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# "The Urban Praetor's Tribunal" in Spaces of Justice in the Roman World

Eric Kondratieff, *Western Kentucky University*



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COLUMBIA STUDIES IN THE CLASSICAL TRADITION

# *Spaces of Justice in the Roman World*

Edited by *Francesco de Angelis*



COLUMBIA STUDIES IN THE CLASSICAL TRADITION

BRILL

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# Spaces of Justice in the Roman World

*Edited by*  
Francesco de Angelis



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*On the cover:* Interior of the Pantheon, Rome. Photo F. de Angelis.

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## THE URBAN PRAETOR'S TRIBUNAL IN THE ROMAN REPUBLIC

ERIC KONDRATIEFF

The tribunal of the *praetor urbanus* was an important and well-known landmark of the Forum Romanum during the Republic; its presence in the civic landscape represented the locus for the praetor's judicial activities, or his "space of justice." Yet, because the tribunal was an impermanent and mobile landmark, its precise location is difficult to pin down; even its *general* location, which changed several times throughout its long history, is still a matter of debate.<sup>1</sup> Thus, discussions of the urban praetor's "space(s) of justice" during the Republic must grapple with the problem of figuring out where, when and by whom those spaces were established.

### *Tribunal and Comitium: middle to late Republic*

Although sources inform us that the first praetor held office in 366 BCE, they do not tell us when praetors actually began adjudicating. In fact, the recorded activities of early praetors seem to indicate that they had little time for judicial matters; this in turn throws into doubt the putative 'legal motive' for the praetorship's creation, despite what Livy says (more on that below).<sup>2</sup> While we may suspect that praetors began officiating at their tribunals in the Forum during the 4th century, we must bear in mind that evidence for their judicial activities only truly begins to appear in the late-3rd century, and even then, it is sketchy at best.

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<sup>1</sup> Recently: Richardson (1973); Frier (1983) and (1985); David (1992) and (1995); Chioffi (1999); and Kondratieff (2009).

<sup>2</sup> See Brennan (2000) 61–63, and below: "The Praetor and His Identity."



Since legal activities had been conducted in the Comitium or its vicinity from at least the mid-fifth century, it makes sense that the urban praetor would choose, or be assigned to officiate there.<sup>3</sup> Indeed, it has often been argued that he would have been required to operate within a *templum*, or inaugurated and consecrated space, under open sky, in which case the Comitium would have been an excellent choice.<sup>4</sup> But the sources used to link the early praetors' activities to the Comitium supply no useful information on the praetor's tribunal or its exact placement within that locale: Plautus merely refers to the Comitium as a place where one could encounter perjurers or meet with their advocates;<sup>5</sup> Livy only alludes to the general proximity of the urban praetor's tribunal to the Curia.<sup>6</sup> Only Gellius specifically links the praetor to the Comitium by mentioning the conveyance—in some vague, earlier time—of disabled persons *ad praetorem in comitium*.<sup>7</sup> Modern topographers, therefore, proffer somewhat varying opinions on its specific location (and on its movement over time, to be discussed below). Platner and Ashby state only that it stood somewhere on the Comitium; Coarelli locates the tribunals of the *praetor urbanus* and the *praetor inter cives et peregrinos* on the Comitium's northern edge, flanking the Curia on either side (which arrangement Brennan follows in principle) not far from the Puteal of Attus Navius; Richardson believes it stood on the Rostra; and David emphasizes its propinquity to symbolic monuments on or near the Rostra on the Comitium's northeastern flank.<sup>8</sup>

<sup>3</sup> As indicated by *XII Tab.* 1.6–7 (*ap. Rhet. Her.* 2.13.20): *Rem ubi pacunt, orato. Ni pacunt, in comitio aut in foro ante meridiem causam coiciunto*; cf. Cic., *Rep.* 2.31. Coarelli (2009b) 3–5 and nn. 16–18 argues that judicial activities in the Comitium may be traced back to the Regal period.

<sup>4</sup> Most recently, Coarelli (2009b) 3 and n. 2; see also Richardson (1973) 223–224; Welin (1953) 111–120; but see Vaahtera (1993) 107–112 for some objections relevant to this view.

<sup>5</sup> Plaut., *Curc.* 470: *Qui periurum convenire volt hominem ito in comitium*. Plaut., *Poen.* 805: *Advocati [...] cras mane, quaesio, in comitio estote obviam*.

<sup>6</sup> Liv. 27.50.9 (207 BCE).

<sup>7</sup> Gell. 20.1.11, 20.1.47.

<sup>8</sup> Platner and Ashby (1929) 540; cf. Jordan (1871) 499–500; Coarelli (1992) 22–27, fig. 5 and, in general, 59–87, cf. Coarelli (1993e) and (2009b) 5; Brennan (2000) 106–107, 289 n. 71; Richardson (1973) 223, 227–228 and (1992) 401, s.v. “Tribunal Praetoris” and 97, s.v. “Comitium,” locates the tribunal on the Rostra, but the sources he cites—Varro, *Ling.* 5.155; Macr., *Sat.* 3.16.15; and Liv. 27.50.9—do not mention this, nor does he seem to realize that this would elevate the praetor far too high above the heads of those with whom he dealt (see below on tribunals); David (1995) 372–376; cf. David (1992) 14–18.

Where the urban praetor located his tribunal is so difficult to pinpoint because no physical remains of actual tribunals have survived, *in situ* or otherwise. Tribunals were generally temporary structures built of wood, as confirmed by accounts of their rapid assembly and, occasionally, their use as bonfire kindling.<sup>9</sup> Indeed, one theory on the ephemeral nature of tribunals holds that incoming magistrates always had new ones built for their use (after observing a decent interval in which their predecessors could have the old ones demolished and cleared away).<sup>10</sup> Whether this occurred or not, it is clear that the average tribunal was not an impressive structure. It was a chest-high dais, mounted by a short attached ladder or stairway, just large enough to accommodate the magistrate upon his curule chair and, perhaps, a couple of his lictors, with clerks or assessors stationed on the ground nearby (although Cicero refers at least once to an assessor's presence on a praetor's tribunal).<sup>11</sup> Imperial-era depictions of *tribunalia* on, e.g., coins, tomb paintings, and at least one fragmentary relief sculpture from the Forum itself, are useful guides to the general design and use of tribunals in the Republic (although these must be used with caution, as modifications over time were possible: figs. 1 and 2).<sup>12</sup>

<sup>9</sup> Jos., *BJ* 2.301 notes the rapid assembly of a tribunal for Gessius Florus before the palace in Jerusalem, from which he received supplicants on the very morning in which it was set up; see also Capponi, in the present volume. On the use of tribunals for bonfires: Ascon., *Mil.* p. 33 C (52 BCE): *Populus ... corpus P. Clodi in curiam intulit cremavitque subselliis et tribunaliibus et mensis et codicibus librariorum* ("The *populus* ... carried P. Clodius' body into the Curia and cremated it using for fuel benches, tribunals, tables, and notebooks belonging to the clerks"). The Curia and the adjacent Basilica Porcia were also destroyed. See recently Sumi (1997). On the fire of 44 BCE: Suet., *Iul.* 84.3 and n. 61, below.

<sup>10</sup> Richardson (1973) 219 makes this argument *e silentio*, noting that no record exists of a new praetor taking over his predecessor's tribunal; one might as easily postulate the opposite on the same grounds.

<sup>11</sup> Richardson (1973) 220–221; Cic. *Vat.* 34 describes P. Vatinius ascending C. Memmius' tribunal to thrust the praetor down from it: *Num quis reus in tribunal sui quaesitoris escenderit eumque vi deturbarit?*; Cic. *Verr.* 2.2.94 depicts C. Verres speaking down from his tribunal: *De sella ac tribunali pronuntiat*. Mart. 11.98.17 notes that *tribunalia* are *alta*. See most recently Bablitz (2007) 29–31. For assessors on a praetor's tribunal: Cic., *De orat.* 1.168; Frier (1985) 62; and Bablitz (2007) 211 n. 100.

<sup>12</sup> Numerous coin designs represent the emperor seated alone upon a curule chair atop a small square or rectangular tribunal receiving victory laurels or infant hostages (*RIC* I Augustus 162–165, 200–202); appointing kings for subject kingdoms (*RIC* II Trajan 666; *RIC* III L. Verus 512); or accompanied by two or three attendants doling out money (*RIC* I Nero 153). In scenes of *adlocutio* (addressing the troops) or acclamation, the emperor is depicted standing upon a tribunal alone or crowded by several other figures in military kit (*RIC* I Gaius 32 [alone] and Galba 466 [with companions]). Note also the tomb painting

Though quite modest as structures go, a tribunal served its main purpose as long as it established a visual hierarchy of status and power between the magistrate sitting upon it and everyone else, while not raising him so high as to impede his ability to communicate and interact with those who came before him.<sup>13</sup> If regularly positioned on the Comitium's edge facing in towards the *cavea*, the assembly area, the urban praetor's tribunal could have been shorter than most, taking advantage of the pre-existing height differential between its position at the top of the steps leading down into the Comitium. In this case, litigants (or accused) and advocates standing in the recessed area of the *cavea* would still have to look up at the praetor, even though his tribunal may have been only a foot or two in height. If his tribunal faced outwards from the Comitium, or when he had to preside elsewhere, as in 215 BCE (see p. 95, below), the praetor would have needed a taller tribunal, perhaps three or four feet in height, built for the occasion. Their modest size and construction out of relatively lightweight material made tribunals easily portable: they could be set up, disassembled, relocated within, or removed entirely from the Forum in fairly short order.<sup>14</sup> The portability of tribunals—the praetor's or any other officer's—exemplified the mutability of the Forum itself.

The Forum was, throughout the Republic, not only Rome's chief venue for judicial, political and financial activities, but also a venue for games, entertainments and religious ceremonies. This meant that the portions of the Forum, if not its entire space, often had to be converted to different uses, sometimes dedicated wholly to one activity. On comitial days, for instance, the area around the Comitium would be occupied by voting *pontes*, large wooden gangways upon which individual voters would proceed from their assembled tribe up to the Rostra, a properly consecrated *templum* within which stood voting urns to receive their

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of municipal magistrate C. Vestorius Priscus, an aedile of Pompeii, portrayed sitting upon a small tribunal that is level with the waists of his surrounding attendants (Richardson [1973] 221; recently reproduced in Clarke [2007] 152–153, figs. 134–135). Bablitz's chapter in this volume (pp. 240–248) provides the most recent discussion of a relief fragment found near the Lacus Iuturnae in the southern Forum Romanum that depicts two disputants standing before the corner of a chest-high tribunal with a magistrate's *sella curulis* upon it; see also Bablitz's (2008) survey of tribunals and reconstruction of their apparent development in form and function.

<sup>13</sup> Bablitz (2007) 30.

<sup>14</sup> Jos., *BJ* 2.301 (n. 9, above). Richardson (1973) 222 suggests that most of the portable items of a court, such as those mentioned in Ascon., *Mil.* p. 33 C (n. 9, above) could be carried off and stored in buildings around the Forum.

ballots.<sup>15</sup> During the voting process, the citizenry in attendance could fill the entire Forum (as sometimes occurred during *contiones*), at least when the legislative matter had generated enormous popular interest.<sup>16</sup> Some scholars believe that concrete support for such crowds may be found in a series of *pozzetti* (small stone-lined pits) found in front of the Rostra. They theorize that these supported posts for screens that could be set into the Forum floor to create an *ovile* (“sheepfold”), a holding pen like the one used in the Campus Martius to divide the people into tribes or centuries as they awaited their turn to vote. Nevertheless, the fact that a Forum assembly could quickly divide into voting tribes may indicate that creating an *ovile* required nothing more sophisticated than rope barriers (held by attendants as at Athens, or attached to portable posts on wooden bases).<sup>17</sup> It is quite possible that the *pozzetti* served a different function. For instance, the entire Forum was sometimes converted into an enormous banqueting area, whether for funeral *epula* (feasts)<sup>18</sup> or triumphal celebrations.<sup>19</sup> On such occasions, when hundreds, or even thousands of dining couches were set

<sup>15</sup> Taylor (1966) 39, 41, 45, 75, 79, 108–109 and 127 n. 22; her work on the voting *pontes* is still fundamental. The Rostra Castoris also served as a location for the voting urns, although the people would then have assembled in the open area before the temple instead of in the Comitium.

<sup>16</sup> On filling the Forum during *contiones* and *comitia*, see most recently Kondratieff (2009).

<sup>17</sup> On the *pozzetti* and their possible function: Lugli (1946) 81–82; Coarelli (1992) 126–131; Patterson (1992) 91; Mouritsen (2004), in a critical examination of modern theories connecting *pozzetti* in the Forum Romanum and in colonial *fora* of Republican Italy with popular assemblies, argues that their heterogeneous nature indicates that *pozzetti* were likely used for a variety of functions, both religious and practical; Coarelli (2005), *contra* Mouritsen (2004); Welch (2007) 36–38; and Coarelli (2009b) 4. In this author's view, the *pozzetti* seem too large to serve as postholes for screens to create an *ovile*. For the people rapidly dividing into voting tribes see, e.g., Liv. 25.2.7.

<sup>18</sup> Liv. 39.46.1–3 (183 BCE): *Post ludos epulum in quo cum toto foro strata triclinia essent [...]* (“After the [funeral] games, a feast was held in which the entire Forum was covered with banqueting couches”). Filling the Forum with *triclinia* was not uncommon: Welch (2007) 5 notes that this event was worth recording because the tents used to protect the *triclinia* from the weather harmlessly fulfilled a prophecy about tents filling the Forum. Likewise, Plutarch (*Sull.* 36.1–2) only mentions Sulla's public feasts because he transgressed his own sumptuary laws through extravagance and waste; and Suetonius (*Iul.* 26) mentions gladiatorial games and a public feast given by Caesar because they were the first dedicated to a woman (his daughter, Julia).

<sup>19</sup> Plutarch (*Crass.* 12.2) remarks that one of Crassus' chief achievements as consul in 70 was to provide a feast for the Roman people at 10,000 tables (though such a large number of banqueters probably could not have been accommodated entirely within the Forum).

up throughout the entire space, shade could have been provided by awnings anchored not only to some of the buildings surrounding the Forum, but also to large, mast-like posts erected in the *pozzetti*. Indeed, such posts would have been necessary to support, e.g., the expansive linen awnings with which Caesar famously “covered the Forum, the Sacra Via from his house (the Regia) and the Clivus Capitolinus” for his gladiatorial games—and, surely, the accompanying public feasts—in 45 BCE.<sup>20</sup>

The Forum’s use as a venue for gladiatorial matches and *venationes* (wild beast hunts) is well attested. At such times, it could be temporarily fitted out with a large wooden amphitheater that resembled its stone contemporaries—such as Pompeii’s, completed ca. 80 BCE—in size, shape, and seating capacity, holding up to 15,000 spectators.<sup>21</sup> The assembly, use and disassembly of these massive wooden amphitheaters—undertaken by contractors and work teams who built many such temporary structures every year in Rome<sup>22</sup>—would have to have been fairly rapid, occupying the Forum for perhaps only two or three weeks. Buildings around the Forum’s perimeter could also accommodate spectators for such games, either with permanent balconies or with temporary wooden platforms cantilevered out from their upper floors to overlook the performance area.<sup>23</sup>

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<sup>20</sup> Plin. *NH* 19.6.23: *Caesar dictator totum forum Romanum intexit viamque sacram ab domo sua et clivum usque in Capitolium*. To Pliny’s sources “the awning seemed more marvelous than the gladiatorial display itself” (*NH* 19.6.23: ... *quod munere ipso gladiatorio mirabilius visum tradunt*; cf. *NH* 15.20.78). This is all in the context of Pliny’s discussion on the wonders of linen and its earliest use as awning material in Rome, beginning with Q. Lutatius Catulus’ rededication of the Capitolium in 69 (cf. Thein [2002]), Lentulus Spinther in 60 as *praetor urbanus* in charge of the *Ludi Apollinares* (cf. Brennan [2000] 99, 103–104, 824 n. 109, and Val. Max. 2.4.6), Caesar as dictator in 45, and ending in 23 with Marcellus’ use of linen awnings to shade litigants in the Forum Romanum when he was aedile (Plin. *NH* 19.6.24, cf. Dio 59.23.9 for Gaius’ use of awnings for a similar purpose sixty years later). As linen, not the history of all awnings, is Pliny’s subject, one should not preclude the probable, earlier use of non-linen awnings to shade substantial portions of the Forum (Liv. 33.48 provides a non-Roman 3rd-century example of awnings used to shade feasters). On Caesar’s combining of *munera* and *epula*: Plut. *Caes.* 5.9 (65 BCE as aedile, perhaps using awnings of different material and limited deployment?), cf. Suet. *Iul.* 10; and Plut. *Caes.* 55.4, cf. Suet. *Iul.* 38–39 (45 BCE).

<sup>21</sup> Welch (2007) 18–26, 38–42, 43–71 along with figs. 21–30 and 34–35.

<sup>22</sup> Vitruvius 5.5.7–8: *Dicet aliquis forte multa theatra quotannis Romae facta esse* (“Someone might say, perhaps, that many theaters are built each year in Rome”).

<sup>23</sup> Coarelli (1992) 42–53; Welch (2007) 32–35, 277–278 nn. 29–30, figs. 25, 26 and 29.

The Forum's temporary conversion to other uses frequently necessitated the removal of non-essential, impermanent structures; this highlights the fact that many topographical sites and structures that formed important and immutable parts of the monumental Forum—as we tend to imagine it—were in fact ad hoc, mobile affairs. Whether all or only some of these conversions interrupted the urban praetor's work is uncertain: his tribunal may have been located on or near the Comitium's north-western side, and therefore outside of the so-called *septem iugera forensia*, the Forum's central space. Thus, the construction or dismantling of amphitheaters may not have prevented him from adjudicating in his normal location; but other activities, e.g., Forum-filling *contiones*, *comitia* and public banquets may have done so.

The portability of tribunals also afforded the magistrates who used them some flexibility in where they could perform their official duties, as demonstrated in 215 BCE. The consuls of that year ordered the senate to hold its meetings at the Porta Capena so that prorogued generals could confer with them about, e.g., their campaigns in Campania without having to cross the *pomerium* and thereby abrogate their *imperium*.<sup>24</sup> In order to remain in close proximity to the senate and its activities, Livy reports that,

*praetores quorum iuris dictio erat tribunalia ad Piscinam publicam posuerunt; eo vadimonia fieri iusserunt ibique eo anno ius dictum est.*

(Liv. 23.32.4)

The praetors who had judicial duties [i.e., the *praetor urbanus* and *praetor inter cives et peregrinos*] set up their tribunals at the Piscina Publica [near the Porta Capena];<sup>25</sup> they ordered that this location should be named in *vadimonia*, and there justice was dispensed in that year.<sup>26</sup>

This example is unusual only in its duration; more frequent was the urban praetor's temporary installation of his tribunal in such endroits as the Campus Martius so he could preside over, e.g., the *quarta accusatio* of a *iudicium populi* in which a capital charge was being prosecuted by a tribune who lacked the authority to assemble the people in centuries for

<sup>24</sup> Liv. 23.32.3. The Porta Capena debouches onto the Via Appia.

<sup>25</sup> The Piscina Publica—a public swimming pool and bath (Fest. p. 232 L)—was apparently located within the Servian Wall, near the Porta Capena. See Platner and Ashby (1929) 391, s.v. "Piscina Publica"; Richardson (1992) 292, s.v. "Piscina Publica," notes that it originally may have been a reservoir; Coarelli (1999c) 91–92.

<sup>26</sup> On the traditional location for the tribunal of the *praetor inter cives et peregrinos*, see most recently Bablitz (2007) 21–22.

the final vote.<sup>27</sup> Most unusual in its purpose, but also illuminating, is the occasion when M. Caelius Rufus, *pr. per.* 48 BCE, moved his tribunal next that of *praetor urbanus* C. Trebonius in order to provide *auxilium* to debtors who might request it.<sup>28</sup>

The impermanence and mobility of tribunals (and similar structures) also provides an important clue as to why so many references to the regular locations of various magistrates and officers of Rome are keyed to nearby *permanent* structures or monuments, such as the Comitium for the praetor's tribunal, or the Tabula Valeria for the tribunes' *subsellia*.<sup>29</sup> It is to this permanent landscape, in which the praetor normally set up his tribunal, that we must return in order to get a better sense of the "space of justice" in which he worked.

### *The praetor and his 'identity'*

Because the Forum was patently mutable in aspect and function, any discussion of the meaning(s), symbolic or otherwise, that its religious and civic landscape may have held for Romans who functioned individually and collectively therein must acknowledge that more than one valid interpretation of any set or subset of its topographical sites likely existed then as now. The following consideration of possible ways in which the urban praetor and his tribunal may have been perceived or interpreted in connection to its surroundings, therefore, does not claim to be an exhaustive examination, but merely a starting point for further investigation.

One interesting view proposed by David is that the praetor acquired his identity from his physical surroundings, with particular reference to the nearby statue of Marsyas, itself set up perhaps as early as 294 BCE

<sup>27</sup> Liv. 43.16.8–11: P. Rutilius, *tr. pl.* 169 BCE, in prosecuting the censors for *perduellio* named a date (*diem dixit*) on which the *praetor urbanus* would assemble centuries in the Campus Martius for the *quarta accusatio*.

<sup>28</sup> Caes., *Civ.* 3.20.1: M. Caelius Rufus *praetor causa debitorum suscepta initio magistratus tribunal suum iuxta C. Treboni, praetoris urbani, sellam collocavit et, si quis appellavisset de aestimatione et de solutionibus, quae per arbitrum fierent, ut Caesar praesens constituerat, fore auxilio pollicebatur*.

<sup>29</sup> Tabula Valeria: a painting affixed to the Curia's west side in 264 BCE (Plin., *Nat.* 35.22) where the tribunes normally placed their benches (when not in the Basilica Porcia, built by Cato the Censor in 184 BCE) which became metonymic for their "offices" (Cic., *Vatin.* 21; *Fam.* 14.2.2; cf. Ascon., *Tog. cand.* p. 91 C; Richardson [1992] 376, s.v. "Tabula Valeria").

by the censor C. Marcius Rutilius Censorinus to commemorate a law he passed when tribune in 311 against the abuses of *faeneratores*.<sup>30</sup> Extrapolating from this, and from the fact that the Marsyas statue seems always to have been closely associated with the urban praetor's tribunal, David posits that Romans would have viewed the *praetor urbanus* as a champion of debtors and crusader against usurers, citing the extreme cases of A. Sempronius Asellio, *pr. urb.* 89 BCE, and M. Caelius Rufus, *pr. per.* (!) 48 BCE—both of whom lost their lives due to 'pro-debtor' activities—as exemplars of this particular role.<sup>31</sup> While this aspect of a praetor's work and identity may indeed have been key for Romans who sought relief from abusive moneylenders, we must be careful not to set aside the other roles and identities of a *praetor urbanus*, whether derived from his immediate surroundings or from his activities.

Brennan demonstrates that although the praetor's ability to dispense justice was inherent within his grant of *imperium*, Livy's declaration that the praetor was created "to administer justice in the city" is undercut by his own accounts of early praetors that focus on military activities, legislation, and civic leadership.<sup>32</sup> Initially, the praetor appears on the scene as a man invested with '*minus*' *imperium* who could command a "third army" to protect the city<sup>33</sup>—the Servian Wall apparently needed

<sup>30</sup> David (1995) 375. On Censorinus' law: Gaius, *Inst.* 11.23. On the statue, Platner and Ashby (1929) 499, s.v. "Statua Marsyae," date its arrival in Rome to 188 BCE (carried from Phrygia by Cn. Manlius Vulso), while noting that its exact location was not given in the sources before 8 BCE; Torelli (1982) 89–118 dates it to 294 and the censorship of C. Marcius Rutilius Censorinus—two years after the Ogulnii brothers erected a statue of the Lupa with Romulus and Remus near the Ficus Ruminalis—and argues that the statue was consistently moved to wherever the *praetor urbanus* kept his tribunal; Coarelli (1992) 91–119; Richardson (1992) 370–371, s.v. "Statua Marsyae"; Coarelli (1999h) 364–365 notes that Censorinus may have erected the statue in 265 BCE in his *second* censorship.

<sup>31</sup> David (1995) 375–377. A mob of creditors roused by L. Cassius, *tr. pl.* 89 BCE, pursued and killed *praetor urbanus* A. Sempronius Asellio for giving relief to debtors (Val. Max. 9.7.4; see also Liv., *Perioch.* 74; App., *BC.* 1.54; *MRR* 2.33 and 3.188). M. Caelius Rufus, *pr. per.* 48 BCE, was suspended from office by *cos.* P. Servilius Isauricus for illegally pressing bills to suspend payments of rent, interest and debts against his colleagues' opposition; he fled Rome and raised a revolt with T. Annius Milo, during which he was killed by soldiers (Caes., *Civ.* 3.20.1–22.4; Dio 42.22.1–25.3; *MRR* 2.273 for further references, including his position as *praetor inter cives et peregrinos*, not *praetor urbanus* as David seems to indicate).

<sup>32</sup> Liv. 6.42.11 (367 BCE): [...] *a plebe nobilitati de praetore uno qui ius in urbe diceret ex patribus creando*. Brennan (2000) 61 and 271–272 nn. 20–22.

<sup>33</sup> Coli (1973) vol. 2, 597–599, notes the mustering in 386 BCE of a "third army" (Liv. 6.6.14, *tertius exercitus*) or "city legion" (Liv. 6.9.5, *legiones urbanae*) to defend Rome against invaders. While this predates the praetorship's creation by 20 years, Brennan (2000) 70–73 takes it as a hint at the original purpose for the praetorship's creation. On



at least 4,000 men to guard it properly<sup>34</sup>—while the consuls were in the field; later, he became a regular field commander in his own right. Other activities recorded for early praetors include detaining treasonous soldiers, presiding over the senate, and exercising *ius agere cum populo* (as in 332 BCE to pass a law granting *civitas sine suffragio* to Acer-rae).<sup>35</sup> Since no clear record of their early judicial activities exists, and since early praetors appear to have been too occupied with other affairs to have spent much of their time adjudicating, Brennan concludes that Livy's assertion that the praetorship was created for the administration of justice is "in a sense anachronistic" and surmised from his (or his sources') own experience of the office in its later, developed phase.<sup>36</sup> Even then, as in the years 218 to 166 BCE (a well-documented period during which the praetorship was fully developed), we find that in addition to administering justice the urban praetor "was de facto entrusted with the bulk of the important duties in the city."<sup>37</sup> In short, his work encompassed a multitude of roles—requiring him to function in military, civic, judicial, even religious capacities<sup>38</sup>—all of which played into the identity or identities of the *praetor urbanus*. Thus, David's proposed identity for the praetor is not invalid, but merely too limited for this period of the praetorship's history. We must not focus on a single identity for the urban praetorship to the exclusion of other possibilities that obtained under different circumstance or from differing perspectives. With that

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the '*minus imperium*' of the praetors, a principle which apparently dates to the earliest years of the Republic (as seen in the submission of consuls to the authority of dictators), see Brennan (2000) 25–28, 34 and *passim*.

<sup>34</sup> Starr (1980) 16–19, 24 n. 10.

<sup>35</sup> Liv. 7.39.3 (detaining soldiers); Liv. 8.2.1–2 (presiding over the senate); and Liv. 8.17.12 (exercising *ius agere cum populo*). Brennan (2000) 119 suggests that praetors may have regularly passed legislation delegating *imperium* rather than conferring it, as some have postulated, albeit these actions are not recorded in the sources; cf. also Brennan (2000) 725.

<sup>36</sup> Brennan (2000) 61–62. On the political aspects and administrative motives for the praetorship's creation: Brennan (2000) 63–73, esp. 72–73 on the praetor's early, probably primary, role in defending the city. He also argues that the *praetor urbanus* likely could not spend much time in adjudication until much later in the praetorship's history.

<sup>37</sup> Brennan (2000) 101 points out that if the *praetor urbanus* shared duties with any other praetor it would have been with the *praetor inter cives et peregrinos*, although "the *praetor urbanus* was the 'senior' praetor: he had general precedence over the peregrine and (we can assume) all other praetors."

<sup>38</sup> In 217 BCE the *pontifex maximus* charged *praetor urbanus* M. Aemilius Regillus with performing a rogation to ratify public vows for a Sacred Spring: Liv. 22.9.7–10.10; cf. Liv. 33.44.2, 34.44.1–3, 6; and Brennan (2000) 124–126 on the praetor's religious functions.

in mind, we might examine other aspects of the local topography that could have influenced people's perception of the *praetor urbanus* when at his tribunal.

In the western end of the Forum, the praetor's tribunal was surrounded by a number of important structures and monuments, such as the Curia, Comitium and Rostra; the temples of Saturn and Concordia, along with the Volcanal; the Columna Maenia and Columna Rostrata of C. Duilius; and much more besides, including numerous statues of great men of the Republic (not to mention the previously-noted statue of Marsyas).<sup>39</sup> Many of these buildings, monuments or statues, imbued as they were with historical significance, could be 'called upon' as witnesses to the principles they embodied by an orator giving a speech to the people from the Rostra, or pleading a case before a nearby tribunal and attendant throng.<sup>40</sup> Indeed, they were so useful to the skilled orator that Cicero complained about the *lack* of such surroundings—of Curia, Forum and enthusiastic crowd<sup>41</sup>—when forced to plead for King Deiotarus in Caesar's house to Caesar alone.<sup>42</sup>

Within this milieu, one might suppose that the praetor on his tribunal could literally bask in the reflected glory of Rome's gods, institutions and heroes, enjoying all the prestige that they conferred upon him and his office. But this setting also had a darker side: when situated on or near the Comitium, the praetor's tribunal also sat amid a cluster of important sites that Purcell has aptly termed the "topography of punishment."<sup>43</sup> This included such well-known buildings or topographical features as the Carcer, the ancient, cramped jailhouse on the lower slope of the

<sup>39</sup> On the monumentalization of the area around the Curia and Comitium during the middle and late Republic, see: Hölscher (1978) and, most recently, (2006) 108–113; Coarelli (1993e); Hölkeskamp (1993) 27–29 and (2004), esp. 158–163 and plan (fig. 16) for the statues; Purcell (1995a) 327; and Kondratieff (2004) 7–10.

<sup>40</sup> Examples of orators pointing out statues in speeches include: Cic., *De orat.* 2.59.242 (L. Licinius Crassus referring mockingly to the family statues of the Domitii); App., *BC* 1.41.169 (Octavian pointing to Caesar's statue when claiming his full inheritance); and Suet., *Rhet.* 6 (C. Albius Silus pointing to a statue of M. Brutus as the last embodiment of Republican virtue). On topographical referents in Roman oratory, see: Favro (1999); Aldrete (1999) 30–32.

<sup>41</sup> For the *praetoria turba*, a smallish crowd including lictors, clerks, petitioners and advocates whenever the praetor was present, not to mention juries and a corona of onlookers during trials: Cic., *Verr.* II 1.138, cf. *Ad Q. fr.* 2.3.6 and n. 83, below; Frier (1985) 62 and n. 59.

<sup>42</sup> Cic., *Deiot.* 5–7; cf. de Angelis in this volume; on hearings held in enclosed spaces, see also Frier's and Bablitz's chapters.

<sup>43</sup> Purcell (1995a) 333; cf. Coarelli (1992) 59–87 and (2009b) 5.

Capitoline Hill not far from the Curia and Comitium, and the Tarpeian Rock, from which malefactors, army deserters, would-be tyrants and political undesirables were cast headlong to their deaths.<sup>44</sup> Not so obvious in this topographical ‘set’ is the Comitium itself, which could be converted from its more benign uses—a meeting place for legislative assemblies or gathering spot for litigants awaiting a hearing—into a venue for cruel, public punishments. In 138 BCE, for instance, army deserters were subjected to the yoke and prolonged public flogging in the Comitium, then sold into slavery for one *sestertius* apiece.<sup>45</sup> An important corollary is that the Comitium—or any site used for widely varying purposes—could be integral to overlapping or intersecting topographical ‘sets,’ and thereby partake of multiple identities, just like the officers and magistrates associated with the activities that occurred there.<sup>46</sup>

Returning to the *praetor urbanus*, the upshot is that his tribunal sat not only within the ‘topography of legislation,’ and the ‘topography of litigation,’ but also within the ‘topography of punishment,’ overlooking the very site reserved for corporal punishments. The psychological impact that this collocation of tribunal of justice and place of punishment may have had upon a Roman standing before the praetor is irrecoverable and would have depended upon *why* he had been brought before the praetor in the first place; but it was undoubtedly significant and surely augmented the praetor’s dominance in the hierarchy of power established by the platform upon which he sat in judgment. One is irresistibly reminded of courtrooms of America’s Old West whose windows looked out upon a gallows or ‘hanging tree.’ Unlike in the Old West, however, there existed a ready source of assistance for those who felt that they were receiving unfair treatment from the praetor: the tribunes of the plebs, who kept their benches just north of the Comitium, not far from the praetor’s tribunal. This meant that tribunician *auxilium* or intercession was within convenient reach of anyone who wished “to appeal from the praetor to

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<sup>44</sup> On the Carcer and Comitium, see Coarelli (1993d) and (1993e). On the Tarpeian Rock: Wiseman (1999); Livy (24.20.6) reports that 370 army deserters were thrown off the Tarpeian Rock in 214 BCE.

<sup>45</sup> Liv. *Perioch.* 55; Liv., *Epit. Oxyrh.* 55; Frontin., *Strat.* 4.1.20. While these men had been accused before the tribunes (*apud tribunos plebis*), other cases exist of praetors ordering citizens publicly flogged, notoriously C. Verres, *pr. urb.* 74 BCE (Cic. *Verr.* II 1.47.122), albeit the praetor’s tribunal was by then in the Forum’s SE corner (see below).

<sup>46</sup> Some topographical sets were virtually one and the same, differentiated only by the addition or subtraction of the Carcer or Rubra Saxa, or by activities, e.g. a trial vs. the execution of corporal or capital punishment.

the tribunes" (*a praetore tribunos appellare*).<sup>47</sup> Communications between these two locations, of course, flowed in both directions. For instance, as late as the early-first century we read of tribunes approaching the tribunal of the *praetor urbanus* to bring capital charges against individuals, and to name a day (*diem dicere*) on which he would assemble the centuriate assembly for a public trial (*iudicium populi*).<sup>48</sup> Later in the century, however, it appears that tribunes preferred to bring the accused before the praetor, rather than undertake a *iudicium populi* with all of its cumbersome processes.<sup>49</sup>

In sum, it is difficult to imagine the *praetor urbanus* (or his tribunal) having one particular identity derived from his (its) surroundings in the Forum's western end, since the surroundings themselves were so varied in their functions and, therefore, in their symbolic meanings for the Roman people. It is also possible to imagine that the urban praetor, whose magistracy encompassed a multitude of important roles and duties, conferred as much, or more, *dignitas* on his "space of justice," despite the humble appearance of his actual tribunal, as the space and nearby topographical features conferred upon him. How, or whether, perceptions of the praetor and his tribunal may have changed when relocated elsewhere in the Forum is difficult to say.

#### *The praetor's tribunal moves south: the post-Sullan Republic*<sup>50</sup>

There is clear evidence that by the mid-70s BCE the *praetor urbanus* was adjudicating at a new location near the Forum's southeastern corner adjacent to the Gradus Aurelii, or Aurelian Steps (fig. 3).<sup>51</sup> Based on Cicero's statement that they resembled a theater, these are thought to

<sup>47</sup> Cic., *Quinct.* 64 (more generally 29, 63–65, 87) provides a good example of this practice as it occurred in 83 BCE. Tribunes also refused *auxilium* if they thought the praetor had acted correctly, as in Cic., *Tull.* 7.38–39 (71 BCE).

<sup>48</sup> M. Vergilius, *tr. pl.* 87 BCE, indicted (*diem dixit*) Sulla, then in Asia, at Cinna's behest (Cic., *Brut.* 179; Plut., *Sull.* 10.4).

<sup>49</sup> Brennan (2000) 125–126, 130–131 and 370.

<sup>50</sup> The following section is a much reduced version of points presented in Kondratieff (2009).

<sup>51</sup> Brennan (2000) 289 n. 71, following Frier (1983) 223 n. 11 and Frier (1985) 59 n. 56, believes the praetor's tribunal was placed ca. 80 BCE near the Puteal Libonis/Scribonianum, which is argued below to have occurred later. Richardson (1973) 225–227 argues that the urban praetor's tribunal was not moved from the Comitium until the mid-40s.

have been grandstands.<sup>52</sup> The original view that the Gradus were built of stone has fallen out of favor since excavations in the Forum have failed to reveal any remains that can be positively identified with them; the current theory is that they were built of wood.<sup>53</sup> This theory accords well with two facts: wooden grandstands—even whole amphitheaters—in the Forum were commonplace by this time;<sup>54</sup> and we only hear of the Gradus Aurelii in relation to activities that occurred there, not because the steps themselves were inherently remarkable. We may imagine the Gradus, therefore, as curved wooden grandstands that faced (or flanked?) the praetor's newly situated tribunal, itself perhaps identifiable as the new Tribunal Aurelium, a structure apparently located near the Temple of Castor and Pollux.<sup>55</sup>

All of our evidence for both structures comes solely from Cicero: he refers to the Gradus Aurelii in speeches given in 66 and 59 BCE;<sup>56</sup> and mentions the Tribunal Aurelium in the four post-exilic speeches of 57, always in the context of the tribune Clodius' activities there in 58 (a levy of slaves) that 'desecrated' the site.<sup>57</sup> In the four latter speeches, the propinquity of references to Clodius' activities at the Tribunal Aurelium and at the Temple of Castor makes it difficult to avoid the conclusion that the two sites were in close *physical* proximity. The tribunal may have stood before the temple, or perhaps it was located immediately to its

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<sup>52</sup> Cic., *Cluent.* 93: *Gradus illi Aurelii tum novi quasi pro theatro illi iudicio aedificati videbantur.*

<sup>53</sup> Platner and Ashby (1929) 539–540, s.v. "Tribunal Aurelium," believe that the Gradus were built of stone; Purcell (1995a) 332–333 believes they could have been wooden. In either case, they were removed by the time Augustus had the Forum repaved, hence the complete lack of archaeological remains (and why consensus on their actual nature is so elusive); Coarelli (1992) 198–199 also notes the lack of identifiable remains.

<sup>54</sup> Plut., *CG* 12.3–4 mentions circular grandstands built for gladiatorial shows in the Forum in 122 BCE; cf. Vitruvius 5.5.7 (quoted in n. 21, above) on the multitude of wooden theaters built annually in Rome. On the development Roman wooden grandstands: Welch (2007) 30–71, esp. 49–71; also, nn. 20–22, above.

<sup>55</sup> Neudecker, in this volume, suggests that the Gradus Aurelii and tribunal were part of the same structure, with the tribunal in the middle and the *gradus* at the *cornua* of the curve providing seats for the *iudices* (there could be as many as 81, as in Milo's trial in 52 BCE: Ascon., *Mil.* p. 39 C). However, his evidence is mostly later, i.e., the curved tribunal built in the Basilica of Fanum by Vitruvius (Vitruvius, 5.1.8) and the shape of the *exedrae* in the Forum Augusti; moreover, the earliest of examples that he adduces, the Comitium of the Forum Romanum, was in all likelihood *not* round, for which see Carafa (1998).

<sup>56</sup> Cic., *Cluent.* 93; *Flacc.* 66.

<sup>57</sup> Cic., *P. red. ad Quir.* 13; *Dom.* 54; *Pis.* 11; and *Sest.* 34.

east, as Frier hypothesizes.<sup>58</sup> Tellingly, Cicero never mentions the Gradus Aurelii and Tribunal Aurelium together in the same speech, which may indicate that they were related structures, with one being metonymic for the other. Thus, Cicero's reference to the Tribunal Aurelium may have indicated to his auditors the whole court complex of which the Gradus were only part.<sup>59</sup>

Because neither structure is mentioned after 57 BCE, it is reasonable to conclude that both were removed or destroyed not long thereafter. Korhonen believes that they were consigned with other tribunals, desks and benches to Clodius's ad hoc funeral pyre in the Curia in 52, and so postulates that the Gradus and Tribunal stood adjacent to the Curia instead of the Temple of Castor.<sup>60</sup> If the two structures were in fact destroyed in 52, it is quite conceivable that, in their zeal to burn down the Curia over Clodius' body, the riotous crowd could have broken up any wooden structures within reach throughout the Forum proper and then transported the materials to the Curia for burning. It is thus not necessary to assume that the Gradus and tribunal stood near the Curia. If they did survive the conflagration of 52, it is almost certain that they did not survive Caesar's cremation before the Regia, which stood just north of their presumed location near the Temple of Castor.<sup>61</sup> Suetonius writes that, after Caesar's bier was set alight, "the crowd of bystanders immediately threw onto it dry branches and the tribunals with the judgment seats, and whatever else could serve as an offering."<sup>62</sup> It is tempting to see in Suetonius' collocation of tribunals and judgment seats (or grandstands for jurors?) an oblique reference to the Tribunal Aurelium and Gradus Aurelii, although he may also be referring to the apparatus of other permanent courts located in the general vicinity. In

<sup>58</sup> Frier (1983) 223 n. 11, and (1985) 59 n. 56.

<sup>59</sup> See, e.g., Platner and Ashby (1929) 539–540, s.v. "Tribunal Aurelium"; Coarelli (1992) 192; Purcell (1995a) 332–333; Korhonen (1999). Richardson (1973) 225–226, (1992) 181–182, s.v. "Gradus Aurelii," and 400–401, s.v. "Tribunal Aurelium," believes they were not related, preferring to connect the Gradus Aurelii to the steps of Sulla's newly rebuilt Comitium (which Carafa [1998] 151–159 demonstrates was *not* rebuilt until Caesar's reorganization of the Forum in the mid-40s BCE) and the Tribunal Aurelium to a dais near the Ovile in the Campus Martius (ably refuted by Korhonen [1999]).

<sup>60</sup> Korhonen (1999). For the materials consumed in Clodius' pyre, see Ascon., *Mil.* p. 33 C, quoted in n. 9, above.

<sup>61</sup> For the location of Caesar's pyre near the Regia: App., *BC* 2.148: [...] ἔνθα τὸ πάλαι Ῥωμαίους ἔστι βασιλείον. See also David (1992) 15 n. 32, 17; and Chioffi (1999) 172.

<sup>62</sup> Suet., *Iul.* 84.3: *Festimque circumstantium turba uirgulta arida et cum subselliis tribunalia, quicquid praeterea ad donum aderat, congressit*; cf. Plut., *Caes.* 68, *Ant.* 14.3 and *Brut.* 20.3 for similar descriptions.

either case, the absence of both structures from literary sources after 57 strongly indicates their temporary nature which, in turn, lends support to the view that both had been built of wood.<sup>63</sup>

It is easier to date the construction of the Gradus Aurelii and Tribunal Aurelium than their disappearance, since there seem to be only two likely builders in consecutive years: C. Aurelius Cotta, while consul in 75, or his brother, M. Aurelius Cotta, while consul in 74, a theory offered by Platner and Ashby.<sup>64</sup> More recently, Coarelli proposed that C. Cotta erected the steps in 81 while praetor.<sup>65</sup> But Coarelli's theory may be set aside now that Brennan has convincingly demonstrated that C. Cotta—who probably held his praetorship later, ca. 78<sup>66</sup>—did not hold any games during his praetorship, and therefore could not have been *praetor urbanus*.<sup>67</sup> As he had no need to accommodate an audience for performances, or a jury for cases held before the *urban* praetor's tribunal, he would have had little reason to build such a grandstand during his praetorship. We know nothing at all about M. Cotta's praetorship except that, given his consulship in 74, he had to have been praetor no later than 77.<sup>68</sup> But M. Cotta's praetorship also can be set aside as a possibility, given Cicero's

<sup>63</sup> Purcell (1995a) 332–333; Korhonen (1999); cf. Welch (2007) 49–71.

<sup>64</sup> Platner and Ashby (1929) 539–540 s.v. “Tribunal Aurelium,” a theory recently revived by Korhonen (1999).

<sup>65</sup> Coarelli (1992) 190–199, cf. (2009b) 6–7, chooses 81 because Broughton (*MRR* 3.31) dated C. Cotta's praetorship to that year following Sumner (1973) 110, who suggested that Cotta, whom Sulla restored from exile (Cic., *Brut.* 311), was elected praetor for 81 but had to wait six years for his consulship due to his inept performance *pro praetore* against Sertorius in 80 (based on Plut., *Sert.* 12.3; cf. *MRR* 2.80, with query). Coarelli also reasons that building a new praetor's tribunal was more appropriate for a praetor than a consul; and, Cotta's proposed praetorship in 81 coincides with Sulla's expansion of the *quaestiones perpetuae*. But Plutarch does not say *which* Cotta fought against Sertorius in 80, hence Broughton's query in *MRR* 2.80; moreover, commanders could hold *imperium pro praetore* without having been praetor, even in the Sullan era (see, e.g., Pompey as *pro praetore* in Africa in 80: *MRR* 2.81), so a Cotta holding such authority in 80 need not have been praetor beforehand. Indeed, Konrad (1994) 128–129 cogently argues that Plutarch's usage of ἀντιστρατηγός merely means “general,” not “praetor” or “propraetor,” and that the best candidate for this Cotta would be either L. Cotta, the youngest of the three Cotta brothers (operating as a quaestor attached to Fufidius, then governing Farther Spain) or, given Plutarch's failure to indicate a *praenomen*, an Aurunculeius Cotta. Brennan (2000) 913 n. 307 also rejects a praetorship for C. Cotta in 81 on these and similar grounds.

<sup>66</sup> Brennan (2000) 748 and 913 n. 307; see also nn. 67–68, below.

<sup>67</sup> Brennan (2000) 913 n. 307 notes that Cic., *Off.* 2.59 lists C. Cotta among those who rose to the consulship without ever giving public entertainments, and so could not have been a *praetor urbanus*.

<sup>68</sup> Thus Brennan (2000) 749, based on the constraints of the *cursus honorum* established by the *leges Corneliae*.

retrospective declaration in 66 that the Gradus Aurelii were brand new when the trial of C. Junius was held there in 74: "those famous Aurelian steps, new at the time, seemed to have been built as a theater for that court case."<sup>69</sup> Because Cicero's emphasis on the temporal linkage between construction and court case strongly indicates that the steps had been built within months, if not weeks, of Junius' trial, the consular years of C. and M. Cotta comprise the most likely period for their construction.<sup>70</sup>

There are numerous reasons to attribute the building of the Gradus Aurelii to C. Cotta in 75, rather than to his brother, M. Cotta, in 74. Not least of these is that M. Cotta spent most of his consular year in Bithynia.<sup>71</sup> C. Cotta, on the other hand, was in Rome for his entire consulship, during which time he and his colleague inaugurated a sweeping renovation project that included the letting of contracts for the inspection and repair of Rome's temples.<sup>72</sup> Oversight for this immense endeavor proved so involved that the consuls had to delegate much of the work to C. Licinius Sacerdos, *pr. urb.* 75, and his colleague, M. Caesius; they, in turn, passed on uncompleted portions of the project to C. Verres, *pr. urb.* 74, and his colleague, P. Coelius.<sup>73</sup> In addition, one of the two Cotta's apparently undertook to have the entire Forum repaved: formerly attributed to Sulla, this project has been assigned to an Aurelius Cotta based on Castagnoli's emendation of a passage of Festus and down-dated

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<sup>69</sup> Cic., *Cluent.* 93 (quoted in n. 51, above). On the trial of C. Iunius, a former *iudex quaestionis*: Cic., *Cluent.* 1.55, 59, 78, 84, 90–96, 103, 113 and 189; *Verr.* I 29, II 1.157; Ps.Ascon., *Verr.* pp. 216, 255–256 Stangl; *Schol. Cic. Gron. A* pp. 331, 351 Stangl; *Schol. Pers.* 2.19.

<sup>70</sup> Platner and Ashby (1929) 539–540, s.v. "Tribunal Aurelium"; Korhonen (1999).

<sup>71</sup> *MRR* 100–101 for references.

<sup>72</sup> Cic., *Verr.* II 1.130; Brennan (2000) 445–446, 751; cf. *MRR* 2.96 for additional references.

<sup>73</sup> Verres' supposed abuse of his assignment in relation to the Temple of Castor—a 'restoration' of the temple in which a few out-of-plumb columns were reset and re-stuccoed—is treated in Cic., *Verr.* II 1.130–157 and Brennan (2000) 445–446, 819 nn. 23–30. But Nielsen and Poulsen (1992) 114 defend Verres, noting that the shoddily-constructed Metellan phase of the temple suffered significant subsidence as it sat atop the "swampy area just east of the Cloaca Maxima"; hence, Verres' 'repairs' were both called for and likely sufficient. Frier (1983) 223 n. 11 and (1985) 59 n. 56 assigns to the senate in 80 BCE the letting of contracts for the refurbishment of temples based on Cic., *Verr.* II 1.130 in conjunction with Fest. p. 416 L as emended by Jordan (see n. 74, below). While Cicero clearly indicates that P. Iunius had been contractor for maintaining the Temple of Castor since Sulla's consulship in 80, *pace* Frier, the passage need not be taken as indicating that a whole series of contracts for temple upkeep had been let by the senate or anyone else in that particular year.



to the years 78–74 (when C. and M. Cotta held praetorships and consulships).<sup>74</sup> Given C. Cotta's inauguration of the temple restoration project, it seems logical to attribute the Forum's repaving to him as well for. Indeed, both endeavors appear to have been conceived as a single comprehensive work of renovation, a logical follow-up to projects initiated by Sulla—the restoration of the Temple of Jupiter Capitolinus, the enlargement of the Curia, and the construction of the new Tabularium—intended to bring the rest of Rome's monumental center up to par with these new or rebuilt edifices. As the Temple of Castor would have been conspicuous among the temples marked down for restoration in Cotta's refurbishment project, why not also attribute to C. Cotta the construction of the Gradus Aurelii in its vicinity, perhaps following the installation of the Forum's new pavement? Of course, since the Gradus were probably constructed of wood—despite the obvious trend of monumentalizing the Forum, the financial crisis that emerged in 75 may have led to the downgrading of some projects<sup>75</sup>—M. Cotta easily could have seen to their erection early in 74, as a sort of pendant to his brother's renovations, before departing for Bithynia.<sup>76</sup> In either case, the result was a structure named for the consul who undertook its construction to accommodate the urban praetor in a location newly designated for his judicial activities.

While it is possible that one or another of the praetors already may have been operating occasionally in this area—particularly after 81/80, when the increase of *quaestiones perpetuae* caused more tribunals to be set up around the Forum so that it was “full of trials” and “full of magistrates”<sup>77</sup>—the creation of the Gradus Aurelii and Tribunal Aurelium in

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<sup>74</sup> Coarelli (1992) 196–197; Giuliani (1995b). Castagnoli (1964) 192 sensibly emends Fest. p. 416 L (*Statae matris simulacrum in forum colebatur: postquam id collastravit, ne lapides igne corrumperentur qui plurimis ibi fiebat nocturno tempore, magna pars populi in suos quique v(i)cos rettulerunt ei(u)s deae cultum*) from *collastravit* to the much more likely *Cotta stravit*, as opposed to Jordan's emendation (1871, 525) to *Sulla stravit*.

<sup>75</sup> Piracy and wars on multiple fronts all contributed to a major financial crisis and severe grain shortage in Rome (Sall. *Hist.* 2.45 and 2.47.6–7 M; Plut. *Pomp.* 24, *Caes.* 1.8–2.7); n. 72, above, for C. Verres' limited but effective repairs on the Temple of Castor; and Kondratieff (2009).

<sup>76</sup> Platner and Ashby (1929) 539–540, s.v. “Tribunal Aurelium” attribute the Gradus Aurelii and Tribunal Aurelium to M. Cotta in 74 because Cic., *Cluent.* 93 (n. 51, above) emphasizes their newness in that year; Giuliani (1995b) 343 also favors M. Cotta for this project, but on the assumption that he also built the Tribunal Aurelium.

<sup>77</sup> Cic. *Verr.* 2.5.143 (*forum plenum iudiciorum*) and *Flacc.* 57 (*forum plenum iudiciorum, plenum magistratuum*). For instance, the praetor overseeing prosecutions for *ambitus*, Cn. Domitius Calvinus (*RE* no. 43), had his tribunal “in mid Forum” (*in foro medio*) when Cicero defended L. Calpurnius Bestia against a bribery charge “before a

75/74 seems to mark a point in time when the urban praetor's tribunal was moved permanently to the southeastern part of the Forum.<sup>78</sup> I have discussed possible reasons for the timing and location of this change elsewhere, so will only briefly summarize them in the paragraph below.<sup>79</sup> The upshot is that this *permanent* change in 75/74 may be linked, in part, to the concurrent revival of tribunician *contiones*, an activity that had been in near-total abeyance since 81.

Prior to Sulla's dictatorship, crowded *contiones* (and *comitia*) run by tribunes—some of whom “all but lived on the Rostra” and who “addressed the crowd almost daily”<sup>80</sup>—had been expanding outwards into the Forum and may have been encroaching on areas in which the *praetor urbanus* kept his tribunal. From at least the fourth century, tribunes began addressing crowds in the Forum instead of in the Comitium; and by 145 BCE, *tr. pl.* C. Licinius Crassus had also moved the voting assemblies out of the Comitium into the main area of the Forum.<sup>81</sup> On occasion, the noise generated by contional crowds could reach extreme levels, as in a *contio* held ca. 100 when the “entire forum was thunderous with the roar of the ignorant mob.”<sup>82</sup> The intentional addition of a *claque*, or worse, competing *clagues* could elevate the noise levels to staggering proportions.<sup>83</sup> Meanwhile, the *praetor urbanus*—not to mention any other

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large crowd” (*maximo conventu*) in early 56 (Cic. *Ad Q. fr.* 2.3.6). On Domitius himself: Brennan (2000) 755, 927 n. 468. On the tribunal of M. Cicero, *pr. repetundis* 66, and its location, see Laffi (1996) 239.

<sup>78</sup> Thommen (1995) 361 believes that the tribunal was transferred to the Forum's eastern end in 75 due to the increase in *quaestiones perpetuae*, which occurred in 81, but does not offer an explanation for the six-year delay.

<sup>79</sup> Nn. 80–93, 95, below, include key passages and points discussed at length in Kondratieff (2009).

<sup>80</sup> Cic., *Brut.* 305–306. Estimates of crowd size vary. For the Comitium: 1,000 (Thommen [1995] 364); 3,000 (Carafa [1998] 140, n. 52); and 6,000 (MacMullen [1980] 456). For the main Forum: 6,000 (Thommen [1995] 364) to 20,000 (MacMullen [1980] 455–456). See also Morstein-Marx (2004) 45 and n. 36. MacMullen's estimate seems feasible, at least for occasions when people crowded into temple podia and the loggias of *tabernae*.

<sup>81</sup> Taylor (1966) 21–25, 108, based on Varro, *Rust.* 1.2.9; Morstein-Marx (2004) 45–47 offers a different, though not entirely convincing, explanation of these changes.

<sup>82</sup> Val. Max. 3.8.6: *clamore imperitae multitudinis obstrepens totum forum*; Morstein-Marx (2004) 138, 149–150 and nn. 161–162, 168–169, and 180 provides multiple examples of noisy, contional crowds, and roars of approval or disapproval elicited by speakers, many of them tribunes, from the contional crowd (e.g., Cic., *Orat.* 213–214).

<sup>83</sup> Cic., *Ad Q. fr.* 2.3.2. Morstein Marx (2004) 133, 136–137 and 142–143 discusses the origin and development of ‘claptraps’; on 135 and 165–166 he discusses how the (violent) occupation of the area immediately around the Rostra by a speaker's core supporters created an impression of unified support by drowning out other audience members with their applause and shouts.

praetor adjudicating in the Forum—had at his tribunal crowds consisting of lictors, clerks, petitioners, advocates and a corona of onlookers who produced plenty of noise on their own.<sup>84</sup> When large enough, these crowds came into conflict with one another and created sufficient disturbance to hinder the praetor's work, or to draw off portions of the tribune's contional audience as attested by at least one *recorded* conflict between a praetor and tribune.<sup>85</sup> For whatever reason, no permanent solution to these problems seems to have been found (albeit some accommodations, now lost to us, may have been made). In 81, the potential for overlapping and conflicting zones of activity should have been seriously exacerbated by the increase in praetorian tribunals around the Forum, thanks to Sulla's expansion of the *quaestiones perpetuae*. However, the tribunate simultaneously entered an unwonted period of virtual desuetude, because Sulla emasculated the institution by removing its legislative initiative;<sup>86</sup> limiting its intercessory powers;<sup>87</sup> and prohibiting tribunes from pursuing higher offices after their tribunate.<sup>88</sup> These changes caused anybody of worth or ambition (so the sources inform us) to avoid the tribunate altogether.<sup>89</sup> A collateral result of all this was, according to Cicero, a virtual dearth of tribunician *contiones* for more than half of a decade.<sup>90</sup>

The potential for conflicts re-emerged in 75, however, when consul C. Aurelius Cotta passed the *lex Aurelia* allowing former tribunes to

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<sup>84</sup> On the *praetoria turba*: Cic., *Verr.* II 1.138 and Frier (1985) 62 and n. 59. On noise at praetors' tribunals: Cic., *Orat.* 107; *Att.* 1.16.3. On the loud voice necessary to be heard at a tribunal: Cic., *Brut.* 317; cf. Cic. *Orat.* 32. On modulating one's voice so as not to be heard at an adjacent tribunal: Cic. *Flacc.* 66. On the intolerable crowding due to Sulla's expansion of the *quaestiones perpetuae*: Richardson (1973) 224.

<sup>85</sup> *Vir. ill.* 73 (100 BCE): *Glaucia praetori, quod is eo die, quo ipse contionem habebat, ius dicendo partem populi avocasset, sellam concidit, ut magis popularis videretur* ("Because the praetor Glaucia had called away part of the people by adjudicating the law on the self-same day in which [tribune of the plebs L. Appuleius Saturninus] was holding a *contio*, Saturninus shattered Glaucia's chair, so that he would seem more *popularis*"). Surely an orchestrated piece of political showmanship that took advantage of what was probably a typical problem of mutually interfering crowds and the fact that *avocatio contionis*, the calling away of a tribune's *contio*, was a well-established transgression against tribunician *dignitas* that *could* engender serious consequences (Liv. 43.16.3–16 details the capital trial of a censor who had called away the *contio* of P. Rutilius Rufus, *tr. pl.* 169 BCE).

<sup>86</sup> Liv., *Perioch.* 89; cf. App., *BC* 1.60.

<sup>87</sup> Cic., *Leg.* 3.9.22, *Verr.* II 1.155; Caes., *Civ.* 1.5, 7; Suet. *Iul.* 5.

<sup>88</sup> Cic., *Verr.* II 1.30, *Cluent.* 148.

<sup>89</sup> App., *BC* 1.100.

<sup>90</sup> Cic., *Cluent.* 110.

seek higher office:<sup>91</sup> the tribunate recovered some of its former *dignitas*, ambitious men once again sought election as tribunes, and large-scale, frequent *contiones* returned to the Forum in December 75, when *tr. pl.* L. Quinctius “seized upon the Rostra.”<sup>92</sup> The return of contional mobs, crowding, extreme noise levels, and whatever other interference tribunician activities could generate may have precipitated a redistribution—official or not—of the Forum’s available space, with its eastern half allotted to the praetors and *quaestiones perpetuae* (clustered around the urban praetor’s new tribunal and the Gradus Aurelii), well away from the Rostra and the tribunes. This spatial reconfiguration would not have provided praetors with complete relief from the noise generated by contional crowds, much less from the constant hubbub of activity all around the Forum. Complete relief was not necessary, however, as Romans clearly had a high level of tolerance for working in noisy and crowded conditions. Simply moving the urban praetor’s tribunal a hundred meters or so away from the Rostra and concentrating the attention of his jury/audience on his tribunal through the grandstand’s curvature *and* overall orientation at an oblique, sound-dampening angle *away* from the Rostra would have significantly improved the overall conditions under which he had to work.<sup>93</sup> Conversely, the possibility that an urban praetor might draw away a tribune’s audience with his judicial activities—and the potential for subsequent conflict with the tribunes—was now minimized. Better working conditions would not be found until the Forum Augusti had reached a sufficient degree of completion for the tribunals of the *praetor urbanus* and *praetor inter cives et peregrinos* to be permanently moved to that location.<sup>94</sup> As for the urban praetors of the next two decades, the combination of a new tribunal and jury seating in

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<sup>91</sup> Cic. *Corn. fr.* 18, 51 = Ascon. *Corn.* pp. 66–67, 78 C; Sall. *Hist.* 2.49, 3.48.8M (*oratio Macri*). On the frequency of *contiones* in the 60s–40s, Morstein-Marx (2004) 9 and n. 40 notes that more than one could be held in a single day (though by different officials), as in Ascon., *Mil.* p. 49 C and Cic., *Att.* 2.24.3; *Vat.* 24, 26; Pina Polo (1989) 308–309 (nos. 346–351) points out that six *contiones* were held in the four days following Caesar’s assassination.

<sup>92</sup> Cic., *Cluent.* 93, 103. For later, “daily *contiones*” (*contiones cotidianae*): Cic., *Sest.* 39, 42; *Mil.* 12; Ascon., *Mil.* p. 51 C.

<sup>93</sup> The effects that previous conditioning (i.e., noise toleration ability), topographical/physical environment, changes in distance and alteration in listening/sound orientation (whether of the auditor or the sound-source) might have had within this context are discussed in detail in Kondratieff (2009), forthcoming, based on data provided by White (1975) 125, 377–378, and Peterson and Gross (1978) 5–6, 20 and 37–39.

<sup>94</sup> For which see below and n. 120; also, Neudecker’s chapter in the present volume.

this important, monumental area of the Forum—dominated by the venerable and highly symbolic Temple of Castor<sup>95</sup>—along with the tribunals of other praetors clustered round about surely resulted in an impressive praetorian ‘presence’ in the Forum, which in turn imparted additional prestige to their office and its activities.<sup>96</sup>

### *The praetor urbanus and the Puteal Libonis*

In explaining the topographical references in one of Horace’s epistles, his scholiast Porphyryon indicates that the urban praetor’s tribunal and juror’s benches were located—in Horace’s day, at least—near a small monument known as the Puteal Libonis (referred to by some sources as the Puteal Scribonianum).<sup>97</sup> What this monument was and what it signified are not nearly so difficult to pin down as when, where and by which Libo it was established, or when the urban praetor’s tribunal was actually moved to its vicinity.

The Puteal Libonis was a stone enclosure erected by a Scribonius Libo whom the senate commissioned to investigate and ‘contain’ places struck by lightning.<sup>98</sup> Its depiction on two coin types issued ca. 62 BCE—one

<sup>95</sup> Poulsen (1992) includes all references to the temple’s symbolic importance. For the Temple of Castor’s significance as a “witness” of activities—legislative, judicial and political—in the Forum: Cic., *Verr.* II 5.186.

<sup>96</sup> Beyond enhancing the praetors’ prestige, Thommen (1995) 361 believes that the concentration of praetorian tribunals away from the Rostra physically and symbolically isolated the tribunes from the machinery of government; *contra*, Kondratieff (2009) demonstrates how this new location had little impact on communications—visual or physical—between the tribunes’ benches and the urban praetor’s tribunal (including requests for *auxilium*, or the tribunes’ ability to monitor the praetor’s activities).

<sup>97</sup> Hor., *Epist.* 1.19.8–11, esp. 8 (a sort of mock praetor’s edict): ‘... *Forum putealque Libonis / mandabo siccis, adimam cantare seueris: / hoc simul edixi, non cessavere poetae / nocturno certare mero, putere diurno* (“To the teetotalers I shall assign the Forum [business] and Libo’s *puteal* [banking]; I shall debar the stern from singing.’ Ever since I put forth this edict, poets have not ceased to compete in nightly wine-drinking, nor in daily reeking.”); Porph., *Hor. Epist.* 1.19.8: *Per puteal praetorem ac iudicem significat. Puteal autem Libonis sedes praetoris fuit prope arcum Fabianum, dictum quod Libone illic primum tribunal et subsellia collocata sunt* (“By ‘puteal’ he indicates the praetor and judge. Now, the *puteal* of Libo was the seat of the praetor near the Fabian Arch, so called because the tribunal and benches were placed there for the first time by Libo.”). NB: Porphyryon conflates the Scribonius Libo who moved the urban praetor’s tribunal next to the Puteal Libonis with the earlier one who built it and after whom it was named.

<sup>98</sup> Fest. pp. 448–450 L: [*Scribonianum ap*]pellatur ante atria [*puteal, quod fecit Scri*]bonianus, cui negotium da[tum a senatu fuerat, ut] conquireret sacella att[acta]. The *puteal* is referred to in the sources both as *Libonis* and *Scribonianum*. In general, see Platner and

by L. Scribonius Libo (*RE* no. 20), *cos.* 34, the other in conjunction with L. Aemilius Lepidus Paullus, *cos.* 50—provides the earliest testimony of its existence and the *only* evidence for its appearance (figs. 4 and 5):<sup>99</sup> a square or cylindrical ‘wellhead’ type enclosure, it had carved decoration depicting the anvil, hammer and tongs of Vulcan, manufacturer of lightning bolts (the garlands and lyres may be merely decorative). Nevertheless, it was much more than a mere ‘wellhead’: by the late Republic, it was the regular haunt of moneylenders, and its name had become metonymic for the banking establishment (as had the name of the nearby shrine to Ianus).<sup>100</sup> Thus, its appearance on coins in 62, accompanied by depictions of either Concordia or Bonus Eventus, likely had symbolic significance far beyond a mere reference to the moneyer’s family.<sup>101</sup> Alone, the head of Concordia (Harmony) on the joint issue of Libo and Paullus appears to refer to the *concordia ordinum* promoted by Cicero in 63; the head of Bonus Eventus (Good Outcome) on Libo’s coins refers to the successful suppression of Catilina and his forces.<sup>102</sup> But, combined with the Puteal Libonis, these personifications surely refer to the welcome restoration of Rome’s “good faith and credit,” damaged in the financial panic and credit crisis of 63 precipitated by Catilina’s calls for a general cancellation of debt (as part of his

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Ashby (1929) 434, s.v. “Puteal Libonis”; Richardson (1973) 229–231 and (1992) 322–323, s.v. “Puteal Libonis (or Scribonianum)”; Coarelli (1992) 166–180; Chioffi (1999); and Noreña (2002g).

<sup>99</sup> Issued by Libo alone: Crawford (1974) 441–442, *RRC* 416/1a–c (Obv.: Head of Bonus Eventus right; LIBO behind; BON EVENT before. Rev.: wellhead; PVTEAL above; SCRIBON below). Issued by Libo and Paullus together: Crawford (1974) 442, *RRC* 417/1a–b (Obv.: veiled head of Concordia right; L. PAVLLVS LEPIDVS behind; CONCORD before. Rev.: wellhead; PVTEAL SCRIBON above; LIBO below). Harlan (1995) 11–17, dates the issue to 63. L. Paullus also issued his own series of coins in the same year, without Libo’s name: Crawford (1974) 441, *RRC* 115/1 (Obv.: as on *RRC* 417/1a–b. Rev.: TER above trophy flanked by Perseus and his two sons on the left, L. Aemilius Paullus, *cos.* 168, on the right; PAVLLVS in exergue). See also Harlan (1995) 1–10.

<sup>100</sup> Harlan (1995) 11–12. Cicero, in *Sest.* 18, recalls how in 58, consul A. Gabinius, was “puffed up against the puteal and its flock of creditors” (*puteali et faeneratorum gregibus inflatus*). Ovid, *Rem.* 561–562, joins the puteal and shrine of Ianus in a similar comment: *Qui Puteal Ianumque timet celeresque Kalendas, / torqueat hunc aeris mutua summa sui* (“Let the outstanding principal of his debt torture the man who fears the Puteal and Ianus and the swift-coming Kalends”: transl. Harlan, loc. cit.). See also nn. 111 and 119, below.

<sup>101</sup> Crawford (1974) 441–442.

<sup>102</sup> So Crawford (1974) 441–442 citing, in reference to Concordia: Cic., *Cat.* 4.15, *Cluent.* 152 (“for an earlier adumbration”) and *Off.* 2.78–84 “for some later reminiscences.”

revolutionary program).<sup>103</sup> It is surely worth noting that the coins issued jointly and individually in 62 by Libo and Paullus consumed no less than 472 obverse and 525 reverse dies, representing millions of *denarii*—an output exceeding the mint's production for the previous three years combined.<sup>104</sup> Much of this coinage was surely intended to pay the legions involved in suppressing Catilina's rebellion; but in a nice bit of symbolic circularity, it seems that by providing an infusion of cash liquidity into the economy, the virtual torrent of coins bearing images of the Puteal also helped to restore stability to the very 'institution' that it symbolized.<sup>105</sup>

When and by whom the Puteal Libonis was erected is, unfortunately, much less clear. Some attribute it to L. Scribonius Libo (*RE* no. 18), *tr. pl.* 149, who established Rome's first permanent *quaestio*, and who is the only well-known Scribonius between 161 and 62 BCE.<sup>106</sup> A more recent theory hypothesizes that L. Scribonius—f. Libo (*RE* no. 19), father of the consul of 34, held an otherwise unattested urban praetorship in 80 BCE and, in this capacity, both created the Puteal Libonis and moved the praetor's tribunal from the Comitium to the southeastern part of the Forum—where, this theory assumes, the Puteal Libonis stood—in order to correlate the statements of Horace and Porphyron with references indicating that the tribunal had been relocated to the purpose-built Gradus Aurelii near the Temple of Castor (already discussed above).<sup>107</sup> The Libo who built the

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<sup>103</sup> Harlan (1995) 12–13, though he believes the coins were issued in 63 as a call for harmony and a prayer for a good outcome. Valerius Maximus (4.8.3) describes the financial panic of 63 in which land values plummeted and cash liquidity evaporated as creditors called in debts and loans; Q. Considius restored calm by publicly announcing his refusal to charge principal or interest on 15,000,000 sesterces in outstanding loans; cf. Cic. *Off.* 2.84 on his restoration of Rome's "good faith and credit" by suppressing Catilina.

<sup>104</sup> Based on die counts provided by Crawford (1974) 439–442, *RRC* 411–417 for 65–62 BCE.

<sup>105</sup> Though lacking a theoretical language for "economics," Romans understood the correlation between plentiful cash, price inflation and low interest rates (Suet., *Aug.* 41; Dio 51.21.5), its opposite (n. 102, above), and the need to increase the cash supply to alleviate financial stress (Suet., *Tib.* 48.1, cf. *Vesp.* 16).

<sup>106</sup> Coarelli (1992) 166–169 and (2009b) 6, based on: his assumption that the urban praetor moved his tribunal away from the Comitium once the first permanent *quaestio* was established in 149 BCE; the *terminus ante quem* provided by the coin of 62; and the fact that no other Scribonii Libones appear in our sources between those two dates.

<sup>107</sup> Frier (1983) 223 n. 11 and (1985) 59 nn. 54–56 uses the following evidence: the statements of Horace and Porphyron (n. 96, above); the supposed 'Sullan' repaving of the Forum ca. 81/80, based on Jordan's (1871) 525 reading of Fest. p. 416 L as *Sulla stravit* (but dated by others to 78–74 and attributed to a Cotta; see n. 74, above); the apparent letting of contracts in 80 by the senate to repair temples (based on Cic., *Verr.* II 1.130,

Puteal, however, need not be the one who located the praetor's tribunal in its vicinity. We should not, therefore, rule out the possibility that some other Scribonius Libo fulfilled the senate's commission.<sup>108</sup> More problematic for this recent theory is that the relevant *testimonia* indicate that the Puteal Libonis stood not in the Forum's southeastern corner near the Gradus Aurelii, but elsewhere.

Efforts to locate convincing archaeological remains of the Puteal have failed, and the literary sources, some of them late, provide diverse points of reference to its actual location: the vicinity of the shrine of Janus (Medius?); "near the Fabian arch"; "in the Julian portico at the Fabian arch"; and "before the *atria*."<sup>109</sup> Nevertheless, an emerging consensus on the character and location of these sites makes it possible to triangulate a likely position for the Puteal Libonis and, therefore, of the praetor's tribunal when located nearby. The *Ianus* is possibly the *sacellum*, or shrine, of Janus Quirinus that stood in the northern half of the Forum near the western end of the Basilica Paulli "before the doors of the Curia Iulia."<sup>110</sup> This location, or perhaps another nearby shrine, of Janus Medius, had given its name through metonymy to the money lending establishment.<sup>111</sup> The *arcus Fabianus*, also known as the Fornix Fabianus, stood at the Forum's eastern entrance along the Sacra Via.<sup>112</sup> Later sources specifically place the arch near the Puteal Libonis *and* in the Porticus Iulia, as noted above; "next to the

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but see nn. 72–73, above, for a different date); and the fact that the *praetor urbanus* was adjudicating in a new location by 74 (Cic., *Cluent.* 93: n. 51, above). Given the reasonably firm evidence for the date of the new location of the urban praetor's tribunal, Frier postulates that Porphyrio's Libo was L. Scribonius—f. Libo (*RE* no. 19); cf. Welin (1953) 33 who suggested that the moneyer's father built the puteal. Broughton subsequently included a note on the conjectured praetorship in *MRR* 3.186–187. David (1995) 378–379 also accepts this theory, but Brennan (2000) omits him altogether.

<sup>108</sup> L. Scribonius Libo (*RE* no. 17), curule aedile in 194 BCE (*MRR* 1.343; Liv. 34.54.3–8) is also a possible candidate for the senate's commission. Coarelli (1992) 167–168 agrees with Welin (1953) 34 that the puteal's garlanded style cannot antedate the mid-2nd c. BCE; even so, the coin type of 62 (n. 98, above) could represent a restoration and 'updating' of the puteal by a later Libo (if not the moneyer himself).

<sup>109</sup> Ov., *Rem.* 561 (*qui Puteal Ianumque timet*); Porph., *Hor. Epist.* 1.19.8 (*prope arcum Fabianum*); Schol. *Pers.* 4.49 (*in porticu Iulia ad Fabianum arcum*); Fest. p. 448 L (*ante atria*).

<sup>110</sup> Dio 84.13.3; cf. Procop., *Goth.* 1.25.18–23. Liv. 1.19.2 locates it "at the bottom of the Argiletum" (*ad infimum Argiletum*); cf. Serv., *Aen.* 7.607. For the location of Janus Medius: Noreña (2002e); Tortorici (1996); Richardson (1992) 205–206; Coarelli (1983a) 89–97.

<sup>111</sup> See n. 100, above; Cic. *Phil.* 6.15, cf. 7.16.

<sup>112</sup> Cic., *De orat.* 2.267, *Planc.* 17.7; Sen. *Dial.* 2.1.3.



Regia”;<sup>113</sup> or “before the Sacra Via between the Temple of Faustina and [the temple of] Vesta.”<sup>114</sup> The old theory that the Fornix Fabianus stood east of the Temple of Divus Iulius along the southern branch of the Sacra Via (the road splits as it enters into the Forum), has been persuasively overturned by Coarelli, Steinby and Chioffi, who now locate the arch on the Sacra Via’s northern branch, where it passed along the Basilica Paulli on its way to the shrine of Janus.<sup>115</sup> The *atria* referred to by Festus could be the Atrium Regium, the Atrium Vestae or the Atria Licinia, but the latter—located just northeast of the Basilica Paulli, thus very close to where the Fornix Fabianus probably stood—may be the most likely candidate.<sup>116</sup> The nature of the Porticus Iulia, sometimes identified with the later Porticus Gai et Luci (ca. 12 CE), is still debated. It is variously considered to have been either a series of fifteen shops that ran along the front of the Basilica Paulli, an arcaded portico that ran *between* the basilica and the Temple of Divus Iulius, or an arcaded portico that ran along the northern flank of the Temple of Divus Iulius and the northeastern flank of the Regia.<sup>117</sup> What is germane to this discussion is that, whatever the character of the Porticus Iulia, it stood in the Forum’s northeastern quadrant, and it seems to have incorporated the Puteal within it.<sup>118</sup>

Another important facet of the evidence linking the urban praetor’s tribunal to the Puteal Libonis is that earliest reference to this collocation dates to the late-30s/early-20s BCE, more than two decades after our last direct references to the Gradus Aurelii or Tribunal Aurelium in 56.<sup>119</sup>

<sup>113</sup> Ps.Ascon., *Verr.* p. 211 Stangl: *‘Ad ipsum fornitem Fabianum.’ Fornix Fabianus arcus est iuxta Regiam in Sacra via Fabio censore constructus.*

<sup>114</sup> *Hist. Aug., Gall.* 19.4 refers to a statue *ante Sacram viam inter templum Faustinae ac Vestam ad arcum Fabianum.*

<sup>115</sup> On the Fornix Fabianus: Steinby (1987); Coarelli (1992) 172–173; Chioffi (1995); Noreña (2002c). On the Sacra Via: Coarelli (1999f); Dumser (2002); representing the older view, Richardson (1992) 338–340, s.v. “Sacra Via.”

<sup>116</sup> Thus Noreña (2002g) 212.

<sup>117</sup> Coarelli (1992) 174–180 and fig. 24; David (1995) 382–383 theorizes that the Porticus Iulia was hypaethral to allow the praetor to adjudicate under open sky; Palombi (1999a) and (1999b); Noreña (2002b) and (2002f).

<sup>118</sup> Coarelli (1992) 166–180, Chioffi (1999) and Noreña (2002f), revitalizing Deman (1913) 24, 27; most recently, Bablitz (2007) 15–16.

<sup>119</sup> Hor., *Epist.* 1.19.8, *Sat.* 2.6.34; Porph., *Hor. Epist.* 1.18.9 (quoted in n. 96, above); Ov., *Rem. Am.* 561 (quoted in n. 99, above); Pers. 4.49. Chioffi (1999) 172, notes that Cicero’s retrospective reference to the Puteal Libonis in 58 and 68 BCE (*Sest.* 18, delivered in 56 BCE, quoted in n. 99, above) is in its metonymic context for the location where financiers operated, not to the presence there of the urban praetor’s tribunal.

Before the end of the 1st century, the tribunal would be transferred to the exedra of a different Porticus Iulia: the colonnade that lined the northern side of the Forum Augusti.<sup>120</sup> The tribunal's relocation to the area near the Puteal Libonis in the Forum Romanum, therefore, must have occurred in the intervening period. The only Libo from that era notable enough to be referred to simply by his cognomen (as in Porph., *Hor. Epist.* 1.19.8) is L. Scribonius Libo (*RE* no. 20), *cos.* 34, a prominent Pompeian who successfully negotiated the treacherous terrain of power politics and civil war in the Republic's last decades.<sup>121</sup> His significance to the history of this period—and when he might have transferred the praetor's tribunal to the vicinity of his ancestor's monument—will become more apparent with a brief review of what is known about his life and career.

We have already encountered Libo as the moneyer of 62 who issued coins depicting the Puteal Libonis. By 56, he was well ensconced among Pompey's senatorial supporters, "a trusted adviser, and a loyal confederate."<sup>122</sup> What Libo had to offer Pompey aside from counsel, friendship and fidelity is uncertain, but his moneyership in 62 may hint at banking connections and deep pockets.<sup>123</sup> For his own part, Pompey was loyal to Libo: when Libo was accused before the censors of 55 (as part of a campaign by Pompey's detractors to harm his interests by attacking his *amici*), Pompey put in a personal appearance to defend his trusty adherent.<sup>124</sup> It may have been in this year, or not long afterward, that the two solidified their connection through a marriage alliance, with Pompey's son, Sextus, betrothed or married to Libo's daughter, Scribonia.<sup>125</sup>

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<sup>120</sup> Suet., *Aug.* 29.2 notes the transfer of *iudicia populi* and *sortitiones iudicum* to the Forum Augusti before it was completed; David (1995) 383 opts for a date of 6/5 BCE for this last relocation. For the evidence pointing to this new location for the urban praetor's tribunal (derived mainly from *vadimonia* of the third quarter of the 1st c. CE discovered at Pompeii and Herculaneum), see Carnabucci (1996), Bablitz (2007) 16–21, and Neudecker's essay in this volume.

<sup>121</sup> Chioffi (1999); Scheid (1975) 362; cf. David (1995) 382 and n. 62.

<sup>122</sup> Cic., *Fam.* 1.1.3 (13 Jan. 56 to Lentulus Spinther) notes that Libo lobbied (as *tr. pl.*?) to have the command to restore Ptolemy to the throne of Egypt transferred to Pompey (cf. Plut. *Pomp.* 49.6, Dio 39.16.1 for the proposal of *tr. pl.* L. Caninius Gallus; Cic. *Fam.* 1.2.1 on the senate debate itself); Gruen (1995) 314.

<sup>123</sup> Crawford (1974) 603; Harlan (1995) 11–17, *passim*.

<sup>124</sup> Val. Max., 6.2.8, surely in 55 BCE. Gruen (1995) 313–314 points to three trials in 55 against *amici* of Pompey, including Libo's, and notes a half dozen more trials with the same purpose in 54; cf. Seager (1979) 131. We do not know the outcome of Libo's examination by the censors; if reduced to *aerarius* (though unlikely), he would have to recover his senatorial status through election to a junior office.

<sup>125</sup> Lindsay (2002), esp. 181, Table 1.

Although Libo's *cursus* in the 50s is no longer extant, the fact that he was deeply, even desperately in debt by early 49 could indicate that he was already paving the way for his election to a higher magistracy, perhaps the consulship of 48, through heavy spending (more on this below).<sup>126</sup> But civil war interrupted his political career, and he spent 49 and 48 as a commander under Pompey.<sup>127</sup> He then disappears from view until November of 46, when he reemerges as Cicero's traveling companion in Italy.<sup>128</sup> From 46 to 43 he acted as Sextus Pompeius' agent in Rome;<sup>129</sup> he also undertook the gentleman's pursuit of writing histories.<sup>130</sup> In 40, with Octavian at the nadir of his popularity thanks to his ruthless prosecution of the Perusine War, Libo conveyed Pompeius' offer to Antonius of an alliance against Octavian.<sup>131</sup> Hearing of this, Octavian brokered a countervailing union through Maecenas, offering to marry Libo's sister, Scribonia; Libo accepted.<sup>132</sup> Within the year, Libo was at the nexus of a very powerful, if fleeting, marriage alliance between the Pompeii and Julii: father-in-law to Pompeius, brother-in-law to Octavian.<sup>133</sup> A recent theory proffers the compelling notion that Octavian offered to marry the much older, twice-wedded Scribonia not so much to induce Sextus Pompeius to leave Italy's maritime traffic unmolested as to detach the extremely capable Libo from Pompeius' entourage.<sup>134</sup> Indeed, Libo's continued importance to the Pompeian cause is highlighted by his lead-

<sup>126</sup> Cic., *Att.* 9.11.4 (20 March, 49).

<sup>127</sup> In 49 Libo trained recruits in Campania (Cic., *Att.* 7.12.2, 8.11B.2), commanded a fleet at Dyrrhachium (Caes., *Civ.* 3.5.3), defeated Dolabella in the Adriatic, and captured C. Antonius in Illyricum (Caes., *Civ.* 3.5.3, 8.4; Lucan. 4.433; *Schol. Lucan. Bp.* 135 Usener; Flor., *Epit.* 2.13.31; Dio 41.40.1; Oros., *Hist.* 6.15.8–9). In 48 he negotiated with Caesar at Oricum (Caes., *Civ.* 3.15–18), and commanded the Pompeian fleet after M. Bibulus died, but failed to blockade M. Antonius at Brundisium (Caes., *Civ.* 3.23–24; Plut., *Ant.* 7; Dio 41.48.1–4). He was also on reasonably friendly terms with Caesar, on whose behalf he attempted—unsuccessfully—to mediate an accord with Pompey at Brundisium in 49 (Caes., *Civ.* 1.26.3–5). See also MRR 2.614 and 3.187; Harlan (1995) 14–17; Welch (2002) 52.

<sup>128</sup> Cic., *Fam.* 7.4 (21–22 Nov. 46).

<sup>129</sup> Cic., *Att.* 16.4.1 (10 Jul. 44); Welch (2002) 52 specifies Libo's maintenance of links between Sextus Pompeius and Cicero and Decimus Brutus in Rome; Lowe (2002) 71.

<sup>130</sup> Cicero consulted Libo's *Annales*: Cic., *Att.* 13.30.2 and 13.32.3.

<sup>131</sup> App., *BC* 5.51.

<sup>132</sup> App., *BC* 5.52–53; Suet. *Aug.* 62.

<sup>133</sup> On family ties between Julio-Claudians and Scribonii, see Lindsay (2002), esp. 181, Table 1 and Fantham (2006) 17–31; cf. Welch (2002) 52; Osgood (2006) 187. Octavian sent a notice of divorce to Scribonia in 39, on the day after Julia was born (Dio 48.34.3).

<sup>134</sup> Welch (2002) 52 points out that Sextus Pompeius also had female relatives who were, or who could be made available to marry Octavian.

ing role in negotiating the Treaty of Misenum in 39 between his son-in-law and the triumvirs, from whom he also wrested the promise of a consulship for himself, to be held in 34 (the *consules ordinarii* having already been appointed for 38–35).<sup>135</sup> Remaining with Pompeius until 35, he defected to Antonius only when Pompeius' cause was clearly defunct, then returned to Rome to hold the promised consulship of 34.<sup>136</sup> Libo's ultimate absorption into the new regime—perhaps as a showpiece of Augustus' new policy of reconciliation and restoration—is indicated by his transferal to the patriciate before 29.<sup>137</sup>

Returning to the question of *when* Libo might have transferred the urban praetor's tribunal to the vicinity of the Puteal Libonis, an urban praetorship held in the late-50s would provide the most logical occasion. Although Libo's *cursus* for the 50s is missing from our sources, that of his erstwhile colleague as *monetalis* is not: L. Aemilius Lepidus Paullus was praetor in 53 and consul in 50.<sup>138</sup> Given that Paullus can have been born no later than 93 in order to be praetor in 53, along with the likelihood that the *monetales* of 62 were coevals (give or take a year), one could reasonably assume that Libo also was eligible to hold a praetorship in the late 50s.<sup>139</sup> The most likely year is 52, a critical year for the Republic, but one for which the urban praetor's name is unattested. Several factors point to this possibility. Pompey had been elected sole consul (rather than dictator, an office made reprehensible by Sulla) as a result of the electoral crisis set off by Milo's murder of Clodius; later in the year, he secured the election of his lackluster father-in-law,

<sup>135</sup> Welch (2002) 53–54; App., *BC* 5.69, 73, cf. 139. On these events and the outcome, see also: Liv., *Perioch.* 127; Vell., 2.77; Plut., *Ant.* 32; App., *BC* 69–74; Dio 48.36–38; Osgood (2006) 206–208.

<sup>136</sup> Dio 49.39.1 (Antonius, Libo's co-consul, resigned the consulship after Jan. 1, 34 BCE); Welch (2002) 52–53 on Libo's ability to make a deal to save himself while still appearing fully *Pompeianus*.

<sup>137</sup> *MRR* 2.428; *CIL* 14.2502. He was also one of the *VIIviri epulones*. On transferals of plebeians to the patriciate, cf. Dio 49.43.6 (33 BCE); Aug., *RGDA* 8 and Dio 52.42.5 (30 BCE).

<sup>138</sup> L. Aemilius Paullus' *cursus*: *MRR* 3.9, noting that he was also quaestor in 60 and possibly curule aedile in 56 or, less likely, 55; Brennan (2000) 755, 928 n. 480. See also Crawford (1974) 708–711, "Careers of the Moneyers," noting that while many moneyers were in their 20s, it was not unusual for the office to be held after the age of 30, as the office was not actually part of the official *cursus honorum*.

<sup>139</sup> When or if he held a praetorship in the late 50s is debated: Broughton (*MRR* 2.248) follows Münzer in tentatively assigning Libo's praetorship to 50 BCE, but notes that he may have been only a *legatus* in that year; Brennan (2000) 750 and 916 n. 343 considers Libo's praetorship unlikely before 49, though he includes him in his praetorian *fasti* with the notation "(?)49." Obviously, I take a different view.

Metellus Scipio, as co-consul.<sup>140</sup> This was an old maneuver for Pompey: after he and Crassus had manipulated affairs to wrest the consulship of 55, they administered the elections for lesser magistracies in favor of their own candidates.<sup>141</sup> No less in 52 did Pompey need men willing to support his political agenda, whether through administration of the law, legislation, or other means;<sup>142</sup> no less should we expect him to have used his influence to secure praetorships (and other offices) for those among his eligible connections. Libo—trusted adviser, loyal confederate, relation by marriage—surely had no better chance to win a praetorship than in this year. With no definitely attested praetors for 52, there can be no real objection to inserting Libo's name in the praetorian *fasti* as *praetor urbanus*.<sup>143</sup> An urban praetorship in 52 would also coincide nicely with the opportunity afforded by the destruction of the Gradus Aurelii—if indeed it was destroyed in Clodius' ad hoc cremation<sup>144</sup>—to establish his tribunal near the Puteal Libonis.

There are, of course, other years without a definitely attested *praetor urbanus* in which Libo may have held the office: 51, although A. Plautius is tentatively assigned the post on very slim evidence;<sup>145</sup> or early 49, before Caesar seized Rome and filled the 'vacant' praetorships with his own adherents.<sup>146</sup> The years of Caesar's *dominatio* are less likely, given that the dictator filled many magistracies with his own creatures. Nevertheless, several prominent, pardoned Pompeians held magistracies in these years, so it is worth noting the years for which the urban praetors are unknown: 46, although Suetonius claims Caesar appointed prefects instead of praetors;<sup>147</sup> and the latter part of 45, after Caesar granted pardons to his Pompeian foes (curule elections took place in September).<sup>148</sup> The urban praetors in the triumviral years of 42 and 41 are

<sup>140</sup> MRR 2.234 for full references.

<sup>141</sup> Cic., *Fam.* 1.8.1, 1.4, 1.9.19, *Ad Q. fr.* 2.7.3; Liv., *Perioch.* 105; Val. Max., 4.6.4; Plut., *Pomp.* 52–53, *Cat. Min.* 42; Dio, 39.32.

<sup>142</sup> MRR 2.234 for references on his mass of new legislation, such as the *lex Pompeia de vi* and *lex Pompeia de ambitu*, both intended to restore order to Roman public life and politics.

<sup>143</sup> Broughton (MRR 2.235) lists four, but these are all tentative and inferred; Brennan (2000) 755 offers no names for this year under the rubric of "Attested Praetorships."

<sup>144</sup> Korhonen (1999) and n. 59, above.

<sup>145</sup> Brennan (2000) 750, 755 and 928 n. 485; Cic., *Att.* 5.15.1.

<sup>146</sup> MRR 2.257–258.

<sup>147</sup> Suet., *Iul.* 76.2.

<sup>148</sup> Caesar pardons his foes: Vell., 2.56.3; Plut., *Caes.* 57.2–3; Suet., *Iul.* 75.1; App., *BC* 2.107; Dio, 43.49.1, 50.1–2. On the names of the praetors: MRR 2.306–307. Of the

also unknown, but we may go no further, as Libo was definitely *praetorius* before the summer of 39;<sup>149</sup> if Libo rejoined his son-in-law once the proscriptions were underway in November of 43, then the *terminus ante quem* for his praetorship must be 44.<sup>150</sup> Nevertheless, and despite all of these possibilities, the evidence strongly favors an urban praetorship in 52.

Of course, Libo did not need the Gradus Aurelii to be destroyed to justify a change of venue for his tribunal, as other suitable motives also fell within this timeframe. In 52 (and down to 49), one obvious reason for Libo to move his tribunal closer to the Puteal Libonis, the locus for financiers, would have been to signal his intent to maintain the *concordia ordinum* and Rome's "good faith and credit," so strikingly advertised on the coins he had issued in 62, through a rigorous enforcement of the applicable laws.<sup>151</sup> The juxtaposition of the urban praetor's tribunal with the Puteal Libonis by a *Pompeianus* urban praetor surely would have underscored Pompey's broader efforts to impose his own brand of order on Rome. At the very least, the symbolic meaning inherent in this move was not lost on M. Caelius Rufus, *pr. per.* 48, who moved his tribunal next to the urban praetor's so that he could be on hand to offer *auxilium* to debtors who might request it.<sup>152</sup> An additional inducement for Libo might have been the restoration of the nearby Basilica Paulli (also known as the Basilica Fulvia et Aemilia), undertaken ca. 56/54 by L. Aemilius Lepidus Paullus.<sup>153</sup> The transfer of his tribunal to this area would both

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fourteen praetors elected in September 45, only three names are known, while seven others are listed as "probably praetor."

<sup>149</sup> Reynolds (1982) 62 notes that Libo is listed fourth in the *SC de Aphrodisiensibus* of 39 BCE; he was therefore *praetorius* (*MRR* 3.187). He could not have held one of the merely decorative praetorships that Antony and Octavian promised in 39 to the proscribed exiles who were with Pompeius, as these 'magistracies' were held in 38 (Dio 48.35.1–3, 48.36.4; App. *BC* 5.73; cf. Dio 43.48.2, noting that 67 praetors served for short periods in 38). NB: M. Agrippa was *pr. urb.* 40 (*MRR* 380).

<sup>150</sup> The urban praetor of 44 was M. Iunius Brutus (*MRR* 2.321–322 for references)—14 of the remaining 15 praetors are certain; M. Caecilius Cornutus was *praetor urbanus* 43 until his suicide in Nov. (*MRR* 388).

<sup>151</sup> For the coins, n. 98, above, esp. *RRC* 417/1a–b; see also Cic., *Off.* 2.84 and n. 102, above.

<sup>152</sup> Caes., *Civ.* 3.20.1, quoted in n. 27, above.

<sup>153</sup> Broughton (*MRR* 2.216, 3.9) avers that Paullus was likely curule aedile when he undertook the basilica's reconstruction, so that work on it would have commenced in 56, even though we first hear of it in 54 (Cic., *Att.* 4.16.8, ca. 1 July 54; Plut., *Caes.* 29.3 indicates that Caesar gave Paullus 1,500 talents, perhaps when Paullus was consul in 50, to completely rebuild the Basilica; cf. App., *BC* 2.26).

recall Libo's partnership with Paullus, and allow him to adjudicate out of the shadow of the Basilica Julia (begun in 54), surely looming already over the area (formerly?) occupied by the Gradus Aurelii.<sup>154</sup> Whatever the actual date or motive, Libo's transfer of the praetor's tribunal to the Puteal Libonis marks an important interim stage between its placement at the Tribunal Aurelium and Gradus Aurelii in 75/74 and its final transfer to the Forum Augusti.

*The urban praetor's tribunal and the Augustan régime*

If avoiding a visual or symbolic connection to Caesar through physical proximity to his building project had been one of Libo's reasons for establishing the urban praetor's tribunal in its new location, he ultimately failed in this goal. Within his lifetime, the eastern end of the Forum Romanum would be transformed into a monumental complex dedicated to Divus Iulius, Augustus and his heirs, while the rest of the Forum would be rebuilt or refurbished by Augustus and his family and friends (often with Augustus' money).<sup>155</sup> By the end of Augustus' principate, Corbier observes, "any passerby standing in the center of the Forum could, with one look around, read the name of the *Iulii* on all four sides of the plaza."<sup>156</sup> Even the Basilica Paulli, dedicated in 34 by Paullus' son, had been built with Caesar's money, and would be rebuilt in 14 BCE by Augustus and Paullus' friends.<sup>157</sup> In short, the Puteal Libonis and the urban praetor's tribunal were ultimately engulfed by, and incorporated into Augustan building projects, just as Libo himself seems to have been absorbed into the Augustan régime.

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<sup>154</sup> If Libo held his urban praetorship in the 40s (though this is very unlikely), other reasons to move his tribunal would have occurred, e.g., Caesar's general reconfiguration of the Forum in the early- to mid-40s (see n. 155, below), or the triumvirs' appropriation in 42 of space formerly occupied by the Gradus Aurelii near the Regia and Temple of Castor for the new Temple of Divus Iulius (construction began in 42 BCE: Dio 47.18.4; Octavian dedicated it in 29: *R. gest. div. Aug.* 19.1; Dio 51.22.2).

<sup>155</sup> On the Forum's transformation in aspect and function under Caesar and Augustus: Zanker (1988) 79–82; Coarelli (1992) 212–324; Purcell (1995b); Noreña (2002d); Hölscher (2006) 113–116.

<sup>156</sup> Corbier (1987a) 47: "Tout passant, debout au centre du forum, pouvait, d'un regard circulaire, lire le nom des *Iulii* sur les quatre côtés de la place."

<sup>157</sup> Dio 49.42.2, 54.24.2–3. Interestingly, Libo was succeeded in the consulship on 1 July 34 BCE by Paullus Aemilius L.f. L.n. Lepidus (*RE* no. 82), *cos. suff.*, who "dedicated the Basilica Aemilia begun by his father" (*MRR* 2.410; Dio 49.42.2).

If Augustus intended to physicalize the fact that he was supplanting the annual magistrates (praetors) as the guarantor of order and justice, he did a good job of it.<sup>158</sup> It is manifest not only in his building program, which transformed the old Forum with new symmetry, grandeur and dignity, but also in his formalization of the space as a setting for public business and law (many activities for which it had once been used, e.g., spectacle entertainments, now took place elsewhere).<sup>159</sup> Nevertheless, all of this would be surpassed by the final venue for the urban praetor's tribunal, the Forum Augusti.

This last transfer could have occurred as early as 14 BCE, when fire destroyed the Basilica Paulli and surrounding area up to the Temple of Vesta, thus including the Porticus Iulia, where the urban praetor adjudicated.<sup>160</sup> At the very least, the urban praetor of 14 (and perhaps his immediate successor) would have needed to relocate temporarily while the initial clean up and repairs were in progress. The *terminus post quem* for this last move appears to be 7 BCE: an inscription commemorating the repaving of the Forum Romanum by L. Naevius Surdinus *pr. per. ca. 7 BCE* implies that the *praetor inter cives et peregrinos* was still operating in the Forum Romanum at that time, and suggests that the *praetor urbanus* was also.<sup>161</sup> It is impossible to be more precise.<sup>162</sup>

The installation of the urban praetor's tribunal in the Forum Augusti would have represented a considerable change in his public image, as David avers: no longer working in the open air of the Forum in an atmosphere of rough-and-tumble competitive politics, he now adjudicated within a confined and enclosed space comprised of buildings explicitly dedicated to the glory of the imperial household, whose newly-emerging system of government strove not only to pacify the empire, but to quell the fires of popular politics and ensure "the equilibrium of the city and

<sup>158</sup> David (1995) 382–383.

<sup>159</sup> Noreña (2002d) 130. *Spectacula* were held in, e.g., the Amphitheatrum Statilii Tauri after 29; the last *spectacula* in the Forum Romanum were given in the 20s BCE by Tiberius (Suet., *Tib.* 7.1).

<sup>160</sup> Dio 54.24.2–3; cf. Noreña (2002a) on the extent of the fire.

<sup>161</sup> The inscription of L. Naevius Surdinus (*CIL* 6.31662, 37068), commemorating his repaving of the Forum Romanum, has been variously dated to 14 BCE (Bablitiz [2007] 23, 209 n. 55 and refs.) or as late as 7 BCE (Coarelli [1992] 226–227; Noreña [2002d] 130), which seems more likely if he is to be equated as the *Illvir monetalis* of 15 BCE (*RIC* I<sup>2</sup> Augustus, 383–386).

<sup>162</sup> David (1995) 382–383 suggests 6/5 BCE based on Suet., *Aug.* 29.2 (n. 119, above); Bablitiz (2007) 21, 209 n. 50 more plausibly opts for 2 BCE, when the Forum Augusti was actually dedicated.



the tranquility of the citizens.”<sup>163</sup> In addition, by locating the urban praetor within a space dedicated to portraying himself as the *telos* of Rome’s history, Augustus reminded all-comers whence flowed the true fount of justice.

*The urban praetor’s “space(s) of justice” over time*

We have seen that during the Republic, the “space of justice” over which the *praetor urbanus* presided was an important, though semi-permanent and occasionally mobile part of the civic landscape. Because much of the Forum’s usable space took on different identities, depending upon the activities to which it was dedicated at any given moment, the praetor’s “space of justice” only really existed when he and his tribunal were actually present. Some “spaces of justice” over which the urban praetor presided on occasion—e.g., the *quarta accusatio* of a *iudicium populi* held on the Capitol or in the Campus Martius—were truly ephemeral, lasting only a day or so at a time. Nevertheless, the area around the Comitium, the Gradus Aurelii, and the Puteal Libonis in the Forum Romanum, as well as the Piscina Publica at the Porta Capena, each constituted in their turn the urban praetor’s “space of justice” thanks to the regular and repeated placement in those locations—over the course of a single year, a few decades or several centuries—of his tribunal for the specific purpose of adjudication.

Known Locations of the Urban Praetor’s “Space of Justice” (all dates BCE)

Ia) 366 (?) – 216	Comitium, in the northwestern Forum Romanum;
II) 215	Piscina Publica (interim location, established by the praetor’s decree due to the senate’s relocation to the Porta Capena in that year);
Ib) 214–75/74	Comitium, in the northwestern Forum Romanum;
III) 75/74–52 (?)	Tribunal Aurelium and Gradus Aurelii near the Temple of Castor in the southeastern Forum Romanum;

<sup>163</sup> David (1995) 382–383: “l’équilibre de la cité et la tranquillité des citoyens.” Neudecker, in this volume, echoes these sentiments, arguing that Augustus’ judicial reforms—in judicature, private law, spaces of justice—were intended to establish legal certainty and order (to be enforced by the *vigiles*, but this is controversial), and that the Forum Augusti, the urban praetor’s new home, was itself a “monumentalisation of order”.

- IV) 52 (?) – ≤ 2 BCE      Adjacent to the Puteal Libonis in the northeastern Forum Romanum (eventually incorporated into the Porticus Julia);
- V) Between 14–2 BCE—?      Exedra of (another) Porticus Julia in the northern side of the Forum Augusti.

In most cases, it appears that where the urban praetor set up his tribunal and established his “space of justice” during the Republic was determined by the praetor himself, albeit in accordance with precedent, custom and the exigencies of the day (as in 215). By the middle of Augustus’ principate, however, the princeps himself established a new and permanent location for the urban praetor’s tribunal in the Forum Augusti: in effect, symbolically grafting the urban praetor onto the new order by the physical transfer of his tribunal into a location powerfully associated with Augustus and his régime. In other words, the urban praetor no longer supported the *concordia ordinum* as an independent magistrate of a free republic, but as a servant of the princeps and his political programme.<sup>164</sup>

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<sup>164</sup> Further arguments for the relocation of the urban praetor’s tribunal to the Puteal Libonis in the praetorship of L. Scribonius L. f. Libo: Libo’s coins (62 BCE) designate the puteal as “SCRIBON(ianum)” not “LIBON(is)”, as they surely would have done (to play up Libo’s cognomen) had it been known as such then; also, Porphyryon states only that Libo placed the praetor’s tribunal near the puteal (not that he built it), after which it became known as “Libo’s Wellhead” (Puteal Libonis). Apparently, the puteal was originally known as the Puteal Scribonianum, after the Scribonius who built it, but the Puteal Libonis after Libo placed his tribunal there. I develop these arguments more fully in an article I am currently writing on the year and type of L. Scribonius Libo’s praetorship.



Fig. 1. RIC I<sup>2</sup> Augustus 165a, *denarius*, Lugdunum (Lyons), 15 BCE. AVGVSTVS DIVI F., bare head right / Augustus, togate, seated in curule chair upon tribunal, reaching for laurel branches offered by two soldiers. IMP. X in exergue. Original photo courtesy of Classical Numismatic Group.



Fig. 2. RIC II Trajan 666, *sestertius*, Rome, 115–116 CE. Laureate and draped bust of Trajan; IMP CAES NER TRAIANO OPTIMO AVGGER DAC PARTHICO P M TR P COS VI P P / Trajan seated, with prefect and soldier standing alongside, on tribunal before which stand three kings; REGNA ADSIGNATA above, S C in exergue. Original photo courtesy of Classical Numismatic Group.

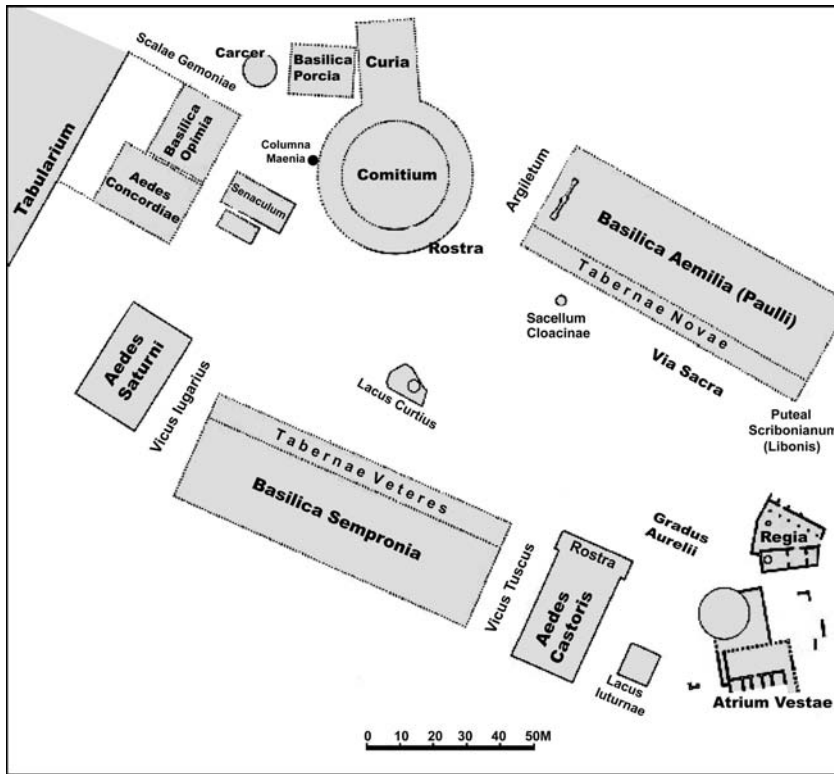


Fig. 3. Plan of the Forum Romanum ca. 75 BCE, adapted from J.M. David and H. Broise, *Architecture et Société* (1981) 244.  
 NB: Current research indicates that the Comitium may have been square, rather than circular as depicted here.



Fig. 4. Crawford, *RRC* 416/1a–c, *denarius*, Rome, 62 BCE. Head of Bonus Eventus right; LIBO behind; BON EVENT before/ Garlanded wellhead with two lyres on flanks, anvil at base; PVTEAL above; SCRIBON(ianum) below. Original photo courtesy of Classical Numismatic Group.



Fig. 5. Crawford, *RRC* 417/1a–b, *denarius*, Rome, 62 BCE. Veiled head of Concordia right, [P]AVLLVS LEPIDVS behind, CONCORD before/ Garlanded wellhead with two lyres on flanks, hammer at base, PVTEAL SCR[I]BON(ianum) above, LIBO below. Original photo courtesy of Classical Numismatic Group.

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