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SPIS TREŚCI / CONTENTS

SEBASTIAN LELKO

The political emancipation of the plebs in 366 BCE 7

SZYMON CZERSKI

Supply of war horses to the Roman military in the last days of the Republic and the Principate 31

ANDRIJ KORČAK

The cult of Sabazius in the northern Black Sea littoral: monuments and their interpretation 37

EMZAR KAKHIDZE, KAKHABER KAMADADZE, SHOTA MAMULADZE

The Pontus-Caucasian frontier: the Roman and Byzantine fortification system in the southeastern Black Sea littoral 51

URSZULA IWASZCZUK, MARCIN MATERA

Man's best friend on the borders of the Greek *oikumene*: the so-called dog burials and the role of dogs in Tanais 75

PAWEŁ GOŁYŹNIAK, ALFRED TWARDECKI

Athlete, Hymen or Meleager? An intaglio from Olbia 109

JAN NIEMYSKI

The *gladius Hispaniensis* revisited — a small sword with great implications 125

DOMINIK MIKOŁAJ STACHOWIAK

The Christian funeral rite in Late Antiquity — an overview 139

MATEUSZ ŻMUDZIŃSKI

| | |
|-------------------------------------------------------------------------------------------------|-----|
| Ludwika Press in the light of documents from the archives of the University of Wrocław | 163 |
| Oświadczenie o etyce wydawniczej i niewłaściwych praktykach | 173 |
| Informacje i wskazówki dla autorów | 175 |
| Publication ethics and malpractice statement | 181 |
| Guidelines for authors | 183 |

Sebastian Lelko

THE POLITICAL EMANCIPATION OF THE PLEBS IN 366 BCE

Abstract: The paper is an analysis of ancient accounts concerning the *leges Liciniae Sextiae*, the battle for which took place in the years 377–366 BCE, and the process of admission of plebeians to the consulship. The author deconstructs the narratives of ancient authors, comparing them with the results of modern historiography.

Keywords: plebs, consulate, patricians, Licinius, Sextius

1. Introduction

The year 367 BCE is one of the most important dates in the history of the Republic, for modern researchers as much as for the ancient authors. It crowned a decade of struggle by the plebs to pass the *leges Liciniae Sextiae*. The Roman tradition has it that for ten years in a row two elected plebeian tribunes, Licinius and Sextius, submitted three legislative measures — on land ownership, debt and admission of plebeians to the consulship. The ancient accounts concerning these ten years, from 377 to 366 BCE, have apparently escaped the attention of modern historians, who have focused on reconstructing events from the beginning of the fourth century BCE (suffice it to mention Timothy J. Cornell's *The Beginnings of Rome*, and the works of Kurt von Fritz and Endre Ferenczy), or a reconstruction of early Republican concepts (e.g. Jerzy Linderski's numerous articles on the auspices), or an analysis of the literary tradition of ancient authors in terms of anachronisms and calques from later periods. This comprehensive study searches for an inherent consistency and logic in the Roman tradition by deconstructing how the ancient authors viewed the struggle of the Orders in 377–366.

To this end, Livy's account, the main source for the period in question, has been used to give a chronological framework for the discussion. Other sources are discussed complementarily (or in opposition) to specific parts of Livy's *Ab Urbe condita*. Livy's content also determines the issues (and their sequence) that receive more detailed attention. This approach captures the intended flow of Livy's narrative and reflects the logic of his presentation by addressing certain repeated issues (such as auspices, for example) at the point that they appear in greater extent in Livy's work. Accordingly, they are barely mentioned elsewhere in this study in order not to lose its coherence.

The study has a tripartite, chronological structure: 1) the years 377–371, covering the period from the first tribuneship of Licinius and Sextius to the end of anarchy in Rome, 2) the years 370–368, when Livy presents the argumentation of both sides of the conflict for the first time, and

3) the crucial years 367–366, marked by two great speeches, one of the tribunes and the other of Appius Claudius, and the reorganization of the Republic.

2. Sources

The chief source for the period in question is the last part of Livy's Book VI. The Roman historian's account is supplemented with a biography of Camillus written by Plutarch. The full text of the work of Dionysius of Halicarnassus has not been preserved. And although the preserved summary of his work mentions the tribunes and their legislation, it does so without giving any details. There is also a fragment from Cassius Dio and a summary of his work by Zonaras made in the eleventh century. Some minor information has been preserved in compendia from the Imperial period: *De viris illustribus* by an anonymous author, and Ampelius' *Liber memorialis*. A fragment from the work of Fabius Pictor recounting the election of consuls in 367 has also been preserved in the work of Aulus Gellius. However, since the only full source for the events considered here is Livy's Book VI, the presentation will follow the chronology presented by Livy.

Livy's work, written in the times of Augustus, is an example of the so-called late annalist tradition. Since he sourced his material almost exclusively from the works of historians before him, his account is considered as a summary of the annalist tradition of the age.¹ His clearly moralistic approach resulted in his characters being cast as personifications of various moral attitudes and since he was writing 300 years after the events in question, he often could not escape the first-century BCE perspective. Thus, he would attribute late Republican relations to events from earlier times and his understanding of augural and constitutional issues was also often less than accurate.²

In turn, Plutarch, who wrote at the close of the first and in the early second century CE, produced works classed as biographies, in which, as he freely admitted in the introduction to the *Lives* of Caesar and Alexander the Great, he would pass over anything, material or events, that he did not consider of importance for the text at hand. His portraits of famous men from the past revealed "the virtues and faults of their character" (*Alex.* 1.1);³ they were, therefore, mainly psychological in their nature.

3. The years 377–371

3.1. Licinius and Sextius become plebeian tribunes

The sources are in agreement about what prompted Marcus Licinius and Lucius Sextius to begin agitating for their measures. All of them — Livy (6.34.5–11), Dionysios (29.1–2), Zonaras (7.24) and the anonymous author of *De viris illustribus* (20.1) — give as the reason the story of Fabia, daughter of the patrician Marcus Fabius Ambustus and wife of the plebeian Licinius Stolo. She was visiting her sister, whose husband, Servius Sulpicius Rufus (also a patrician), was a consular tribune at the time. When Sulpicius returned from the Forum, the lictor accompanying him gave the customary knock on the door with his rod, frightening Licinius' wife who was unfamiliar with the custom. The situation made her sister laugh but mortified Fabia, who became envious of her sister: "she was wed to one who was her inferior in birth, married into a house where neither honour (*honos*) nor political

¹ CORNELL (ed.) 2013, p. 83.

² BADIAN 1966, p. 198.

³ WIPSYCKA (ed.) 2001, pp. 99–101.

influence (*gratia*) could enter” (Liv. 6.34.9). Hearing this Marcus Fabius Ambustus is said to have started, together with his son-in-law Licinius and Lucius Sextius, seeking ways to reform the law. The first step was for Sextius and Licinius to secure the office of plebeian tribunes.

Up to this point the sources are practically unanimous. The only minor inaccuracy is which sister was the elder one and this is probably due to mistakes made when recording the anecdote.

Livy goes on to say that Licinius and Sextius were elected tribunes and proposed three measures: one on debt (*unam de aere alieno, ut deducto eo de capite quod usuris pernumeratum esset id quod superesset triennio aequis portionibus persolveretur*; repaid interest to be counted as the principal and the remaining sum to be paid in three installments), another one on land (*ne quis plus quingenta iugera agri possideret*; that no one should own more than 500 *iugera* of land) and the third on replacing consular tribunes with tribunes, one of whom would be from the plebs (*ne tribunorum militum comitia fierent consulumque utique alter ex plebe crearetur*) (Liv. 6.35.3–5).⁴ Each of these measures will be discussed separately below.

Fabia’s story was no doubt made up by the annalists. It runs in the same vein as other stories of women’s suffering prompting men to reform the state (the best known examples, although bloodier, are the stories of Lucretia and Verginia).⁵ Moreover, Livy failed to note the many inaccuracies that contradicted his own words. These will be discussed below, in light of the results of modern research.

3.1.1. Patricians in the fourth century BCE

The citizens of Rome were divided into patricians and plebeians from the times of Romulus — this was the order accepted by the annalists, Livy included. They perceived this dualism in full once a part of the plebs organized itself in 494 BCE into a plebeian organization, initiating the so-called Struggle of the Orders lasting until the *lex Hortensia* of 287.⁶

Patricians held the monopoly on power. The annalists were adamant that before 367 only patricians could be consuls and it was Lucius Sextius in 366 who became the first plebeian consul. However, Sulpicius, whom Fabia envied his honors, was not a consul. Livy reports that from 445 *tribuni militum consulari potestate* were chosen instead of the consuls. This was in his opinion a gesture toward the plebs which could thus have its representatives run for this office (Liv. 4.6–7). Interestingly, Livy noted the first plebeian consular tribune in the year 400, that is, 45 years after the office, which was supposed to be open to plebeians from the start, was introduced. A closer look at the *Fasti Consulares* reveals a plebeian, Quintus Antonius Merenda, in the office of tribune already in 422, long before the year 400 recorded by Livy. However, the status of Lucius Atilius, chosen in the first election for a consular tribune (for the year 444), remains unclear.⁷

Regardless of whether the first non-patrician tribunes were elected in 444 or 422, in light of what Livy says, there is nothing that could have stopped Licinius Stolo from rising to this office.⁸ More so, two years earlier, in 379, the college of tribunes was half plebeian (Liv. 6.30.1–2).⁹ In light of this Fabia’s envy was hardly justified. Moreover, a daughter of Marcus Fabius Ambustus, a tribune in his time (in 381 and 369), but foremost a member of one of the most powerful patrician families, could hardly not have been aware of the customary actions of the lictors.

⁴ The law on debt is mentioned only by Livy (6.35.4), the one on land appears in Liv. 6.35.4, Cic. *Leg. Agr.* 2.21, Varro *R.R.* 1.2.9, Dion. Hal. 14.12, Val. Max. 8.6.3, Vell. 2.6.3, Plin. *N.H.* 18.17, Plut. *Cam.* 39, Gell. 6.3.37, Cato 20.1.23, App. *B.C.* 1.8–9, Anon. *Vir. ill.* 20; the one on the consulate in Liv. 6.35.5, Val. Max. 8.6.3, Plut. *Cam.* 39 and 42, Flor. 1.17.26.4, Anon. *Vir. ill.* 20, Ampelius

25.4 (erroneously merging Sulpicius Rufus and Licinius Stolo as Sulpicius Stolo), see BROUGHTON 1951, p. 109.

⁵ OAKLEY 1997, pp. 645–647.

⁶ MITCHELL 1974, p. 31.

⁷ CORNELL 1995, pp. 334–335; ZIÓŁKOWSKI 2005, p. 117.

⁸ VON FRITZ 1950, pp. 4–5.

⁹ On the college of 379, see below, section 3.1.2.

There are other doubts raised by this anecdote well. Livy has his view of the social structure in fourth-century Rome: a privileged group of patricians and the rest of the civic body, namely, the plebeians. From this dualism the annalists derived their interpretation of early Roman history as a tale of the continuous conflict between the two orders, lasting from the creation of the plebeian organization to the passing of *lex Hortensia* in 287. The laws of Licinius and Sextius are for the annalists one of the most important elements in this struggle. However, modern research has critically reviewed the traditional view of Roman society from the fifth and fourth centuries BCE. While an in-depth discussion of the patrician–plebeian dualism is beyond the scope of this paper, let us look at some of the most crucial issues involved. Tradition has it that families were patrician from generation to generation ever since the kingdom. The only exception given in the sources are the Claudii, a family that came to Rome in 504 and was accepted into the patriciate (Liv. 2.16.4–5; Dion. Hal. 5.40.3–5). Apart from them, the patricians under the Republic were a closed group and no plebeian family could rise to patrician status. The patricians’ share in power remained disproportionately large compared to their number. Researchers today do not agree on when the patricians were ultimately formed as a closed caste. No doubt this was after the first of the Claudii arrived in Rome and before the legislation of the decemvirs dated to 451–450, because the Law of the Twelve Tables barred plebeians from marrying patricians.¹⁰ The “closing of the patriciate” occurred at this time, based on their monopoly on the auspices, access to religious colleges and major flaminates. The patricians were a privileged group in Roman society because only they held *auspicia publica populi Romani*, and had thus a special link with the city’s patron god Jupiter (on the auspices, see section 5.3).¹¹ It is irrelevant to the present discussion which of these is the correct date because in 377 the patricians had already been a closed group for up of 70 years.

3.1.2. Plebeians in the fourth century BCE and the draft measures of the tribunes

The origin and identification of the plebeians is equally fraught with difficulties. Our sources are in agreement on one thing: 494 is when plebeians first started to organize themselves during the first secession. Who were the first plebeians? Arnaldo Momigliano, followed in this by Cornell, argues that the first plebeians must have been for the most part *infra classem*, meaning men who unlike the *classici* (class of property-owners) were too poor to serve in the army.¹² Arguments to the contrary are not easily dismissible, namely the military nature of the newly formed organization as well as a boycott of conscription as a pivotal element of the political struggle. It follows that the original plebeians must have been independent farmers with sufficient means to be in the army (and hence part of the *classis*).¹³ It should also be added that not all non-patricians at this time were part of the plebs. Some of them were the clients of the patricians and there was also the *infra classem* group, that is, the poorest citizens.

Regarding the structure of Roman society during the first half of the fourth century BCE, Livy appears to have automatically considered as a plebeian anyone who was not a patrician. Thus, in his account, the plebeian organization was internally differentiated by the material status of its members: “so abject indeed was the surrender not only of the lowest of the plebs but even of their leaders”¹⁴ (Liv. 6.34.3). Licinius and Sextius, leaders of the plebeian movement, were among those leaders. The patrician Marcus Fabius Ambustus, with whom Licinius was related by marriage, could have been one of the chief allies.¹⁵

¹⁰ RICHARD 2005, p. 117; RAAFLAUB 2005, pp. 199–202; FERENCZY 1976, p. 16.

¹¹ RAAFLAUB 2005, p. 206.

¹² MOMIGLIANO 2005, pp. 173–174; CORNELL 1995, p. 257.

¹³ ZIÓLKOWSKI 2005, p. 98.

¹⁴ This quote and the next one after: *Livy: Books V, VI and VII*, tr. B. O. FOSTER *et alii*, Cambridge, MA 1924.

¹⁵ On M. Fabius’ actual role, see section 4.3.

The status differentiation of the plebs (in Livy's opinion) was reflected in the issues covered by the measures introduced by Licinius and Sextius. In his account, both the debt and the land laws were in the interest of individuals who had little use for the consular office. Livy does say that "an opportunity for innovation was presented [only] by the enormous load of debt, which the plebs could have no hope of lightening but by placing their representatives in the highest offices (*summo imperio*)" (Liv. 6.35.1). However, already during the vote on specific drafts of the laws, the plebeians were allegedly inclined a number of times to drop the measure on the consulate while voting on the agrarian law and the one on debt (Liv. 6.39.1–2; see part 5.1). It is clear then that Livy is describing two plebeian groups with different interests, one aspiring to participation in power and the other seeking to better their economic standing.

This dichotomy of attitudes and expectations is emphasized also by modern historians of Rome. For Mommsen, Licinius' and Sextius' success derived from the combined interests of the rich plebeians (Mommsen accepts Livy's description of the dualism of Roman society in the fourth century BCE) and the plebs in general.¹⁶ In his opinion, during the battle for the *leges Liciniae*, the plebeian elite was actually much closer to the patricians than the plebs at large. Ferenczy shared this opinion, pointing out that ever since the year 445 and the *lex Canuleia* (according to tradition, a law that abolished the legal ban on marriages between patricians and plebeians) the richer part of the plebs became politically closer to the patricians, starting also to intermarry, as attested by Licinius Stolo for one.¹⁷ In turn, Mitchell rightly indicated that the Struggle of the Orders makes sense only if there are rich plebeians (better still: non-patricians), whose ambitions include the political successes that they lack.¹⁸ P. A. Brunt is of the same opinion, accepting the annalistic tradition that from the second secession the plebs regularly demanded a distribution of the *ager publicus* and a solution to the debt problem.¹⁹

At this point a closer look at the draft measures proposed by Licinius and Sextius is in order.²⁰ The law on the consulate will be discussed later in this study, so the ones to be considered here are the law *de modo agrorum* and the law on debt, which as Livy would have it, was in the interest of the poorer plebeians. The debt issue had already been taken up by the plebs in 494, during the first secession, but was played down for about a hundred years. It came back again in the fourth century BCE inciting social conflict.²¹ The source of the problem at the beginning of the fourth century was the situation following the ultimate conquest of Veii by the Romans in 396. This substantially increased the territory of the Republic. Livy reports that already by the next year plebeian tribunes called for the resettling of some citizens in the conquered city (Liv. 5.24.5–8). The patricians, including the conqueror of Veii, M. Furius Camillus, opposed the idea. The conflict lasted through 393 when the plebeians finally acceded not to leave their homeland in response to the patricians' begging. In gratitude, the patricians decided to divide the conquered *ager Veientanus* between citizens, both fathers of families and their sons (Liv. 5.29–30). For the year 389 Livy reports one other allotment of public land which concerned the Veii, Capenati and Falisci citizens who had "taken Rome's side" (Liv. 6.4.4–5).

It was unprecedented in ancient history to allot land to all willing citizens. Livy's account, according to which this was an expression of the patricians' gratitude, sounds naive and improbable. It must have been a grievous experience that inclined the patricians to such a courageous move. Since the Gauls had captured Rome a year before the second allotment reported by Livy, the second date passed down by tradition, that is 389, seems definitely much more probable. It is currently accepted that the defeat at the battle of the Allia must have been the reason for disposing

¹⁶ MOMMSEN 1894, pp. 380–381.

¹⁷ MOMMSEN 1894, p. 393; FERENCZY 1976, p. 48.

¹⁸ MITCHELL 1974, p. 31.

¹⁹ BRUNT 1971, pp. 55–56.

²⁰ The word "law" is used here for the sake of a concise argument. On the legal status of *leges Liciniae Sextiae*, see below, section 5.3.

²¹ ZIÓLKOWSKI 2005, pp. 99–100.

of the newly incorporated *ager Veientanus* by allotting plots to all willing adult citizens.²² It has also been currently emphasized that land allotments *viritim*, that is, to men, must have broken the client–patron relation, loosening the economic ties between them: the patrons’ working force now could and had to take care of their own small fields. This must have hit the great landowners hard (and most of them must have been patricians).²³

The labor shortage question had to be solved somehow. In agricultural societies pauperized citizens have to run up debts with the rich — the patricians in the case of Rome. When they could not pay off the debt, they would fall into debt bondage and became *addicti*, that is, adjudicated for personal execution. This must have been how patricians made sure they had enough labor after shortages appeared following land allotment.²⁴

Debt-related unrest occurred already in the 380s. Livy informs of the case of Marcus Manlius Capitolinus in 385–384. Envious of Marcus Furius Camillus’ position, the hero of the war with the Gauls had taken up the cause of the debtors. Captured by the dictator, he was sentenced to death for aiming at the tyranny (Liv. 6.11–20). Five years later Livy noted further unrest caused by the debt issue. The plebeian tribunes openly took up the question of debtors, offering those adjudicated for their debts their *auxilium* (*nam [...] duci addictos tribuni sinebant*; Liv. 6.27.10). Taking debtors under the tribunes’ protection proved highly effective as the election of consular tribunes in 379 demonstrated. Half the college for that year was plebeian (see section 3.1.1). Moreover, the ranks of the plebeian organization were augmented by citizens saved from debt bondage.²⁵ It is thus hardly surprising that Licinius and Sextius sought the support of non-patricians by championing the cause of the *addicti*.

The measures proposed by Licinius and Sextius were a step forward on the debt issue: their draft to credit the repaid interest to the principal and divide the remaining amount into three installments (*unam de aere alieno, ut deducto eo de capite quod usuris pernumeratum esset id quod superesset triennio aequis portionibus persolveretur*) sought to solve the debt problem rather than just provide emergency assistance to the *addicti* (as in 379).

The *lex de modo agrorum* was a separate issue. Livy describes the law in the following words: so that no one would own more than 500 iugera of land (*ne quis plus quingenta iugera agri possideret*) (6.35.4). In *De re rustica*, Varro also says that Stolo’s law prohibited citizens from owning more than 500 iugera of land (*Stolonis illa lex, quae vetat plus 500 iugera habere civem Romanum*) (1.2.9). The impression is that the law restricted land ownership to just 500 iugera in all: Varro says that the law prohibits “having” (*habere*) more than the defined limit, while Livy speaks of possession (*possideret*). What is at issue here, as the situation from the Gracchan era suggests, is not the actual size of privately owned estates, but rather the right of use (*possessio*) of *ager publicus*, public land, which the patricians used but without the right of ownership.²⁶ Interestingly, Livy never précises what kind of land the tribunes had in mind. Presenting the draft law of Licinius and Sextius, he merely says *plus quingenta iugera agri*, without going into any details. The only other place where the draft of the agrarian law is referred to is the speech of Appius Claudius (6.40–41), in which Appius roars that Licinius and Sextius, as if they were Romulus and Tatius, “give away the moneys and the lands of others” (*quia pecunias alienas, quia agros dono dant*; Liv. 6.41.10), suggesting that the limit concerns private patrician property, and that land over the limit will be handed out to the plebeians. One should keep in mind, however, that the speech was directed against the tribunes: Appius as quoted by Livy could have exaggerated, lied and overdramatized excessively to argue his case. The question is whether Livy consciously manipulated his account to put the plebs in a bad light or was simply not sufficiently precise in what he said.

²² RAAFLAUB 2005, pp. 202–203.

²³ ZIÓLKOWSKI 2005, pp. 131–132.

²⁴ ZIÓLKOWSKI 2005, pp. 133–134.

²⁵ ZIÓLKOWSKI 2005, pp. 134–135.

²⁶ CORNELL 1995, p. 328; OAKLEY 1997, pp. 654–660.

The limit of 500 *iugera* mentioned in the sources is considered by researchers to be too high and to many it appears anachronistic: firstly, Tiberius Gracchus was said to have proposed the same limit in 133 BCE and, secondly, the number passed down by tradition would have been too big relative to the conditions in the Republic before the conquest of all of Italia. Moreover, how could there have been land hunger at a time when the recent assignation of the *ager Veientanus* had supposedly alleviated that hunger? Cornell estimates, after De Martino, that roughly 112,000 to 150,000 *iugera* of the *ager Veientanus* was left fallow after the operation. Taking these numbers into account, the 500-*iuger* limit appears quite real.²⁷ Regarding the land hunger issue, which could not have been urgent in 377, Jerzy Kolendo, whose unpublished research was summarized by Adam Ziółkowski, had an explanation. In his view, public, that is, state land, rented individually, was used for grazing throughout the Republic and grazing was the *emploi* of rich citizens, largely from the patrician class, who effectively made use of the *ager publicus*. Therefore, the chief beneficiary of the agrarian law was the plebeian elite which yearned to share in the use of the *ager publicus*. Appian (*BC* 1.8–9) presented the key elements of the law favoring small farmers who had settled on *ager Veientanus*, noting the limits on cattle and sheep numbers introduced alongside the limit on land possession. Grazing animals threatened the fields and crops of these minor farmers, whereas limits set on the number of animals were in the interest of settlers with smaller land plots.²⁸

The idea that all non-patricians identified themselves with the plebs as a consequence of the *leges Liciniae Sextiae* appears sound, but needs clarification. This group must have been already quite numerous at the beginning of the fourth century BCE but the membership of small farmers in it snowballed only after the plebeian organization came out in defense of the debtors. The more citizens came to the *concilium plebis*, the bolder were the actions of the plebeians and in 377 BCE they moved from the defensive (*auxilium*) to proposing comprehensive economic and political reform.²⁹ The plebeian numbers in 377 are best attested by the anarchy that followed in 376–371 (see below). In turn, the passing of the proposed measures resulted in the richer landowners, who had the hitherto been neutral, joining the movement *en masse*, tempted by the office of consul for which they were now eligible.

3.2. The patrician reaction and the anarchy period

The measures proposed by the tribunes, as Livy puts it, “were all matters of great moment, and it would not be possible to carry them without a tremendous struggle. Now when all the things that men immoderately covet, lands, money, and promotion, were jeopardized at once, the patricians became thoroughly alarmed . . .” (*cuncta ingentia et quae sine certamine maximo obtineri non possent; omnium igitur simul rerum, quarum immodica cupido inter mortales est, agri, pecuniae, honorum*; Liv. 6.35.5–6). This shows Livy’s continued use of the ambiguous term *ager*, which would equally well refer to public as well as private property. Without explaining what land precisely was the object of the measure, Livy expresses his opinion that the tribunes’ measures made the patricians “fearful” (*conterriti patres*), causing them “to take council in public and in private” to find a way to reject them. Ultimately, the patricians enlisted the support of the other eight tribunes who vetoed the action:

these men, seeing Licinius and Sextius summon the tribes to vote, came up in the midst of a body-guard of patricians, and refused to permit the bills to be recited or anything else to be done that was usual in passing a resolution of the plebs (Liv. 6.35.7).

²⁷ CORNELL 1995, p. 329.

²⁸ ZIÓLKOWSKI 2005, pp. 138–141.

²⁹ ZIÓLKOWSKI 2005, pp. 134–135.

The tribunes connected with the patricians made any voting on these measures in 376 impossible. Livy goes on to say that Licinius and Sextius responded with the same: chosen tribunes again in 375, they used the veto to block the election of the curule magistrates. The situation continued through 371 (consular tribunes were chosen for the year 370 according to Livy's account): during this period the only elected officials were plebeian tribunes and aediles. The plebeians elected Licinius and Sextius, and eight other tribunes beside them, who opposed them. Zonaras also speaks of the anarchy that lasted some time: "they [Licinius and Sextius] overthrew the established order of the state to such an extent that for four years the people had no rulers, since these men repeatedly obstructed the patrician elections"³⁰ (7.24), and so does Plutarch: "tribunes of the [plebs] were chosen, but the multitude prevented the consular elections from being duly held"³¹ (*Cam.* 39.1). According to Diodorus, the anarchy lasted for one year (Diod. 15.75.1).

Livy's description of events in 376–371 is as problematic as the tribunes' motives presented in the previous section. The patricians no doubt reacted somehow to the tribunes' measures — the ten-year struggle to get them passed is telling enough. Nonetheless, the actions taken by the patricians, according to Livy, raise some doubts. It does not seem likely that the plebeians who chose Licinius and Sextius would have elected at the same time as many as eight tribunes in opposition to them. It is even less likely that they would have done so year after year until 370, which is the year given by Livy. In 369 Livy speaks of five pro-patrician tribunes being elected (6.36.8), and recounts for the following year that "the proposers of the measures would not yield to the vetoes of their colleagues" (*nec intercessio collegarum latoribus obstaret*; Liv. 6.38.3). Electing a tribunal college with not one pro-patrician member is said to have taken the plebeians nine years.

Researchers have challenged the annalists' testimony of tribunal vetoes even more. Ronald T. Ridley lists all of Livy's mentions of the use of the veto against other tribunes: first suggested use in 471, first use in the struggle to codify the law in 462–454, rediscovery (!) by Appius Claudius in 417 and other uses in 415, 410, 395, 377–367, 300 and 294. In three instances, the majority of the tribunes submitted their veto (which had no practical sense because one veto was theoretically enough); in other cases, the number of opposing tribunes was not determined. In response to the patricians taking over part of the tribunal college, Livy's plebeians were said to avoid the conscription (or, as in our case, interfere with the magistrate election), and in three instances the patricians simply "gave way having been defeated".³²

Kurt von Fritz believed this tradition to be an anachronism, the annalists having transferred back into the first half of the fourth century the course of events that took place in 133 and Octavius' veto of the measures introduced by Tiberius Gracchus.³³ Badian gave the ultimate blow demonstrating that Octavius' veto was unthinkable under the Republic and redefined the concept of a tribunal *intercessio*. Prior to that year a single tribunal veto could not have stopped legislation by the *concilium plebis*; when there was a difference of opinion, college decisions were taken by the majority.³⁴ Therefore, eight tribunes could have effectively stopped Licinius and Sextius.

So how could the patricians have obstructed the passing of the laws? In Cornell's opinion, assuming we accept Badian's idea, the only legal means the patricians had at their disposal was to refuse to give their *patrum auctoritas* to resolutions passed by the plebeian assembly. Describing an analogous situation from the fifth century, when according to Livy a few of the tribunes blocked legislation by their colleagues, Cornell says that the plebeians most probably repeatedly voted on the measures only to have the patricians ignore them, denying them validity with regard

³⁰ Translation after *Dio's Roman History*, tr. E. CARY [Loeb Classical Library 37], Cambridge, MA 1914.

³¹ Translation here and below after *Plutarch's Lives*, tr. B. PERRIN, Cambridge – London 1914, with amendments.

³² RIDLEY 1980, pp. 338–345.

³³ VON FRITZ 1950, p. 9.

³⁴ BADIAN 1972, pp. 697–701.

to the *populus* as a whole, and considering them an internal affair of the plebeians.³⁵ The *patres* presumably treated the laws of Licinius and Sextius in a similar way.

Their colleagues' veto caused Licinius and Sextius to obstruct the election of curule magistrates (in this case, the *tribuni militum*), the consequence of which was a five- or four-year *solitudo magistratuum*.

The year of anarchy reported by Diodorus seems the more likely to some researchers because otherwise, as they point out, Rome would have been under threat of enemy attack from outside for too long a time.³⁶ This argument is not necessarily valid in view of the fact that after its conquest of Veii Rome had no enemies threatening its security except for Tarquinia and in this case it was protected by its alliance with Caere. Ziółkowski explained this one-year period of anarchy as a mistake of Diodorus (or his source) who after listing the *tribuni militum* for the year 389 jumped back to the college of 394, synchronizing again with Livy only in 370. The four years of difference between the two versions are the result of this mistake.³⁷

Yet how did the anarchy come about? According to Livy, Licinius and Sextius used the veto to block the magisterial elections. There is a discrepancy here. Livy considered the institution of the *intercessio* in 377–367 already entrenched in Roman political life for a long time (the Roman tradition Livy embraced was that the patricians accepted the validity of the tribunal *intercessio* ever since the *leges Valeriae Horatiae* of 449). However, we now know that the institution started to be shaped in the course of the years of struggle for the *leges Liciniae Sextiae* and was accepted by the patricians much later.³⁸ Moreover, even if we accept the tribunal veto already in this period, never in the history of the Republic did it have power against electoral assemblies.³⁹ Hence the only way the tribunes could obstruct the *comitia* was by disrupting the gathering by force.

4. The years 370–368

4.1. The accounts of Livy and Plutarch...

Livy notes that upon being attacked by Velitrae in 371, the allied city of Tusculum requested military aid. The plebeians then backed down in order to help Rome's ally and an *interrex* conducted the election for the year 370, ending by the same the *solitudo magistratuum*. Even so, the plebeians rebelled and it was only "by strenuous efforts [that] they enrolled an army" (Liv. 6.36.3–4). This is as much as Livy has to say about the year 370.

His account for the next year, 369, which Livy thought would bring a breakthrough, definitely picks up. The number of pro-patrician plebeian tribunes dropped (as indicated already above) and, moreover, Marcus Fabius Ambustus, who was "[allegedly — SL] openly advocating the adoption of the measures he had himself suggested". Despite this, the vote on Licinius' and Sextius' measures continued to be blocked. The pro-patrician plebeian tribunes argued that their veto was justified because "a majority of the plebeians were absent at Velitrae with the army; and that the assemblies ought to be put off until the return of the soldiers, so that the entire body of the plebs might vote on matters that concerned them" (Liv. 6.36.8–9). The rest of the year the trio spent advocating the measures. Livy composes the speech that they were supposed to give in this respect (see below, section 4.2), further proposing to extend the *duumviri sacris faciundis* college to eight members, five of whom were to be plebeians.

³⁵ CORNELL 1995, p. 270.

³⁶ OAKLEY 1997, pp. 647–648.

³⁷ ZIÓLKOWSKI forthcoming.

³⁸ ZIÓLKOWSKI 2005, pp. 263–265.

³⁹ ZIÓLKOWSKI forthcoming.

The army did not return from Velitrae until the next year (that is, 368). Moreover, the *tribuni plebis* did not veto the measures. Livy's account is dramatic: fearful of the results of the assembly summoned to vote on the measures, the "[patricians] were put to their two last shifts — the greatest office, and the greatest of the citizens" (*summum imperium summumque ad ciuem decurrunt*; Liv. 6.38.3–4). So they nominated a dictator who was no other than Marcus Furius Camillus, a national hero, conqueror of Veii and defender of the city against the Galls. Once Camillus became dictator the tribunes supporting the patricians once again blocked the measures, but the voting had in a way been started. When the first *tribus* had cast its vote, Camillus spoke, calling on Licinius and Sextius to respect the veto of their colleagues and threatening that he would intervene as the dictator should they not do so. Licinius and Sextius continued the vote unperturbed. Camillus sent lictors to disperse the plebeians. Ultimately, he stepped down, but Livy gives two versions of why this took place. One is that there was an alleged *vitium* in Camillus' nomination to the office of dictator. The other that Licinius and Sextius carried a motion to punish the dictator with a fine of 500,000 ascs should he undertake any action. In the end, Livy favors the first reason, arguing that "whatever conflicts have occurred between tribunes and consuls, down to the times we can ourselves remember, the dictatorship has always towered above them" (Liv. 6.38.13).⁴⁰

Another dictator, Publius Manlius, was nominated to take Camillus' place. He made Caius Licinius (Livy does not give his cognomen, but we know from the *Fasti* that it was another Licinius, namely, Calvus) his *magistratus equitum*. Licinius Calvus was the first plebeian in this office, which naturally did not find favor with the patricians. Manlius justified his choice by family ties and by pointing out that the *imperium* of the *magistratus equitum*⁴¹ was no larger than that of the consular tribunes, and that office had already been held by plebeians in the past.

Plutarch tells a different story. Camillus ordered a draft just before the plebeians were to gather for the *concilium plebis*. Unwilling to compete with them, "[who had] now become resistless and invincible", he feigned illness and stepped down after a couple of days (Plut. *Cam.* 39.1–4). Manlius became the next dictator, but according to Plutarch the *magistratus equitum* that Manlius nominated was no other than the leader of the plebeians, Licinius Stolo. Moreover, Manlius allowed the agrarian measure to be passed (Plutarch does not even mention the law on debts), thus preparing the ground for the final battle for the consulate (Plut. *Cam.* 39.5–6).

4.2. ...and the problems these accounts raise: the elections for 370

The account of events in 370–368 raises many questions again. First, how was anarchy finally curbed? It might seem that the plebeians would not let go until the patricians agreed to pass the measures in question, but the struggle for these laws continued for another three years. Stephen P. Oakley, who did not actually believe in a five-year long period of anarchy, observed that Livy could not imagine the Republic without any magistrates, hence his description of *solitudo magistratuum* is contained in 18 words.⁴²

The external threat given by Livy as the reason for holding the election of magistrates in 370 is a regular theme in his narration of the patrician–plebeian struggle. During internal conflicts, Livy's plebeians usually back down in the face of an external threat, ashamed of putting the Republic at risk by their actions. Hence, Livy's explanation of the end of the anarchy cannot be accepted as credible. Whatever else happened in 371, there had to have been elections for consular tribunes. Livy recounts that in view of "the tribunes of the plebs relaxing their opposition,

⁴⁰ More on the subject in section 4.5.

⁴¹ DEGRASSI 1954, pp. 40–41.

⁴² OAKLEY 1997, pp. 647–648; similar observation in: VON FRITZ 1950, p. 8.

elections were held by an interrex” (*remittentibus tribunis plebis comitia per interregem sunt habita creatique tribuni militum*; Liv. 6.36.3).

This *interrex* is not known by name. The office was created to organize elections should a consul (or consular tribune) be unable to do so. The *interrex* could serve for only five days and was chosen usually from among the patricians who had reached the highest *auspicia* and *imperium* (with the exception of the last few years of the Republic when there were so few *patres* that the interrex had to be chosen from among those who had only achieved the curule office).⁴³ One of Oakley’s main arguments against a five-year anarchy is that it is difficult to imagine the Republic to have functioned for such a long time with *interreges* rotating every five days. However, Oakley’s reasoning is flawed in the sense that in a state of deep crisis, with revolutionary action undertaken by the plebeian organization, there is little chance that the law being upheld. Oakley rejects a longer period of anarchy because he cannot see how it could meet with the legal rules governing the tenure of the *interreges*. Moreover, Oakley mistakenly assumes that the institution of *interregnum* replaced the consulate, that is, whenever magistrates could not be elected, successive *interreges* fulfilled their duties until such elections could be held successfully. In reality, the interrex was chosen only for the purpose of organizing an election. Therefore, there was no need for successive *interreges* to change every five days for as long as five years.

The *Fasti Consulares* for the years 380–371 are practically lost with the exception of two incomplete lines for the year 371. The first one ends in “*actus est*”, the second in “*t dedicavit*”. Mommsen proposed to reconstruct this line as follows: “[*per annos quinque nullus curulis magistratus f*]actus est”,⁴⁴ but this is contradicted by the second line referring to someone who “*dedicavit*”, that is, did something of a religious nature. More than a hundred years ago, Hülsen linked the account from the *Fasti* with the dedication of a temple of Iuno Lucina, traditionally said to have been erected by Roman women. In Hülsen’s opinion, the temple was built by Lucius Aemilius Mamercinus during his consular tribuneship in 377 and dedicated in 371. His suggested structure for the *Fasti* is: “[*hoc anno L. Aemilius... Mamercinus postquam flamen f*]actus est [*aedem Iunonis Lucinae, quam quinquennio ante vovera*]t, dedicavit”.⁴⁵ The problem with Hülsen’s interpretation is that this is the only use of *dedicare* in the *Fasti*; no other temple dedications have been recorded. Any interpretation of who was behind these words must remain conjectural.

The only possibility of holding elections when there were no magistrates in office was to nominate an *interrex*. But even this solution raises problems: the early Republican Senate was entirely patrician. If there was no magistrate to call a gathering of the Senate, as in this case, then how did the senators manage to assemble and choose an interrex? Cornell suggests that *patres* cannot be assumed to be tantamount with senators in the early Republic. Citing the account of Festus, who declared the Senate not to be a permanent organ before the *lex Ovinia* (most certainly after the first half of the fourth century), but was rather an *ad hoc* advisory council called by consuls (and by kings before that) with its composition dependent on the person convening it (Festus, p. 290 L), Cornell argued that the *patres* who were in charge of the institutions of *interregnum* and *patrum auctoritas* (which could not be dependent on whether the magistrate convened the Senate or not) could not have been the senators, but would have rather had to be a separate, autonomous group.⁴⁶ Cornell’s idea resolves the problem of the elections for 371: while in fact the Senate could not be convened (for lack of a magistrate in office to convene the gathering), the *patres*, who were not an official organ of any kind, simply came together and chose from among themselves the first *interrex* and he then chose the next one who was then able to hold the elections.

⁴³ LINDERSKI 1995, pp. 562–565.

⁴⁴ DEGRASSI 1954, pp. 40–41.

⁴⁵ ZIÓLKOWSKI 1992, p. 67.

⁴⁶ CORNELL 1995, pp. 245–251.

4.3. Marcus Fabius Ambustus

In the breakthrough year of 369, according to Livy's account, the number of plebeian tribunes who were opposing Licinius and Sextius fell to five and the office of consular tribune was filled by Marcus Fabius Ambustus himself, father of Fabia and father-in-law of Stolo, presented by Livy as the initiator of the reforms and chief ally of Licinius and Sextius in their efforts. But why now? asks Ridley pointedly.⁴⁷ Marcus Fabius is mentioned just twice: first as the *spiritus movens* of the entire affair and then again in 369 as consular tribune. In addition, in the year in which, according to Livy, he was so effectively helpful, he is shown as a mere backdrop for the speech given by Licinius and Sextius. His role is insignificant considering his importance for the cause, at least according to Livy. Prosopographical research contributes to a better understanding of the issue. Namely, Friedrich Münzer has suggested that 11 years after the tribunes' victory, something akin to a "patricians' reaction" set in. Between 355 and 343, 7 out of 13 pairs of consuls consisted of patricians alone (in the years 355, 354, 353, 351, 349, 345, and 343).⁴⁸ Jacques Heurgon went a step further, arguing that the beginning of the "reaction" should be moved up to 360, when the radicals linked to the original struggle for the consulate were removed. In 366–361, the patrician consuls were: L. Aemilius Mamercinus (366, 363), Q. Servilius (365, 362) and C. Sulpicius (364, 361), and their plebeian colleagues: L. Sextius (366), L. Genucius (365, 362), Cn. Genucius (363) and the two Liciniuses, Stolo and Calvus (364 and 361).⁴⁹ In the following five years, at the beginning of the "reaction", only the two Fabiuses served as patrician consuls (including M. Fabius Ambustus twice) and Cn. Manlius. Moreover, for the next 18 years, until the consulates of Q. Servilius (342; consul in 365 and 362) and L. Aemilius Mamercinus (341; son of the consul in 366), not one of the consuls represented the families of those serving in 366–361 (with the exception of Sulpicius, who would have another three terms as consul in the 350s, during the years of all-patrician colleges).⁵⁰ Therefore, the patrician reaction must have begun with the consulship of 360, when a group of patricians opposed to the revolutionary team from 366–361 took over. At first, keeping to the letter of the compromise of 367, they chose as their plebeian colleagues the *homines novi* who had evidently come to an agreement with the counterrevolutionaries. However, having solidified their power, they even contrived to have fully patrician colleges. Importantly for the current theme, Marcus Fabius Ambustus, Livy's plebeian ally, was the first of a line of reactionary consuls.

The years of patrician reaction leave no doubt that Marcus Fabius opposed the reforms, which he had, at least according to Livy, initiated and supported. However, the plebeians in the camp of Licinius and Sextus had supporters among the patricians. Heurgon's analysis, which uncovered the falsified role of Marcus Fabius, also revealed a true ally of the plebeians in the person of the patrician Lucius Aemilius Mamercinus, co-consul in the term of the first plebeian consul and father of the two Aemiliuses (Lucius and Tiberius), who as consuls in 341 and 339 ended the patrician counterrevolution.

4.4. Speech of the tribunes

Licinius and Sextius, together with Marcus Fabius Ambustus, started by bringing the leading senators forward and "and ply[ing] them with questions about each of the measures they were laying

⁴⁷ RIDLEY 1980, p. 342.

⁴⁸ MÜNZER 1999, pp. 31–37.

⁴⁹ BROUGHTON 1951, pp. 114–119.

⁵⁰ HEURGON 1973, pp. 189–190; BROUGHTON 1951, pp. 120–134.

before the people [*plebs*]” (Liv. 6.36.10). Livy uses the form of a speech to present the arguments of the two tribunes for the first time. The questioning concerned the agrarian and debt measures:

Had they [patricians] the hardihood to demand that, when land was being assigned to the plebs in parcels of two iugera, they themselves should be authorized to hold more than five hundred iugera? (*ipsis plus quingenta iugera habere liceret*) Did they desire that single patricians should possess the allotments of almost three hundred citizens; and that the plebeian should have a farm scarce large enough to contain a shelter for his necessities or a place of burial? Or was it their wish that the plebs, undone with usury, should give up their bodies to imprisonment and torture, instead of paying the principal sums they owed? Did they mean every day to drag off gangs of condemned debtors (*addictos duci*) from the Forum? to fill with prisoners the houses of the nobles? to make of every patrician’s dwelling a private gaol? (Liv. 6.36.11–12).

However, in its main part, the speech is focused on the consulate measure. The tribunes argue that the only guarantee that plebeian rights would be respected is to have plebeians share in the consular office. These were their arguments in succession:

— “Contempt ... has now become the portion of the plebeian tribunes, for they used the veto to break down their own power” (Liv. 6.37.3) — hence the need to elect plebeian consuls to look after plebeian interests. The argument does not seem to be a particularly strong one considering that as tribunes they had not been successful.

— “There could be no question of equal rights, where the other side commanded (*imperium penes illos*) and they themselves could do nothing but protest (*ius auxilium*)” (Liv. 6.37.4) — equal rights in Livy’s time were understood as the foundation of the Republic’s *libertas*. In this case, plebeians are deprived of equal rights, being excluded from the consulate.⁵¹

— “And let no one think that it would be sufficient if plebeians were accepted as candidates at the consular elections: unless it were required that at least one consul must be chosen from the commons, none ever would be. Had they already forgotten, that although the election of tribunes of the soldiers rather than consuls had been resolved upon, expressly in order that the highest honour might be open even to plebeians, yet for four and forty years no commoner had been chosen to that office?” (Liv. 6.37.4–5) — this is also a rhetorical exaggeration on the part of Licinius and Sextius, because there had been a plebeian consular tribune elected in 422. True, the next non-patrician tribunes (four out of six) were elected only in 400, and in the following years Cornell counts 15, in five out of 24 possible colleges.⁵² Thus, the participation of non-patricians in the consular tribuneship was indeed small, although not as small as described (intentionally) by Livy’s tribunes.

Should we accept Livy’s presentation of the motives for creating the office, then it is indeed difficult to deny the tribunes the rightness of their arguments. Livy writes that the office of consular tribunes was introduced in order to give plebeians access to the highest magistrate. But if this were so, then why were they demanding the return of the consulate? They could have fought for equal access to an office that effectively replaced the consulate and to which they had access. In the words of Raphael Sealey, either the *tribuni militum* were the highest office or they were not. Either plebeians had access to the highest office or they did not.⁵³

T. Corey Brennan argued that the *tribuni militum* did not have either *imperium* or full *auspicia publica*. The plebeian *tribuni militum* had only *auspicia domi* valid in Rome.⁵⁴ But it is difficult to imagine consular power (which is what, to a lesser degree, the *tribuni militum* should have in this interpretation) without *imperium*. Linderski avoided this difficulty by suggesting that the tribunes

⁵¹ OAKLEY 1997, pp. 679–680.

⁵² CORNELL 1995, p. 336.

⁵³ SEALEY 1959, pp. 521–522.

⁵⁴ BRENNAN 2000, pp. 52–53.

simply had lesser *auspicia*. To use his term, they “administered” the *auspicia* for the duration of their term in office. In this way some of the non-patricians could reach the tribuneship while preserving the purity of the *auspicia*, that is, their patrician character.⁵⁵

The last argument is tied in with the above.

Neither could it any longer be maintained — as the nobles had been wont to assert — that among the plebeians were none who were suitable for curule magistracies. Had the public administration been a jot more indifferent or slipshod since the tribuneship of Publius Licinius Calvus, who was the first man elected from the plebs, than it had been during those years in which none but patricians had been military tribunes? Nay, on the contrary, several patricians had been impeached after holding the tribuneship, but not one plebeian. Quaestors, too, like military tribunes, had begun a few years before to be elected from the commons, nor had the Roman People regretted it in a single case (Liv. 6.37.8–9).

The idea here is clear: the plebeians deserve to have the consulate because the plebeian *tribuni militum* and quaestors had never abused their office. The tribunes’ arguments, however, could not be convincing for patricians. As the speech of Appius Claudius will demonstrate (see below, section 5.2), the main patrician argument against admitting plebeians to the consulate was, in Livy’s account, the purity of *auspicia publica populi Romani*.

4.5. The dictatorship of Marcus Furius Camillus

When the Roman forces returned from Velitrae in 368, “the ultimate battle for the measures” took place. Just as before, when Licinius and Sextius were about to start the vote, other tribunes began to veto the motion, “[but] powerful as the veto was on the legal side, it was being overcome by the popularity of the bills themselves and their proposers” (Liv. 6.38.5). Oakley thinks that this attempt to override the tribunes’ veto was modelled on the dispute between Tiberius Gracchus and Octavius, but he cannot be right here.⁵⁶ Appian relays that when Octavius vetoed Gracchus’ motions, the latter first asked the Senate to resolve the matter, and when he failed to get support there, he put the question before the plebeian assembly whether a tribune who acts against the interests of the plebeians should continue in office. When the *tribus* voted that he should not, Octavius was removed from office (BC 1.12–13). Plutarch gives another version: when Octavius upheld his veto, Tiberius proposed that they both mutually submit to a vote to remove them from office (Tiberius would present the case against Octavius and Octavius against Tiberius, with Octavius being the first to make the motion), and when the vetoing tribune did not consent to this, Tiberius filed a motion to remove him from office (Plut. *Tib. Grac.* 11–12). In 368, no effort was made to remove from office the pro-patrician tribunes; their protest was simply ignored, because the *plebs* was openly on the side of the measures of Licinius and Sextius.

At this point the patricians used their last resort, Marcus Furius Camillus who had been made dictator. Livy introduces Camillus’ intervention just as the first *tribus* votes:

If then Gaius Licinius and Lucius Sextius yield to the protest of their colleagues, I will in no way intrude a patrician magistracy upon a council of the plebs; but if, in defiance of the protest [of other tribunes — SL], they try to impose their terms, as though upon a conquered state, I will not permit the tribunician power to work its own undoing (*se ipsa dissolui*) (Liv. 6.38.7–8).

⁵⁵ LINDERSKI 1995, pp. 571–572.

⁵⁶ OAKLEY 1997, p. 685.

Camillus' arguments are of a procedural nature: the tribunes' veto should be respected in keeping with the law, but Licinius and Sextius "were imposing their terms, as though upon a conquered state", acting as if they were kings. This is a recurring motif in Livy's account. In the eyes of their opponents, the "populans" (or rather the politicians whom Livy anachronistically keeps pushing into the "popular" mold) are constantly represented as seeking royal prerogatives.⁵⁷

When the tribunes continued to proceed "with unabated energy to carry out their plans" (Liv. 6.38.8), Camillus sent lictors to disperse the gathering and threatened to enforce conscription. But right in the middle of the action, Camillus stepped down. According to Livy, this may have been because of either a resolution of the *concilium* to punish the dictator or a *vitium* in his appointment. Livy opted for the second reason. The version given by Plutarch is slightly different. Camillus as dictator conducted a conscription, to which the plebeians reacted unfavorably. Camillus feigned illness, and then resigned, forced by the tribunes' resolution (to punish him) and his desire not to go against the plebeians with whom he had previously been successful (Plut. *Cam.* 39.5).

Camillus' behavior is exemplary in both accounts. As dictator he first speaks out to call the tribunes to order and when this does not work he sends in the lictors (who represent his authority) and follows up with conscription into the army (according to Plutarch) or plans for such an action (according to Livy). In the end he steps down, quite obviously defeated (this is attested by the nomination of another dictator; see below). Being a traditionalist himself, Livy does not want to admit that the dictator succumbed to the plebeian tribunes (hence he prefers the version with the *vitium*); he even says he cannot imagine such a scenario: "whatever conflicts have occurred between tribunes and consuls, down to the times we can ourselves remember, the dictatorship has always towered above them" (*et quod usque ad memoriam nostram tribuniciis consularibusque certatum uiribus est, dictaturae semper altius fastigium fuit*; Liv. 6.38.13). Livy's conviction regarding the absolute superiority of the dictator's power is belied by the events of the next year as he recounts them: Camillus, again as a dictator, first opposes the plebeians, then backs down to build concord between the states/classes (for more, see section 5.2).

4.6. The dictatorship of Publius Manlius, Licinius Calvus *primus ex plebe magister equitum*

Another dictator, Publius Manlius, was called to the office that year after Camillus' resignation. In the interval the plebeians apparently voted on Licinius' and Sextius' measures, passing the agrarian and debt laws and rejecting the one about the consulate. Manlius made the plebeian Caius Licinius Calvus his *magister equitum* (Liv. 6.39.3). Plutarch (*Cam.* 39.5) and Cassius Dio (Dio 29.5) give another name, Licinius Stolo, but this seems to be an error resulting from the similarity of the two names. Münzer proved Licinius Calvus to have been the first plebeian *magister equitum*, arguing convincingly that the simultaneous holding of a curule and plebeian office was impossible.⁵⁸

In Livy's opinion, the patricians disfavored this choice and "the dictator was wont to excuse himself to them by alleging his close relationship to Licinius, and asserting that a master of the horse [*magister equitum*] possessed no greater authority than a consular tribune" (Liv. 6.39.4). It does not seem, however, that Manlius actually had to justify his choice to anybody; he was after all dictator, holding the highest *imperium*, and no one could stop him from naming Licinius to this office.

⁵⁷ SEAGER 1977, pp. 379–380.

⁵⁸ MÜNZER 1999, pp. 21–23.

Making Manlius the dictator was interpreted by Livy as a hand held out to the plebeian organization, anticipating their victory the next year. Manlius was a relative of Licinii in some degree and a cousin of Marcus Manlius Capitolinus,⁵⁹ who had taken up the debt issue in 385 and was then sentenced to death. Another source from the first century, namely, the *Fasti*, tells us that Manlius was made dictator *seditionis sedandae et rei gerundae causa* (“in order to suppress the riots and bring order”), unlike Camillus, who was only *rei gerundae causa*.⁶⁰ The *seditio* mentioned in the *Fasti* must have been interpreted as the said conflict between Camillus and the plebeians.

Taking into consideration Manlius’ family relationships, he seems to have played a key role in negotiating the compromise of 367. Manlius was anyhow a consular tribune in 367 when the compromise was being negotiated. The patrician reaction argument could be put forward contra this idea, because the Manlii and the Fabii spearheaded it together. Publius Manlius is not mentioned in the *Fasti* after 367, which could be, in the author’s opinion, proof that he was pro-plebeian in his office.

5. The years 367–366

The plebeians had to wait another year for the conflict to be resolved. Livy fills this year with an account of the tribunes’ dispute with the *concilium plebis*, a great speech by Appius Claudius and the war with the Galls, after which Licinius’ and Sextus’ motions are passed.

5.1. The speech of the tribunes

Livy reports that Licinius and Sextius threatened to drop their efforts to get the law passed because of the plebeians voting for the agrarian law and the law on debts, but rejecting the one concerning the consulate (Liv. 6.39.5). At this point Livy introduces the last speech of the tribunes.

Licinius and Sextius agreed to stand for the successive, tenth tribuneship on the condition that the plebs would accept all three motions:

If you [the plebs] desire to enact together the measures which the tribunes had brought forward, there was some reason for re-electing them; for they would carry through what they had advocated; but if every man of you cared only for the adoption of such clauses as concerned him personally, there was no use in an invidious prolongation of their term; they would do without the tribuneship, and the plebs would do without the proposed reforms [modified translation] (Liv. 6.39.12).

Kurt von Fritz observed that the measures Livy speaks of here as adopted appear once again after the speech made by Appius Claudius, where Livy states explicitly that the vote on these measures was “postponed”. One has to conclude that the proposals of the two tribunes were delayed not by the ill will of the plebs, but rather the lack of *patrum auctoritas* (see below, section 5.4).⁶¹ Cornell, who considered this story to be true, argues that it reflects the different interests of the plebeian organization.⁶² As discussed above, the dual nature of the measures proposed by Licinius and Sextius must have been a well-considered way of combining the interests of the poor citizenship with those of the plebs elite. The union had been successful before, so why now, after the tribuneship of Manlius which had done so much for the plebeian cause, had it disintegrated

⁵⁹ *RE* XXVII, pp. 1157–1158.

⁶⁰ DEGRASSI 1954, pp. 40–41.

⁶¹ VON FRITZ 1950, pp.12–13.

⁶² CORNELL 1995, p. 340

so suddenly? The most probable explanation is that Livy (or his sources) had used this dispute to artificially fill in the year between the dictatorship of Manlius and the actual passing of the law.

5.2. The great speech of Appius Claudius and passing of the tribunes' motion

Appius Claudius Crassus, grandson of the *decemvir* of the same name (Liv. 6.40.1), spoke in response to the tribunes' speech. First, he attacked the tribunes' motions as threatening *libertas* and actively seeking royal prerogatives, and then in the second part of his speech, he focused on auspices and the ritual obstacles to giving non-patricians access to the consulate.

First, Claudius criticizes the tribunes' attitude and their daring to make demands on the plebs:

[Have] Lucius Sextius and Gaius Licinius ... grown so presumptuous in the nine years of their reign, as to threaten that they will leave you free to exercise your right of suffrage neither in elections nor in enacting laws?

and

“On a certain condition”, says one of them, “you shall elect us tribunes for the tenth time”; as though he were to say, “What others sue for we are so surfeited withal that we will not accept it without a great reward” (Liv. 6.40.7–8).

Appius deems these words to be an attack on the *libertas* of the plebs and he goes on to emphasize his point by characterizing the law on the consulate as follows: “I propose”, he says, “that it shall not be permitted you to choose such consuls as you will” (Liv. 6.40.15). He also finds it shocking that Licinius and Sextius, at least in his opinion, believe the tribuneship to be something they deserve. Moreover, he underlines the tribunes' arrogance by comparing them to kings (“perpetual tribunes ... grown so presumptuous” — *perpetuos tribunos ... regnant*, “Tarquin tribunes of the plebs” — *Tarquinius tribuni plebis*). The wording of these accusations is undoubtedly an anachronistic reference to late Republican phraseology.⁶³ The allegation itself is probable enough because the *odium regni* must have been just as strong as in the Late Republic, which is what Marcus Manlius Capitolinus met with personally eighteen years earlier.

Claudius continues with criticism of the plebs in general: “Will you never choose rather to look at facts than at advocates [...]?” (Liv. 6.40.14). He is convinced that the plebs pays attention to who is advocating a motion rather than its potential harmfulness. That the motions are harmful Claudius entertains no doubt:

Is it so sweet to plunder others of their fortunes? Does it not occur to them that one of their laws will make vast deserts in the country-side, by driving the landlords out from their *demesnes*, while the other will wipe out credit, and with it all human intercourse? (Liv. 6.41.11).

At this point, Claudius' view of the agrarian and debt laws is worth a closer look in context with what Livy had to say about them. Claudius accuses the tribunes of wanting to make gifts to the plebs out of property that is not theirs, namely, patrician land: *Sextius et Licinius [...], quia pecunias alienas, quia agros dono dant* and *ex alienis fortunis praedandi* (Liv. 6.41.10–11). As shown above, Livy quoted the content of the agrarian law as follows: *ne quis plus quingenta iugera agri possideret*, speaking only of having land without précising what kind of land is in question and whether *possessio* is meant as full ownership (*dominium ex iure Quiritum*) or actually just “having”.

⁶³ OAKLEY 1997, p. 701.

In a typical rhetorical exaggeration, he is suggesting that the tribunes are looking to limit the size of estates that are the private property of patricians — by this he aims to prove the injustice of the tribunes' motion. He presents the motion on debts, that is debt cancellation, with equal exaggeration as undermining *fides* between people: *fidem abrogari cum qua omnis humana societas tollitur*. Livy actually said only that the total sum of debt should be paid and the only loss on the patricians' side would be on the interest: those left unpaid would be cancelled and those paid credited as capital.

This is hardly the worst consequence of the tribunes motion in Claudius' view. He interprets the argument that a plebeian consul is supposed to be a guarantee for the plebeians that the patricians will not remove them from that office, as was supposed to happen with the consular tribuneship, as follows: "His [Licinius'] meaning is: 'Since of your own accord you will never choose unworthy men, I will make it obligatory on you to elect those whom you do not wish'" (*quia indignos uestra uoluntate creaturi non estis, necessitatem uobis creandi quos non uoltis imponam*) (Liv. 6.40.19–20). Being a patrician is for Appius definitely the measure of "being worthy" of the office; after all, by guaranteeing a place for the plebeians Licinius and Sextius want to impose the election of the unworthy.

However, all of the given arguments are unimportant in view of the ultimate one according to Claudius: "of the indignity of the thing I have said enough. But dignity after all is concerned with men: what of religious observances and auspices — for the immortal gods are involved in insult and disrespect to these?". Auspices stand at the base of the Republic, "this City was founded under auspices ... all measures, warlike and peaceful, at home and in the field, are carried out with auspices, who does not know?" (Liv. 6.41.4–5) and it is this issue that is the main obstacle to non-patricians taking the consulate.

The auspices belong so exclusively to us, that not only are the patrician magistrates whom the people elect no otherwise elected than with auspices, but we ourselves even — without the people's suffrage — take auspices and nominate an interrex; and have, as private citizens, the right of taking them, which you plebeians have not even in your magistracies (*et privati auspicia habeamus, quae isti ne in magistratibus quidem habent*; Liv. 6.41.6).

As mentioned already in passing, the Roman aristocracy at some point usurped the right to *auspicia publica*, by which the patriciate was formed. And it was an effective usurpation: the common belief was that a patrician had by birth the ability to perform *auspicia*, activated when he first became consul or high priest.⁶⁴ This gave the patricians control of state offices because it was assumed that only a patrician could safely hold office as consul and other offices with the power of *imperium* that required communication with Jupiter. In this sense, if, as Livy states, everything in the Republic is carried out *auspicato*, then the election of plebeian consuls is actually "the abolition of auspices in the state".

In Livy's narrative, all that Appius' speech gained was a postponement of the voting on the tribunes' motions. At the same time a law was passed to admit plebeians to the college of *duumviri sacris faciundis* (which from now on became the college of ten) (Liv. 6.42.1–2). Livy reports this fact without paying any special attention to this plebeian victory, although in a sense it must have been a breakthrough act. The college was charged with only the storage and interpretation of the Sibylline books and the supervision of foreign cults established in Rome.⁶⁵ Admittance to the augural and pontifical colleges, which dealt with matters of *sacra* and auspices, remained closed to plebeians until the *lex Ogulnia* of 300,⁶⁶ but with this act the first inroads were made.

⁶⁴ LINDERSKI 1995, pp. 562–565; ZIÓLKOWSKI 2005, pp. 106–107.

⁶⁵ OAKLEY 1997, p. 715.

⁶⁶ DEVELIN 2005, p. 300.

In the next year (367), Camillus was made dictator again because of a Gallic incursion, at least according to Livy (Liv. 6.42.1–4). Upon returning to Rome and celebrating his triumph, he and the Senate ultimately succumbed — after a “great fight” — and the laws were passed, the consuls were elected for the next year, including one of the leaders of the cause, Lucius Sextius Lateranus, as the plebeian consul. The patricians could not let this go without yet another attempt at dislodging the new consul:

The patricians declared that they would not ratify the election [meaning that they refused to give it their *patrum auctoritas*], and the affair had almost led to a secession of the plebs and threatened other terrible embroilments, when the dictator finally proposed a compromise which allayed the discord; the nobles gave way to the plebs in regard to the plebeian consul, and the plebs conceded to the nobles that they might elect from the patricians one praetor to administer justice in the City (Liv. 6.42.9–12).

Livy’s rapid account of these events is surprising: the election of the tribunes in 367, successive obstacles on the way to passing the motions, namely, the war with the Galls, the “riots” (*seditio*), after which the laws managed to be passed, then the resistance put up by the patricians when electing the consuls and successive problems with *patrum auctoritas* for the results of the vote, all in just one chapter (6.42). Plus Livy gives information about establishing new offices: the curule praetor and curule aedile, both in a great hurry.⁶⁷

Oakley believes Livy’s abbreviated report of the Gallic war to reflect the Roman historian’s wish not to be sidetracked by the events, especially as he may have already planned to discuss the different wars with this particular enemy in the next book.⁶⁸ The war, however, is the main theme in the fragments by Zonaras and Dionysios concerning the year 367 (Dion. Hal. 14.8–10; Zon. 7.24.10–12) (although in the case of Dionysios, the state of preservation of the source is such that this does not mean anything). The story of riots during the struggle for the consulship is preserved also in the work of Ampelius (*quarta secessio in foro propter magistratus ut plebei consules fierent, quam Sulpicius Stolo concitavit*; 25.4), but the description is so laconic that these riots could just as well have occurred during the *solitudo magistratuum* period or in 368.

Even though Livy treated the Gallic incursion so summarily compared to other sources, his account still takes up about one third of the text concerning the year 367. In Oakley’s opinion, Livy clearly did not consider the election of the first plebeian consul as such a breakthrough, because it was not the end of the Struggle of the Orders. For the same reason Livy also fails to report the dedication of a temple of Concordia by Camillus (see below), because, as Oakley suggests, he saw no concord in the city at the time.⁶⁹ This explanation seems flawed. Livy himself appreciates the momentousness of the election of Sextius as consul (which Oakley as a matter of fact observes): he opens Book VII (year 366) with the following words: “This year will stand out (*annus hic insignis*) as the one in which a ‘new man’ held the consulship”. And Oakley’s solution does not explain Livy’s cursoriness in his description of events between Camillus’ return from the war with the Galls and Sextius’ election to the consulship. Livy would have had extensive source material at his disposal for the year 367, as indicated by his detailed account. The answer seems prosaically simple: Livy was simply bored with the issue, having exhausted his inventiveness in Appius Claudius’ great speech, which had swollen to two chapters in his work.

⁶⁷ On the edile, see below, section 5.4.

⁶⁸ OAKLEY 1997, pp. 716–717.

⁶⁹ OAKLEY 1997, pp. 721–722.

Camillus' role was recounted more deeply in the tradition written down by Plutarch: accosted by a messenger from the tribunes, he responded by calling a meeting of the senate, at which a compromise course prevailed. It was this compromise that Camillus commemorated with a building of a temple to Concordia (Plut. *Cam.* 42.2–6; see below).

Whatever actually happened in 367, Camillus' role in negotiating the compromise was falsified in the ancient sources. The accounts of both Livy and Plutarch are both too naively internally inconsistent to be considered as reliable. Camillus, who the year before had lost a bitter fight with the plebeian organization suddenly becomes the chief architect of concord? Unlikely. This motif actually seems like a topos, an accepted model of how the life of Camillus is presented. In the biography by Plutarch, Camillus, underestimated and unfairly criticized by the citizens, goes into exile, only to return *deus ex machina* just as the city's conqueror, Brennos, receives Rome's tribute. The story of events in 368–367 repeats the same motif. Forced to give way in the altercation with the plebeians, he returns to rescue the city from the Galls and restore *concordia* between the plebeians and patricians. The legendary nature of these histories is undoubted as indicated by the account regarding the temple of Concordia.

Plutarch is the only one to recount the dedication of a temple by Camillus; other sources (Livy, Zonaras) do not mention it. This tradition was ultimately refuted by Momigliano, who demonstrated that all mentions of a temple of Concordia in Rome before 121 BCE (when consul Lucius Opimius rededicated a temple identified with the alleged temple built by Camillus) refer to the small temple (*aedicule*) of Cnaeus Flavius or the temple on the Arx.⁷⁰ Plutarch' error stems most probably from a tradition that aimed to cover up the fact that the cult of Concordia was introduced to Rome by a man who was the son of a freedman.⁷¹

5.3. *Plebiscita, leges, rogationes* — the legal status of Licinius' and Sextius' motions

The measures proposed by Licinius and Sextius are referred to as laws, but let us take a closer look at their real legal status and its consequences. Any law in the strict sense (*lex*) had to be passed *auspicato*, that is, during *comitia* working under the auspices of a consul or praetor who called these *comitia*. The Roman *populus* was obliged to honor such laws. In turn, the *plebei scita* were passed by the *concilium plebis* and were not considered by the patricians as concerning the state as a whole (and thus were not legally binding with regard to state issues such as *ager publicus*, or constitutional ones like access to the highest magistrate offices) before 287 when the *lex Hortensia* ultimately confirmed the compulsory character of resolutions of the *concilium plebis* for the entire *populus*. The *rogatio*, however, was no more than a project presented during the *comitia* or *concilium plebis*.⁷²

Livy speaks most often of Licinius' and Sextius' projects precisely as *rogationes*, although he is known to refer to them as *leges*, and he also speaks of *comitia* when the vote was to take place. This mixed terminology is rather the effect of Livy's careless language. The *lex Hortensia* of 287 having made the *plebiscita* and *leges* equal in status, the laws passed by plebeian tribunes were of the same status as those of the curule magistrate, blurring the difference between them for Livy.⁷³

It seems justified to assume that the *patres* treated the measures introduced by Licinius and Sextius as not their concern in any way. In this time they approved every activity of the Roman people, giving (or not giving) every peoples' resolution taken during the *comitia* their *patrum auctoritas*, that is, an official confirmation of augural correctness. Only after *patrum auctoritas* had been given did a law or election result become legally binding.

⁷⁰ MOMIGLIANO 1942, pp. 114–120.

⁷¹ ZIÓLKOWSKI 1992, p. 244, n. 217.

⁷² VON FRITZ 1950, pp. 18–19; FERENCZY 1976, pp. 59–60.

⁷³ BADIAN 1966, pp. 201–202.

This, however, concerned only the *comitia*, meaning a vote of the entire *populus*. In the case of the measures of Licinius and Sextius, it is a plebeian legislation we are dealing with. We do not know how the *patres* accepted resolutions made by the plebeian assembly. One theory has it that the *leges Publiliae Philonis* of 339 forced the *patres* to take a stance regarding resolutions made by the plebeian assembly.⁷⁴ In keeping with this, in 367, that is, before the *leges Publiliae Philonis*, the *patres* would have had to give their *patrum auctoritas* to the measures passed by Licinius and Sextius in order for them to become legally binding for the whole *populus*. How the plebeians managed to get the patricians to accept their plebiscites in 367 will probably never be known.

5.4. Lucius Sextius *primus e plebe consul*

The patricians allegedly refused to give their *patrum auctoritas* to the elections for the year 366 held in the *comitia*, which ended with Lucius Sextius being chosen consul. Camillus negotiated a compromise, which included the establishment of a new office, a praetor “to administer justice in the City”. Later, when the Senate wished to organize games to celebrate the return of concord between the orders, the plebeian aediles refused. Then “the young patricians called out that they would willingly do it for the sake of honouring the gods”, which triggered an election of the curule aediles (Liv. 6.42.11–14).

This was the situation in 366: the plebeians were given access to the consulate in return for establishing two new patrician offices (three new seats to fill). Livy’s account, however, is problematic in this part as well. First, the praetor was elected during the very same *comitia*, and hence under the same auspices, hence ideally during the same *comitia* that chose the consuls. It means that the *patrum auctoritas* concerned the choice of consuls as well. The history of the establishment of the curule aediles also sounds naive.⁷⁵

The biggest mystery, however, is the patrician–plebeian compromise. As the speech of Appius Claudius demonstrated, the question of auspices was the main argument against the plebeian consuls. Claudius argued that *auspicia publica populi Romani* are the domain of patricians; admitting plebeians to the office would mean “depriving the state outright of auspices”. In turn, accepting that the plebeians also had *auspicia publica* would mean undermining the role and authority of the patricians.

Jerzy Linderski demonstrated that curule offices even after 366 remained *patricii magistratus*, that is patrician offices in the strict sense.⁷⁶ This meant accepting that plebeian magistrates, while not themselves in possession of *auspicia*, could somehow borrow them for the duration of their term, but that the *auspicia* remained strictly patrician. Plebeians raised to the office became “honorary” patricians for the duration.⁷⁷

The next question is: what did the plebeians actually achieve? The sources give a simple answer: Lucius Sextius became the first plebeian consul. Livy, the *Fasti*, Fabius Pictor (fr. 6 in Gell. 5.4.3), Aulus Gellius (17.21.27) and Plutarch (*Cam.* 42.6) are all in agreement on this. The anonymous author of *De viris illustribus* also speaks of the first plebeian consul in 366, even though he errs in naming Licinius Stolo as the first plebeian consul (*Vir. ill.* 20).

Some researchers have questioned this voice in unison of the ancient sources. The *Fasti* note consuls with plebeian names in the early Republic. This is considered by some as proof that there were plebeians serving as consuls in the early years of the Republic. Cornell counted 22 plebeians

⁷⁴ ZiÓłkowski 2005, pp. 261–262.

⁷⁵ von Fritz 1950, pp. 13–14.

⁷⁶ Linderski 1995, pp. 566–567.

⁷⁷ Badian 1966, p. 210.

serving as the highest magistrates (including two *tribuni militum*) before 400.⁷⁸ Researchers accepting the existence of plebeian consuls before 366 interpreted the situation not so much as allowing plebeians to serve as consuls but rather as breaking a monopoly that patricians had on the office *de facto* rather than *de iure*.⁷⁹

Kurt von Fritz argued that the *leges Liciniae* only determined the plebeians legal ability to serve as consuls and it was the *lex Genucia* that would establish the rule that one of the consuls has to be a plebeian.⁸⁰ Brennan had the same idea.⁸¹ Cornell observed in turn that the sources speak of the measures proposed by Licinius and Sextius not as a breakthrough because they permitted plebeians to take office, but because they supposedly guaranteed the election of a plebeian to the consulship every year. But as he himself admits, this interpretation is flawed in light of the evidence of the *Fasti Consulares*, which attest exclusively patrician consular colleges for the years 356–343. Then, starting from 342, there is an unbroken series of plebeians listed in the *Fasti*. That was the year when after another episode of the patricians struggle against the plebeians, the *lex Genucia* was passed, opening the way for plebeians to fill both seats in the college.⁸²

As shown at the beginning of this study, the patricians at some point became a closed group with a monopoly on access to the offices and priesthood resulting from the usurpation of *auspicia publica*. This closing of the patriciate finds an explanation only if it is assumed that in the beginnings of the Republic, if a family reached the highest *auspicia*, it was automatically considered as worthy of holding them. For this reason it is difficult to imagine that the “plebeian” names in the *Fasti* actually belonged to plebeians. The usurpation would have been effective only if it encompassed all of the emerging elite. The plebeian names in the *Fasti* must have belonged to patrician families which had either died out or disappeared from Rome in some other way.⁸³ Therefore, Sextius must have indeed been the first plebeian consul.

A separate issue altogether is whether the *leges Liciniae* actually guaranteed the plebeians one seat in the consular college. Von Fritz’s idea that the tribunes’ measure only led to the plebeians being admitted legally the right to serve as consuls and that when this proved insufficient after the patrician reaction of the 350s, action was taken to legally guarantee the division of the office between plebeians and patricians,⁸⁴ is not convincing in my opinion. The reaction started, as we have seen, already in 360 and initially even the counterrevolutionaries among the patricians took plebeians as their colleagues in office. Heurgon’s reasoning in this case seems more probable: after five years of reaction the patricians became entrenched enough to try to return to the status quo from before the legislation of Licinius and Sextius and elect exclusively patrician colleges.⁸⁵

6. Conclusion

Summing up, the political emancipation of the plebs is represented in the ancient sources as a legalistic conflict. Livy makes a determined effort to force this conflict into a framework of constitutional correctness. Flashes in his narrative clearly testify to attempts at a forceful resolution of the conflict between patricians and plebeians, but every time Livy searches for a constitutional explanation, which leads him occasionally into absurdity. For example, the five-year period of anarchy according to Livy consisted of legal pushing based on yearly tribune vetoes despite the

⁷⁸ CORNELL 1995, p. 254.

⁷⁹ STAVELEY 1983, pp. 54–55.

⁸⁰ VON FRITZ 1950, pp. 25, 28.

⁸¹ BRENNAN 2000, pp. 66–67.

⁸² CORNELL 1995, p. 337

⁸³ RAAFLAUB 2005, pp. 199–202; ZIÓLKOWSKI 2005, pp. 105–107.

⁸⁴ VON FRITZ 1950, pp. 25, 28; FERENCZY 1976, pp. 36–37.

⁸⁵ HEURGON 1973, pp. 187–189.

fact that, as we have seen, the tribune's right to *intercessio* could not concern the actions of another tribune or election *comitia*. Even so, Livy sees no other explanation for such a long gap in electing officials.

Similarly in the following years Livy does not quite understand what is going on. He seeks to justify Camillus' defeat by introducing the *vitium* to explain his resignation from office. Otherwise he would have been forced to conclude that Camillus was defeated by force, which is clearly not in line with what he thinks. The years 367–366 are similarly described as more of a legal and oratorical pushing back and forth by both plebeians and patricians, obscuring the first attempts at reaching an agreement by making Licinius Calvus a *magistratus equitum* or admitting plebeians to the *sacris faciundis* college.

It is thus clear that the ancient authors understood this conflict as a struggle undertaken and carried out by legal means, at least as far as it could be done. Periods of rioting and obvious settlement by force are smoothed over, and are replaced by passive resistance in the form of a veto (on the part of the tribunes) or the force of authority of both magistrates (Camillus) and private individuals (Appius Claudius). In turn, the accusations in successive speeches, made against patricians and tribunes alike, as well as the descriptions of legal means, are filled with anachronisms from a time after the Gracchi.

Abbreviations

RE XXVII *Realencyclopädie der Classischen Altertumswissenschaft*, vol. XXVII, ed. E. PAULY, G. WISSOWA, W. KROLL, Stuttgart 1928.

Bibliography

- BADIAN 1966 E. BADIAN, "Tribuni plebis and Res Publica", [in:] *Imperium Sine Fine: T. Robert S. Broughton and the Roman Republic*, ed. J. LINDERSKI, Stuttgart, pp. 187–213.
- BADIAN 1972 E. BADIAN, "Tiberius Gracchus and the beginning of Roman revolution", [in:] *Aufstieg und Niedergang der römischen Welt*, vol. I.1, Berlin – New York, pp. 668–731.
- BRENNAN 2000 T. C. BRENNAN, *The Praetorship in the Roman Republic*, Oxford.
- BROUGHTON 1951 T. BROUGHTON, *The Magistrates of the Roman Republic*, New York.
- BRUNT 1971 P. A. BRUNT, *Social Conflicts in the Roman Republic*, London.
- CORNELL 1995 T. J. CORNELL, *The Beginnings of Rome*, London.
- CORNELL (ed.) 2013 T. J. CORNELL (ed.), *The Fragments of the Roman Historians*, vol. I, Oxford.
- DEGRASSI 1954 A. DEGRASSI, *Fasti Capitolini*, Milan.
- DEVELIN 2005 A. DEVELIN, "The integration of the plebeians into the political order after 366 BC", [in:] *Social Struggles in Archaic Rome. New Perspectives on the Conflict of the Orders*, ed. K. RAAFLAUB, Oxford, pp. 293–311.
- FERENCZY 1976 E. FERENCZY, *From the Patrician State to the Patricio-Plebeian State*, Budapest.
- VON FRITZ 1950 K. VON FRITZ, "The reorganisation of the Roman government in 366 BC and the so-called Licinio-Sextian laws", *Historia* 1.1, pp. 1–44.
- HEURGON 1973 J. HEURGON, *The Rise of Rome to 264 B.C.*, tr. J. WILLIS, Berkeley – Los Angeles [*Rome et la Méditerranée occidentale*, Paris 1969].
- LINDERSKI 1995 J. LINDERSKI, "The auspices and struggle of the orders", [in:] *Roman Questions, Selected Papers*, ed. J. LINDERSKI, Stuttgart, pp. 560–574.

- MITCHELL 1974 R. E. MITCHELL, “The aristocracy of the Roman Republic”, [in:] *The Rich, The Well-Born, and the Powerful: Elites and Upper Classes in History*, ed. F. C. JAHER, Urbana, pp. 27–63.
- MOMIGLIANO 1942 A. MOMIGLIANO, “Camillus and Concord”, *The Classical Quarterly* 36.3–4, pp. 111–120.
- MOMIGLIANO 2005 A. MOMIGLIANO, “The rise of the *plebs* in the Archaic Age of Rome”, [in:] *Social Struggles in Archaic Rome. New Perspectives on the Conflict of the Orders*, ed. K. RAAFLAUB, Oxford, pp. 168–184.
- MOMMSEN 1894 Th. MOMMSEN, *The History of Rome*, tr. W. P. DICKSON, London [*Römische Geschichte*, Leipzig 1854–1856].
- MÜNZER 1999 F. MÜNZER, *Roman Aristocratic Parties and Families*, tr. T. RIDLEY, Baltimore [*Römische Adelsparteien und Adelsfamilien*, Stuttgart 1920].
- OAKLEY 1997 S. P. OAKLEY, *A Commentary on Livy. Books VI–X*, vol. I, Oxford.
- RAAFLAUB 2005 K. RAAFLAUB, “From protection and defense to offense and participation: stages in the conflict of the orders”, [in:] *Social Struggles in Archaic Rome. New Perspectives on the Conflict of the Orders*, ed. K. RAAFLAUB, Oxford, pp. 185–222.
- RICHARD 2005 J.-C. RICHARD, “Patricians and plebeians: the origins of a social dichotomy”, [in:] *Social Struggles in Archaic Rome. New Perspectives on the Conflict of the Orders*, ed. K. RAAFLAUB, Oxford, pp. 107–127.
- RIDLEY 1980 R. T. RIDLEY, “Livy and the *concilium plebis*”, *Klio* 62.2, pp. 337–354.
- SEAGER 1977 R. SEAGER, “‘Populares’ in Livy and the Livian tradition”, *The Classical Quarterly* 27.2, pp. 377–390.
- SEALEY 1959 R. SEALEY, “Consular tribunes once more”, *Latomus* 18.3, pp. 521–530.
- STAVELEY 1983 E. S. STAVELEY, “The nature and aims of the patriciate”, *Historia* 32.1, pp. 24–57.
- WIPSYZKA (ed.) 2001 E. WIPSYZKA (ed.), *Vademecum historyka starożytnej Grecji i Rzymu*, vol. I/II, Warsaw.
- ZIÓLKOWSKI 1992 A. ZIÓLKOWSKI, *Temples of Mid-Republican Rome*, Rome.
- ZIÓLKOWSKI 2005 A. ZIÓLKOWSKI, *Historia Rzymu*, Poznań.
- ZIÓLKOWSKI forthcoming A. ZIÓLKOWSKI, *Zmiana czy kontynuacja? Trwanie i rewolucje w starożytności*.

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