quaestors were the participants of a magistrative-comitial prosecution of a criminal. The theory of the Roman criminal procedure

[22] Ibid. P. 111.
[23] Ioan. Lyd. *De mag.* 1.26.

presented by Th. Mommsen had direct connection with his theory of a polyfunctional *imperium*[24]. It was the negation of this theory that made W. Kunkel consider the quaestors' functions to be carried out in the criminal procedure of private prosecution.

Tacitus (*Ann.* XI. 22) stated that quaestors were mentioned in the *lex curiata de imperio* that was adopted concerning the kings, and Lucius Brutus when the republic was established confirmed its necessity for consuls. Ludwig Lange supposed – and we agree with him – that in the lex curiata mentioned by Tacitus it was said that the lex curiata de imperio covered quaestors in the same meaning as lictors[25]. In other words, quaestors acted as the assistants to the holders of *imperium* in the judicial sphere. Th. Mommsen thought that a magistrate's *coercitio* inalienably belonged to major magistrates with *imperium*, and quaestors did not have it but they came from criminal justice; their name originated from these cases. *Quaerere* in the state legal sphere does not have any other meaning than judicial especially criminal investigation[26].

Having supported the understanding of quaestors' functions of the early times within the magistrative-comitial procedure and having ascertained the fact that the objects of their powers were such crimes as murders we must try to find out what their functions were that is what competence these officials had.

Ulpianus (Dig. I.13.1.1-4) with reference to Junius, Trebatius and Fenestella informs that quaestors from the beginning were named by the way of investigation (*quaerendi*), indicating the fact that quaestors held investigation. L. Lange thought that in the time of kings quaestors did nothing but searched for suspects and strived for them to appear before the king's justice. The opinion of A. Zumpt was that they gave sentence themselves as the king's assistants (*Zumpt A.W.* Das Criminalrecht der römischen Republik. Bd. 1. Abt. 1. Berlin, 1865. S. 52f., (we could not access the work) was not supported by Lange[27].

According to Mommsen[28] quaestors (he thought they acted beginning from the Republic) brought a charge of crime, convened centuries when a citizen exercised his right of provocation. It was in his opinion their main task. Mommsen talks not about a quaestor's own right but a mandate of a major magistrate given to him, about delegating the powers. If there was no holder of *imperium* in the city his judication in criminal cases was given to a quaestor. Mommsen defined quaestors' competence as participation in criminal prosecution, and they acted only there where there was a provocation that is within a charge of a grave crime. The idea that quaestors according to the ancient law were authorized to impose small penalties, could deal with criminal procedure that did not result in death penalty was doubtful Mommsen thought, he wrote that this question could not be answered for sure, but probably such competence of quaestors should be denied as they had a jurisdiction exactly in

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[24] About this theory see: *Дементьева В.В.* Магистратская власть Римской Республики: содержание понятия imperium // Вестник древней истории. 2005. №4. С. 46–75.
[25] *Lange L.* Römische Alterthümer. 3-Aufl. Berlin, 1876. Bd. 1. S. 387.
[26] *Mommsen Th*. Römisches Staatsrecht... S. 537.
[27] Ibid. S. 539–541.
[28] Ibid. S. 539–541.

connection with the law of provocation. He conceded that possibly quaestors' judication could cover also the crimes for which big monetary penalties were imposed and not only death penalties. In general the scientist thought that quaestors' powers covered exactly the whole public criminal law except the process *perduellio*.

And here we come to another question that was discussed in historiography – about the correlation of *quaestores parricidii* and *duumviri (duoviri) perduellionis*.

Duumviri perduellionis as the officials having the jurisdiction over the activity against the state (crimes against the state) were fixed by Livius (I. 26.6–7) as introduced by Tullus Hostilius, and later mentioned by the Roman historian in 384 B.C. in connection with the Marcus Manlius Capitolinus trial (VI. 20.12). In 63 B.C. Cicero mentioned them in the speech in defence of Gaius Rabirius (*Pro Rab. perd.* 12).

Th. Mommsen defined the correlation of the functions of *quaestores parricidii* and duumvirs in the following way: probably, with the establishment of the Republic criminal jurisdiction was divided in the way that regular quaestors dealt only with general crimes and political crimes in fact were in charge of duumvirs introduced when necessary[29]. The counter-evidence – quite significant – of this approach is the case when quaestors prosecuted Cassius exactly for *perduellio* (Liv. II.41.11)[30].

The hypothesis ruling out such contradiction of the historical reconstruction and the sources was presented by Bernardo Santalucia[31]. In the reconstruction of Santalucia the Early Republic quaestors investigated all crimes including *perduellio*. But in addition to quaestors when high treason was evident extra-ordinary judges – *duumviri* could be appointed who processed a case at earliest possible date. Santalucia gave the following explanation of the correlation of the functions of early quaestors and *duumviri perduellionis*. The tradition testifies that *quaestores parricidii* and *duumviri perduellionis* were assistants to the king in the prosecution of criminals. The function of *quaestores parricidii*, the Italian researcher thought, was to ascertain if it was a murder, if it was premeditated and also to launch the mechanism of vendetta in the presence of people at a *contio*. *Duumviri perduellionis* formed an extra-ordinary tribunal to proclaim the amenability for the act done and an immediate criminal sentence upon the person who was accused of *perduellio* and caught at the scene of the crime[32].

We do not see the objections on the matter of principle to the fact that *quaestores parricidii* as well as *duumviri* in charge of the crimes against the state could be engaged in the investigation of *perduellio* and *duumviri perduellionis* were used when the crime was evident (the criminal was caught at the scene of the crime). But we can not agree with Santalucia that both quaestors and *duumviri* were self-sufficient courts that could make conclusive ruling concerning such serious occasion without *comitia*. The material of the sources about the presence of the right of

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[29] *Mommsen Th*. Römisches Staatsrecht... S. 542.

[30] *Liv*. II.41.11: inuenio apud quosdam, idque propius fidem est, a quaestoribus Caesone Fabio et L. Ualerio diem dictam perduellionis, damnatumque populi iudicio, dirutas publice aedes.

[31] *Santalucia B.* Dirtto e processo penale nell`antica Roma. Ed.2. 1998. P. 21–22, 51.

[32] Ibid.

provocation in the archaic Rome contradicts this point of view. In other words, without disputing the conclusion of B. Santalucia about quaestors' participation in the prosecution of state criminals, we can not agree with the understanding of their activity outside the magistrative-comitial process. Taking into consideration that even W. Kunkel (the most consistent opponent of the magistrative-comitial process) thought that the process *perduellio* was public and not private, recognizing the possibility of quaestors' participation in it based on the narrative sources only supports this theory of Mommsen though contradicting his understanding of certain functions of these officials.

Recognizing or denying a public character of the criminal procedure in the archaic Rome inevitably affects the researchers' ideas of quaestors' certain functions, of how exactly they were involved in the trial. The supposition of B. Santalucia that they had to regulate vendetta (blood feud) between two families was recognized by D. Cloud[33]. But Cloud wondered what exactly took place: "The trial of the delinquent? The announcement of the innocence or guilty party to the agnates? The announcement of a prima facie case against the suspect, prior to an action against him before a judge or judges? The second alternative is perhaps the most plausible." And we think that the accusation that evidently was brought by a quaestor fits into the magistrative-comitial public process in the most natural and consistent way.

To expand the boundaries of our notions about the activity of quaestors, in addition to priority functions of investigation and accusation – Varro helps in an indirect way saying (*L.L.* V.81)[34] that the quaestors, whose name originated from the *quaerere* meaning to look for, looked for crimes that were looked for by *triumviri capitales* in his times. Thus, Varro connects with quaestors (without specifying the name) the functions of criminal investigators. The ananlogy of them with criminal triumviri's competence given by Varro forces to enumerate the functions of the latter. *Tresviri capitales* are minor magistrates, they entered into the *vigintisexviri*, acted from the third century B.C. Criminal *triumviri* held preliminary investigation, supervised prisons, serving of a sentence, keeping fetters bound on the guilty intact, executed capital punishment. In addition *tresviri capitales* passed an interlocutory sentence, had night police supervision in the city. They could also penalize citizens for sacral crimes – renunciation of traditional Roman religious ceremonies, worshipping alien gods (Cic. *Leg.* III. 6; Sall. *Cat.* 30.7; 55 .1; Liv. XXV. 14 IV.46. 9; XXXIX .14. 10; XXXIX. 14. 10; XXXIX. 16. 12). Possibly, quaestors as the predecessors of criminal triumviri according to Varro also had some of these functions.

A more detailed understanding of the functions of quaestors within the criminal-legal sphere can be obtained with the help of concrete examples of their activity within it expressed in the narrative tradition. In these examples quaestors act in the period of early Republic and are called just *quaestores.*

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[33] *Claud D.* Motivation... P. 118.

[34] quaestores a qu<a>erendo, qui conquirerent publicas pecunias et maleficia, quae triumviri capitales nunc conquirunt; ab his postea qui quaestionum iudicia exercent quaes<i>tores dicti.

The first story of the antique tradition of this kind is the accusation of Spurius Cassius (486 B.C.). Direct participation of quaestors in this case is fixed by Livius (II.41.11), Dionysius of Halicarnassus (VII.77. 2–5) and Cicero (*Resp.* II.60). Livius and Dionysius call the quaestors in this episode by names (Lucius Valerius Poplicola and Caesoninus Fabius) in the description of these antique historians two quaestors were involved in the Spurius Cassius trial, according to Cicero it was only one, and nameless. These evidences of antique authors show that the quaestors brought Cassius to book on a charge of a crime against the state, namely: they accused him, convened people and brought him to book before people as well as sentenced him by people's agreement to death (the sentence itself according to Livius was passed by people).

The question arises, – what judicial people's assembly was convened by the quaestors? Dionysius writes about ekklesia but the Greek authors could call any meeting using this term with regard to Rome. But could a quaestor as a magistrate without *imperium* convene *comitia*? Varro (*L.L.* VI.90–91)[35] helps to answer these questions.

It's quite evident that Varro tells about the calling of a meeting (*contio*) by a quaestor. In his story the word comitia is used once but without saying what *comitia* (*centuriata* or *tributa*) was convened which means that the word is used collectively – "the assembly of people". Judicial *contiones* usually preceded *comitia* and gradually turned into them (they were held in different time but in one place); at *contiones* people discussed, at *comitia* they took decisions. "The aggregate of a *contio* and *comitia* in this case forms "a logically complete" institution *iudicia populi*"[36]. Varro's indication to the fact that a defendant was summoned by a praetor and not by a quaestor corroborates the standard: *ius vocationis* was the constituent of the *iurisdictio* of magistrates with *imperium*.

If Th. Mommsen thought that convening people a quaestor relied on the mandate given by the consul we think that delegating of *imperium* in this case was not necessary. The process of discussing and taking a decision by people was two-stage a quaestor convening *contiones* and later, at *comitia*, already a major magistrate took the chair.

Since for the story of Spurius Cassius both Dionysius and Livius inform of the presence of another version of his conviction (by Cassius's father: either within

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[35] Varro (*L.L.* VI.90–91): circum muros mitti solitus quo modo inliceret populum in eum <locum>, unde vocare posset ad contionem, non solum ad consules et censores, sed etiam qu<a>estores, commentarium indicat vetus anquisitionis M. Sergii, Mani filii, qu<a>estoris, qui capitis accusavit <T>rogum; in [a]quo sic est: 'auspicio orande sed in templo auspiciis. dum aut ad praetorem aut ad consulem mittas auspicium petitum, commeatum praetores vocet ad te, et eum de muris vocet praeco; id imperare <o>portet. cornic<in>em ad privati ianuam et in arcem mittas, ubi can[n]at. collegam roges ut comitia edicat de rostris et argentarii tabe<r>nas occludant. patres censeant exqu<a>eras et adesse iubeas; magistratus censea<n>t ex<qua>era<s>, consules praetores tribunosque plebis collegasque <t>uos [et] in templo adesse iubeas [h]om[i]nes; ac cum mittas, contionem a<d>voces.'

[36] *Фролов Р.М.* Типология contiones Римской Республики // Государство. Общество. Религия. Проблемы всемирной истории. Ярославль, 2007. С. 28.

patria potestas according to Livius or by the Senate's decision according to Dionysius) so K. Latte and D. Cloud had doubts about the historicity of the report[37]. Latte noted that the version of the participation of quaestors came from Calpurnius Piso who thought of it as "the most appropriate to the dignity of the state". Meanwhile Cloud supposed that there was the element of truth in the tradition but there was no historicity in the mention of the role of quaestors in the conviction of Cassius. We think relying on the arguments mentioned above that quaestors convened a judicial *contio* and not *comitia* therefore there is not any lack of correspondence with public standards and the possibility of the punishment by the father does not affect the reconstruction of quaestors' powers in the judicial sphere (for Dionysius and Livius presenting also an alternative version did not cast doubt on these powers).

The second case dates back to 459 B.C. and is mentioned only by Livius. According to his narration the quaestors Aulus Cornelius and Quintus Servilius brought Marcus Volscius to trial for evident perjury against Caesoninus (Liv. III. 24.3)[38]. Voting on this case took place – because of the opposition of plebeian tribunes to quaestors – already during the dictatorship of Lucius Quinctius Cincinnatus (Liv. III. 24. 7, 29.6). It is interesting that Marcus Volscius was suggested when he suspected Caesoninus to bring a private accusation (*Liv.* III. 24.5)[39], but he did not do it (*Liv.* III. 24.6: *cum ad iudicium ire non auderet),* probably being afraid to fail in a suit and in this case he himself could be prosecuted[40].

This story also raised doubts about the historicity of information[41]. The reason for these doubts was the evidence of the Roman historian that Volscium got banishment prescribed as the punishment. W. Kunkel considered it to be the annalistic fabrication because according to the laws of XII tables that corroborated the existed practice for perjury the convicts were sentenced to throwing from Saxurn Tarpeium. D. Cloud added to this that Volscium could withdraw before being convicted by people and not after it. Our objections to this argumentation of the negative assessment of the authenticity of the given information are caused by the fact that firstly the situation still dates back to the time before the adoption of the laws of XII tables therefore there were no written regulations yet, and secondly even Cicero noted in the examples, dating back to the early Republic, that *comitia* sentenced convicts to be banished (*Dom.* 86).

The third example is connected with Marcus Furius Camillus and is dated by the researchers to either 396 or 391 B.C. According to the report of Pliny the Elder (*N.H.*

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[37] *Latte K.* The Origin...P.26; *Cloud J.D.* Parricidium... P. 25; *Idem.* Motivation... P. 99–100.

[38] *Liv.* III. 24.3: A. Cornelius et Q. Seruilius quaestores M. Uolscio, quod falsus haud dubie testis in Caesonem exstitisset, diem dixerant. Since *diem dicere* literally means "to fix a date", so the matter is not of the right of a quaestor to convene the people to the trial.

[39] *Liv.* III. 24.5: nec iis temporibus in quae testis crimen coniecisset Caesonem Romae uisum, adfirmantibus qui una meruerant secum eum tum frequentemque ad signa sine ullo commeatu fuisse. nisi ita esset multi priuatim ferebant Uolscio iudicem.

[40] See.: *Бодянская Н.Е., Чистяков Г.П.* Комментарии // Ливий Тит История Рима от основания города. М., 1989. Т.1. Прим. 48–49. С. 529.

[41] See.: *Claud D.* Motivation... P.103.

XXXIV.13: *Camillo inter crimina obiecit Spurius Carvilius quaestor, ostia quod aerata haberet in domo*) Camillus was accused by a quaestor Spurius Carvilius of embezzlement, the evidences of the crime being the bronze doors in his house. This information has something in common with the reports of Cicero (Cic. *Dom.* 86) and Plutarch (*Cam.* 12.1), but there is no certainty in the identity of the situation: Cicero did not say who exactly prosecuted Camillus and Plutarch named another prosecutor – Lucius Apuleius and his position was not noted.

This story gave rise to doubt in the historicity of the information of the tradition in a specific way. On the one hand researchers emphasized the connection between quaestors' prosecution and their treasury functions that according to researchers corroborated trustworthiness of the story[42]. But there were doubts about the prosecutor's role of the quaestor concerning Camillus because there was also a story about the prosecution of Camillus by a plebeian tribune. D. Cloud presents the opinion of the editors of one of the editions of "Naturalis Historia" by Pliny that the quaestor Carvilius was the witness of the prosecution of Camillus mentioned by Livius for 391 B.C. (V.32. 8–9), when the prosecutor was a plebeian tribune, L. Apuleius (this name was also noted by Plutarch) and the trial was for the Veii booty. The banishment of Camillus is considered in historiography as the tradition's fiction introduced by Quintus Ennius in order to explain the defeat at the river Allia by the long absence of Camillus[43]. However, D. Cloud writes, "the veracity of details of the of the prosecution which led to his exile is a very different matter"[44]. Let us admit that the reconstruction of a biographic fact of the commander and the reconstruction of public mechanisms of archaic Rome are different things: in this case it is more important that ancient authors considered criminal prosecution by quaestors quite admissible.

The latest example of quaestors' participation in prosecution is in Varro's fragment (*L.L.* VI. 90–91) cited above. The quaestor M. Sergius prosecuted Trogus convening a *contio*. The story is not dated, only indirect dating is possible: the plural form of the word "*praetor*" forces to date this event to the period not earlier than 242 B.C. and the linguistic peculiarities of the document most likely to the first half of the second century B.C.[45]. Varro does not note what Trogus was accused for; Claud thinks that he could be accused for stealing the money from the treasury in the temple of Saturn[46], but it is only an arbitrary assumption.

Thus, all the examples of participation of "just quaestor" in the cases of the sphere criminal justice have nothing to do with murders but other, though serious, crimes. All three dated examples date back to the early Republic, before the beginning of the fourth century B.C. inclusive.

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[42] Ibid. P. 104–105.

[43] *Дементьева В.В.* Марк Фурий Камилл: древний портрет полководца в современной реставрации // ANTIQVITAS AETERNA. Поволжский антиковедческий журнал. Вып.2. Саратов: СГУ, 2007. С. 125.

[44] *Claud D.* Motivation... P. 104

[45] *Latte K.* The Origin... P. 27.

[46] *Claud D.* Motivation... P. 105.

The analyzed sources material (the concepts offered being carefully examined and the researches results being taken into account) allows drawing the following conclusions. *Quaestores parricidii* that appeared in the kings' period and existed in the early Republic acted within the magistrative-comitial process of a public character based on the law of provocation. *Quaestores parricidii* were included in the *lex curiata de imperio* of republican magistrates as the assistants to major officials in the sphere of criminal justice. To all appearance, after that (with the transition to the Republic) quaestors' competence began to cover the prosecution not only of murderers but also other criminals who committed grave crimes therefore in the name of their position the indication to "parricide" (interpreted broadly as "the murder of a citizen" from the kings' time) was omitted. What the correlation was of quaestores aerarii with these officials is a separate question and needs special consideration.

The main functions of the quaestors in the criminal sphere were the investigative actions in relation to people who committed a calculated murder and later any other grave crime (punished by death penalty) and convening of a judicial meeting (*contio*) where people were put in centuries to vote at *comitia.* At the *contio* of Roman citizens quaestors acted as prosecutors (not at *comitia* where major magistrates only put the matter to a vote). In addition to the main functions the quaestors acting in the area of prosecution took part in executing the sentence (punishing citizens), supervised custody. Quaestors' competence covered all the cases of both political and nonpolitical character including the cases that could be determined as "the crimes against the state". For the latter when the criminal was caught in the act *duumviri* could be involved whose task was the summary investigation, accusation and punishment of a criminal.

In whole, we think that the functions of the quaestors of archaic Rome within criminal justice included a pre-trial examination (investigation), participation in trial as a prosecutor at a *contio* convened by them and in the execution of punishment of citizens who were given sentence for grave crimes.