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## CONTENTS

Kaarle Hirvonen	Cledonomaney and the grinding slave woman, Od. XX, 91—121 . . . . .	5
Jorma Kaimio	The nominative singular in -i of Latin gentilicia	23
Iiro Kajanto	Tacitus on the slaves. An interpretation of the an- nales XIV, 42—45 . . . . .	43
Saara Lilja	On the nature of Pliny's letters . . . . .	61
Olli Makkonen	Waldterminologie im Latein . . . . .	81
Päivö Oksala	Das Geschlecht des Attis bei Catull . . . . .	91
Tuomo Pekkanen	Finnicus Afnius . . . . .	97
Heikki Solin	Analecta epigraphica . . . . .	101
Jaakko Suolahti	Legatio libera . . . . .	113
Holger Thesleff	Genitive absolute and Platonic style . . . . .	121
Toivo Viljamaa	Ciceros Bildersprache und die Quellenfrage von Tusc. disp. I, 26—81 . . . . .	133
Maarit Vuorenjuuri	Vocative singular addressing the chorus in Greek drama . . . . .	147

# LEGATIO LIBERA

J a a k k o S u o l a h t i

As representatives of the Roman people and Roman authority the *legati* of the Senate enjoyed considerable privileges which facilitated their official journeys to different parts of the empire. They received a certain sum of money (*viaticum*) from the treasury to cover their expenses as well as those of their suite; a war-ship often transported them across the sea; the governors of the provinces put *lictors* at their disposal and saw to their accommodation etc. As representatives of the Roman state they received, and indeed, demanded all possible help and respect from private persons.<sup>1</sup> It is probable that this kind of position quite early tempted some men to put it to incorrect use. The line between the respect due to a *legatus* and that he thought himself entitled to was often quite impossible to draw. From the 3rd century on we know of certain glaring abuses which probably increased with the growth of Roman power.<sup>2</sup>

Presumably the *legati* very early conducted private business with official journeys, in so far as this was possible. Later, especially, when there were Roman citizens scattered all over the Mediterranean countries, nearly every senator was likely to have some affairs of his own or of his friends to attend to during his journeys. And usually there was time for all this in between his official business. Particularly when it was a question of fulfilling of a religious duty promised for example during a magistracy, it could be considered to form a sort of the official mission. It was to the benefit of the state, of course, that her magistrates were on good terms with the gods. Maintaining good relationships with the gods was convenient at times; two praetors were able to refuse the dangerous provinces delegated to them for the convenient reason that a religious vow kept them in Rome.<sup>3</sup>

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<sup>1</sup> TH. MOMMSEN: *Römisches Staatsrecht II*<sup>3</sup>, Leipzig 1887, 85—87; A. v. PREMERSTEIN: *Legatus* (RE XII, 1925, 1133—1149), 1135; P. WILLEMS: *Le sénat de la république romaine, sa composition et ses attributions II*, Louvain 1883, 149; SOLDAN: *De reipublicae Romanae legationibus provincialibus et de legationibus liberis*, Diss. Marburg 1857; *CIG. Fam.* 12. 3. 2. (44)

<sup>2</sup> Liv. 29. 6—9; 16—22. (205); Q. Pleminius (RE 5); 42. 1. 7—12. (173)

<sup>3</sup> Liv. 41.15.9—10; 41.27.2. (176); 42.32.1—3. (175)

Possibly religious promises, made during the term of office and thus in a way made for the state, gave birth to the so called *legatio libera*. It was only natural that the state should give all possible support for example to a victorious military commander who wanted to leave in order to fulfill a vow made to the gods on the day of battle. Possibly Scipio Africanus the Elder had made such a trip to Etruria in the year 187.<sup>1</sup>

The Senate sometimes considered it beneficial to the state to send some faithful supporter of its away from the capital until the hatred of the people against him had died down. But entrusting him with an apparent mission it both protected a faithful supporter and preserved its own authority. Further unnecessary disturbances were also thus avoided. For political reasons the person thus concerned could not be trusted with any mission of importance, but the *legatio libera* guaranteed him an honourable and comfortable exile. The first recorded *legatio libera* was indeed of this type. In the year 132 the Senate sent P. Cornelius Scipio Nasica (RE 354), who was hated by the people because he had overthrown Ti. Sempronius Gracchus (RE 154), to Asia without giving him any official mission.<sup>2</sup> Ten years later his relative P. Cornelius Lentulus (RE 202), who had fought against C. Gracchus (RE 47) is said to have used the *legatio libera*.<sup>3</sup> During the restless times that followed the Senate probably used this pretext quite often.

It was very tempting for a man in the position of an official *legatus* to look after his private affairs, such as the claiming of a legacy or debt. The senators of course gladly granted this opportunity to their colleagues, from whom they expected similar services in due course. However, other reasons may have influenced their decisions, too. It was considered right and proper that every senator who left for the provinces should travel in a way suited to a magistrate of Rome. For the young and those of small means this was only possible with the support of the state. Nor were their journeys useless to the state, since travelling added to their factual knowledge and made them more useful both as senators and future magistrates. In addition they brought the Senate fresh information from the provinces and Italy. This custom which had evolved gradually resulted partly from the efforts of the senators to profit by their power, and partly from the practice of combining official and private affairs.

<sup>1</sup> Liv. 38.56.8. (187); M. HOLLEAUX: L'Entretien de Scipion L'Africain et l'Hannibal (*Hermes* 48, 1913, 75–98), 94 note 1; TH. MOMMSEN: Die Scipionenprocesse (MOMMSEN: Römische Forschungen II, Berlin 1879, 417–510), 469 note 103.

<sup>2</sup> Plut. *Ti.Gr.* 21.4; VM. 5.3.2 e. (132)

<sup>3</sup> VM. 5.3.2 f. (122)

At least by the end of the republic, almost the only period from which information is preserved concerning the *legatio libera*, the custom seems to be quite common. Even those who like Cicero disapproved of it, nevertheless made use of it.<sup>1</sup> Probably the most conscientious men were in principle against the misuse of state authority, but it was the abuses practised under its cloak that raised general resentment. Contemporary Romans naturally noted these points, but more detailed information concerning general features is rather scanty. Cicero, in whose works we find most of the references, presumed that his correspondents as well as the readers of his speeches knew of the *legatio libera* as well as he did.

The *legatio libera* meant, as is obvious from the title, the status of a *legatus* without any fixed official duty<sup>2</sup> but with the opportunity to take care of his private affairs. Probably only senators, who were also entrusted with the official *legatio senatus*, could be appointed to this position. There is no explicit reference to it extant, but all the known cases have been of senators.<sup>3</sup> Indeed, as nominal prefects, the knights as well were able to enjoy the privileges of an official position while looking after their private affairs in the provinces.<sup>4</sup>

A senator who sought to obtain the *legatio libera* had to send an application to the Senate. As only magistrates, and above all the chairman of the Senate, had the right to present applications, the application was probably always addressed to him.<sup>5</sup> Cicero for instance relates that in 44 he wrote about the matter both to his son-in-law Dolabella and, to be impartial, also to the other consul, Antonius, who was suspicious.<sup>6</sup> In all probability it was usually sufficient to address the application to either of the consuls.<sup>7</sup> In it at least the reason for the journey and also its probable duration were indicated.<sup>8</sup> The latter was necessary in order to calculate how long the senator would be absent from sessions of the Senate. In the beginning the decision probably did not limit the time allowed, for it was only Cicero who in 63 finally succeeded in

<sup>1</sup> Cic. *Att.* 2.18.3. (58 June-July)

<sup>2</sup> Cic. *agr.* 1.8. (63); *Id.leg.* 3.9. (44); 3.18. (44); *Id.fam.* 12.21. (44)

<sup>3</sup> Those which we are able to identify.

<sup>4</sup> J. N. MADVIG: Quelques remarques sur les officiers dits 'praefecti' pendant les derniers temps de la république romaine (*Revue de philologie, de littérature et d'histoire anciennes* NS. 2, Paris 1878—1880, 177—187), 184—186.

<sup>5</sup> TH. MOMMSEN: Römische Staatsrecht III, Leipzig 1887, 951—953.

<sup>6</sup> Cic. *Att.* 15.18.1. (31. 5. 44)

<sup>7</sup> Cic. *fam.* 11.1.2. (17. 3. 44)

<sup>8</sup> *Ibid.*

limiting the *legatio libera* to one year,<sup>1</sup> which Caesar then confirmed by a new law.<sup>2</sup>

Cicero mentions the following reasons for the *legatio libera*: to fulfil a religious promise (*legatio votiva*),<sup>3</sup> to receive legacy (*hereditates obire*)<sup>4</sup> and to attend to one's creditor's rights (*exigere syngraphas*).<sup>5</sup> The first was considered to be the most honourable.<sup>6</sup> In all probability there were other valid and suitable reasons. Besides, one could find pretexts if one simply wanted to be away from Rome for political reasons<sup>7</sup> or wanted to take a trip for pleasure. At least the leading politicians, such as Cicero, could tell the actual motive to their friends.

There is no information extant regarding the view the Senate used to take of the applications for a *legatio libera*. Most probably they were regularly granted, even if some men disagreed on principle. The number of those who could enjoy the *legatio libera* had of course to be limited for practical reasons — if only so as not to reduce the number of senators in the sessions of the Senate too much. In addition to the solidarity of their colleagues many senators could rely on the help of their followers and supporters. To get the approval of the Senate was naturally easy for a politician like Cicero. He is also known to have recommended an acquaintance of his, C. Anicius (RE 1), a lower magistrate, to the governor, and it is very likely that he also supported his application to the Senate.<sup>8</sup>

There are no detailed references if any duties were attached to the *legatio libera*. According to the letters of Cicero it is quite clear that those enjoying it had no official duties to perform; they looked after their private affairs only. And it was this fact that caused resentment in those opposing the custom.<sup>9</sup>

It is not clear what rights of a *legatus* were connected with the *legatio libera*. It is hardly probable that senators travelling only for private reasons received their travelling-expenses from the treasury.<sup>10</sup> Instead Cicero emphasizes the

<sup>1</sup> Cic. *leg.* 3.18. (44)

<sup>2</sup> Cic. *Att.* 15.11.4. (44)

<sup>3</sup> Cic. *Att.* 2.18.3. (58 June-July); 4.2.6. (57 Oct.); 15.18.1. (31. 5. 44); 15.11.4. (8. 6. 44); Plut. *Mari.* 31.1—2. (88)

<sup>4</sup> Cic. *agr.* 1.8. (63); *id. leg.* 3. 18. (44)

<sup>5</sup> Cic. *Flacc.* 86. (59); *id. leg.* 3.18. (44)

<sup>6</sup> Cic. *Att.* 15.8.1. (31. 5. 44)

<sup>7</sup> VM 5. 3. 2; Cic. *Phil.* 1. 6. (2. 9. 44); *id. Att.* 15. 11. 4. (8. 6. 44); *id. fam.* 11. 1. 2. (17. 3. 44)

<sup>8</sup> Cic. *fam.* 12. 21.(44)

<sup>9</sup> Cic. *agr.* 1.8. (63); 2.45. (63); *qui rerum privatarum causa legationes liberas obeunt; Id. leg.* 3.9. (44); *Rei suae ergo ne quis legatus esto;* 3.18. (44)

<sup>10</sup> Cic. *agr.* 1.8. (63); *non maximis opibus neque summa auctoritate praediti.*

*auctoritas* they had in the provinces as representatives of the Roman state in spite of their very limited official powers.<sup>1</sup> This in itself helped them in their journey, but apparently they could, like ordinary *legati*, demand certain help and hospitality from the inhabitants of the provinces. Perhaps Cicero refers to this when he writes that the inhabitants of the provinces made complaints and were hardly able to endure the *legatio libera*.<sup>2</sup> Although he may have purposely exaggerated speaking of the misuse of the *legatio libera*, it seems certain that his words were founded on fact.<sup>3</sup>

To render the status of the *legatus* more effective the lower senators could ask a more powerful colleague for a letter of introduction to the governor of the province or provinces where they intended to go. Cicero's letter to Cornificius, the governor of Africa, in 44, in which he recommends his friend C. Anicius, is a typical example. He asks Cornificius to help Anicius in every possible way and to see that his private business is easily settled. But above all he urges the governor to see that the *auctoritas* of Anicius is respected, as this is most valuable to him, and provide him with *lictors*, as he himself had done for all the senators in his own province.<sup>4</sup>

What a state representative, accompanied by the *lictors*, could demand from the provincials, is shown by the extant fragments of the speeches of C. Gracchus in which he tells how a consul had had a municipal magistrate at a municipium flogged for a slight mistake, how a *praetor* had caused the death of two men, and how a young man, who had not even a magistracy, ordered a shepherd to be whipped to death for making a few trifling jokes.<sup>5</sup>

On the other hand it is obvious from the letters of Cicero that the *legatio libera* never gave its holder the same secure juridical status as the regular *legatio* or magistracy. Thus it did not, for instance, give protection against accusations levelled against the holder of an office.<sup>6</sup> In all probability the position of the man enjoying the *legatio libera* was largely dependent on his own official status and on the attitude of the governor. In any case the position of the *legatio libera* was useful in managing private affairs and could be misused.

<sup>1</sup> Cic. *leg. agr.* 2.45. (63); *homines auctoritate tenui, qui rerum privatarum causa legationes liberas obeunt, tamen externae nationes ferre vix possunt. Grave est enim nomen imperii, atque id etiam in levi persona pertimescitur, propterea quod vestro, non suo nomine, cum hinc egressi sunt, abutuntur.*

<sup>2</sup> Cic. *leg.* 3.18. (44)

<sup>3</sup> *Id. agr.* 1.8. (63); *quam graves eorum adventus sociis nostris esse soleant*; 2.45. (63); c.f. above note 1; Cic. *Q. fr.* 27.2. (55 February); *plena res nummorum.*

<sup>4</sup> Cic. *fam.* 12.21. (44)

<sup>5</sup> Gell. 10.3.1—2; cf. Cic. *agr.* 2.45. (63); *id. Flacc.* 86. (59)

<sup>6</sup> Cic. *Att.* 2.18.3. (58 June); 15.11.4. (8. 6. 44)

Lacking all sources it is impossible to say how early the custom was formed and how it developed fully. In the year 63, at least, there is evidence of its misuse. It was in that year that Cicero proposed its abolition, but the veto of a tribune of the plebs prevented the passing of the proposal.<sup>1</sup> He succeeded, however, in securing a decision to the effect that the *legatio libera* would not be granted for a longer period than one year.<sup>2</sup> The powerful politicians then found the nominal office of *legatus*, which by means of their imperator friends showed their respect for them, a new and better way of looking after their own affairs free of all restrictions as to time. Cicero, for example, mentions the advantageous offices as *legatus* that were offered to him by Caesar, Pompeius and Dolabella<sup>3</sup> and which enabled him to leave Rome or to stay there at will. Caesar renewed the restrictions to the *legatio libera* decreed by Cicero<sup>4</sup>, but he did not abolish it. The custom was continued far into Imperial times, though information about it is very scanty. E.g. Tiberius enjoyed it when a *praetor*.<sup>5</sup>

As late as about 200 A.D. Ulpianus explained that those enjoying the right of the *legatio libera* were not travelling on affairs of state but on those of their own.<sup>6</sup>

Probably the main point about the *legatio libera* in Imperial times lay in the fact that the senator concerned was permitted to stay away from the sessions of the Senate and from Italy; indeed, it was called a vacation (*commeatus*).<sup>7</sup> Already in republican times permission to stay away from the sessions of the Senate was necessary, and during wars it was forbidden to leave Rome.<sup>8</sup> As the senators were still entirely Italians and mostly members of the Roman aristocracy, they usually did not wish to stay away from the capital for longer periods. But as the number of the men from provinces in the Senate increased, it was found necessary to take steps to keep them in Rome, as many of the Imperial orders indicate.<sup>9</sup> It was, for example, considered necessary to ascertain that only the senators absent by permission of the Emperor retained their domicile in Rome.<sup>10</sup> The ruler had probably removed or at least greatly limited the official privileges attached to the *legatio libera*.

<sup>1</sup> Cic. *leg.* 3.9. (44); 3.18. (44)

<sup>2</sup> *Ibid;* *Id. Att.* 15.11.4. (8. 6. 44)

<sup>3</sup> Cic. *Att.* 2.18.3. (58 June-July); 4.2.6. (57 Oct.); 15.11.4. (8. 6. 44)

<sup>4</sup> Cic. *Att.* 15.11.4. (8. 6. 44)

<sup>5</sup> Suet. *Tib.* 31; cf. Suet. *Claud.* 23.7.

<sup>6</sup> (Ulp). *Dig.* 50.7.15.

<sup>7</sup> SCHOL. BOB. 107 K-S (Cic. Flac. 86); *Eas* (sc. legationes liberas) *nunc commeatus appellamus*; M. ROSTOWZEV; *Commeatus* (RE IV, 1901, 718—722) 720—722; Thes. III, 1826.

<sup>8</sup> Liv. 27.504. (207); 36.3.3. (191); 43.11.4. (170)

<sup>9</sup> Suet. *Caes.* 42.1; Tac. *an.* 12.23; Dio 52.42; *Dig.* 1.9.11.

<sup>10</sup> (Paul) *Dig.* 50.1.22.6.



This was, indeed, quite a natural development. The *legatio libera* had been thought up at a time when the empire was growing, when it was necessary to reserve for the members of the ruling class an opportunity to attend to their private affairs in all parts of the Roman state without any loss to the authority of the Senate. But the selfish class-consciousness apparent in the history of the senatorial class during the latter period of the Republic, transformed the necessary right into a misuse. The Emperor removed the features harmful to the state, but did not deprive the senators of the opportunity to attend to their private affairs in the provinces.

## REFERENCES

- A. ADAMEK, Die Senatsboten der römischen Republik, Progr. Graz 1883.  
B. CAGNAT, Legatio (Darenberg-Saglio, Dictionnaire III, Paris 1918, 1025—1046) 1033.  
L. LANGE, Römische Alterthümer, Berlin 1874, II, 380; III, 247, 292.  
TH. MOMMSEN, Römisches Staatsrecht II<sup>3</sup>, Leipzig 1887, 690—691.  
A. V. PREMERSTEIN, Legatus (RE XII, 1925, 1133—1149) 1135—1136.  
SOLDAN, De reipublicae Romanae legatis provincialibus set de legationibus liberis, Diss. Marburg 1854.  
P. WILLEMS, Le sénat de la république romaine, sa composition et ses attributions, Paris 1878—1883, I, 149—150 203, II, 165 footnote 4.