THE JURISDICTION OF THE PONTIFFS
AT THE END OF THE FOURTH CENTURY BC

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1. Introduction

In modern literature, the publication in 304 BC of the legis actiones and the dies fasti by Gnaeus Flavius is often used as evidence that, at the end of the fourth century BC, the pontiffs lost their monopolistic control of civil law. Until then, only the pontiffs as supervisors of litigation had had a—jealously guarded—knowledge of the legis actiones and the dies fasti. According to some authors, the publication marked the beginning of the secularization of Roman civil law; others explained the publication in the context of the factional politics that divided Rome by the end of the fourth century BC. In this connection, some authors also referred to the lex Ogulnia of 300 BC that opened the pontificate and the augurate to the plebeians.

In my view, considerable confusion has been caused by the use of the term ‘monopoly’. It is not clear what, in this connection, is meant by this term, why it was broken, and how. In the following, I shall use the publication of the legis actiones and dies fasti by Flavius in order to argue that the pontiffs did not have a monopoly, that it was not broken, and that the publication of the legis actiones and the dies fasti was only a matter of modernization of public life that took place at the end of the fourth century BC. Moreover, I shall argue that the clauses of the lex Ogulnia support my view that the pontiffs continued to be supervisors of litigation.

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First, I shall deal with the publication of the *legis actiones* and *dies fasti* by Flavius; then, I shall focus on the *Lex Ogulnia* and its connection with the publication by Flavius.

2. The Publication of
the Legis Actiones and Dies Fasti by Gnaeus Flavius

2.1. Sources

Nine sources inform us on the publication by Flavius, but they differ as to what Flavius actually published. Some relate that Flavius published the *legis actiones*.³ According to other sources, Flavius published the *dies fasti*.⁴ Again other sources tell us that Flavius published both the *legis actiones* and the *dies fasti*.⁵ The most reliable source seems to be a letter written by Cicero to his friend T. Pomponius Atticus. In this letter of 22 February 50 BC, Cicero refers to a question Atticus had asked in one of his previous letters, insinuating that Flavius lived in the fifth century BC. Cicero’s answer runs as follows:

Cicero, *Ad Atticum* 6.1.8.:⁶

*...quis...?...quippe...?...occultatam...?...illegit...?...potius...?...annis...?...sepulcrum...?...calum...?...cur...?*  

You raise a historical query in one of them concerning Cn. Flavius, son of Annius. He did not live before the Decemvirs, for he became Curule Aedile, an office created long after their time. So what did he achieve by publishing the *fasti*? The answer is that at one time the list is supposed to have been kept a secret so that business days could only be known by application to a few persons. There are plenty of authorities for

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³ Cicero, *De oratore* 1.186; Pomponius, *Digesta* 1.2.2.7.  
⁵ Cicero, *Ad Atticum* 6.1.8; Valerius Maximus, *Facta et dicta memorabilia* 2.5.2; Livy, *Ab urbe condita* 9.46.1–6.  