

The *Res Publica* of the Tribunes. Tribunician legislation and the political strategies of the Roman Mid-Republican elite.

(218-180 BC)

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Dedicated
to my parents
and
to Joanna

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Introduction

The *status quaestionis* and the background of this work

The interest in the tribunate of the *plebs* has been a recurring theme in the historiographical research on the Roman world from the ancient times to our own. This introduction will seek to chart some of the main scholarly contributions on the tribunate, starting from the early modern period, and indeed from a major figure of the Italian Renaissance: Niccolò Machiavelli.¹ The title that the great Florentine historian and political thinker gave to the third chapter of his *Discourses on the First Decade of Livy* is: ‘Quali accidenti facessono creare in Roma i Tribuni della plebe, il che fece la repubblica più perfetta’.² What immediately stands out is the positive conceptualization of the tribunate that emerges from the title of that essay. In Machiavelli’s perspective, the Roman Republic, thanks to the existence of the tribunate, achieved a higher standard of political efficiency: ‘perfetta’, evidently derived from the Latin *perficio/perfecta*, an adjective that may be translated in English as ‘accomplished’. The Republic was therefore more balanced, and eventually stronger because of the tribunate. This assessment is even more significant if one looks back to what the character of Quintus Cicero in *De legibus* (3. 19) says about that very magistracy: *in seditione et ad seditionem nata* (‘originated from civil discord and aimed to create new strife’), a formula that captures what had been, in his own view, the initial historical context of the tribunate of the plebs and its political aim.³ A further issue emerges, involving not only the constitutional remit and political significance of the tribunate, but the very idea of what the Roman Republic was about, for the character of Cicero’s brother as well as for Cicero himself. Furthermore, debates on the same question also unfolded amongst Cicero’s contemporaries and peers, especially on how the brief of the tribunate had changed across the centuries, as well as that of other Roman magistracies. Lily Ross Taylor wrote very

¹ *Discorsi sopra la prima deca di Tito Livio*, I, 3.

² See the English translation by Julia Conaway Bondanella and Peter Bondanella in the Oxford World’s Classics (2008), p. 28: ‘The Circumstances that Caused the Creation of the Tribunes of the Plebeians, Making the Republic More Perfect’.

³ Cf. Wiseman (1971) 162 n. 1, where Cicero himself is regarded to have ‘deliberately avoided the tribunate because of his ‘senatorial’ sympathies’. See the commentary by Dyck (2004) 492-494. It is remarkable that Dyck links the statement of Quintus back to the Sullan period, as a ‘reaction against the use of the office by P. Sulpicius’ (492). On this point see the study of Lanfranchi (2015), esp. the final chapter: ‘L’image des tribuns de la plebe. Conflicts et enjeux de modèles interprétatifs’, at 549-644.

insightful and, in a way, definitive words on this problem, particularly on the importance of considering the historical creation and development of the tribunate as a crucial and distinctive feature of the Roman political system.⁴ The attempt to circumscribe the tribunician magistracy within defined boundaries is not, in my view, the most helpful path to pursue in addressing such a complex historical matter. Quintus' understanding of the tribunate is remarkable, and is exactly the opposite of what underlies the definition given by Machiavelli; it is also strongly corrected in Marcus' later intervention in the dialogue.⁵ Quintus resorts to the word *sedition* to describe, as we said, not just the origin of the tribunate, but also the political aims of the magistracy itself.⁶

From these few initial words, it does emerge what the main issue one has to address in approaching this complex topic: in which respects the history of the tribunate of the *plebs* at the time of the Roman Republic should be reframed. What we are looking at, in fact, is not just *one* tribunate, but many, at least as many as the number of observers who across the centuries commented on or wrote about this magistracy. The tribunate of the *plebs* is a hotly contested and controversial feature of the Roman *res publica*. The consequence of its complexity is that any attempt to approach it would result into the risk of missing many of the specific aspects that are intrinsically part of the magistracy. In light of these concerns, the best way to approach the issue is to attempt an analysis that will consider the tribunate under two main headings: the constitutional scope of the magistracy, which has been the main focus of an important strand of German scholarship, particularly of Theodor Mommsen⁷ in the nineteenth century and, in the last century, of two major historiographical contributions by Jochen Bleicken; and, on the other hand, what one could regard as a more practice-orientated approach to the tribunate, which focuses mainly on its contribution to the legislative process and on its crucial political and economic consequences.⁸ Bleicken's 1955 study on the tribunate, *Das Volkstribunat der*

⁴ Taylor (1962) 19-21.

⁵ *Leg.* 3. 23. On this passage cf. n. 6.

⁶ The noun *sedition* is translated in the Lewis and Short Latin Dictionary, Oxford, 1969 with 'an insurrectionary separation (political or military); dissension, civil discord, insurrection, mutiny, sedition'. Pfaff (1921) 1024 offers significant historical insights into the political meaning of the word *sedition*. In spite of the fact that Quintus considers the tribunate as a *pestifera potestas* (*Leg.* 3. 19), his brother's assessment of the tribunate is not much more positive in itself: the magistracy is regarded as a necessary political institution, whose main use is to prevent the potential cruelty of the common people (*vis populi multo saevior*, 3. 23). The *vis* of the people, therefore, has to be thought of as the political parallel of the tribunician *potestas*, which Marcus regards as 'excessive', *nimia*. Hence, Cicero's view of the tribunate is not so easily defined. That magistracy is a danger, but is essential to prevent a greater threat: *sedition*.

⁷ Mommsen (1887-1888) 1037-1048.

⁸ Bleicken (1955) and (1975).

klassischen Republik. Studien zu seiner Entwicklung zwischen 287 und 133 v. Chr., building on the earlier works of Mommsen and Niccolini, set out to rethink the controversial political nature of the tribunate. The task that the scholar addressed was arduous, especially for the early Republican period, before the Second Punic War. The juridical terminology, in fact, does not lend itself to a straightforward definition for the centuries preceding the Hannibalic War, and this is due to a serious lack of reliable primary sources that could offer a comprehensive and exhaustive historical perspective. Without any doubt, the most interesting, and disputable, point that Bleicken made concerns the absence of any revolutionary character of the tribunate after the 287 BC, in the aftermath of the promulgation of the *lex Hortensia*. The revolutionary character of the tribunate is not just to be identified with its political aims at the very beginning of its history, at the end of the sixth century BC. The whole of the tribunician legislation, as we shall see, is a patent proof of the destabilizing strength that the tribunes deployed in dealing with all the major political issues and protagonists of the Middle Republic. In that period, according to Bleicken, the tribunate was a central feature of the Roman State, with the right of summoning the Senate (*ius senatus habendi*), and, on the other hand, to promote the legislative action. Bleicken's choice to stress the relevance of the *plebiscita*, as the real and more effective instrument of Roman legislation at the end of the second century BC, is fruitful and, furthermore, represented a new approach to the understanding of the impact of the tribunician laws in the Mid-Republican context. However, his refusal to understand the legislative activity of the tribunes as the historical development of the original revolutionary character of the magistracy represents a serious limitation. In this regard, the German scholarly tradition has to be linked with recent developments in British historiography, particularly under the aspect of the impact of the tribunes in shaping the development of the Roman constitutional system. Amy Russell has forcefully drawn attention to the role that the tribunes played in terms of achieving remarkable political results using the tools that political oratory gave them, with particular reference to the later phase of the Republic.⁹

Nevertheless, even the latest developments of the historiographical research on the tribunate are rooted in a debate that goes back several centuries. The age of the French Revolution prompted an intensive reflection on the nature and scope of the tribunate of the *plebs*, and the intellectual implications of that debate still impinge on the assessments that we now have of the tribunate. Two generations earlier, in the eleventh book of his great work on the '*Spirit of the Laws*', C. de Montesquieu dealt with the tribunate of the *plebs*; interestingly,

⁹ Russell (2013).

he did so in the same section in which he discussed the nature of the English constitution.¹⁰ The French philosopher attempted, in doing so, to establish an historical comparison between the tribunate of the *plebs* and the political framework of democracy, shaped in its modern terms and, for this very reason, specific developments. In 1734 Montesquieu himself had addressed the question related to the relevance of the political experience of the Roman institutions in his work: ‘*Considérations sur les causes de la grandeur des Romains et de leur décadence*’.¹¹ What is particularly noticeable is that in this work Montesquieu did not refer to the role that the tribunes played in defining the form of the Roman Republic, especially from the legislative point of view. The first chapter, devoted to the beginning of Rome, ‘Commencements de Rome’, in which one could expect to find a clear reference to the political factors that brought to the creation of the tribunate, shows no trace of the presence of such magistracy. Throughout this work the two main protagonists of the early Republican period are the consuls and the Senate. There is a sharp difference from the perspective of Machiavelli’s discussion.

The French Revolution gave a new lease of life to the Roman magistracies, especially to the tribunate of the *plebs*. The political developments of the nineteenth century also played a crucial role in shaping later historiographical developments: the work of Th. Mommsen, which played a major role in setting the debate on the Roman political system for at least two generations to come, was also strongly shaped by the events of Prussia in the age of Bismarck and by the turmoil of 1848. Mommsen put forward a fundamental distinction between the tribunes and the magistrates that played a central role in government: the consuls. The chronological watershed that he recognized within the historical development of the tribunate was the *lex Hortensia* of 287 BC. Before the promulgation of that statute the tribunician prerogatives were viewed negatively, but their political and legislative nature changed after 287 BC, when the tribunate was fully integrated within the constitutional system.¹² The great merit of Mommsen in that respect was to demonstrate that the tribunes were by all intents and purposes part of the Roman constitution, an issue that for many centuries had remained totally out of account. However, Mommsen was restating an old view that presented the magistracy as the outcome of a revolutionary act, which from that moment had within itself the

¹⁰ Montesquieu (1748).

¹¹ Cf. the English translation by Lowenthal (1965). On the relevance of the French Revolution and, at the same time, of its main cultural consequences on affecting the contemporary idea of the tribunate the bibliography is, of course, immense. Cf. Catalano (1971) 65 and Godehot (1985) 278. M. Raskolnikoff (1992, 527-533) reflects on the French approach to the issue of the tribunate, drawing, at the same time, a parallel between the studies of Mommsen and the work of Niebuhr (1828) esp. 570-571.

¹² Mommsen, *RS*, II, (1877) 261-318.

revolutionary aspects that by the end of the second century showed all their pernicious consequences. There is no doubt that the perspective of Mommsen was, at least in part, determined by the interpretative framework provided by Cicero, in spite of his very critical view on the political outlook and impact of the great orator. In this respect, we could see in Quintus' words Cicero's own view on the tribunes and their political disruptive role, particularly during the first half of the first century. This assessment of the political consequences of the tribunes' legislative commitment enables us to see how peculiar the perspective on the tribunes in the first century BC was, after the traumatic experiences of the Gracchi, Glaucia and Saturninus, and the eventful years of Sulla's dictatorship.

It is apparent, therefore, that the problem of the primary sources for the history of the tribunate is very much at the forefront of this study, especially because most of them date to the first century BC and reflect the political preoccupations of their own time: notably Cicero, as we have already seen, and even more so Livy. The reliability and overall historiographical agenda of Livy are especially important problems. J.-L. Ferrary made a major contribution to the understanding of Livy's evidence for the tribunician legislation, especially on the thorny question of Livy's tendency to omit the names of many tribunes that feature in his narrative.¹³ Ferrary's study has been of unquestionable value in defining the problem of the lack of consideration that Livy often showed towards the tribunes. However, it does not place equal emphasis on the role that the Greek sources, particularly Polybius, have in shaping our understanding of the magistracy. In some cases, the most significant of which is the account of the *lex Marcia Atinia* of 196 BC, the position taken by Livy was completely different from that one of the Greek historian, even though Livy is known to have drawn much of his evidentiary basis from Polybius himself.¹⁴ In that case, which shall be discussed more fully below, Polybius completely leaves out not just the names of the tribunes involved in that debate, but even any reference to the role, which we know to have been pivotal, of the magistracy itself in the legislative process. The distance between the two authors has to be considered as a relevant instance of how differently the tribunate was understood by two major historical sources. The choice whether to mention or not the names of the magistrates, especially in the case of the tribunes, was always a politically loaded one. Leaving out from his reconstruction of the events the legislative action of the two tribunes, Polybius wanted to issue a clear message to his audience: Roman politics is a matter that lies in the hands of the serving consuls and of the

¹³ Cf. Ferrary (2012) 134.

¹⁴ Nicolet (1973) is especially remarkable in this respect. For a further study on the relevance of Greek thought for the development of the Roman political theory, especially during the second century BC, see Nicolet (1983).

Senate. That also entails a strong and unparalleled (at least in such evident terms) devaluation of the role that the popular assemblies played in Rome under the Republic, especially in decades marked by intense political competition, such as those after the Second Punic War were.

Livy, on the other hand, made a completely different choice about the bill of 196 BC, well over a century after Polybius' work: his choice is even more significant if we bear in mind that the same historian in many other cases took a completely different option, and failed to mention the names of the tribunes involved in the events discussed in his narrative. The fact that an historian writing towards the end of the first century BC could relate the names of the tribunes who served at the beginning of the second century BC is a noteworthy element, which will play a significant role in our analysis. Its implication is that in other cases (it is unfortunately impossible to tell how many) Livy's failure to name the tribunes that put forward a piece of legislation is not necessarily a consequence of a lack of sources, but an intentional and arguably ideological choice on his part. This leads to a further point. It has been often argued by a number of scholars that the tribunes of the Gracchi represent a chronological and, more importantly, political watershed in the history of the tribunate of the *plebs*. This work on the tribunes and their legislation is also aimed to challenge this widely accepted view.¹⁵ The revolutionary character of the magistracy, which, in the view of Quintus Cicero and many others, became apparent after 133 BC, might have been seen at work through the legislative activity that the tribunes embarked upon throughout the second century BC. The straightforward view whereby the tribunate of the first century BC was something completely different from the magistracy that had been in existence in the previous centuries is at the very least misleading. This assessment is as unsatisfactory as the approach of those who regard the tribunate of the first two centuries of the Republic as a fundamentally different institution from its Mid-Republican incarnation. Such an approach to Republican institutions has serious shortcomings, especially in dealing with a magistracy that had such weighty and differentiated prerogatives as the tribunate. In the history of this magistracy there is not a set moment that may helpfully be seen as the starting point of a completely different phase: the emphasis should be placed on continuity and gradual change. The close analysis of tribunician legislation will strongly corroborate the view that a facile definition of the tribunate and its prerogatives is at

¹⁵ Cf. Münzer (1920); Earl (1960); Earl (1963); Briscoe (1974). For a more nuanced position cf. two brilliant studies of Develin (1979) and (1985). Millar (1986) showed the importance of a more complex approach towards the political role of the tribunate of the *plebs*. Mouritsen (2001), whilst having similar concerns to Millar's, reached very different conclusions on the role of the tribunes and their political connection to the *plebs*.

hand. One of the few full-scale studies devoted to the tribunate of the *plebs* in the middle Republic, the 1996 paper on ‘*Tribuni Plebis and Res Publica*’ by Ernst Badian, shares this problematic perspective of other important contributions on the topic.¹⁶ A quote from this fundamental study would serve the purpose of our discussion:

‘To try to understand the tribunate as such, we ought to look at its development, and that of the assembly over which it presided. As we know it and see it reliably attested, it is a monster. No other constitution I know of has had anything like it; not even the Italian cities of later centuries which tried to imitate the Roman Republic. Yet the Romans lived with it. After a period of initial difficulties, they came to take it for granted, and in the end, it was exploited by the warlords who usurped the *res publica*’.¹⁷

Above all, starting from the historiographical sources in which it is discussed, the tribunate of the *plebs* has been regarded as a real problem within the Roman constitutional system. This fact has become apparent at least since Mommsen, who was fully aware of the problems presented by the existence and integration of the magistracy into the *res publica*.¹⁸ Badian seems to take his cue from the uncertainties and questions that arose from Mommsen’s work, and offers a very poignant definition of the magistracy: ‘a monster’.

The present study seeks to address such questions, and establish not just whether it is possible to achieve a theoretical description of the tribunate, but a better historical contextualisation too. Its necessary premise is the knowledge that the historical developments modified its political role and function. Some peculiar characteristics of the tribunate should be stressed in this connection. As already mentioned, this magistracy was firstly created as a defensive instrument for the *plebs* in the context of the conflicts among the different components of the Roman society.¹⁹ In that connection, the tribunes soon defined themselves

¹⁶ Badian (1996).

¹⁷ Badian (1996) 190-191.

¹⁸ Cf. *RS* II³, 292-295.

¹⁹ On this issue see Raaflaub (1986) 180-195. About the *leges Liciniae Sextiae*, the position of the main aristocratic families, and the role of the Roman nobility in promoting the establishment of the tribunate, see Münzer (1920) (English transl., 1999), especially ch. 1, 12-47. For a definition of the fundamental relevance of the Roman aristocracy, details about the political dynamics within it, and the choices adopted towards the other social classes during the fourth century BC, the most important work Hölkeskamp (1987, 2011²); chapter 3, ‘Der Kampf um die Gleichberechtigung und die plebeische Organisation 366 bis 340’, 62-109, is especially significant to our purposes. The literature on the origins of the *plebs* is vast: the work of Richard is especially significant (see 1978 and 1986).

not just as the revolutionary leaders of the plebs, but first and foremost as political leaders whose authority and influence applied to every citizen. From 367 BC, they had a position of influence, based on the political and military relevance gained by the social order that expressed them. Nevertheless, the negative power of *intercedere* and the *summa coercendi potestas*, which are functionally correlated, do not represent the full range of the *tribunicia potestas*. It was during the third century (the final part of which is included in this study) that the tribunician prerogatives became greater and came to include a new and fundamental element: the *ius senatus habendi*.²⁰ In other words, the tribunes did not just have the right of taking part in the Senate meetings, from which they had long been excluded, but also of summoning the Senate itself.²¹ Unfortunately, the sources on which we can base our study, notably Livy, do not allow us to accurately reconstruct which positions were assumed by the tribunes towards the changing political situation, especially for this crucial period of the history of the Republican institutions, during which the *plebs* fought to impose the acceptance of the plebiscite by the Senate. It is at this point that our research begins. In fact, from 287 BC (*lex Hortensia*), the *plebs* became the main source of legislative production and the Senate took up a less prominent role as political promoter of new statutes. The analysis of the tribunician laws will, therefore, shed light on the relationship between the Senate and the tribunes, and how that political assembly considered them vis-à-vis the other magistracies, with which the Senate routinely interacted. As we shall see, when the tribunes were requested by the Senate to initiate a legislative procedure, the Senate did not proceed in the same way towards them as it usually did with the other magistracies. The detailed textual analysis of the literary sources will play a fundamental role in this connection. One may refer, for example, to the formula that the Senate often used to involve the tribunes in the legislative action: *uti consules cum tribunis agerent ut, si iis videretur, plebem rogarent* ('the consuls are entitled to urge the tribunes, if it does fit with their will, to bring the question before the *plebs*').²² Livy's text, in this respect, is very

²⁰ Liv. 8.23.12; 22.61.7. Cic. *Phil.* 7.1.1.

²¹ Mommsen thought that they could use such faculties since the earliest times. Although he was aware of the slow development of the rights and powers of the tribunes: 'schwerlich wurde dies Recht so, wie wir es finden, mit einem Schlage den Tribunen erworben'. *Staat.* II³ 230; Willems (1883) 92-106; Coudry (1989); Ryan (1998) 96-136.

²² Cf. Liv. 8.23.12: *actum cum tribunis est, ad populum ferrent*; 26.2.5: *omniumque in unum sententiae congruebant, agendum cum tribunis plebis esse*; 26.33.11: *censeo* (i.e. M. Atilius Regulus) *cum tribunis plebis agendum esse*; (Q. Fabius) *agique cum tribunis plebis ut de imperio eius* (i.e. P. Cornelius Scipio) *abrogando ferrent ad populum*. Livy here does not explicitly refer to the fundamental role played by the Roman Senate elsewhere. He seems more interested in stressing the importance of specific protagonists of the Roman political scenario at the time of the Second Punic War. The unmediated connection between those individuals and the tribunate is even more interesting. It is also remarkable the fact that, in other passages, Livy used the ritual

complex and ambiguous, even if the style always remains consistent, allowing us to recognise an element of undisputable validity with regards to the procedural elements. In other words, the Senate instructed the consuls to cooperate closely with the tribunes, almost as though the consuls were to start diplomatic relations with a foreign political power. The tribunate, therefore, could be constructed as a political institution that was external to the Senate, although it was fully recognised by that political body, which considered it as an entity to be persuaded with all due caution: a domestic enemy. This is perhaps one of the issues that led Badian to define this magistracy as ‘a monster’: the tribunate is a complex reality, which eludes any definition that aims to set its limits once and for all.

Dealing with such a difficult matter only from the perspective of the constitutional theory could of course present the risk of not properly understanding the tribunate as the result of a tortuous historical development, which had more to do with the political needs rather than to a theorisation formulated far away from the concrete political reality. Momigliano argued that ‘il successo dei plebei in termini puramente organizzativi è confermato dal fatto che i patrizi stessi dovettero riconoscere che i plebei avevano colmato certe ovvie lacune dello Stato patrizio. Lo Stato patrizio non aveva dei soprintendenti a templi, mercati, archivi, come gli edili: perciò al tempo del compromesso del 366, non solo gli edili plebei furono riconosciuti come funzionari dello Stato assieme ai tribuni della plebe, ma due nuovi edili furono creati a loro imitazione e supplemento’.²³

In this model, the tribunes should also be considered as civil servants, who were entitled to deal with economic questions, moral issues, and the military domain. However, presenting the tribunes as mere experts of technicalities, presents the risk of misunderstanding the actual political meaning of the magistracy, which is undoubtedly eccentric from the other institutions of the Roman constitutional system, but is relevant to the same division of power and influence among the different elements of the Roman state. The tribunate was not a contingent solution devised by the Roman nobility, or an institution forged by the political ruling class in order to

legislative formulation: 30.27.3: *consules iussi cum tribunis plebis agere, ut, si iis videretur, populum rogarent*; 31.50.8: *senatus decrevit ut [...] consules, si iis videretur, cum tribunis plebis agerent uti ad plebem ferrent*; 39.19.4: *senatus consultum factum est [...] utique consul cum tribunis plebis ageret ut ad plebem primo quoque tempore ferrent*. It is plausible to think of a sort of misunderstanding of the technicalities of the Roman legislative process, particularly during such a complex time like the Mid-Republic was. Nevertheless, it should be taken into serious consideration the possibility that the historian may have intentionally used a variety of formulations in order to differentiate and nuance his narrative from a literary point of view.

²³ Momigliano (1987) 239-256.

maintain the status quo. The remarks of Sandberg, who made a significant contribution to our understanding of the socio-political implications of the Roman legislative practice, deserve attention: ‘the development of legislative practice in the Roman Republic is, I think, best understood in the context of the Conflict of the Orders. Even if it is impossible to reconstruct the various stages of this struggle with any higher degree of confidence, there are certain data in the annalistic tradition that must pass as structural facts. [...] I find no reason to doubt that the plebeian organization owed its origins to political and social discord. [...] Neither is there any valid reason to doubt that tribunician action at an early date, in addition to political obstruction, came to include legislative initiatives’.²⁴

Sandberg focuses on a point of extraordinary relevance: the political meaning of the tribunate. However, in spite of recognising the fundamental legislative role played by the tribunes, especially from the end of the third century BC, he did not put forward any suggestion about the political meaning of the tribunes’ involvement in that remit, and, on the other side, about the increasingly less relevant importance of the consuls in that domain. In fact, in the later development of Republican history, the consulship, which had long been one of the two Roman legislative pillars, enters a phase of decline, and the activity of the tribunes comes into sharper focus. A further important point stressed by Sandberg is the way that is commonly under use to refer to the single Roman statute. Rotondi’s work is, in this regard, in need of a comprehensive update, not least on account of the erroneous titles that he attributed to most of the laws he listed. In this regard, the position assumed by Crawford in his review of Sandberg’s book, where he stressed the need to revisit Rotondi’s approach, is significant.²⁵ It is, in fact, likely that the laws were originally cited only referring to the names of the *rogatores* of the statutes themselves, leaving out the specific content of the bills.²⁶ This is the practice that will be followed in the present work.

This study aims to give due consideration to such crucial change, with the ambition to contribute to the shaping of a new vision, not just of the position of the tribunate, but also the role played in legislative terms by the consulship in the legislative domain between the third and second centuries BC. The work of Sandberg represents a significant point of reference for all the questions related to the technicalities of the juridical language used in the formulation of the laws. It has already been stressed above that the main source upon which our study is

²⁴ Sandberg (2001) 114-115.

²⁵ Crawford (2004) 172.

²⁶ On this the Introduction of the online catalogue *LEPOR (LEges POPuli Romani)*, directed by J.-L. Ferrary and P. Moreau.

based is Livy. It is worth pointing out that Livy's evidence for tribunician action offers more questions than credible and solid answers. Furthermore, it is necessary to achieve a detailed reconstruction, and ask in which cases Livy was silent, what his main omissions on the legislative texts are, and why these missing elements have often regarded the tribunician legislation. Why has Livy chosen to proceed in a way that so often led him to be silent on the importance of the *plebs*, and of course of the tribunes, with respect to the complex mechanisms of the legislative procedure? This will be a fundamental step of the present work, keeping in serious consideration the relevant contribution that has been offered by Ferrary's research.²⁷ The French historian, building on the fundamental study of Bleicken, from whom he draws some insights on the strongly independent character of the tribunate, introduces the legislative activity of the tribunes, examining Livy's accounts of books 21 to 45. Many aspects of Ferrary's analysis deserve to be stressed. For the purposes of this discussion, I will examine two points that are essential to the present analysis: the views that Livy had on the tribunician magistracy, and the political dynamics he described between the tribunate and the Roman Senate.²⁸

On the first part of the question, a direct quote may be helpful, not least because it shows a significant point of agreement with Badian: 'ainsi que l'a souligné E. Badian, le faible nombre des tribuns dont Tite-Live nous conserve le nom est révélateur du peu d'intérêt qu'il manifeste pour cette magistrature et ses représentants dans les livres 21 à 45. Dans ces conditions, il était inévitable que fût volontiers omise la participation des tribuns à des processus de décision complexes, où l'accent était mis au contraire sur le débat sénatorial'.²⁹ The latter point serves as a valuable introduction to the study of the tribunate and its legislative implications. The partiality of Livy's account and the omissions that we find in his work, should not be considered proof of scarcity or lack of information, but of a *modus operandi* that placed the emphasis on the debate within the Senate. Of course, such an approach from our main source could present a serious obstacle in the reconstruction of the progressive development and change of the characters of the tribunate; however, an analysis conducted on a broad chronological span, such as that developed in this study, can come to terms with these negative factors. Secondly, the preference of Livy for the activity of the Senate is not to be considered as a limitation, but as a

²⁷ Ferrary (2012) 119-152. On the drafting of the laws, especially the redaction and promulgation of the *lex rogata*, see Ferrary (2012) 3-37.

²⁸ Bleicken (1955).

²⁹ Ferrary (2012) 134.

positive opportunity to rethink the political dynamics that have too often been taken for granted.

A final proviso is in order. The present work is not to be understood as a new version of Rotondi's work for a specific phase of the mid-Republican period.³⁰ Like that great compilation, however, it will consistently follow a chronological sequence, which will enable us to build a coherent and ordered analysis of the tribunician legislation between the Hannibalic War and the Gracchan period. Across the three chapters into which the thesis will be divided, the political commitment of the tribunes shall be analysed from the many historiographical perspectives that the literary tradition developed. Furthermore, it is my intention to pursue an historical approach that, overcoming a merely chronological sequence, could establish the real political aims that the tribunes wanted to achieve by presenting each law. According to that working principle, it will be necessary to build, within each chapter, logical sequences of statutes which, through their similarities in content, can help us to understand what the complex political scenario behind the tribunician legislation of the Middle-Republic was.

³⁰ Rotondi (1912).

Chapter One

A Problematic Legislative Corpus: the Tribunician Statutes at the End of the Third Century (218-202 B.C.)

The main goal of this first chapter is to provide a detailed analysis of the laws put forward by the tribunes of the plebs in the years spanning from 218 BC to 202 BC. The chronological terms have been determined by two key considerations: the recognition of the historical significance of the Second Punic War, and the aim to establish the impact of that pivotal event on the development of the role of the tribunate in the legislative process during a crucial phase of the Republican period. Attaining an historical understanding of the political role of the tribunate, in fact, means above all to overcome the distinction between the juridical and the political aspects of this magistracy. The distinctiveness of the tribunate has to be found exactly in its complex and differentiated nature, which enabled the tribunes to deal with the most diverse and complex issues. The key role played by the tribunes of the *plebs* within the Roman constitutional system has been read, in several important studies, as revolutionary or, rather, as that of a power parallel to the executive, represented by the consuls, and, on the other hand, to the advisory body that was the Senate. The only serious and effective tool we currently have to try and bring some clarity on this difficult question is the analysis of what ultimately was one of the main prerogatives of the tribunes: putting forward new pieces of legislation. It would in fact be misleading to keep pursuing a merely morphological investigation of the constitutional nature of the tribunate or of its relations with the other political institutions of the Republic. The work on the statutes put forward by the tribunes has the ambition to attain the important result of bringing together aspects that would otherwise be left in isolation from one another, with the risk of producing an unsatisfactory historical picture.

[1.1] *plebiscitum Claudianum* (218 BC) [*de senatoribus* Rotondi]³¹

This was a controversial tribunician bill, which dealt with very significant economic matters especially related to sea-trade, involving also, at its very core, the political relations between the senatorial elite and the emerging equestrian order.

The year 218 BC represented a crucial moment in the history of Rome and the whole Mediterranean world. We are at the very beginning of the Second Punic War, a conflict that will reshape the political-military order for many decades to come. In the same year a *lex Claudia* was proposed and passed. The key source for it is Livy 21. 63. 3-4:

[...] *invisus etiam patribus ob novam legem, quam Q. Claudius tribunus plebis adversus senatum atque uno patrum adiuvante C. Flaminius tulerat, ne quis senator cuive senator pater fuisset maritimam navem quae plus quam trecentarum amphorarum esset haberet, id satis habitum ad fructus ex agris vectandos, quaestus omnis patribus indecorus visus. res per summam contentionem acta invidiam apud nobilitatem suasori legis Flamini, favorem apud plebem alterumque inde consulatum peperit.*

Flaminius was not in favour with the senators because of a new law, which the tribune of the *plebs* Q. Claudius had put forward against the Senate, with the support of Flaminius only among the senators. The law stated that no senators, as well as no senator's son, should have a ship able to carry more than 300 amphorae. That size was considered enough for the transport of the harvest from the countryside; any income was regarded as unbecoming by the senators. The bill had to face a great controversy, and caused to Flaminius, the backer of the law, hostility among the nobility, but favour with the *plebs*, and later yielded him a second consulship.³²

This first plebiscite allows us to address two preliminary issues, which are both quite separate and strongly complementary. Livy stresses the collaboration between two constitutional and political entities that throughout his work typically embody the two pillars of the Republican legislative production: the tribunate and the consulship. Flaminius (cos. 223 BC) was a private citizen during Claudius's tribunate, but he held the consulship in the following year: it is conceivable that he was already one of the candidates to the highest political office for 217 BC, when the Claudian bill was put forward. It seems that common ground between Flaminius and

³¹ On this piece of legislation see Rotondi (1912) 249-250; Elster (2003) 187-190. On the *plebiscitum Claudianum* there is a vast bibliography: see De Martino (1954) 335-337; Càssola (1962) 215-218; Yavetz (1962) 325-344; D'Arms (1981) 31-33; Brunt (1988) 144-193; Feig Vishnia (2012) 27-35; Coudry *LEPOR* (2014); Prag (2016).

³² Unless otherwise stated, translations are mine.

Claudius was found on the proposal to set an economic prohibition to the senators and their sons to own ships that were larger than a set size. In this respect, the first step of this discussion must be to investigate what the actual political purpose and the financial consequences of the statute were. It has rightly been pointed out that the bill did not prevent the senators from being involved in commercial activities at sea: it set restrictions on what Cicero calls *naviculariam facere* ('to run business with small vessels'), and which we also find mentioned by Gaius with regard to the definition of the figure of the *exercitor navis*: *ideo autem exercitoria actio appellatur, quia exercitor vocatur is, ad quem cotidianus navis quaestus pervenit* ('the ship-master: therefore it is called business due to it is used to consider *exercitor* the person whose daily profit comes from ruling a vessel').³³ The use of ships for commercial purposes was certainly in continuous increase at the end of the third century, even more so if we consider that huge amounts of goods that were then exchanged across the Mediterranean Sea.³⁴ The juridical position of the *exercitor navis* is, therefore, not so significant in terms of defining the complex meaning of the law itself. Furthermore, the *exercitores navium* were the final point of an economic chain at the end of which we can recognise the key players: the members of the Senate. The senators were, at any rate, able to use the name of simple mere ships' captains (*exercitores navium*) to conceal their own business involvement, hence curtailing the impact of the bill.

Livy does not make any reference to the possible existence of a fine for the transgressors in the lost text of Claudius' *plebiscitum*. It is necessary to read through the lines of Livy's heavily compressed summary of the statute if one is to grasp the political significance of the law itself. At that time, there was an ongoing separation between two different ways of practising and conceptualising the production and the commerce of goods. The distinction between a wealthy senatorial class, involved in landownership, and a 'middle' class focused in

³³ Cic. *Verr.* 2. 5. 44-46; Gaius *Inst.* 4. 71. See Kay (2014) 14.

³⁴ Nicolet (1978) 594-599; D'Arms (1981) 30-46; Kay (2014) 134-135. Nicolet and D'Arms considered the economic strength of Carthage as a major feature in order to determine the legislative choices made in Rome at the end of the third century BC. The commercial strength of the Punic city represented a real threat for the chances of Rome to expand its economic influence across the Mediterranean. On this point cf. Cic. *Rep.* 2. 7. In spite of the excessive remarks made by Cicero about the commercial strength and influence of Carthage, this piece of evidence enables us to better contextualize the legislative initiative of the tribune Claudius and, at the same time, Flaminius' political engagement. Cicero offers a traditional perspective on the destabilizing role of trade within the society, with particular regard to the precedents of Carthage and Corinth: [...] *error ac dissipatio civium, quod mercandi cupiditate et navigandi et agrorum et armorum cultum reliquerant*. The *cupido mercandi et navigandi* was certainly one of the key stated elements of the legislative initiative of the tribune. Cicero, in spite of his moralistic view, indirectly confirms the fundamental role played by economic issues in shaping the tribunician legislation at the end of the third century.

achieving a new social and political status through its commercial activities is part of the story, not the story itself.³⁵ In this context, the political action of Flaminius is of great importance, although Livy is not a completely reliable source. It is in fact evident that Livy voices the hostile position towards the consul of 217 BC that we also encounter in Polybius.³⁶

It is, indeed, of great interest to consider in what terms the Greek historian presented the consul of 217 BC to his readers, Roman and Greek alike, not with specific reference to the content and the political consequences of the *plebiscitum Claudianum*, but specifically because of the land reform he had put forward in 232 BC, during his tribunate. Flaminius is labelled as ὄγκλοκόπον μὲν καὶ δημαγωγόν ('a rabble-rouser and a mob-leader': 3. 80. 3). This judgement reflects a conservative view of Roman politics, albeit influenced and shaped around a political language that was not part of the Roman cultural landscape. In this instance, the historian altogether disregarded the role of the tribune, saying nothing about the law or its immediate political consequences. This is a surprising choice, considering that the plebiscite, placing a limit on the free initiative of the Senate, was ostensibly aimed to support the economic interests of a new and dynamic part of the Roman society. Accordingly, it is safe to say that between the initiative of the tribune Claudius, supported by such an influential political personality, and the interests of emerging social groups at that time there was a political agreement. This belonged in a wider convergence of interests between certain elements of the Roman political system and an increasingly significant number of citizens that were rapidly assuming a relevant political role within Roman society.³⁷ Nevertheless, the account that Livy offers of the

³⁵ See Brunt (1988) 172-173, whose assessment of the involvement of senators in trade and in any kind of business activity is based on evidence from the first century BC, notably Cicero (cf. 168 n. 84). While it is plausible to assert that at that time the interaction between the senatorial and the equestrian orders was no longer antagonistic, it does not follow that the same should apply to the end of the third century BC, when the emerging equestrian order had a strong incentive to promote its own economic and political interests, challenging the strong position of the Roman Senate and its members. Brunt, briefly presenting the *plebiscitum Claudianum*, does not offer any historical explanation for the bill itself: 'we do not know why it was passed' (173).

³⁶ See Feig Vishnia (2012) 29, stressing the influence of Greek political thought on the perspective that Polybius put forward describing the political dynamics within the Roman context: 'I believe that it is in this context that Polybius' interpretation of Flaminius' agrarian law should be construed. Polybius' world outlook was embedded in the Greek political thought of his era and he wrote mostly for a Greek upper-class audience who in general shared his view'. The same issue that, as we shall see in detail in the second chapter, will emerge with the *lex Marcia Atinia* of 196 BC. Feig Vishnia, stressing the relevance of the tribunate that Flaminius held in 232 BC, attempted to build a link between the agrarian issue, and the further developments of Flaminius' political stance between 218 BC and 217 BC. There is no possible doubt that the role that Flaminius played as a tribune reverberated its effects also on Claudius' political action, which he strongly supported, even from a minority position.

³⁷ The comment of D'Arms (1981) 31-32 is significant in this respect: C. Flaminius 'has appeared as a champion of the traditional senatorial values, the *mos maiorum*, reflected by Livy in the familiar phrase *quaestus omnis patribus indecorus visus*'.

plebiscitum Claudianum is not likely to satisfy our need to understand a law that is more complex and has more far-reaching implications than the surviving evidence would suggest at first glance.

Yavetz put forward a reconstruction of Flaminius, starting from his tribunate in 232 BC, in which he emerges as a shrewd and insightful politician, keen to gain the support of those families, mostly plebeians, who had achieved a significant amount of wealth and were trying to expand their influential presence also outside of Italy, with a special emphasis on the new Roman military undertakings.³⁸ Against this background, we could consider the choice of Flaminius as part of a political strategy, aimed at finding new allies and supporters for his political ambitions. On a different note, Kay stressed the fact that the strong senatorial opposition to the piece of tribunician legislation put forward in 218 BC might imply that the senators were engaged in maritime trade to a considerable extent.³⁹ A third route may be explored instead. The senatorial families were, of course, interested in gaining money with their involvement with trade, but, at the same time, this activity could represent a very effective way to establish new political connections in the overseas territories where the Roman imperial presence was developing. The Roman *nobilitas* was very focused on the chance to create a new network of *clientelae*, and was increasingly aware that the provincial system was becoming ever more fundamental for the balance of Roman internal policy.⁴⁰ Prag has recently offered a significant interpretative perspective in emphasizing the significance of the moment between the end of the third century and the beginning of the second as the phase in which one can see the real development of a ‘Roman imperial government’ at work.⁴¹ This background is indeed essential to the appreciation of the *lex Claudia*, and a further complementary point should be brought into the equation: the ideological connection between the legislative action put in place by the tribune Claudius and the role of Flaminius, the central political figure of this whole affair. The future consul played a crucial role in envisaging, at the end of the third century, a new role for the tribunate. This development, as we shall see, yielded its most important results during the first half of the second century, especially during the period of the colonization that followed the end of the Second Punic War.

³⁸ Yavetz (1962) 340-341.

³⁹ Kay (2014) 13-18.

⁴⁰ On this important issue see Badian (1958). For a reconsideration of this major work see Jehne and Pina Polo (2015). Cf. also Prag (2016).

⁴¹ Prag (2016), see the ‘Introduction’. See also note 44.

A further point should be discussed in this connection. Unlike what he did on other similar occasions, Livy mentioned the name of the tribune who put forward the bill.⁴² That choice was not dictated by the importance of the man himself, but by the political involvement of the former consul into the legislative initiative pursued by the tribune. On this count, M. Coudry has offered a better understanding of the evolution that the tribunate experienced in this historical phase, particularly with reference to the new dimension of the tribunician statutes of the last two decades of the third century. She was able to address, on the one hand, the strictly economic aspect of the statute of 218 BC and, on the other, the consequences that Flaminius' action determined within the political landscape at the beginning of the Second Punic War. However, Coudry does not draw attention to the legislative continuity that we find between the bill of the 218 and the tribunician laws of the beginning of the second century: a point we shall come back to in the following sections of this study.⁴³

The end of the third century, with the beginning of the Second Punic War, witnesses the emergence of a new 'imperial' economy, based, of course, on a wider range of trade exchange, particularly from the great islands of the Mediterranean, Sardinia and especially Sicily.⁴⁴ The transportation of grain was a strong and increasingly relevant necessity for Rome, on which both the Roman *nobilitas* and the emerging equestrian order wanted to establish their control.⁴⁵ Although the evidence is elusive, it is safe to argue that the position taken by the tribune Claudius, and especially by Flaminius, was instrumental to the achievement of broader political goals. Both were probably looking for wider popular support, mostly among the ranks of traders and merchants, who, by the end of the second century, were increasingly consolidating their positions, and could later prove valuable assets to those who wished to achieve greater political influence. The Senate was against the law, and even more strongly against its main supporter, with whom the nobility had already had previous grounds for

⁴² Ferrary (2012) 134-135.

⁴³ Coudry *LEPOR* (2014).

⁴⁴ The Second Punic War represented a pivotal moment in order to contextualize the changes that involved the new trade activities that the Romans were able to pursue at the end of the century. Roman imperialism assumed, in that very moment, a less nuanced fashion than it had been in the immediate aftermath of the First Punic War. On this respect, Badian (1972) 26-47; Nicolet (1978) 606-622; Harris (1979) 212-218; Crawford (1990). More specifically on the role of the Second Punic War in changing the dynamics of the Roman economy, and on the relevance of the Roman 'militarism' in shaping the tribunician legislative production between the end of the third century and the first decade of the second one, see Eckstein (2006) 182-191. The war and the increase of the income derived from commercial activities across the Mediterranean heavily modified also the function itself of tribunician legislation, especially those laws, such as the *plebiscitum Claudianum*, that were directly committed to modify the internal political and financial balance on which the Roman Republic had been run since the second half of the fourth century.

⁴⁵ See also Zevi (1994) 61-68.

conflict. It is not of secondary importance, henceforth, that in the senatorial nobility there were increasingly clear attempts by some of its members to distance themselves from the ranks of their peers, with the prospect to emerge and establish a more direct relation with the populace. What in previous decades had been a fairly homogeneous compact, in which senators tended to align their desires to the will of the majority, went through a very quick change.⁴⁶ The emergence of new elements from the social classes most involved in the business was creating a new balance in the Senate, the old order was giving way to a new policy in which differences would become less marked, and in which the economic interests originated by the Hannibalic conflict would set the agenda with ever-increasing strength. The agreement between those who should have been permanently divergent elements would no longer be an anomaly, but an established feature of the political landscape.

Against this background, one should ask why a proposal such as the *plebiscitum Claudianum* was made precisely at this juncture, in the run-up to the most arduous and longest military confrontation that Rome had ever faced. It is not easy to provide a satisfactory answer to this question, but attention may be drawn to an important point: the war against Hannibal was to take place almost entirely on the ground. Large bodies of men would soon find themselves to have to deal with pitched battles; at least in the first phase of the conflict, the Carthaginians were to prevail. However, control over the sea would still be crucial to securing the intake of supplies and sustaining the flow of trade, and was going to be one of the key points in the development of the war. Restricting the opportunity of senators and their sons to invest at a time like that, in such a crucial field, was certainly a controversial political issue. It reveals the extent to which the tribune who put forward the bill and his backer of consular rank, had understood the dynamics at work and the developments that were likely to unfold in the future.

The question should then be asked whether the *plebiscitum Claudianum* established a new divide within the Roman economy and society, whereby the senators were to increasingly focus in accumulating ever greater portions of land, leaving to others the management of maritime affairs and the related activities. It seems logical to assume that subsequent changes in the mode of distribution of goods could not be determined simply by the initiative of a tribune: however,

⁴⁶ Plb. 6. 17; Liv. 23. 48; 25. 3; 34. 9. Polybius and Livy, evidently from different perspectives offer a unique narrative of the social changes that at the end of the third century and at the beginning of the second one determined a remarkable shift of power balance within the Senate. The army supplies, the increasing business around the construction of new ships and their exploitation offered to wealthy new men the opportunity to impose their presence not only in the social dynamics, but within the main Roman political body as well.

the plebiscite was moving in a direction that supported the establishment of a more dynamic and interconnected trade system. The law should not be viewed as a response to a contingent situation, but as an act designed to determine, according to its own logic, future developments in the domain to which it applied. The reference to the senators' sons shows that the measure provided clear limits for the present generation and for subsequent ones. It therefore aimed to build a regulatory system that structurally changed the position of some actors of the Roman economy at the end of the third century BC.

[1.2] *lex Metilia* (217 BC) [*de aequando magistri equitum et dictatoris iure Rotondi*]

Another tribunician law of the following year, which is only ostensibly disconnected from the *plebiscitum Claudianum*, the *lex Metilia* of 217 BC, should be understood within the same political context. The statute addressed a political matter of paramount importance more closely than the plebiscite of 218 BC, especially if one considers the position of the man who was the target of the bill promoted by the tribune M. Metilius: Q. Fabius Maximus.⁴⁷ A law on trade, clearly informed by economic considerations, was soon followed by a bill formulated in order to put serious obstacles on the path of one of the most important political figures of the time. Livy is again the only source for the *lex Metilia* (22. 25. 10-11). The historian attempted to present the real intention of the tribune, or, at least, the actual political aim of his legislative action:

[...] *quas ob res, si antiquus animus plebei Romanae esset, audaciter se laturum fuisse de abrogando Q. Fabi imperio; nunc modicam rogationem promulgaturum de aequando magistri equitum et dictatoris iure.*

For these reasons, if their ancient spirit had still been alive among the Roman *plebs*, he (i.e. the tribune) would have courageously proposed the abrogation of Quintus Fabius' command; as it was, he should put forward the adoption of a moderate proposal, for the elevation of the master of the horse to the same legal status of the dictator.

⁴⁷ On Fabius Maximus in late Republican historiography see Stanton (1971) 49-56.

In order to better contextualize and understand the beginning (*quas ob res*) of the Latin text, we have to refer to another passage in Livy: 22. 8. 5-6, where the historian detailed the moment and the process by which Fabius Maximus was created *dictator*:

[...] *et quia et consul aberat a quo uno dici posse videbatur, nec per occupatam armis Punicis Italiam facile erat aut nuntium aut litteras mitti [nec dictatorem populo creare poterat], quod numquam ante eam diem factum erat, dictatorem populus creavit Q. Fabium Maximum et magistrum equitum M. Minucium Rufum.*

Since the consul was absent from Rome, and only he could appoint a new dictator, nor was it easy to send a letter or a messenger to the whole of Italy, which was occupied by the Carthaginian army, nor had the Roman people the power to elect a *dictator*, the Roman people appointed Q. Fabius Maximus *dictator* and M. Minucius Rufus *magister equitum*, which had never been done before.

Between the two passages we can immediately note an important point: in one case (22. 25. 10-11) Livy refers to the *plebs* as the main political agent involved into this intricate constitutional matter, arguing that the tribune would have more effectively pursued his political goal if the *plebs* itself had found its *antiquus animus*. In the second text (22. 8. 5-6), where the historian discusses the very moment when Fabius Maximus was created *dictator*, the reference is to the whole of the Roman people. The political outcome of that event could potentially mean, for the tribune, isolation from his own political body, which had been involved, presumably by the Senate, into the process that had brought to the election of Fabius Maximus as new *dictator*. The first reason for the *lex Metilia*, therefore, could be searched exactly in the attempt of a part of the Roman political assembly to create a political distance between the tribunician magistracy and its political and social base.⁴⁸

The studies by Vervaeet and Bellomo are the most recent scholarly contributions on the *lex Metilia*. In spite of the considerable ability shown by Vervaeet in addressing the primary evidence, his discussion does not properly address the main historical and political features. Vervaeet pays little attention to the political and military context in which this piece of legislation should be contextualized. In this regard, Bellomo dealt with those two major aspects

⁴⁸ See De Martino (1973) 268-269; Hartfield (1982) 303-306; Brennan (2000) 43-45; Lesinski (2002) 131-158; Vervaeet (2007) 198-199; Ferrary (2012) 121-129; Bellomo (2017) 155-160. Among scholars there is uncertainty on which assembly voted for the election of the *dictator* of 217 BC. It would also be quite interesting to know who the magistrate that dealt with the *dictio* was. Hartfield (1982) argued that one of the praetors could have addressed that issue. Bellomo (2017), on the other hand, put forward the possibility that after the *creatio* there would have not been any *dictio*: this is a plausible hypothesis, based on the absence in Livy's account of any clear evidence in this regard.

with a more focused and productive approach, putting forward an effective historical scenario in which the political aims of Fabius Maximus were harshly opposed by the legislative action put in place by the tribune, whose political involvement was backed, as arguable, by a considerable part of the Roman Senate.⁴⁹

M. Metilius thought he could depose the dictator Q. Fabius Maximus from office, probably in order to gain an outstanding personal status to build upon during his further political career, especially backed by that part of the Senate that was set against the political and military determinations enacted by Fabius. The proposal probably was not put forward, at least not in accordance to the original formulation. In the same year, therefore, the magistrate decided to adopt a milder course of action, suggesting that the *magister equitum* and the *dictator* should have equal power (*par potestas*). Such a resolution would have led to the creation of a *collegium* reducing the powers of the dictator, using the time-honoured principle of collegiality that applied to the other magistracies in the traditional *cursus honorum*.⁵⁰ It may be argued that the *lex Metilia* directly influenced the long-term decline of the dictatorship, if not from a legal point of view (since the institution remained in existence), certainly in political terms. In fact, after 202 BC, the year of the dictatorship of C. Servilius Geminus (Liv. 30. 39), there were no more dictators until Sulla, whose dictatorship had its own distinctive characters which made it something very different from what it had been in the previous centuries.⁵¹ The evidence of Cicero in *leg. 2. 3. 9* is significant to this debate:

[...] *eumdem magistratum, ni interfuerint decem anni, ne quis capito. aevitatem annali lege servanto. ast quando duellum gravioresve discordiae civium escunt, oemus ne amplius sex menses, si senatus creverit, idem iuris quod duo consules teneto, isque ave sinistra dictus populi magister esto. equitatumque qui regat habeto pari iure cum eo quicumque erit iuris disceptator. reliqui magistratus ne sunt.*

⁴⁹ Vervae (2007) 210-213; Bellomo (2017) 156. Vervae does not put forward any clear historical background in which the political events of that year may be contextualized.

⁵⁰ On this concept of Roman constitutional theory see Mommsen, *RS* 59-92. On *par potestas* see Mommsen, *Röm. St.* 59: 'Beamte gleicher Gewalt (*par potestas*) sind sämtliche Collegen gegen einander, so weit sie nicht durch die eben erwähnten besonderen Vorschriften über die Abstufung des Imperium zu ungleichen Collegen geworden sind: also Consuln, Prätores, Censoren, Aedilen, Quästoren, Volkstribune, Kriegstribune unter einander. Die nähere Entwicklung des Begriffs so wie die Beantwortung der Frage, inwiefern im Collisionfall das eine dieser gleichen Imperien vorgeht, also wenigstens der Sache nach als imperium maius erscheint, ist im folgenden Abschnitt gegeben'. Here arises the question of how to cope with a strong desire of political power that both personalities showed from the outset. We should think of a stratagem to severely limit the institution of dictatorship, and, at the same time, an action to increase the political influence of the tribunes.

⁵¹ The last dictatorship *rei gerundae causa*, before that of Fabius Maximus in 217 BC, had taken place in 249 BC, when A. Atilius Calatinus was appointed *dictator*: Liv. *Per.* 19; Zonar. 8. 15. See Gusso (1990) 296; Lesinski (2002) 140-144.

No one shall be allowed to hold the same magistracy earlier than ten years since the last assignment. They must comply with time-restrictions imposed by the *lex annalis*. But if a more serious war or civil strife were to break out, a man with the same rights as the two consuls has to receive the power for a period not exceeding six months, if the Senate deems it fit. After being nominated under favourable auspices, he has to be the master (*magister*) of the people. The commander of the cavalry is equal to the dictator by law, and, whoever he may be, can take decisions in the legal domain. There shall be no other magistracies.

Cicero's text describes the establishment of the dictatorship as the response towards two basic needs: in case of a foreign war and, on the other hand, if the Republic has to cope with civil strife, both scenarios cannot be addressed using the ordinary methods.⁵² In the theoretical vision of Cicero the internal struggles have probably taken a gloomier aspect than the wars waged against foreign States. No doubt the period in which Cicero lived made him view the dictatorship as a magistracy that was inextricably linked to the imbalance suffered by the Republic, and as the most evident indicator of the degeneration of the whole political system. The dictatorship, from the beginning of its history, at the end of the sixth century, was conceived as an effective response to questions of purely military nature.⁵³ In time it turned into something very different, becoming an instrument of coercion, especially with respect to the social issues and instances represented by the popular classes of Rome. With particular regard to the third and second century BC, this predicament became increasingly pressing. However, one should wonder why a tribune of the plebs such as M. Metilius proposed a *rogatio* to define, or indeed to undermine the prerogatives (*imperium*) of Fabius Maximus, at a time when the external threat became imminent for Rome, because of the effectiveness of the military strategy put in place by Hannibal. Ferrary, developing the reconstruction put forward by Brennan, refuses to imagine that the bill of M. Metilius aimed to equalize the powers of M. Minucius Rufus and Q. Fabius Maximus. Whether that was the case, we should envisage a form of *imperium minus* for the *magister equitum*, something that we are not entitled to imagine, especially because of the complete absence of this eventuality in our sources (i.e.

⁵² Cf. Dyck (2004) 460: 'the evidence at our disposal for early dictatorships, if reliable, suggests that the need for unified command in a difficult war may have been the *causa efficiens*, whereas *discordiae civium* may have been emphasized in light of the experience of Sulla's dictatorship'.

⁵³ Drummond (1989) 190-192: 'the dictator was originally termed 'master of the army' *magister populi* (Cic. *Rep.* 1.63) while his subordinate (and appointee) was still known as the 'master of cavalry' (*magister equitum*) in the late Republic. [...] the titles of the dictator and his assistant, the restriction of the office to a maximum of six months and the accomplishments of those early dictators with the strongest claims to credence demonstrates that, as other ancient authorities supposed [Pomp. *Dig.* I, 2,2,18; Suda s.v. δικτᾶτωρ; cf. Livy 2. 18. 2 ff.], the office was specifically military in purpose'.

Livy). Secondly, both scholars interestingly pointed out that it is at least odd that no senator backed the tribunician bill promoting the political role of Minucius Rufus. The latter point is rather implausible, unless we think of a strategy on Livy's part, aiming to present the tribune of 217 BC as politically more isolated than he really was. This final point would not be so speculative, if we consider how often the historian attempted to diminish the role of the tribunician magistracy, especially when it was involved in political affairs in which a prominent figure like Fabius Maximus was involved.

Livy (22. 25. 3-4) discusses Metilius' stated motives:

[...] *tum M. Metilius, tribunus plebis, id enim vero ferendum esse negat: non praesentem solum dictatorem obstitisse rei bene gerendae, sed absentem etiam gestae obstare et in ducendo bello sedulo tempus terere, quo diutius in magistratu sit solusque et Romae et in exercitu imperium habeat.*

Then M. Metilius, tribune of the *plebs*, said that this was beyond any possible acceptable behaviour: not only had the dictator disallowed a successful strategy being put in place while he was present, but he even protested, now that the victory was won, and persisted in drawing out the war and wasting time, in order to remain in office longer, and to continue to be, both at Rome and in the army, in sole possession of command.

According to Livy, the tribune Metilius had, at first, threatened to deprive the dictator Fabius Maximus of his power, and later the same magistrate has opted for a middle ground solution, proposing the equation, from a legal perspective, of the functions of the *magister equitum* (M. Minucius Rufus, *cos.* 221) with those of the *dictator*.⁵⁴ In support of the uncertainty surrounding this piece of legislation, there is also the relevant issue regarding the *imperium*, which, in this case, was to be transferred to the *magister equitum*. The passage of Cicero quoted above does not include specific technical terms, and in fact rather tends to avoid them. Cicero speaks of *pari iure* ('with equal right') and adds *quicumque erit iuris disceptator* ('whoever he may be'). Polybius' account sheds some light on this problem. According to the historian of Megalopolis (3. 103. 3-6), in 217 B.C., Rome had two dictators:

διό καί τὸν μὲν Φάβιον ἠτιῶντο καὶ κατεμέμφοντο πάντες ὡς ἀτόλμως χρώμενον τοῖς καιροῖς, τὸν δὲ Μάρκον ἐπὶ τοσοῦτον ἠῤῥξον διὰ τὸ συμβεβηκὸς ὥστε τότε γενέσθαι τὸ μηδέποτε γεγονός, αὐτοκράτορα γὰρ κάκεῖνον κατέστησαν, πεπεισμένοι ταχέως αὐτὸν τέλος ἐπιθήσειν τοῖς πράγμασι. Καὶ δὴ δύο δικτάτορες ἐγεγόνεισαν ἐπὶ τὰς αὐτὰς πράξεις [...] τῷ δὲ Μάρκῳ διασαφηθείσης τῆς τε τοῦ πλήθους εὐνοίας καὶ τῆς παρὰ τοῦ δήμου δεδομένης ἀρχῆς αὐτῷ διπλασίως παρωρμήθη πρὸς τὸ παραβάλλεσθαι καὶ κατατολμᾶν τῶν πολεμίων.

⁵⁴ See the useful discussion of the political context in Brennan (2000) 43-49.

All therefore found fault with Fabius, accusing him of not making a bold use of his opportunities, while Marcus's reputation rose so much owing to this event that they took an entirely unprecedented step, investing him like the Dictator with absolute power, in the belief that he would very soon put an end to the war. So, two Dictators were actually appointed for the same field of action [...] when Minucius was informed of his popularity at home and the office given to him by the people's decree, he grew twice as eager to run risks and take some bold action against the enemy.⁵⁵

This account would tend to corroborate Livy's account of the *lex Metilia*. However, there are other authors who do not seem to be as definitive on this point as the historian of Megalopolis. Plutarch (*Fabius* 9. 3) also touches upon the matter:

τὸν δὲ Μινούκιον ἐψηφίσαντο τῆς στρατηγίας ὁμότιμον ὄντα διέπειν τὸν πόλεμον ἀπὸ τῆς αὐτῆς ἐξουσίας τῷ δικτάτορι.

They voted that Minucius should have an equal share in the command and should conduct the war with the same powers as the dictator.⁵⁶

Plutarch's source, in which the role of Metilius receives considerable attention, reports that the tribune proposed that Minucius should have the same position as Fabius and that, *de facto*, he had the same powers as the dictator. However, he does not speak of two dictators at work at the same time on the political scene. Polybius' position requires closer scrutiny. There are two plausible reasons for it: the first is merely a factual one, while the second could have some significance from the theoretical standpoint. A dedicatory inscription from Rome survives (*CIL* I², 2. 607) in which we can read:

Hercolei sacrum M. Minucius C. f. dictator vovit

M. Minucius dictator, Gaius' son, has dedicated this to Hercules.⁵⁷

⁵⁵ English translation has been taken from the Loeb Classical Library.

⁵⁶ English translation has been taken from the Loeb Classical Library.

⁵⁷ This inscription was found in 1862 near the basilica of San Lorenzo Fuori le Mura: *EAGLE*, Schedae numerus EDR115585. It is undoubtedly authentic and can be dated at the end of the third century BC. The M. Minucius mentioned in the inscription must be, as a matter of fact, the same M. Minucius of the *lex Metilia*, since we do not have any evidence for any other M. Minucius who held the dictatorship: Bellomo (2017) 158.

The identification of the M. Minucius mentioned in the inscription with the *magister equitum* of 217 BC could support Polybius' position about the simultaneous presence of the two dictators.⁵⁸ Moreover, the historian from Megalopolis had his own distinctive intellectual background and agenda, and in his narrative of the events he probably had no hesitation in sketching a sort of diarchy, perhaps reminiscent of the dual Spartan kingship. Polybius set his discussion on a different level than the other sources: he aimed to provide a clear account of the Roman constitutional system. The dictators were two. He does not use a periphrasis and does not refer to legal formulations of compromise. This is further confirmation of his profoundly Greek perspective and its application to the Roman constitutional system.

Let us return to Livy's text. A linguistic analysis may yield useful results. The Roman historian repeatedly uses the Latin verb *aequare*: at 22. 25. 10, *de aequando magistris equitum et dictatoris iure* ('about the equalization of the powers of the *magister equitum* and the *dictator*'); at 26. 7, *acceptisque in ipso itinere litteris senatus de aequato imperio* ('during the journey, he received a letter from the Senate, by which he was notified of the decision made concerning the equalization of their powers'); in 27. 5, *itaque quo die primum congressus est cum Q. Fabio, statuendum omnium primum ait esse quem ad modum imperio aequato utantur* ('Therefore, at the first meeting with Q. Fabius, he proposed that the first point on which a decision was necessary was how to make use of the shared power'). We are dealing with a legal device, aimed to overcome a moment of impasse that had arisen within the Roman political dynamics, clearly considering the crucial stage at which Rome was within the extremely serious trend of the war against Hannibal. The difference between the *dictator* and the *magister equitum* is therefore only one of title, a nominal discrepancy; de facto, considering the concrete attributes of power, both magistrates are on the same level.⁵⁹

⁵⁸ On this issue see Walbank (1999) 434: 'Livy (22. 25. 10), however, speaks of '*rogationem... de aequando magistris equitum et dictatoris iure*'; and Minucius' dedication to Hercules during his dictatorship (*CIL*, I², 2, 607) may refer to an earlier dictatorship, e.g. *comitorum habendorum causa* in 220'. Dorey (1955) 92-96 suggests, indeed, that the recorded inscription could not refer to the co-dictatorship of 217 BC: 'It can thus be maintained that Minucius was Dictator (presumably *comitorum habendorum causa*) shortly before the outbreak of the Second Punic War, and that the dedicatory inscription *CIL* I², 2, 607, need not refer to his alleged co-dictatorship in 217'. The point made by Dorey and Walbank is not convincing. Firstly, the dedicatory inscription found in San Lorenzo Fuori le Mura confirms that Minucius was dictator in the year 217 BC, at the time of Fabius' dictatorship. There is no reason to imagine, before the outbreak of the Second Punic War, a dictatorship *comitorum habendorum causa* held by Minucius. Secondly, the literary sources do not offer any support whatsoever to this kind of historical reconstruction.

⁵⁹ Dorey (1955) 94: 'the difference in *imperium* between two different officials, whether they were Consul and Praetor or Dictator and Magister Equitum, was a difference not in kind but in degree. Moreover, this very difference in degree did not necessarily correspond to any difference in office'. On the concept of *imperium* and, more specifically, with regard to this case of *imperium maius*, see Ehrenberg (1953) 113-136, building on Last

The question of the election of the dictator and the *magister equitum* and the decisive intervention of the people is a major issue that deserves to be underlined and discussed. This decision could be referred to the desire to make sure that both men, who had to save the country from incoming disaster, receive all the support that they might need. P. Pinna Parpaglia stresses the fact that this particular procedure deprived the dictator of his traditional prerogative to decide who his *magister equitum* would be, and puts forward the hypothesis that some more powerful elements could push for such an important deviation from the regular constitutional procedure.⁶⁰

Regarding the assembly that elected Q. Fabius Maximus (*cos.* 233, 228) and M. Minucius Rufus (*cos.* 221) *interregni causa*, some aspects must be considered. In 210 BC, when the consul M. Valerius Laevinus did not accept to nominate a possible candidate to a dictatorship *comitiorum habendorum causa*, the Senate wanted him to ask the people whom they wanted to be designated as *dictator* by the consul.⁶¹ It is difficult to distinguish and understand precisely which assembly Livy is talking about, whether the *comitia centuriata* or the *comitia tributa*.⁶² Following Livy's account in 22. 7. 14, we could assume that this decision was taken by the praetors and the Senate, and that the election was probably conducted by M. Aemilius, the *praetor urbanus*. After the election of Fabius and Minucius, the college of the *pontifices* sent a message to the Senate, in which they recommended giving the praetor M. Aemilius a full set of religious prerogatives in order to supply to the absence of the new dictator

(1947) 157-164. See also Brennan (2000) 155 & 313 n. 7; Ferrary (2000) 350; Vervaeke (2009) 412-423; Vervaeke (2014) 212. It seems that also in his last work on the complex issue of the *imperium*, Vervaeke does not completely focus his attention on the two main questions that the *lex Metilia* addressed: firstly, the constitutional issue, in accordance to the balance of power within the Roman Republican system, secondly, the mere, but no less significant, political fashion of the statute itself, which introduced a major juridical problem, whose political consequences had to be confronted a century later.

⁶⁰ Pinna Parpaglia (1969) 221-241 suggests that in this way M. Minucius reached 'una posizione di virtuale indipendenza dal *dictator*' and that 'l'indubbio effetto di una congiunta nomina comiziale del *dictator* e del *magister equitum*... tende, anzi, a svincolare quest'ultimo da ogni rapporto col *dictator* e a porlo... per lo meno in una condizione di indipendenza sostanziale pur non intaccando, sul piano puramente formale, il legame di subordinazione fra il *magister equitum* e il *dictator*'. A clever argument, however the juridical issue of the *potestas* should have been stressed more strongly, hence it was the most relevant point made by the bill put forward by the tribune Metilius.

⁶¹ Livy 27. 5. 14-17: *M. Lucretius tribunus plebis cum de ea re consuleret, ita decrevit senatus ut consul priusquam ab urbe discederet populum rogaret quem dictatorem dici placeret, eumque quem populus iussisset diceret dictatorem* ('in the meantime the tribune of the *plebs* M. Lucretius dealt with this question, so the Senate decided that the consul, before leaving the city, should ask the people whom they preferred to be elected as dictator, and, consequently, that the same consul will nominate the dictator following the people's will').

⁶² Münzer *RE* (1932) 1960. He seems to believe that the *comitia centuriata* who modified Minucius' official role. Münzer also says that '«[d]aher stand M. von vornherein fast als Kollege neben Fabius und wird von Polybios schon in dieser Zeit regelmäßig als sein *συνάργον* bezeichnet.'

Fabius Maximus.⁶³ In 22. 31. 8-11, however, Livy makes a more precise statement about the role of Fabius, saying that all the annalists declare that Fabius was dictator in his military campaign against Hannibal, and that Coelius wrote that he was the first to be created dictator by the People.⁶⁴ In 22. 23. 1-3, Livy notes that Q. Fabius put in place a different military strategy, which improved the difficult predicament of the Roman army. Despite the good results that Fabius' strategy yielded, his decisions created discontent among the Roman citizens and the soldiery, especially when Fabius temporarily came back to Rome, leaving to his *magister equitum* M. Minucius the military leadership.⁶⁵ It is important to understand the proposal of the tribune of the *plebs* M. Metilius in this context of controversy and hostility from different sectors of Roman society. The tribune, after a series of very strong criticisms to the conduct of the dictator, proposed an intermediate solution: the equation of the political and military power of the *magister equitum* and the dictator.

The position of Fabius is also unclear. He refused to make any statement to the people in order to support a position that, as he knew well, was not much appreciated (*in actione minime populari*). His position was certainly not strong within the Senate either. After having presided over the election of M. Atilius Regulus to the consulship, the dictator left Rome to join the army, exactly the day before the vote of the tribune's bill, with the aim to avoid any question about the *imperium*.⁶⁶ We can argue that the intent of the tribunician bill was not just to moderate the power of the dictator, but to reshape the remit of *consulare imperium* and *dictatorium imperium*.⁶⁷ At this point it is quite clear that the dispute around the bill put forward

⁶³ Livy 22. 9. 11: *senatus, quoniam Fabium belli cura occupatura esset, M. Aemilium praetorem, ex collegii pontificum sententia, omnia ea ut mature fiant curare iubet.* ('the Senate, due to the very serious military conjuncture with whom Fabius had to cope with, following the ruling of the pontifical college, orders that the praetor M. Aemilius should take care of all these measures right away').

⁶⁴ Livy 22. 31. 8-11: *omnium prope annales Fabium dictatorem adversum Hannibalem rem gessisse tradunt; Coelius etiam eum primum a populo creatum dictatorem scribit. sed et Coelium et ceteros fugit uni consuli Cn. Servilio, qui tum procul in Gallia provincia aberat, ius fuisse dicendi dictatoris; quam moram quia exspectare territa tanta clade civitas non poterat, eo decursum esse ut a populo crearetur qui pro dictatore esset.* ('nearly all the annalists confirm that Fabius was dictator during his campaign against Hannibal. Coelius also writes that he was the first to be created dictator by the people. But, Coelius as the others did not recall that the right to nominate the dictator belongs just to the consul, that in such case was Cn. Servilius, who was far from Rome, in the province of Gaul. Since the city, in such a dramatic situation, could not effort any delay, it was established that the people will create a man with dictatorial prerogatives'). In this passage Livy makes a clear republican statement, in a period in which all the established constitutional values and, what is most, regulations were deprived of any real political substance.

⁶⁵ For this period of Fabius Maximus' stay in Rome, during which he dealt with religious matters, see Livy 22. 18. 8; 22. 24. 1; 25. Plb. 3. 94. 9.

⁶⁶ Liv. 22. 25. 16: *ne praesens de iure imperii dimicaret.*

⁶⁷ The *genera imperii* were three: the *praetorium imperium*, the *consulare imperium* and the *dictatorium imperium*. In *Rep.* 2, 56, Cicero defines the dictatorship as a *novum genus imperii, proximum similitudine regiae*.

by the tribune revolved around the possibility for a *magister equitum* to hold the *imperium*. There is, in fact, a strong difference between the term *ius*, which is used in Cicero, and the concept of *imperium*. Fabius Maximus, as we have seen, left Rome in order to avoid a public debate on the *imperium*, arguing that his effective power could be modified or, perhaps, reduced by the initiative of the tribune.⁶⁸ In this regard, in order to understand what the *imperium* of the *magister equitum* amounted to, we have to refer to Livy's account (23. 11. 10), where the historian says that it was *consulare imperium*. Another passage of Livy (6. 39. 3) is also very meaningful: the Roman historian presents the dictator P. Manlius, who declared C. Licinius, who was *tribunus militum consulari potestate* and a plebeian, his *magister equitum*. The Senate was offended by this initiative of the dictator, but he excused himself invoking his close friendship with Licinius and arguing that a *magister equitum* had an authority no greater than that of a consular tribune: *simul negantem magistri equitum maius quam tribuni consulari imperium esse*. The passage in question shows that the figure of the *magister equitum* was perceived as more powerful than the consular tribunate, in spite of the latter carrying *consulare imperium*. Varro (*L. L.* 5., 82) discussed this problem from a linguistic standpoint:

[...] *dictator, quod a consule dicebatur, cui dicto audientes omnes essent. Magister equitum, quod summa potestas huius in equites et accensos, ut est summa populi dictator, a quo is quoque magister populi appellatus. Reliqui, quod minores quam hi magistri, dicti magistratus, ut ab albo albat.*

Dictator, because he was named by the consul as the one to whose *dictum*, 'order', everybody should obey. *Magister equitum*, 'master of the cavalry', because he has supreme power over the cavalry and the replacement troops, just as the dictator is the highest authority over the people, from which he also is called *magister*, but of the people and not of the cavalry. The remaining officials, because they are inferior to these *magistri*, masters, are called *magistratus*, magistrates, derived just as *albat*, whitened, white-clad is derived from *albus*, white.⁶⁹

Polybius (3. 87.9) and Plutarch (*Ant.* 8. ,3) also claim that the *magister equitum* is subordinate to the dictator, but becomes his successor (διάδοχος) and the first in power (πρώτη καὶ μόνη) in case of absence or if the dictator is occupied in other affairs. Therefore, from a constitutional point of view, the consul also had a subordinate role to the *magister equitum*. The legal

In the process, he makes a very significant and remarkable parallel with the monarchic institute, despite the strong rejection of Roman political theory towards the monarchy.

⁶⁸ Kunkel & Wittmann (1995) 309 state that the *magister equitum* could not celebrate a public triumph 'als Gehilfen des Diktators'.

⁶⁹ The English translation is from the Loeb Classical Library.

positions of the dictator and the *magister equitum* after the *lex Metilia* were virtually on the same footing. The tribunician bill, in fact, did not only reframe the *consulare imperium* of Minucius as a *dictatorium* one, but also clarified from a legal perspective that both of them were endowed with *par imperium*.⁷⁰ We can argue that, in the same way, the political relationship between Fabius Maximus (*dictator*) and M. Minucius Rufus (*magister equitum*) was comparable to the dynamic that existed between the two consuls: their *genus imperii* was the same.

[1.3] *lex Metilia* (217 BC) [*de fullonibus dicta* Rotondi]

Only a year after the *plebiscitum Claudianum*, the tribune M. Metilius put forward the law concerning the regulation of the *fullones*' trade, a bill aimed to address a specific sector of the Roman economic dynamics, and the production of goods at the end of the third century BC. The bill affected both the Roman economy, on a local and regional level, and the long-standing debate on moral values, their complex significance, and their political impact in the years of the Hannibalic War.⁷¹

We have just one literary source directly addressing the law of 217 BC: a passage of the Elder Pliny's *Natural History* (35. 17 (57) 197). The tribune who promoted the bill was almost certainly the same M. Metilius who, in the same year, had dealt with the statute concerning the abrogation of Fabius Maximus' dictatorship, attempting to level the political prerogatives of the *magister equitum* Minucius with those of the *dictator*. This piece of legislation concerned, as we have seen in the previous section, a major constitutional matter, aimed to weaken the political strength and the troubling prominence of Fabius Maximus. The sumptuary bill of the same year, which addressed the regulation of the textile industry, should be regarded as a further legislative development of the political commitment that the tribune had already shown in targeting Fabius' overwhelming political influence.⁷² Livy, who at 22. 25 mentioned the

⁷⁰ On this see Brennan (2001) 45: 'on balance, the whole incident of M. Minucius Rufus in 217 seems too uncertain for us to know whether the master of the horse held *imperium* by the time of the Hannibalic War. Even if that could be shown, I must emphasize that it need not imply the same for the period down to 366. ... A passage of the ideal constitution contained in Cicero's *De Legibus* seems to equate the power of the two'.

⁷¹ Flohr (2013).

⁷² On Metilius see *RE* s.v. *Metilius* (1) 1397; Scullard (1951) 48; Càssola (1962) 213-215, 361-363. Càssola argued that the legislative action put forward by the tribune Metilius in 217 BC was backed by the political influence of

name of the tribune and his legislative choices on the political and constitutional issues that Rome was experiencing, does not make any reference to the bill on the *fullones*.⁷³ This gap in Livy's account confirms the arbitrary historiographical method pursued by the historian in selecting his material, especially if we consider the details he singled out in presenting the question of the dictatorship of 217 BC.⁷⁴

The summary of the law, in spite of its brevity, offers some significant aspects to deal with, especially considering, as mentioned above, the connections with the bills put forward in the same chronological span, involving the major economic issues of the time. The preliminary questions will concern the relevance, at such a time, of a law dealing with clothes' luxury, the technical procedures to be adopted by the *fullones*, and, above all, the authorship and the date of the statute. Before doing so, however, it is essential to directly address the account we do have.

[...] *est et alius Cimoliae (cretae) usus in vestibus. nam Sarda ... est vilissima omnium Cimoliae generum; pretiosior Umbrica et quam vocant saxum. ... Umbrica non nisi poliendis vestibus adsumitur. neque enim pigebit hanc quoque partem adtingere, cum lex Metilia exstet fullonibus dicta, quam C. Flaminius L. Aemilius censores dedere ad populum ferendam. adeo omnia maiores curae fuere.*

There is also another way to use clay for clothes. As a matter of fact, from Sardinia comes the cheapest kind of clay, while the one from Umbria is more valuable, and is called stone [...] the second one is used to wash vestments. It will not represent a problem the fact that we deal with this matter, since we can refer to the *lex*

the consul Flaminius, who already in 232 BC, during his office of tribune, openly championed the economic interests of the rural plebs against the urban *plebs*: 'la legge Metilia, lungi dal provare la sollecitudine di Flaminio per gli artigiani e gl'imprenditori della plebe urbana, conferma l'esistenza di un antagonismo fra costoro e il cetto contadino' (214-215). Càssola's perspective seems to create a division within the complex social and political body of the Roman *plebs*. See Clemente (1981) 5, who correctly stressed the uncertainty of the economic aims of the statute, and, at the same time, emphasized the role played by Flaminius, whom he regarded as the political champion of the whole legislative tribunician production of the years 218-217 BC. Zanda (2011) 114 is even more cautious, and prefers a merely technical interpretation of the bill of 217 BC, rejecting any further and deeper explanation of its political and social implications.

⁷³ On the *fullones*' position and standing in Roman times across a broad diachronic perspective, see Bradley (2002) 21-22, Flohr (2003) 447-448 and Flohr (2013) 58, where Bradley's distinction between the Roman and the medieval periods is accepted: '[...] in Roman times [...] *fullones* generally seem to have dealt with finished garments, and not with raw cloth'.

⁷⁴ Develin (1979) 270-272; Ferrary (2012) 129; Vishnia (2012) 33-37. Vishnia offers a list of the passages where Livy directly mentioned the political career of Flaminius, starting from the time of Flaminius' tribunate (21.63.8), when the *certamina* with the Senate began. It is very unlikely, as shown by the numerous passages in books 21-22, where the historian makes clear reference to Flaminius, that Livy does not offer any account of the second law put forward by the same tribune in 217 BC.

Metilia, concerning the work of the fullers, which the censors C. Flaminius and L. Aemilius brought to the people. Therefore, our ancestors addressed every issue.⁷⁵

The first problem we find in this account is the date of the law and its real political backers. Pliny tells us, in fact, that there was a *lex Metilia*, dealing with the *fullones*' activity, which the censors C. Flaminius and L. Aemilius put to the consideration of the people (*dedere ad populum ferendam*). There are no doubts that the censors of 220 were Flaminius and Aemilius; it is less certain that M. Metilius was the tribune of that year. Broughton cautiously maintains that the tribunate of 220 BC was held by M. Minucius, the same man that, as we have seen, we find again in 217 BC with Flaminius as consul.⁷⁶ Münzer argues that Minucius held the tribunate twice: the first one in 220 BC, during the censorship of Flaminius, the second in 217 BC, when Flaminius was consul.⁷⁷ Rotondi referred to the law using these words: 'probabilmente plebiscito del tribuno M. Metilius'.⁷⁸ If we accept that in the year 220 BC the tribunate was held by M. Metilius, and that the law was a plebiscite, we should ask why in Pliny's account we find the statement *censores dedere ad populum ferendam*. That seems, at least, a strange formulation, which would lead us to envisage an initiative put in place by the censors, rather than a tribunician project. If we pursue, for a moment, this path, we find, as a matter of fact, that the question addressed by the statute was quite close to the remit of the censorial duties, and even more so if we consider more closely the censors of the year 220 BC, especially C. Flaminius. In this regard, it is important, in order to get a better understanding of the law, to investigate what the political interests of Flaminius in regulating the activity of the *fullones* could have been. In 232 BC, as previously mentioned, Flaminius held the tribunate.⁷⁹ He addressed a crucial question, particularly at the end of the third century, in a crucial moment for the Republic under both the military and political standpoint: the distribution of land in the *ager Gallicus et Picenus*, enacted by the *lex Flaminia* (Polyb. 2. 21.7-8; Cato. fr. 43 Peter; Cic. *Sen.* 11; *Inv.* 2. 52; *Acad.* 2. 13; *Brut.* 57; *Leg.* 3. 20; Liv. 21. 63. 2; Val. Max. 5. 4. 5).⁸⁰ The

⁷⁵ Bradley (2000) 249. He stresses the relevance of Umbria especially for land trading: 'land trade through Umbria was very important, and in many ways its land-locked position made it a crossroads for trans-Italy commerce rather than a backwater, leading to the richness of the aristocratic graves discussed above'.

⁷⁶ Broughton (1951) 236.

⁷⁷ Münzer, *RE* (2) 1957-1962.

⁷⁸ Rotondi (1911) 252.

⁷⁹ Plb. 2.21.7. See Beck (2005) 244-269 for an accurate and comprehensive account of Flaminius' career.

⁸⁰ See Tibiletti (1948) 180-192; Bleicken (1955) 28-30; Fraccaro (1957) 191-196; Càssola (1962) 242-243; Forsén (1991); Roselaar (2010) 89-113, where the scholar offers a detailed account of land distributions in the Middle-Republic and of their political implications in order to gain political power.

opposition of part of the Roman Senate to that project was strong, but not successful. Polybius singled out that episode as the beginning of the decline (moral and political likewise) of the Roman people.⁸¹ The impact of Flaminius' tribunate has been discussed by prominent scholars, with much emphasis being placed on the strenuous opposition of part of the Senate, and the significance of the *ager publicus* to the Roman nobility.⁸² However, there is no doubt that the economic aspect has to be linked with the political implications of the policy put in place by Flaminius during his tribunate. The position of Fraccaro, who argued that the Senate considered the distribution of land promoted by the tribune as a first step towards the granting of the Roman citizenship to the same people who had previously obtained the distribution of the *ager publicus*, offers useful insights.⁸³ It is by pursuing this approach further that the study of the *lex Metilia* of 217 BC can offer the most interesting results.

The approach of Bradley, Zanda, and Flohr does not yield any better understanding of the statute of the tribune, firstly because of their overwhelming focus on the technical aspects of the bill itself, which has to be considered as the first element of a longer debate, and secondly for their refusal to recognize a clear policy behind the legislative initiative of Metilius.⁸⁴ The tribunician bill that Pliny's account presents as a legislative initiative of the censors of the year 220 BC, Flaminius and L. Aemilius, aimed to pursue a double path: on the one hand, the

⁸¹ Plb. 2.21.8: Γαίου Φλαμνίου ταύτην τὴν δημαγωγίαν εἰσηγησαμένου καὶ πολιτείαν, ἣν δὴ καὶ Ῥωμαῖοις ὡς ἔπος εἰπεῖν φατέον ἀρχηγὸν μὲν γενέσθαι τῆς ἐπὶ τὸ χεῖρον τοῦ δήμου **διαστροφῆς**. ('Gaius Flaminius was at the origin of this popular policy, that, it is possible to be said, has been the beginning of the moral and political deterioration of the common people').

⁸² Meyer (1910) 392-393 explained the senatorial opposition to Flaminius' land distribution as the result of strong economic interests in securing control over the *ager publicus* in Picenum. The same historical perspective emerges from De Sanctis (1967) 332-334, even if he recognized in Flaminius' legislative action during his tribunate a wider and more complex political project, aimed to promote new settlements of landowners who would eventually become entitled to the Roman citizenship. Despite the scarcity of primary evidences for the last two decades of the third century, it seems plausible to think that the tribune of 232 BC attempted to use the political prerogatives of his magistracy in order to support the social developments that had already started in the aftermath of the First Punic War.

⁸³ Meyer (1961) 521 n. 3 challenged the point made by Fraccaro (1919), who argued that in 241 BC the Roman citizenship had been awarded to a part of the population of the Sabina and Picenum. It is worth stressing that in that case the political and legislative action had been taken by the whole of the Senate. The differences with the year 217 BC are significant, first of all because in this very moment the point was made not by the Senate, but by the consul Flaminius, and the tribune Metilius. On this point see also Bispham (2007) 76-87, who helpfully discusses the social and political groupings at the end of the third century against the background of the political links between local communities and prominent figures in Rome.

⁸⁴ Bradley (2003) 37 briefly refers to the law summarised by Pliny without any historical contextualization of the bill itself: 'Fullers also presented something of a legal minefield'. Zanda (2011) 113-114 does not attempt any analysis of the tribune's action. Flohr (2003) 449-450 and (2013) 309-318 gives a reconstruction of the role of the fullers in Roman society, especially in the urban context, but does not discuss the situation in Rome in the late third century BC.

creation, through the political involvement of the tribune, of a stronger social base for the consul of the year 217 BC, Flaminius again, who had to rally around himself a cohesive, supportive and committed sector of the Roman society. This interpretation of the statute, therefore, makes the hypothesis of a clash between the interests of the urban *plebs* and the rural *plebs*. The whole of the Roman *plebs* was targeted by the strategy of Metilius and Flaminius. Secondly, the fact that in Pliny the censors are the political protagonists of a legislative action could be explained not as an historical error, but as the account of an event that did indeed take place. It is not by chance that one of the two censors was Flaminius, who in 217 BC, as consul, backed the same bill that he had supported three years earlier. In this sense, the clause *censores dedere ad populum ferendam* becomes perfectly intelligible.⁸⁵ The legislative involvement of the tribune Metilius in 217 BC definitely served the political goals of Flaminius, especially because his interests matched with the critical military situation of Rome. The sumptuary law, regulating the activity of the *fullones*, represented an important opportunity for the consul and the tribune to put in place a shared political project, aimed to create a new and strong social and economic support to their wider strategy.

[1.4] *lex Minucia* (216 BC) [*de triumviris mensariis* Rotondi]

As we have seen, the three laws put forward by the tribunes of the plebs in 218 BC and 217 BC dealt with a fairly wide range of matters. Two of them, the *plebiscitum Claudianum* (218) and the *lex Metilia* (217), directly addressed relevant economic issues. This legislative trend was also confirmed in the following year, when the tribune M. Minucius Rufus put forward the *lex Minucia*, whose first aim was to create a special political and financial committee of three men (*triumviri*) in order to deal with the shortage of silver.⁸⁶ This piece of legislation deserves

⁸⁵ Astin (1990) 29 stresses a pivotal aspect of the censorship, especially if we link his words with the analysis of the bill of 217 and the political involvement of the censors in the year 220 BC: '[...] in Rome as elsewhere public authorities, including censors, sometimes took action consciously directed towards objectives which today would be termed –economic- or –socio-economic'. Flaminius' action, backed in 217 BC by the tribune Metilius, was definitely a socio-economic initiative, to be contextualized, nevertheless, in a wider political landscape in which the tribunate and the consulship acted together.

⁸⁶ On Minucius see Münzer, *RE*, coll. 1957-1962 where his political role as a tribune of the *plebs* receives little attention and the focus is on the constitutional question involving Minucius as *magister equitum* and *dictator pari iure* under the *lex Metilia* of 217 BC. On the *lex Minucia* see Mommsen (1871) 257-260, who offered a wider historical interpretation of the *triumviri*'s specific duties and put forward a very convincing hypothesis: the

a close analysis, mainly in two complementary directions. First, it will be of primary importance to understand the political context in which the special committee was put in place, especially in light of the fact that the praetorship and the censorship already had specific competences in economic and financial matters. Secondly, attention will have to be paid to what the duties of the *triumviri mensarii* were, and whether their role had been devised within a short-term perspective, only intended to overcome a phase of military crisis that the Republic was going through.

Livy reports the establishment of this board in 23.21.7:

[...] *et Romae quoque, propter penuriam argenti, triumviri mensarii, rogatione M. Minucii tribuni plebis, facti L. Aemilius Papus, qui consul censorque fuerat, et M. Atilius Regulus, qui bis consul fuerat, et L. Scribonius Libo, qui tum tribunus plebis erat.*

And in Rome, due to a shortage of silver, was also created, as the result of the legislative intervention of the tribune M. Minucius, a committee of *triumviri mensarii*: L. Aemilius Papus, who had been consul and censor, M. Atilius Regulus, who had been consul twice, and L. Scribonius Libo, who at that time was tribune of the *plebs*.

Livy's account, in spite of its brevity, provides details that are of primary relevance in addressing the two main points mentioned above. However, an important preliminary issue emerges from the Latin text. At the very beginning of his account, Livy says *et Romae quoque*: 'also in Rome' [...]. From this detail it is possible to infer two interesting elements: firstly, Rome was not the only place within the peninsula affected by lack of money, secondly, the Urbs was in all likelihood not the first community to allow the creation of a special commission

triumviri mensarii were bankers, who were able to define what investments could be useful for the economic development of the Roman financial interests. Bleicken (1955) 47-52 agreed with Mommsen's perspective, and was the first scholar to envisage a possible direct link with the figure of the Greek *τραπεζίτης*. Bogaert (1966) 26-31 clearly underlined the historical connections between the role of the *argentarii* and the juridical and economic relevance of the *triumviri mensarii* in 216. Andreau (1987) 234-237, 569 developed the theoretical points made by Bogaert, and saw a close interconnection between the Greek monetary practice, and the Roman financial context at the end of the third century. Lintott (1987) 42 criticized the view of Mommsen and Bleicken, stressing that the committee was created only with the specific and limited intent of dealing with the scarcity of silver: a temporary committee for a rather extraordinary contingency. Andreau (1999) 30-49 put forward a remarkable point on the political and economic role of the *argentarii mensarii*, whom he regarded as key professional protagonists of the development of Roman trade across the whole Mediterranean Sea during the perilous time of the Second Punic War. Ferrary (2012) 143-144 pointed out the pivotal issue of the legislative procedure that in Republican Rome was enacted in order to establish an exceptional commission. Kay (2014) 124-126, 240 focuses on the later part of the Roman Republic, when the profession of the *argentarii mensarii* as professional bankers was well established. The *lex Minucia* has not yet been included in the *LEPOR* catalogue.

to deal with this issue. Furthermore, Livy does not provide any information about the *senatus consultum* that, in accordance to Roman legal practice, should have been issued before the tribunician proposal of a *plebiscitum* on a matter of this kind was put forward. As Ferrary has pointed out : ‘l’élection d’une commission de magistrats extraordinaires est indissociable de la ratification du s. c. par un pl. sc.’⁸⁷ Livy somewhat simplifies a much more complex political and legislative landscape. In order to refer to the elections of those magistrates, he says *facti*, compromising the close and absolutely meaningful legislative interconnection between the Roman Senate and the political engagement of the tribune Minucius.⁸⁸ It would be quite interesting to know exactly for what reasons the historian did not refer to that juridical and legislative connection. It is possible that the practice of distancing the legislative action of the tribunes from the Senate’s political role was aimed to contain the relevance of the tribunate, implicitly describing such magistracy as an outsider in the wider Roman political framework. Even more, Livy’s choice to be silent on the *s. c.*, of which he was most probably aware, was a clear and deliberate attempt to weaken the political and legal impact and significance of the tribunician bill itself, stressing instead the impact of the tribune’s legislative act, rather than the legislative and juridical process that brought to the election of the *triumviri mensarii*.⁸⁹

This preliminary discussion of Livy’s interpretation of the Roman legislative process take us to the first of the two main points defined above: the role of the tribunes in shaping the developments of the Roman economic policy, and the political and military reasons for the exclusion of the praetorship from those kind of pivotal deliberations.⁹⁰ The economic and financial significance of the censorship was partly preserved with the inclusion of a former censor within the committee (i.e. L. Aemilius Papus). The account specifically refers to a close and, as one may say, strategic political relationship between the consulship and the tribunate:

⁸⁷ Ferrary (2012) 143.

⁸⁸ This misunderstanding of the Roman legislative procedure is not unparalleled in Livy. We can refer to another case in which the historian failed to mention the specific role played by the Senate. At 23.31.9, in the wider context of the military events related to the Second Punic War, Livy says: [...] *interea duumviri creati sunt Q. Fabius Maximus et T. Otacilius Crassus aedibus dedicandis, Menti Otacilius, Fabius Veneri Erucinae.*

⁸⁹ Ferrary (2012) 143-144.

⁹⁰ On the role of the praetors in the economic and financial domain see Bunse (2002) 30-37. Beck (2005) 63-70 points out what surely was, since the third century BC, the main reason for that major changes within the prerogatives of the praetorship: the priority of military tasks. On the same point, Brupbacher (2006) 115-120, who saw in the political competition between consuls and praetors for the military command, the main explanation for the minimal involvement of praetors in economic issues, especially at the end of the third century. With specific regard to the last two decades of the third century see Bergk (2011) 71-74, who underlines how the consulship, unlike the praetorship, became, during the second half of the century, even more attractive for ambitious political players, especially focused on achieving high public office, and also with specific interests in affecting the Roman legislative process.

the tribune Minucius acts as the proponent of the bill (*rogator legis*), L. Aemilius Papus is a former consul (225) and censor (220), M. Atilius Regulus, twice consul (227 and 217, when he was consul *suffectus*), and L. Scribonius Libo, tribune in office.⁹¹ In this respect, from a merely political standpoint, the statute put forward by the tribune Minucius represented a decisive development in the nature itself of the tribunate: a further confirmation, if one was needed, of the misleading historical view according to which the tribunate was a revolutionary magistracy until 287 BC, and then, in the middle phase of the Republic, a political instrument in the hands of the Senate.⁹² In 217 BC the tribunate proved its ability to make a clear and effective legislative impact, pushing forward its political prerogatives, in order to directly affect a sensitive and crucial matter like the availability of silver was at that time.⁹³ The political coalition that the tribune Minucius was able to build around his bill implied a patent ability in bringing together three key constitutional actors: the consulship, the censorship, and the tribunate itself. In 216 BC, the military contingency was at such a pivotal point that it could be shrewdly exploited by the tribune to exclude the praetorship from the special commission of the *triumviri*. The tribune's policy was remarkably successful, particularly if we consider that Minucius was the same man that, in the previous year, had been appointed *dictator pari iure* together with Fabius Maximus.

This whole set of events brings us to the second aspect of the *lex Minucia*: the direct financial aims of the statute itself. In this regard, the political elements at the very base of the bill show that Livy's account does not provide the full picture. It is hard to believe that the *triumviri mensarii* were appointed only because of a shortage of silver (*propter penuriam argenti*). One might consider the shortage of silver as a facile pretext, in order to create what we can regard as the archetype of the professional banker we shall find at the end of the

⁹¹ Broughton (1951) 229; 230; 235; 242; 249.

⁹² Taylor (1962) 19. See also Brunt (1971) 60. Brunt speaks of an 'era of quiescence' for the period between the *lex Hortensia* and the tribunate of Tiberius Gracchus (133BC). On the same historiographical line Scullard (1982) 8: in his reconstruction, the tribunate was again viewed as no more than a political tool exploited by the Senate.

⁹³ On this point see Sandberg (2001) 137, whose comment on the political outlook of the *nobilitas* at the beginning of the third century BC is methodologically important. It is less clear what Sandberg meant in noting that the tribunes, coming from the 'leading plebeian families [...] had the same interests to guard as the old aristocracy'. The notion of 'same interests' is especially problematic. The tribunician magistracy itself and its political commitment testifies that the social and political changes that had taken place from the beginning of the third century, represented a turning point for the Roman political elite, and, of course, for those economic interests that the tribunician legislation so often aimed to act on: see Lanfranchi (2015) 229-236. The big issue, as Lanfranchi thoughtfully pointed out, still concerns the quality and nature of the tribunician legislative action, which was the primary characteristic of such magistracy from the very beginning of its history. Such prerogative was directly linked to the *ius cum plebe agendi*, and for that reason was eventually undermined. The *lex Minucia* has to be understood against this complex background.

Republic.⁹⁴ The immediate aftermath of the battle of Cannae represented, as Andreau points out, a tragic moment in Republican history.⁹⁵ It is no mere speculation to think that, at such an arduous time, the tribunate sought to exploit precisely that contingency to push further the nature and the robustness of the Roman financial system, in which the use of money had to be implemented, in order to support the continuous expansion of trade and business across the Mediterranean.⁹⁶ The *triumviri mensarii*, in this perspective, were intended not as a merely extraordinary magistracy, appointed to address a difficult short-term task, but as new and long-term role, called to introduce a new way of money-lending and to build an original business model upon the outcome of the current war. Furthermore, Livy's account does not say anything about the duration of the mandate of the committee: a further reason to consider the goal achieved by the tribune Minucius as something more than the creation of a board of mere accountants. Moreover, the close etymological relation between the word *mensarius* and the Greek *τραπεζίτης* provides a further argument for regarding the Roman case as a consequent development of Hellenistic approaches to the use and investment of money.⁹⁷

[1.5] *lex Oppia* (215 BC) [*sumptuaria* Rotondi]

In the year 215 BC the tribune C. Oppius put forward a sumptuary law that, like the *plebiscitum Claudianum*, the *lex Metilia* and the *lex Minucia*, belongs to the distinctive Roman legislative corpus that was enacted during the dramatic years of the Second Punic War, and was deeply shaped and affected by the conflict itself.⁹⁸ Although it is possible to rely, as we shall see, on numerous accounts for this period, Livy remains our main source for this statute as well. The historian opens book 34 (195 BC) with these words:

⁹⁴ Andreau (1987) 235-236.

⁹⁵ Andreau (1987) 233.

⁹⁶ See von Reden (2010) 20-26; Rosillo-López (2016) 26-28. The latter scholar attaches great weight to Roman military expansion, as a driver of economic and financial changes during and in the aftermath of the Second Punic War. The 'stimuli for monetization' and the deriving emergence of a more complex financial Roman framework are also stressed in Rosenstein (2016) 115.

⁹⁷ Migeotte (2014) 245-253.

⁹⁸ On the *lex Oppia* see Rotondi (1912) 284; Sauerwein (1970) 40-46; Bonamente (1980) 85-90; Culham (1982) 786-793; Gabba (1988) 37-38; Baltrusch (1989) 52-59; Bottiglieri (2002); Perl-El-Qalqili (2002) 414-439; Elster (2003) 217-220; Coudry (2004) 135-171; Zanda (2011) 114-117; Kay (2014) 204; Coudry, *LEPOR: Lois somptuaires* (2014); Feichtinger (2015) 671-688; Zecchini (2016).

[...] *inter bellorum magnorum aut vixdum finitorum aut imminentium curas intercessit res parva dictu, sed quae studiis in magnum certamen excesserit.*⁹⁹

In the middle of great wars, either not yet completely accomplished or still to be fought, an event happened, which was ostensibly of little importance, but able to cause, due to the passions it provoked, a great dispute.

Unfortunately, we do not have definitive elements in order to establish the exact moment of the repeal of the *lex Oppia*. However, we can rely on some significant details. Firstly, the consuls of 195 BC (L. Valerius Flaccus and M. Porcius Cato) took office on 24 November 196 BC.¹⁰⁰ Secondly, we know that Cato was in Rome until late summer, before starting his military campaign in Spain.¹⁰¹ Considering these two points, and, at the same time, the political relevance that Cato had within Livy's account, we are entitled to say that the dispute over the destiny of the *lex Oppia* took place in the first half of 195 BC.

The chronological issue of the law is directly linked to a second fundamental question: the decision made by Livy to report the tribunician initiative without having referred to the moment in which the law had been put forward by the tribune Oppius, i.e. 215 BC, but, as has been mentioned above, in relating the events of twenty years later, when the tribunes M. Fundanius and L. Valerius proposed the abrogation of the law.¹⁰² The historian, probably with the intent to create among the readers a suspense effect, introduces the main question saying: [...] *intercessit res parva dictu, sed quae studiis in magnum certamen excesserit.*¹⁰³ On this very statement of Livy we could say that it is very unlikely that the *magnum certamen* took place only at that time, and not in 215 BC, when the statute was proposed for the first time. Secondly,

⁹⁹ Liv. 34.1.1; see Briscoe (2003) 43, who does not believe that the plural *bellorum* [...] *finitorum* should be explained as a reference to the end of both the war with Philip and the Second Punic War. In contrast, my understanding is that Livy was emphasising the lasting and complex consequences of the Hannibalic War, especially with regard to his choice to set the political debate around the abrogation of the *lex Oppia* within the context of the year 195 BC. The *bella imminencia* are, of course, the wars with Antiochus and in Spain. See also Kay (2014) 204, who establishes a direct and historically plausible connection between the bill of 215 BC and the 'serious financial crisis' determined by the conflict.

¹⁰⁰ Broughton (1951) 339.

¹⁰¹ Briscoe (2003) 26.

¹⁰² Broughton (1951) 340; Briscoe (2003) 43-44. On M. Fundanius we do not have any other relevant information. On the contrary, for L. Valerius we know that he was praetor in 192 BC, and *IIIvir* for the settlement of new colonists at Placentia and Cremona in 190 BC. It is unlikely that, as a plebeian, he could be a relative of the Valerii. However, as Briscoe correctly pointed out, the tribune could be 'a descendant of a freedman of a Valerius'. In spite of this possible link, it worth noting that the two Valerii had contrasting views about the repeal of the *lex Oppia*.

¹⁰³ Liv. 34. 1.

the second supine is worthy of attention: *dictu* leaves completely open the crucial problem of who was, or perhaps who were, the people that considered the *lex Oppia* so relevant at the time of its abrogation.¹⁰⁴

After addressing these preliminary questions, it is possible to deal with the core of Livy's account, and to compare it with the other literary accounts of this period, in order to establish whether they simply accepted Livy's version, or they enriched the account of an event with other elements, perhaps drawn from contemporary experience.

In reporting Livy's words, we shall also see that, at the time of the law's repeal, alongside the main dispute between Cato and the two tribunes Fundanius and Valerius, we find another crucial political friction that occurred within the tribunician college itself: the tribunes Marcus and Publius Iunius Brutus opposed the abrogation of the *lex Oppia*.

[...] *M. Fundanius et L. Valerius tribuni plebi ad plebem tulerunt de Oppia lege abroganda. tulerat eam C. Oppius tribunus plebis Q. Fabio Ti. Sempronio consulibus, in medio ardore Punici belli, ne qua mulier plus semunciam auri haberet neu vestimento versicolori uteretur neu iuncto vehiculo in urbe oppidove aut propius inde mille passus nisi sacrorum publicorum causa veheretur. M. et P. Iunii Bruti tribuni plebis legem Oppiam tuebantur nec eam se abrogari passuros aiebant.*¹⁰⁵

The tribunes of the *plebs* Marcus Fundanius and Lucius Valerius put forward to the *plebs* a law for the abrogation of the *lex Oppia*. It had been proposed by the tribune Gaius Oppius, during the terrible days of the Second Punic War, when Quintus Fabius and Tiberius Sempronius were consuls. According to the law, no woman should have more than half an ounce of gold, or be dressed in coloured clothes, or be carried by a vehicle in Rome or in a town within the distance of a mile, apart from the celebration of a religious festival. The tribunes of the *plebs* Marcus and Publius Iunius Brutus were defending the *lex Oppia*, and said that they would not tolerate its abrogation.

Livy's account raises a number of specific questions: above all, the nature of the law itself. The tribune Oppius had carried the bill *in medio ardore Punici belli*: it was a wartime law.¹⁰⁶ Taking an opposite approach to Culham's, it is necessary to move from what the Roman historian explicitly tells us about the dire emergency in which Rome was in the aftermath of the Battle of Cannae.¹⁰⁷ There is no doubt, in this respect, that the *ardor Punici belli* is a clear reference

¹⁰⁴ On Livy's sources, with special emphasis on the tribunician legislation, see Ferrary (2012) 119-120.

¹⁰⁵ Liv. 34. 1. 2-4.

¹⁰⁶ Feichtinger (2015) 672-673 underlines the role played by the Punic War in deeply shaping the legislative action put in place by the tribune Oppius.

¹⁰⁷ Culham (1982) 793: '[...] Livy himself supplies the evidence which shows that the *lex Oppia* is a simple sumptuary law, not a war-inspired confiscatory measure'.

to the disastrous battle of 216 BC, which marked the most challenging moment for the Roman political and military system as a whole. The war determined a new state of affairs, in which the role of women emerged with an unprecedented strength and vigour.¹⁰⁸ It is against this background that we should contextualize the choice made by Livy to mention the *lex Oppia* at the moment of its repeal. In doing so, the historian had the chance to stress a moment of tremendous political and cultural change, which vividly emerge from his account of Cato's speech.¹⁰⁹ The political, and even more, cultural perspective backed by the consul of 195 BC is the instrument that Livy put in place, in order to build an implicit connection between the impact that the *lex Oppia* had on the Roman society of both the years 215 BC and 195 BC, and the *lex Metilia* of 217 BC, firstly put forward by the tribune Metilius, with the crucial support of Flaminius.¹¹⁰ The foreign policy, as it had been shaped from the very beginning of the Second Punic War, could bring, more than Roman domestic politics, to the outbreak represented by the repeal of the *lex Oppia*. It is also from this perspective that we should regard the contrast within the tribunician magistracy itself, notably between the two couples of tribunes. Livy does not tell us anything about the speeches given by the two Bruti. He prefers to sketch, in accordance to his own historical interpretation, a balance between the political position assumed by Cato, and, on the other hand, the speech of L. Valerius. The intervention of the tribune is apparently a mere chronological link with the time when the *lex Oppia* was enacted. Valerius, instead, is openly supporting a new understanding of the use of money, and the meaning of luxury within the urban context: [...] *tali tempore in luxuria et ornatu matronae occupatae erant ut ad eam coercendam Oppia lex desiderata sit* ('at that time, the Roman matrons were so focused on luxury and ornaments that the Oppian law was put forward to reduce them').¹¹¹ In this regard, the political point made by the tribune of 195 BC was in full continuity with the economic and financial outcome of the *lex Minucia* of 216 BC: a new way

¹⁰⁸ See the valuable analysis of Cantarella (1989) 602-606, who pointed out the political and cultural meaning of the increasing amount of wealth that, since the Second Punic War, was in the hands of Roman women. See also Coudry (2014).

¹⁰⁹ On this see Astin (1978) 25 rejecting the authenticity of Cato's and Valerius' speeches. See also Briscoe (2003) 39, who stresses, like Astin, that the speech given by Cato is a 'free composition' by Livy. In this regard, it should be pointed out that we do not have any fragment of a speech against the abrogation of the *lex Oppia*.

¹¹⁰ On this see Càssola (1962) 350: 'l'attaccamento di Catone alle antiche virtù (e agli antichi pregiudizi) dei contadini, risulta dalla sua sfortunata campagna in difesa della legge Oppia'. In spite of the relevance of the issue of luxury in Cato's political engagement, it is preferable to explain the political position assumed by the consul more in terms of foreign than domestic policy: see Ferrary (1988) 527-539. The complex legislative dynamics between the end of the third and the beginning of the second century were much more heavily affected by external issues, determined by the Roman military expansion, than by domestic political affairs.

¹¹¹ Liv. 34. 6. 15.

of exploiting the resources that the Roman military presence across the Mediterranean could secure.

A passage of Tacitus gives further insights into this debate. The imperial historian openly emulates Livy, particularly in describing the increasingly relevant role played by the Roman women, in determining the political and cultural changes within the context of the late third century BC:

[...] *duorum egressus coli, duo esse praetoria, peruicacibus magis et impotentibus mulierum iussis quae Oppiis quondam aliisque legibus constrictae nunc uinclis exolutis domos, fora, iam et exercitus regerent.*¹¹²

There were two elements to be considered in the streets, two different powers, and the stronger and decisive orders were the women's ones, who in the past had been restrained by the *lex Oppia*, but now, with no more checks, they run the households, the political affairs and also the military matters.

[...] *placuisse quondam Oppias leges, sic temporibus rei publicae postulantibus : remissum aliquid postea et mitigatum, quia expedierit.*¹¹³

At the time of the Republic the *lex Oppia* was enacted because it was needed: later the contingency brought a change into the Roman legislation, in terms of remission and mitigation of the law itself.

In Tacitus, the role of the Roman matrons and the cultural change it entails also emerge as the main aspects of the repeal of the *lex Oppia*. Unfortunately, we do not have any reference to the tribunes' role within his historical narrative. However, we are entitled to infer that when he says *quia expedierit* to give the reason for the statute's abrogation, he clearly links his analysis to Livy's *tali tempore*. The Second Punic War had imposed the legislative action undertaken by the tribune Oppius; the consequences of that conflict (*vixdum finitus*) determined the onset of a new political phase, marked by the increasingly complex combination of foreign and domestic issues.

¹¹² Tac. *Ann.* 3. 33. 4.

¹¹³ Tac. *Ann.* 3. 34. 6.

[1.6 a] *plebiscitum Carvilium* (212 BC) [*lex Carvilia de exilio M. Postumii Pyrgensis Rotondi*]

[1.6 b] *plebiscitum* (211 BC) [*de exilio Cn. Fulvii Flacci Rotondi*]

As the analysis of the tribunician legislation developed thus far has shown, the tribunate dealt with a range of highly significant matters during the troubled years of the Second Punic War. In the previous pages, we have gone through a set of different and complex statutes, relating to political, economic, and social issues. The year 212 BC, however, marked a further development within the legislative prerogatives of the tribunes, who put forward in two consecutive years two statutes regarding the exile (*exilium*) of two men: M. Postumius Pyrgensis in 212 BC and Cn. Fulvius Flaccus in 211 BC.¹¹⁴

These two *plebiscita* open a number of important and complex problems. First, the role of the Senate in the process that led to the presentation and passing of the laws; secondly, the political interests of the tribunes in putting forward legislative actions that directly affected strategic economic assets built by the Roman elite over the last two decades of the second century. In this connection, it shall be of great interest to investigate, as far as possible, what the relation between the tribunician magistracy and the increasingly important role played by the Roman tax-farmer (*publicani*) in this period was.¹¹⁵

Before addressing the analysis of Livy's account of Postumius' exile, it will be helpful to refer to a previous passage of Livy's narrative, where the historian explicitly refers for the first

¹¹⁴ On this important question, which has often failed to receive proper scholarly consideration, see Brecht (1938) 250-257; Bleicken (1955) 111; Crifò (1961) 184-191; Càssola (1962) 71-81; Badian (1972) 11-25; Magdelain (1973) 409-415; Shatzman (1975) 195-196; Santalucia (1982); Giovannini (1983) 549-559; Crawford (1985); Badian (1996) 202-208; Kelly (2006) 25-39; Ferrary (2012) 121; Humbert (2013) 286-288; Kay (2014) 76-80.

¹¹⁵ Postumius was a *publicanus*, who in 215 had taken on the contract for the supplies to the Roman army that was, at that time, fighting in Spain (Liv., 23. 48. 4-49. 4). On the complex debate regarding the role played by the *publicani* within the economic and political context of the Republic and, furthermore, on the relations with the *ordo equester*, see Nicolet (1966) 320: '*publicanus* est un terme très general, dont nous verrons le sens plus en détail, et qui recouvre en réalité deux catégories assez différentes. D'une part les entrepreneurs de travaux publics ou les fournisseurs de l'Etat, de l'autre, inversement, les collecteurs d'impôts'. Livy, with specific reference to the case of Postumius Pyrgensis, makes an interesting remark at 25. 4. 1: [...] *plebe dimissa senatus vocatur et consules referunt de concilio plebis turbato vi atque audacia publicanorum* ('once the plebeian assembly was dismissed, the Senate was convened and the consuls referred about the troubles within the same plebeian assembly caused by the violence and impudence of the *publicani*'). Livy, using the plural *publicani*, may have thought of a homogeneous social group, perhaps as a specific branch within the same *ordo equester*, but for sure inspired by the same *vis* and *audacia*. Finally, it is significant that Badian (1972) 18 openly considered Postumius and T. Pomponius of Veii as members of the equestrian order: 'both must be equites, men of the upper (officer) class of Roman society'.

time to a contract established between the Roman Republic and a private company of *publicani*, in order to provide the Roman army with the resources it needed during the military campaign conducted in Spain in 215 BC, three years before the *plebiscitum Carvilium* was enacted. The events of 215 BC are the key historical background of what occurred in 212 BC, especially because among the nineteen men called to help the Republic in that crucial contingency there was M. Postumius of Pyrgi as well. At the same time, the developments of 215 BC also represent a further confirmation of what we have said with regard to the *lex Minucia* of 216 BC. The economic expansion of these private economic interests found further momentum from the demands of the Hannibalic War and, one could say, an effective justification.¹¹⁶

[...] *exitu aetatis eius qua haec gesta perscriptimus litterae a P. et Cn. Scipionibus venerunt, itaque nisi fide staretur, rem publicam opibus non staturam. prodendum in contionem Fulvio praetori esse, indicandas populo publicas necessitates cohortandosque qui redempturis auxissent patrimonia, ut rei publicae, ex qua crevissent, tempus commodarent, conducerentque ea lege praebenda quae ad exercitum Hispaniensem opus essent, ut, cum pecunia in aerario esset, iis primis solveretur. haec praetor in contione; <diemque> edixit quo vestimenta frumentum Hispaniensi exercitui praebenda quaeque alia opus essent navalibus sociis esset locaturus. ubi ea dies venit, ad conducendum tres societates aderant hominum undeviginti, quorum duo postulata fuere, unum ut militia vacarent dum in eo publico essent, alterum ut quae in naves imposuissent ab hostium tempestatisque vi publico periculo essent.*¹¹⁷

At the end of the summer in which occurred the facts that have been described, P. and Cn. Scipiones sent a letter, saying that it was necessary to find some help in private credit, otherwise the State would not be able to survive with its own financial resources. They also suggested that the praetor Fulvius should go before the assembly, in order to make the people aware of what the public needs were, and to urge the men who had increased their wealth by public contracts to give time to the State, which was the source of their increased wealth, and to supply what the army in Spain needed, on the condition that they would be paid back as soon as the treasury would have money again. That was the speech of the praetor. The magistrate established a day on which he would let the contracts for supplying clothes, grain to the army in Spain, and all the other things requested by the allies. When the day arrived, three companies of nineteen men offered to take the contracts, under these two conditions: firstly, they

¹¹⁶ Note the important remarks of Badian (1972) 18: ‘It [i.e. the question involving Postumius Pyrgensis and T. Pomponius of Veii] shows the *publicani*, on practically their first explicit appearance in our record, already organized as an extra-legal pressure group, already putting private profit above the public interest’. Badian acutely underlined the core of the problem: the *publicani* were able to gain a position of considerable power over the main Roman political institutions, exploiting the very difficult predicament in which the Republic was throughout the whole Second Punic War. On this point see also Kay (2014) 76-79. The deep tensions between the private and the public interest, and even more the increasing number of bribery cases brought, in the second half of the second century, to the promulgation of two statutes of major importance: the *lex Calpurnia* (149) and the *lex Acilia* (123).

¹¹⁷ Liv. 23. 48. 4; 9-12; 49, 1-3.

should be exempted from the military service for all the duration of the contract; secondly, any risk for the ships, derived both from adverse weather condition or war, would be financially covered by the State.

This account is a valuable source on at least two points of great significance: the approach of the Roman government to economic matters, and the balance of power between different sectors of the Roman elite.

We should start our discussion by pointing out that the suggestion to encourage private investments came from the military commanders in Spain, P. and Cn. Scipiones, who, as Livy here relates, were interested in furthering the interests of the *publicani*.¹¹⁸ The second issue, in order of appearance within the text, is the clear reference to the prominent political role played by the praetor in the matter. We have already touched upon the relevance of the praetorship in shaping the economic decisions, with particular reference to the *lex Minucia* of 216 BC. This case from the following year shows, again, how strong and decisive the political activity of the praetors was, not only with the primary aim to make significant decisions in the economic domain, but also with the wider ambition to build a new political setup.

The third main point raised by Livy's account concerns this very statement: *qui redempturis auxissent patrimonia*. The statement by which the Roman historian allows us to think that this very practice of asking for private investments was a 'longstanding institution'.¹¹⁹ It may be argued that the *publicani* represented within the Roman society of the late third century BC a social group that was directly interested in maintaining strong and profitable economic relations with the Roman State. This link, as we shall see in discussing the events of 212-211 BC, reached a stage in which the senate was unable to prevent such developments from taking place. In this regard, Badian's definition of the *publicani* as an 'extra-legal pressure group' is especially productive.¹²⁰ It is not clear, though, what is meant by 'extra-legal', especially if we consider, as suggested above, that the economic initiative put in place by that very group had been previously encouraged by the praetor himself, and, above all, by the military commanders

¹¹⁸ Càssola (1962) 383-403. It is worth noting that the two men involved into the scandal of 212 BC, T. Pomponius of Veii and M. Postumius of Pyrgi, were both from Etruria. On this point see Càssola (1962) 386: 'vale la pena di ricordare che uno fra i più grandi affaristi dell'epoca fu T. Pomponio Veientano. [...] egli era proprietario di navi e nel contempo appaltatore. [...] la fortuna dei Pomponii serve a dimostrare che gli Scipioni attribuivano grande importanza alle clientele etrusche'. See also Etcheto (2012) 108, who correctly underlines the role of the Italic *clientelae* within the army that the Scipiones led in Spain: 'Lors de la prise de Carthagène en 209, le différend qui opposa les socii navales aux légionnaires révèle encore toute l'importance des éléments italiens dans les forces que commandait Scipion'.

¹¹⁹ Badian (1972) 16.

¹²⁰ Badian (1972) 18.

in Spain, with the obvious political backing of the Roman Senate. In this respect, the *plebiscitum Carvilium* shall offer a better insight into the political resolutions made by the Roman assembly and, at the same time, by the tribunes. For this case our main source is again Livy, who deals with the events related to Postumius Pyrgensis and Pomponius Veientanus early on in book 25:

[...] *publicanus erat Postumius, qui multis annis parem fraude avaritiaque neminem in civitate habuerat praeter T. Pomponium Veientanum, quem populantem temere agros in Lucanis ductu Hannonis priore anno ceperant Carthaginenses. Hi, quia publicum periculum erat a vi tempestatis in iis quae portarentur ad exercitus et ementiti erant falsa naufragia et ea ipsa quae vera renuntiaverant fraude ipsorum facta erant, non casu.*¹²¹

Postumius was a tax-farmer, who in many years had no equal in dishonesty and avarice within the city of Rome, except for T. Pomponius of Veii, whom the Carthaginians under Hanno's command had captured the year before, while he was cruelly despoiling land in the territory of the Lucanians. These men, since the Roman state had decided to assume the risk of bad weather during sea-expeditions to the army, had referred about false shipwrecks, and also about those truly happened, they had taken place not by accident, but by their own initiative.

The text is clearly related to what the historian had previously said in book 23, with particular reference to the second condition that the nineteen *publicani* imposed to the praetor Fulvius: *alterum ut quae in naves imposuissent ab hostium tempestatisque vi publico periculo essent*. What, at this stage, appears to be the most interesting factor is the reaction of the Senate, on the one hand, and, at the other end of the spectrum, of the tribunes involved with the matter. As for the first aspect of the problem, the political position assumed by the Roman Senate is quite surprising, especially if we consider the seriousness of the case, and, at the same time, the complexity of the military contingency.

[...] *ea fraus indicata M. Aemilio praetori priore anno fuerat ac per eum ad senatum delata nec tamen ullo senatus consulto notata, quia patres ordinem publicanorum in tali tempore offensum nolebant. Populus severior vindex fraudis erat; excitatique tandem duo tribuni plebis, Sp. et L. Carvili, cum rem invisam infamemque cernerent, ducentum milium aeris multam M. Postumio dixerunt.*¹²²

That fraudulent act had been referred, the previous year, to the praetor M. Aemilius, and the magistrate reported the matter to the Senate, but the senators did not take any serious decision, because they did not want to harm the *publicani* at such a time. The common people were more affected by that issue, two tribunes of the plebs

¹²¹ Liv. 25. 3. 8-10.

¹²² Liv. 25. 3. 12-13.

particularly, Spurius and Lucius Carvilius, considering the seriousness of the crime, made provision for a fine of two hundred thousand asses upon Marcus Postumius.¹²³

The attitude of the people in this instance, together with the political and legislative action put in place by the two tribunes, appear to be the only factor that may enable the punishment of a glaring case of bribery, in the absence of a permanent court of justice that could impose a set form of punishment. It is fascinating, in this regard, to see that Livy uses this very statement in order to introduce the moment in which the people and the tribunes take the matter in their own hands: *populus severior vindex fraudis erat*.¹²⁴ On the other hand, the Senate appears to be affected by a ‘pusillanimous unwillingness’ to make decisions that could affect the interests of the *publicani*.¹²⁵ Furthermore, this decision made by the political body did not take place in the year of the *plebiscitum Carvilium*, but, as Livy explicitly says, in 213 BC: *priore anno*, when M. Aemilius was praetor. It may therefore be argued that the political conduct of the Senate was not only an attempt to maintain good relations with the *ordo publicanorum* in that very moment of the Hannibalic War (*tali tempore*), but also an implicit support to the economic role of the *publicani* in the Roman Republic, and for which we found evidence in the discussion of the terms of the *lex Minucia*. In accordance to that, the legislative reaction of the two tribunes Carvilius has to be regarded as a mere empirical solution, i.e. the *exilium*, to punish the wrongdoing of two *publicani*, rather than as a political attempt to fight their increasing importance of that group within the Roman political and economic landscape.

The final point raised by the Postumius affair deals with the punishment inflicted on the corrupt *publicanus*: the *aqua et igni interdictio*.¹²⁶ Livy’s account on this specific question is particularly brief, and we have no certainty why the case was debated before the *concilium plebis*, led by the two tribunes Carvilius, instead of the centuriate assembly, which had main responsibility for the *res capitalis*.¹²⁷ We can assume that the historian did not have a clear historical perspective on that legal matter, and he preferred to simplify the question by relating

¹²³ Broughton (1951) 263.

¹²⁴ On this crucial aspect of Roman criminal law see Humbert (2013) 291-294. As Humbert pointed out, the vocabulary linked to punishment is strongly shaped by the idea of vengeance: *vindicare*, *vindicta*, *ulciscere* are the most frequently used terms. It is noticeable that, in our case, the whole of the citizen body, the *populus*, is entrusted with the task of *fraudem vindicare*.

¹²⁵ Badian (1972) 18.

¹²⁶ Liv., 25. 4. 9-10. On this Kelly (2006) 25-34. The complete formula was *tecti et aquae et ignis interdictio*: see Cic. *Dom.* 78; Plut., *Mar.* 29; App., *BC* 1. 31.

¹²⁷ See Feig Vishnia (1996) 74-75, who does not discuss the legal process that led to it. Perhaps, we could argue that a *iudicium populi* (before the centuriate assembly) would have been enacted in case Postumius had remained in Rome.

it only to the final intervention of the two tribunes. Finally, it may be argued that the interdiction of water and fire could be put in place to prevent the return of the self-exiled Postumius, who surely knew that his fellow Romans could not convict him *in absentia*. The tribunes accepted this solution, which should probably also be explained in the light of the importance that the *publicani* had in the meantime achieved in the Roman economic system, disrupted by the war against Hannibal.

[1.7] *plebiscitum* (211 BC) [*de imperio M. Claudii Marcelli* Rotondi]

We know from Livy 23. 30. 17, 19 that in 215 BC, the year after his second praetorship, M. Claudius Marcellus had already been the object of a statute, possibly a *plebiscitum*, under which he had been appointed *proconsul*.¹²⁸ In this regard it is relevant, if one is to achieve a better contextualization of the *plebiscitum* of 211 BC, to directly address Livy's testimony, and analyse its specific components:

[...] *plebeii ludi aedilium M. Aurelii Cottae et M. Claudii Marcelli ter instaurati. [...] circumacto tertio anno Punico belli [...] M. Marcello pro consule imperium esse populus iussit, quod post Cannensem cladem unus Romanorum imperatorum in Italia prospere rem gessisset.*

The Plebeians Games, organised by the aediles M. Aurelius Cotta and M. Claudius Marcellus, were held for three times. [...] When the third year of the Punic War ended [...] the people ordered that M. Marcellus be granted the proconsular *imperium*, because he had been, after the defeat of Cannae, the only Roman commander who had managed to successfully handle the military affairs in Italy.

These few lines of Livy's account provide significant historical data about the political and military career of M. Marcellus, and, at the same time, present a serious question about the legislative procedure within the Roman Republic at the end of the third century. Firstly,

¹²⁸ Rotondi (1912) 253. What Rotondi says about the political and juridical aim of the law does not seem entirely accurate: 'concesse a M. Claudius Marcellus, pretore, la *prorogatio imperii* col titolo di pro console'. We are not facing a mere *prorogatio imperii* with the bill of 215 BC, since Marcellus had been praetor in 216 BC, but the grant of a completely different *imperium*. Broughton (1951) 231; 248; 255: 'granted proconsular imperium as a tribute to his generalship in 216'. Giovannini (1983) 27-30; Elster (2003) 210-212; Drogula (2007) 422, 442-451; Beck (2011) 77-82; Ferrary, LEPOR (2014). Ferrary considers the law passed in 215 BC a plebiscite.

attention is drawn to the role of Marcellus as aedile of the *plebs*.¹²⁹ It is plausible to think that the politically and socially important office he held in 216 BC was in the very background of the bill enacted by the *populus* in the following year, and, even more, that it was one of the key arguments that pushed the tribunes of 211 BC to support the appointment of someone who had already held the consulship on three occasions. Livy stressed the fact that the *plebeii ludi* were *ter instaurati*, presenting the episode like an extraordinary event, and a broadly positive one. As previously mentioned, the second aspect of historical interest presented by the statute concerns the juridical features of the law itself. In this regard, there are two main issues we have to deal with. The first one concerns the nature of the *imperium* and the fact that in the previous year (216) Marcellus had not been consul, but praetor.¹³⁰ Useful insights into this debate come from the analysis of *imperium* offered by Beck, who has interestingly pointed out the changes in the nature of the *imperium consulare*, and particularly the developments that occurred during the troubled years of the Second Punic War.¹³¹ It is in this sense that we should interpret Livy's words concerning the military role played by Marcellus in the aftermath of the defeat of Cannae. The former praetor was the only Roman commander (*unus Romanorum imperatorum*) that had been capable to demonstrate good military skills, and therefore a man for whom the *populus* could also decide the 'renegotiation' of the relations between Republican magistracies about which Beck has written.¹³²

The third and last aspect that evidently emerges from Livy's account concerns the meaning of the term *populus* and its legislative implications.¹³³ There are no serious doubts among scholars about the fact that, from the end of the third century, all the public laws were passed in the tribal assembly. The challenge is to establish whether in this specific case we are entitled to speak of a *plebiscitum* or not, especially when the word *populus* is employed. Ferrary accepts

¹²⁹ Marcellus had probably been aedile (*curule*) in 226. See Broughton (1951) 229.

¹³⁰ Beck (2005) 64; Beck (2011) 94-96; Bergk (2011). Ferrary, LEPOR (2014) underlines the fact that, according to Livy 23. 31. 12-14, Marcellus during the same year 215 BC was created *consul suffectus*, an office from which he abdicated because of '*vitio creatus*'. It is exactly for this reason that Ferrary considers as plausible that, after his year of praetorship, Marcellus was granted the *imperium proconsulare*: '*à titre de consolation*'.

¹³¹ Beck (2011) 94: 'Throughout the history of the Roman republic, the notion of magisterial *imperium* was exposed to profound changes. The number of *imperium*-holders was steadily increased and their competences redefined; relations between magistrates *cum imperio* were constantly renegotiated, a process that was also shaped by the rise of new imperial commands'.

¹³² On the changes that occurred within the prerogatives of the magistracies *cum imperio* during and due to the military consequences of the Second Punic War, see Brennan (2000) 156, who invokes the 'problem of the shortage of suitable commanders' as a plausible justification for the serious modifications of the very political and juridical content of the *imperium*.

¹³³ Kunkel (1964) 21; Staveley (1972) 129-132; Develin (1975) 302-337; Richard (1986) 110-115; De Martino (1988) 330; Sandberg (2001) 104-110.

without discussion that the law enacted by the people was a *plebiscitum*.¹³⁴ That is certainly possible: however, it remains quite difficult to explain why Livy should use the term *populus* to refer to the passing of a *pl. sc.* It is, in fact, well known that the *pl. sc.* was a legislative act of the *concilium plebis*, summoned by the tribunes: in this very case, we should argue that this piece of legislation was enacted by the *comitia tributa*, where the whole of the Roman people was gathered. It is conceivable, as well, that Livy does not make any particular distinction between a *plebiscitum* and a *lex*, in accordance to the fact that, after the passage of the *lex Hortensia* (287 BC), the *plebiscita* became legally valid and binding for the whole of the Roman people. However, this consideration, even if it could be regarded as a possible explanation for the conceptual uncertainty that we find in Livy, does not fully explain why the historian preferred in this case to stress the legislative role of the *populus*.

The statute of 215 BC, as has been said previously, is relevant to explaining the political involvement of the tribunes in 211 BC, when they acted in favor of Marcellus in order to allow the proconsul to enter Rome, keeping his *imperium*.¹³⁵ Livy relates this episode at 26. 21. 1-5:

[...] *eiusdem aetatis exitu M. Marcellus ex Sicilia provincia cum ad urbem venisset, a C. Calpurnio praetore senatus ei ad aedem Bellonae datus est. ibi cum de rebus ab se gestis disseruisset, questus leniter non suam magis quam militum vicem quod provincia confecta exercitum deportare non licuisset, postulavit ut triumphanti urbem inire liceret. id non impetravit. Cum multis verbis actum esset [...] medium visum ut ovans urbem iniret. tribuni plebis ex auctoritate senatus ad populum tulerunt ut M. Marcello quo die urbem ovans iniret imperium esset. pridie quam urbem iniret in monte Albano triumphavit; inde ovans multam prae se praedam in urbem intulit.*

At the end of the summer, since M. Marcellus had come back from Sicily, a session of the Senate, summoned in the temple of Bellona, was granted to him by the praetor C. Calpurnius. There, after he had put forward his own military success, he calmly complained, not for himself, but on behalf of his soldiers, that, despite the accomplishment of the mission, he could not take the army with him, and he asked to be allowed to enter the city in triumph. That was not accepted. After a long debate on the matter [...] finally a compromise was reached: to let him enter the city in a *ovatio*. The tribunes of the *plebs*, under the *auctoritas* of the Senate, brought before the people the proposal that Marcellus should maintain his full *imperium* on the day of his entrance into the city for the *ovatio*. The day before his *ovatio*, he triumphed in the Alban Mount. During his *ovatio*, he brought before him a huge amount of booty.

Despite the fact that Livy does not mention the names of the tribunes involved in the Marcellus affair, it may be argued that their political and, consequently, legislative commitment was able

¹³⁴ LEPOR (2014) ‘très probablement un *pl. sc.*’.

¹³⁵ Bleicken (1955) 49-50.

to impress a significant modification to the rigid conceptualization of *imperium* that had been dominant until then. It is important to stress, in this regard, the fact that they surely were aware of the bill enacted only four years earlier, concerning the nature of the *imperium* of the former praetor. If, as we have seen, in that case the military implications of the legislative action were one of the possible key factors for the *plebiscitum* of 211 BC, the full military success that Marcellus achieved in Sicily at Syracuse and, furthermore, the financial and economic outcome of the Sicilian campaign were at the very core of the political agreement reached within the Senate.¹³⁶

The *praeda* that Livy mentions at the end of his account represents the most interesting insight, and, at the same time, it allows us to put forward an argument about the relation between the role of the tribunes, the positive response of the Senate, and the decisive political support given by the *populus*. In this very case, Livy does not refer to the *plebs* as the natural social body with which the tribunes interacted on a daily basis. The possible misunderstanding of the legislative procedure that Livy already showed with the statute of 215 BC, would be in this very case even more serious, because of the reference to the tribunes, who were constitutionally required to deal with the *concilium plebis*, leaving the *comitia tributa* to the legislative initiative of the consuls. It is quite possible that Livy, by addressing the outstanding figure of Marcellus, wanted to emphasize both the role of the proconsul and, in accordance to that first step, also the political choice of the tribunes, hence misrepresenting their actual legislative methods and the legal procedures that they followed.

[1.8] *lex Atilia* (210 BC) [*de dediticiis* Rotondi]

The legislative action of the tribune of the *plebs* L. Atilius during the troubled years of the Second Punic War was deeply affected, as we have seen with the *pl.sc.* enacted in 211 BC, by the military choices made by the Roman elite in those years; at the same time, it had to deal with the extraordinary effects of Hannibal's presence in Italy.¹³⁷ The *lex Atilia*, therefore, put

¹³⁶ Rosenstein (2011) 143-152; Ferrary (2012) 134; Vervaeke (2014) 151-157.

¹³⁷ Lenschau, *RE* (1912) coll. 2318-2351; Mazzarino (1947) 114-124, 142-144; Walbank (1956) 37-45; Carcopino (1961) 140-155; Càssola (1962) 209-216; Astin (1967) 577-596; Lintott (1972) 629-631; Christ (1974); Nicolet (1978) 615: 'Qu'Hannibal ait voulu et tenté, dès le début, de séparer Rome de ses alliés italiens, c'est certain. [...] il proclamait qu'il était venu apporter la liberté aux Italiens en faisant la guerre aux Romains'. North (1981) 1-9;

forward by the tribune L. Atilius in 210 BC, has to be contextualized and explained within that dramatic military and political scenario, when the Roman Republic had to face the most challenging and threatening moment in its history.¹³⁸

Before analysing and discussing the specific content of the tribunician statute, a brief summary of the events that led to the political decision of the Roman Senate to punish the Campanian *municipia sine suffragio* in 210 BC is in order.¹³⁹ What Livy says at 23. 7. 1-3 is noteworthy in this connection:

[...] *legati ad Hannibalem venerunt pacemque cum eo condicionibus fecerunt ne quis imperator magistratusve Poenorum ius ullum in civem Campanum haberet neve civis Campanus invitus militaret munusve faceret; ut suae leges, sui magistratus Capuae essent; ut trecentos ex Romanis captivis Poenus daret Campanis, quos ipsi elegerint, cum quibus equitum Campanorum, qui in Sicilia stipendia facerent, permutatio fieret. haec pacta: illa insuper quam quae pacta erant facinora Campani ediderunt: nam praefectos socium civesque Romanos alios, partim privatis negotiis implicitos, plebs repente omnes comprehensos velut custodiae causa balneis includi iussit, ubi fervore atque aestu anima interclusa foedum in modum exspirarent.*

Crawford (1992) 52 correctly underlined the turning point of Cannae, in order to contextualize the revolt of some important allies of Rome: ‘The battle of Cannae was followed by the revolt of a number of Italian communities and conspicuously of Capua’. Fronda (2010) 103-130. Polybius in book 3. 77. 3-7, discussing the outstanding military role of the Carthaginian general, addressed his character of liberator with respect to the condition of many of Rome’s allies throughout the whole of the peninsula. This military, diplomatic and political tendency became absolutely evident, after Capua’s secession in 216 BC, in the immediate aftermath of Cannae’s battle (Liv. 23. 2).¹³⁸ Klebs, *RE* (1896) col. 2077.

¹³⁹ The three Campanian cities that decided to revolt against Rome were Capua, Atella and Calatia. On this point see Sordi (1960); Brunt (1971) 529; Humbert (1978) 366-372 Frederiksen (1984) 244-250; Fronda (2010) 100-126. On Capua and its administrative framework, we can refer to Livy’s account 9. 20. 5, concerning the institution in Campania of *praefecti* (318 BC): ‘[...] *eodem anno primum praefecti Capuam creari coepti legibus ab L. Furio praetore datis, cum utrumque ipsi pro remedio aegris rebus discordia intestina petissent*’ (‘in the same year prefects were elected and, for the first time, sent to Capua, after a statute put forward by the praetor L. Furius had established their specific prerogatives. Those two things had been requested by the same inhabitants of Capua, in order to find a solution to the serious troubles caused by domestic discord’). Livy is here speaking of a bill enacted in 318 by the praetor L. Furius. See Rotondi (1912) 232, who lists the law as a *lex de quattuorviris iuridicundo creandis*. Elster (2003) 81: *lex de praefectis Capuam creandis*. On *legem dare* see Oakley (2005) 267: ‘it is found particularly often in the context of a Roman magistrate arranging the affairs of a community under Rome’s jurisdiction’. Oakley’s position is questionable. It is plausible to think that the expression *lex data* was referred to the definition of the prerogatives of the prefects, more than to the legislative act itself. It is interesting, in this regard, the position assumed by Sherwin-White (1939) 41, where a comparison is established between the *praefectura* at Capua and the Greek *diallaktai*, regarded as ‘international arbitrators’ in the context of the Hellenistic organization of the urban settlements. Bispham (2007) 36 has accepted Sherwin-White’s proposition as ‘convincing’. However, in spite of his acceptance of the historicity of the events, he does not believe that the same events narrated by the Roman historian can be safely related to the history of Capua, ‘or not in the terms Livy relates’ (36 n. 147).

Ambassadors came to Hannibal and reached an agreement based on these specific conditions: that no Carthaginian commander or magistrate should exercise any power over any Campanian citizen, that no Campanian citizen should be used as a soldier or be called to accomplish any duty against his will; that Capua should have its own laws, its own magistracies, that the Carthaginians should give the Campanians three hundred of the Roman prisoners, chosen as they wished. At the same time, they would make an exchange, offering the Campanian horsemen that were in Sicily. The deal was established in those terms. Something more, however, was added to what had been decided, and the Campanians were responsible for the following terrible acts: the populace suddenly captured prefects of the allies and other Roman citizens, some of them employed in the military service, others busy with private activities, and pretending to guard them, gave instructions that all of them had to be gathered in the baths and there died in a horrible way because of the heat.

Livy's account deserves to be analyzed in detail, as it is directly relevant to the understanding of the tribunician bill of 211 BC. In this very regard, it is important to begin with a remark made by Sherwin-White, and concerning the institution of the *praefectura* in 318 BC for the city of Capua: 'this is not the imposition of Roman customs upon an unwilling subject'.¹⁴⁰ The scholar accepted the historical reconstruction proposed by Livy, who comments on the creation of Capua's *praefecti* and their specific administrative and political duties in the following terms: [...] *cum utrumque ipsi pro remedio aegris rebus discordia intestina petissent*. Unfortunately, there are, between the passage that we are able to read in book 9 and the text that tells us about the agreement made by the Campanians and Hannibal, significant contradictions. These discrepancies will also shed light on the question concerning the value and the political use that the Roman elite made of the citizenship, with particular reference to the last part of the third century BC.¹⁴¹ *Petissent* is employed to suggest the autonomous initiative assumed by the inhabitants of Capua, calling for the legislative intervention of Rome, in order to restore the lost civic peace. Livy's wording, *discordia intestina*, is significant.

On the other hand, as we have briefly mentioned, Livy's account in book 23, especially for what concerned the choices made by the city of Capua, will be of some help to our purposes. The specific references to the political and legislative aspects of the question are of particular relevance: firstly, the whole of the Campanians (with particular regard to Capua) wanted to be free to rule themselves: [...] *ne quis imperator magistratusve Poenorum ius ullum in civem Campanum haberet*. They refused any military control, and, more importantly, any presence

¹⁴⁰ Sherwin-White (1939) 41. For Livy's text refer to n. 12. Note also the sceptical view of Bispham with regard to the historical reliability of Livy's source.

¹⁴¹ On this see Humbert (2013) 132 : '[...] Même si les Romains, en une perspective déformée par l'orgueil national et par l'histoire ultérieure de leur puissance, présentent toujours sous la lumière la plus favorable les premières ouvertures de la cité comme autant de récompenses chèrement payées, la réalité est tout autre'.

of Carthaginian magistrates. The weakness of Livy's narrative emerges clearly from the request made by Capua in 318 BC for the *praefecti* from Rome. If we were to swap the word *Poenorum* with *Romanorum*, we would likely have the historical picture of what the political conditions and expectations of the citizens of Capua were in 216 BC: a strong desire for freedom and political independence from any kind of external power. In this regard, what Livy says soon after at 7. 2 is especially relevant: [...] *ut suae leges, sui magistratus Capuae essent*. The *lex* and the magistracies are here presented as clear symbols of political autonomy from a stronger and incumbent reality, which was keen to maintain its supremacy established with the grant of the *civitas sine suffragio*.¹⁴² That the *praefectura* established by Rome in Capua in 318 BC has to be regarded as the first step of a wider political framework intended to extend the administrative control of the Republic on those territories, is also well attested by Velleius Paterculus' highly compressed account (2. 44. 4) concerning the punishment enacted by the Roman Senate in 211 BC: *Capua in formam praefecturae redacta est*.

According to Velleius Paterculus, the historical administrative form imposed to Capua in 318 BC (i.e. *praefectura*), attested by Livy in the manner that we have seen above, was not the result of a request by Capua itself, but the arbitrary choice of Rome, who in 211 BC imposed the same destiny on the Campanian city.¹⁴³

We find the same historical misrepresentation of the whole Campanian affair in Livy's account (26. 33. 12-14), where the dramatic issue concerning the punishment of the Campanian cities that abandoned Rome in 216 BC, who had accepted to support Hannibal's military effort, is directly addressed. The passage that we shall analyse poses significant issues under a twofold perspective: firstly, the juridical procedure described by Livy is patently wrong, secondly, the content itself of the bill demonstrates a complete misunderstanding of the juridical and political institute of the *provocatio*, and of its political understanding in accordance to the legislative initiative of the tribunes.¹⁴⁴

¹⁴² On this see Humbert (1978) 367.

¹⁴³ See Frederiksen (1984) 180-198; 285-311; Pobjoy (1998) 185, discusses the complex administrative framework of the Campanian cities, especially dealing with the peculiar political status of Capua, and the nature of its *civitas sine suffragio*.

¹⁴⁴ Mommsen (1887) 150-152; Bleicken, *RE* (1959) coll. 2444-2463; Lintott (1972) 226-267; Bauman (1973) 34-37; Develin (1978) 46-50. Humbert (2013) 171-231 is especially relevant to the understanding of our case. He pointed out the political and, even more, ideological link between the tribunate and the juridical institute of the *provocatio*: '[...] L'histoire de la *provocatio* débute avant la République; mais elle ne trouve sa vraie signification qu'avec la naissance du tribunat de la plèbe'. Ferrary in *LEPOR* (2014), s.v. *loi Atilia*.

[...] *L. Atilius tribunus plebis ex auctoritate senatus plebem in haec verba rogavit: «omnes Campani Atellani Calatini Sabatini qui se dederunt in arbitrium dicionemque populi Romani <Q.> Fulvio proconsuli, quosque una secum dedidere quaeque una secum dedidere agrum urbemque divina humanaque utensiliaque siue quid aliud dediderunt, de iis rebus quid fieri velitis vos rogo, Quirites». plebes sic iussit: «quod senatus iuratus, maxima pars, censeat, qui adsient, id volumus iubemusque».*

L. Atilius, tribune of the *plebs*, by authority of the Senate, brought before the *plebs* a law in these specific terms: ‘I am asking you, Quirites, what do you want to be done with specific reference to all the Campanians, Atellani, Calatini, Sabatini, who under the proconsul Quintus Fulvius offered themselves to the will and rule of the Roman people, and the men whom they have decided to surrender together with themselves, the land and the city, all the things that belong to the gods and those of the men, and the whole of the other properties, and anything else that they have offered, with reference to those problems’. The *plebs* replied in this manner: ‘Those present wish and order as the majority of the Senate decided under oath’.¹⁴⁵

Unfortunately, we do not have any other historical information on the tribune L. Atilius, both for the years preceding and following the statute put forward in 210 BC.¹⁴⁶ However, it does emerge from Livy’s account a clear difficulty in understanding the specific political and legislative role of Atilius. Above all, we are called to point out the serious terminological issues that arise in Livy’s account, when he summarised the statute. The statement *plebes sic iussit: «quod senatus iuratus, maxima pars, censeat, qui adsient, id volumus iubemusque »* has to be considered at least inaccurate. Ferrary put forward an attractive solution of Livy’s account, proposing this reconstruction: [...] *de iis rebus, quod senatus ... [...] censuerit [...] ..., id ratum sit* (‘what has been deliberated by the senate, that has been approved’).¹⁴⁷ However, in spite of the scholar’s proposal, what remains very uncertain is the relegation of the tribune’s legislative role to the backbench of the whole political matter concerning the status of the Campanian cities. In this regard, the wording and procedural confusion that we pointed out in Livy’s source, hides an even more relevant issue: the failure to mention the pivotal moment of the *provocatio ad populum*. The last piece of primary evidence that will be taken into account here

¹⁴⁵ Broughton (1951) 161; 279, where he speaks of the legislative action of the tribune in these very terms: ‘carried, i.e. L. Atilius, a plebiscite referring the fate of the Campanians to the decision of the Senate’. It is plausible to think that the juridical formula used by Livy is completely wrong, and, on this behalf, it should be reconsidered the whole of the political relation between the Senate and the voting plebeian assembly.

¹⁴⁶ Lanfranchi (2015) 191 offers a very interesting overview of the magistracies held by the *gens* Atilia since 335 BC. In 311 BC, we find another tribune of the plebs from that very *gens*: L. Atilius.

¹⁴⁷ Ferrary, *LEPOR* (2014). It seems to be the finest reconstruction possible, both under the juridical and the terminological point of view.

shall demonstrate all the inaccuracy and the political misrepresentation that Livy made of the matter concerning the punishment of the Campanians. At 26. 34. 7 he states:

[...] *ita ut nemo eorum ciuis Romanus aut Latini nominis esset, neve quis eorum qui Capuae fuisset dum portae clausae essent in urbe agrove Campano intra certam diem maneret.*

It was ordered that no one of them should be a Roman citizen or enjoy the Latin status, and that no one of them who had been at Capua, while the gates were shut down, should stay in the city or in the same territory of Capua longer than a specific date.

The passage clearly shows how Livy tends to refer all the political decisions concerning the question of the *civitas sine suffragio* of the Campani only to the Senate. The fact that the Roman historian decided to not mention the crucial juridical step of the *provocatio* tells us to what extent he was regarding the political and legislative relevance of the tribunate, and, even more poignantly, the ideological exploitation by the Roman elite of a fundamental issue like the Roman citizenship was at the very end of the third century BC.

[1.9] *lex Lucretia* (210 BC) [*plebiscitum de dictatore creando* Rotondi]

In 210 BC, there is evidence for the passing of another tribunician statute, which also dealt with a major constitutional issue: it addressed the complex dispute concerning the appointment of a *dictator comitorum habendorum causa* for that very year.¹⁴⁸ This law is one of the cases for which we are able to find in our primary evidence, (Livy 27. 5. 16-19), the name of the proposing tribune: M. Lucretius.¹⁴⁹ It shall be quite evident from the text itself that the reasons why the Roman historian decided to refer the name of the tribune are not to be sought in the prominence that the legislative action of the tribunate had within Livy's narrative, but exclusively in the political significance of the other figures involved with that institutional matter, above all the two consuls of 210 BC, M. Claudius Marcellus and M. Valerius Laevinus.

¹⁴⁸ See Rotondi (1912) 258; Bleicken (1955) 50; Giovannini (1983) 31-37; Badian (1996) 207; Brennan (2000) 113-114; Elster (2003) 237-239; Hölkeskamp (2004) 85-91; Williams (2004) 285; Beck (2005) 109-110; Hinard (1988); Beck (2011) 77-96; Hölkeskamp (2011) 161-181; Pina Polo (2011) 188-191; Ferrary (2012) 122; Kuhnert (2013) 137-138; Ferrary, *loi Lucretia*, LEPOR, 2014; Vervaet (2014) 202-211.

¹⁴⁹ Münzer, *RE* 1927, col. 1657; Broughton (1951) 279.

The contrast between the two men over the nomination of a dictator is the main focus of interest.¹⁵⁰

Liv. 27. 5. 16-19:

[...] *M. Lucretius tribunus plebis cum de ea re consuleret, ita decreuit senatus ut consul priusquam ab urbe discederet populum rogaret quem dictatorem dici placeret, eumque quem populus iussisset diceret dictatorem; si consul noluisset, praetor populum rogaret; si ne is quidem uellet, tum tribuni ad plebem ferrent. cum consul se populum rogaturum negasset quod suae potestatis esset, praetoremque uetuisset rogare, tribuni plebem rogarunt, plebesque sciuit ut Q. Fuluius, qui tum ad Capuam erat, dictator diceretur. sed quo die id plebis concilium futurum erat, consul clam nocte in Siciliam abiit; destitutique patres litteras ad M. Claudium mittendas censuerunt ut desertae ab collega rei publicae subueniret diceretque quem populus iussisset dictatorem. ita a M. Claudio consule Q. Fuluius dictator dictus, et ex eodem plebis scito ab Q. Fuluio dictatore P. Licinius Crassus pontifex maximus magister equitum dictus.*

When M. Lucretius consulted it about that matter, the Senate decreed that, before leaving the city, the consul should ask the Roman people whom they wanted to be appointed *dictator*, and should name as *dictator* the man designated by the assembly; that if the consul should refuse, the praetor should ask the people, and if the praetor were also to refuse, the tribunes should put the question before the *concilium plebis*. When the consul refused to bring before the people a matter that he considered as an issue concerning his own prerogatives, and prevented the praetor from doing so, the tribunes put the matter to the *plebs*, and the *concilium* deliberated that Quintus Fulvius, who was then in Capua, should be named *dictator*.

But on the very day when the *concilium plebis* was to be gathered, the consul secretly left for Sicily by night. The senators, having been abandoned, decided to send a letter to Marcus Claudius, saying that he was requested to help the state deserted by his colleague, and should name *dictator* the man indicated by the people. Therefore, Quintus Fulvius was named dictator by Marcus Claudius, and in accordance to the same plebiscite Publius Licinius Crassus, *pontifex maximus*, was appointed master of the horse by the *dictator*.

It is quite clear, in this case, to what extent the military contingency determined the choices of the various political actors: the Senate, the tribunes, and the two consuls of 210 BC. The difficult situation, in fact, led the Senate to ask the consul Laevinus to go back to Sicily, without waiting for the election for the following year. It was for that very reason that a *dictator* had to be appointed.¹⁵¹ Livy's text is important for several reasons. Firstly, the tribune Lucretius

¹⁵⁰ Williams (2004) 285: '[...] All this was a clear indication of the power of the nobility at the time. The way by which the nobles monopolized high office and their total contempt for the stages of the *cursus honorum* must have dismayed non-noble senators'. This is a helpful insight, but more angles are worth considering: the legislative role of the tribune, his clash with the decisions that had been taken by the consul Valerius Laevinus, and, more importantly, the decisive deliberation made by the Roman Senate.

¹⁵¹ Liv. 27. 5. 14: [...] *haec recitata a consule ita movere senatum ut non expectanda comitia consuli censerent, sed dictatore comitorum habendorum causa dicto extemplo in provinciam redeundum*, ('The things that the

appears at the forefront only at the beginning of the legislative process that led to the plebiscite and eventually to the choice of Quintus Fulvius as the new *dictator*. Livy's perspective immediately changes its focus, concentrating its attention on the decision made by the senate to ask the consul *populum rogaret quem dictatorem dici placeret*. Hinard made a valuable comment on this point: 'On n'a pas, en effet, suffisamment insisté sur le fait qu'un dictateur ne pouvait être 'dit' que par un consul et que cette règle était bien plus qu'un simple rituel: la dictature, magistrature d'exception et qui soumettait les autres magistratures pendant la durée de son exercice, n'était véritablement légitime que si elle s'insérait dans le dispositif institutionnel en place'.¹⁵² He pointed out the fundamental role played by the consulship in terms of establishing a direct connection, if not a solid legal justification, between the ordinary Roman political framework and the extraordinary events that required the creation of a dictator, as was the case in 210 BC.

Hinard's remark takes us to the second aspect that emerges from Livy's source: while the tribunician involvement becomes gradually less significant, the consuls remain the essential feature of Livy's reconstruction of the whole political and legislative question.¹⁵³ Livy does not make entirely clear whether Lucretius brought the *rogatio* before the *plebs*, because of the use of the collective term *tribuni*, instead of the name of the tribune himself.

This last point brings us to the third aspect of the question: the way in which Livy presents the tribunes and the role that the historian credited them with. In this very case, the real aim of the legislative involvement of the *tribuni* was to address the difficult task to settle the institutional clash between the two consuls, a member of the tribunician college, namely Laevinus, and the Senate. In order to fully understand this key aspect of this intricate issue, it is important to refer to the few lines where Livy presents what the actual intentions of Lucretius were, and why he eventually left Rome *clam nocte*.

Liv. 27. 5. 15:

[...] *illa disceptatio tenebat, quod consul in Sicilia se M. Valerium Messallam, qui tum classi praeesset, dictatorem dicturum esse aiebat, patres extra Romanum agrum, eum autem Italia terminari, negabant dictatorem dici posse.*

consul had said were so significant, that the senators decided that the magistrate should not wait for the *comitia* to be held, but, once a dictator would have been named in order to hold the elections, he should immediately go back to Sicily').

¹⁵² Hinard (2008) 49.

¹⁵³ See Brennan (2000) 114, on the clash between the consul Laevinus and the *praetor urbanus* L. Manlius Acidinus.

The discussion carried on, particularly on the fact that the consul said that, once in Sicily, he would have appointed the *praefectus classis* Marcus Valerius Messalla as the new dictator. The senators, however, replied that nobody that was outside the *ager Romanus* within the peninsula could be named as dictator.¹⁵⁴

In the light of what we have been able to see so far, the tribunate appears to be in Livy's narrative as a mere instrument in the hands of the Senate and of the consul Marcellus, who brought to an end the legislative process initiated by the tribune Lucretius. However, Livy's account offers a rather confused picture of the whole matter. That confusion becomes particularly evident when the historian tries to clarify which voting assembly was involved in the legislative process. Livy initially mentions the term *populus*, in accordance with the legislative action required by the Senate to the consul Laevinus, who was still present at Rome. This very presence of *populus* continues with the praetor Manlius Acidinus, and duly disappears when Livy firstly introduces the possibility for the tribunes to be the *rogatores* of the bill, and it is at this point that we find the *plebs*: [...] *tribuni plebem rogarunt, plebesque scivit ut Q. Fulvius [...] dictator diceretur*.¹⁵⁵ It is therefore the *concilium plebis*, according to Livy, that was involved in the creation of the new dictator, even if we are not able to say whether the name of Q. Fulvius had been already suggested by the *rogatio* itself or not. In spite of his narrative, in the second half of his own account the historian presents a totally different scenario, in which *patres litteras ad M. Claudium mittendas censuerunt ut desertae ab collega rei publicae subueniret diceretque quem populus iussisset dictatorem* ('the senators decided to send a letter to M. Claudius, in order to ask him to come to help the state abandoned by his colleague, and to nominate *dictator* whom the people eventually had elected'). The *plebs* and its legislative involvement are here completely overlooked, and the *populus* comes back as the main actor of the whole event, pointing to a scenario in which the tribunate is depicted only as

¹⁵⁴ Beck (2011) 93 makes a noteworthy point on *imperium* at the very end of the third century, concerning its geographical connotation: '[...] It should be noted, however, that *imperium* was governed with a maximum degree of flexibility and adaptability. Throughout the Second Punic War, the exercise of *imperium* indicates that its defining characteristics – its geographical and temporal restrictions as well as its anchorage in public office-holding – became increasingly blurred, if not altogether unrecognizable'. It is worth asking whether Livy pushed too heavily on the formal question of the limit imposed by the *ager Romanus* to the appointment of the new dictator, in order to create a political dichotomy, in which the consul Laevinus represented the negative side of the debate and Marcellus the saviour of the *res publica deserta*.

¹⁵⁵ Ferrary LEPOR 2014 s.v. *loi Lucretia* argues that '[...] Lucretius étant très vraisemblablement princeps rogationis'. This one appears to be a questionable point. If Lucretius was, as Ferrary seems to believe, *princeps rogationis*, it is not clear why Livy failed to say that *Lucretius plebem rogavit*, especially after he had already referred to the involvement of the tribune at the beginning of his historical reconstruction of the fact.

the interlude in a political context in which the Senate and the consuls Laevinus and Marcellus remain the main actors.

[1.10] *lex Publicia* (209 BC) [*de cereis* Rotondi]

The political involvement of the tribunes during the final decade of the Second Punic War was of the greatest importance, and, at the same time, had even greater complexity than had been the case during the early years of the conflict. The range and quality of the tribunician legislation, as we shall see, derived, firstly, from the stronger position that the tribunes had been able to achieve within the Roman political setting and, secondly, from the less prominent legislative role played by the consuls at the end of the War.¹⁵⁶ The *lex Publicia* of 209 BC is further evidence for the complexity of the Roman legislative system, and of its historical development.¹⁵⁷

Before addressing our only primary source on this bill (Macr. *Sat.* 1. 7. 33), the preliminary question that we are called to address in discussing the *lex Publicia* is the date of the law itself. The dating of the law to the year 209 BC is conjectural: no definitive argument may be offered in its support. As Ferrary points out, the 209 BC date is ‘traditionelle’, and is based on a prosopographical argument.¹⁵⁸ However, what Livy says about another tribunician

¹⁵⁶ See, on this point, Sandberg (2001) 20-22. See also Pina Polo (2011) 100: ‘[...] the fact that legally they all had legislative capacity does not mean that all of them put it into practice similarly. From a simple reading of Livy, it is apparent that during the pre-Sullan Republican period the tribunes of the plebs were the main legislators, overwhelmingly so in comparison to the higher magistrates’. Lanfranchi (2017) 385 has more specifically addressed this issue, with special emphasis on the years 220-200 BC: ‘[...] à l’inverse, le redémarrage de l’activité comitiale dans les années 220-200 a.C. est dû à la conjonction d’un facteur externe et d’un facteur interne: la deuxième guerre punique et la personnalité de C. Flaminius, lequel s’empara véritablement des possibilités d’initiatives issues de la loi Hortensia de 287 a.C.’. The question is particularly difficult to solve once and for all. However, Lanfranchi’s position seems too strongly focused on the role of a single man, albeit indisputably pivotal, like Flaminius was at that very time. On the contrary, the complexity of the Mid-Republican legislation was the outcome of a political dynamic that had at its core the unstable balance between the popular assemblies, the Senate and the magistracies, especially the consulship and the tribunate of the *plebs*.

¹⁵⁷ See Rotondi (1912) 258, who, as usual, registered the statute, mentioning also the matter itself of the law: *de cereis*; Niccolini (1934) 99; Berger, *RE* Suppl. 7 (1940) coll. 410-411, s.v. *lex Publicia*; Broughton (1951) 286; Münzer, *RE* (1959) coll. 1897-1898, s.v. *Publicius*. All these sources agree in identifying our Publicius with C. Publicius Bibulus, who, as tribune of the plebs, proposed a bill to abrogate Marcellus’ command in southern Italy. See also (Livy 27. 20. 11- 21. 4). Elster (2003) 242-243.

¹⁵⁸ Ferrary (2012) 130: ‘[...] la date traditionnelle repose sur l’identification du tribun Publicius de Macrope avec C. Publicius Bibulus, le tribun de 209 adversaire de Marcellus’.

law, the *lex Cincia*, offers an important pointer: [...] *quid legem Cinciam de donis et muneribus nisi quia vectigalis iam et stipendiaria plebs esse senatui coeperant* ('what brought to the *lex Cincia* was the fact that the plebeians had already begun to be tributaries and tax-payers to the senate').¹⁵⁹ Both statutes were sumptuary laws, and the verb *coeperant* clearly suggests that before the *lex Cincia* was enacted in 204 BC, something had already intervened: the legislative initiative put forward by the tribune Publicius in 209 BC. However, despite the connection between the law of 209 BC and the cognate statute of 204 BC, we should consider the content of the bill itself, because only the analysis of Macrobius' account shall provide us with the necessary elements to judge the political significance of the tribune Publicius in the complex historical context of those years.

Sat. 1. 7. 33: illud quoque in litteris invenio, quod cum multi occasione Saturnaliorum per avaritiam a clientibus ambitiose munera exigerent idque onus tenuiores gravaret, Publicius tribunus plebi tulit non nisi cerei ditioribus missitarentur.

I also find this point in a letter, that since many, exploiting the festivity of the Saturnalia, because of their greed were looking for expensive gifts from their clients, and that practice was heavily affecting those of poorer condition, the tribune of the *plebs* Publicius proposed to the assembly that nothing but wax-tapers should be given to the rich.

As mentioned above, this text of Macrobius represents all we have about the *lex Publicia*. However, we can derive very interesting information from what this source relates. Firstly, the number of the people involved with the request of considerable gifts during the Saturnalia: Macrobius speaks of *multi*. It may therefore be argued that the legislative action put in place by Publicius was not aimed against a specific single political target, but addressed the behavior of a group. In this regard, the passage in which Livy, describing the political attitude of Publicius, says that the tribune *accusavitque non Marcellum modo, sed omnem nobilitatem* is especially relevant.¹⁶⁰ The enemy was, also in that very moment, recognized not only in the proconsul Marcellus, but in the wider group of his supporters, who were probably the same *multi* that we find mentioned in Macrobius' account. It is in this regard that Càssola, in an attempt to establish what the real target of the tribune's bill was, argued that it could consist of the powerful and wealthy *patroni* that played a central role in the judicial affairs of the Mid-

¹⁵⁹ Liv. 34. 4. 9; see Feig Vishnia (1996) 92-94; Zanda (2011) 117-118. She seems to accept the possibility of a legislative and political continuity between the *lex Publicia* and the *lex Cincia*.

¹⁶⁰ Liv. 27. 21. 1-2.

Republican period. On the other hand, the weakest actors involved in this dispute have been identified by Càssola with the *turba forensis*: '[...] si pone il problema di stabilire quale parte della plebe fosse rappresentata da Publicio. [...] il tribuno del 209, a differenza di M. Cincio Alimento [...] si preoccupò soltanto di proteggere gl'interessi dei *clientes* in rapporto ai loro nobili protettori: cioè di un problema che riguardava specificamente la *turba forensis*'.¹⁶¹ This is a valuable point, especially because it differentiates the action of the tribune Publicius from that put forward five years later by Cincius Alimentus. The *lex Cincia*, as we shall see, aimed to regulate all the issues concerning *munera*, while the *lex Publicia* targeted only the *avaritia* that *multi* (i.e. *patroni*) showed during the Saturnalia, extorting money and expensive gifts from their clients. There is a further element in Macrobius' text that could offer an even better understanding of the political dynamics that the passage alludes to: the adverb *ambitiose*. It evidently underlines the moral attitude of the *multi* and its political repercussions, and implicitly corroborates the idea of a *lex Publicia* that was aimed to support the *boni cives*, in a context in which all the energies of the Republic were focused on the attempt to defeat the Carthage.¹⁶²

[1.11] *lex Cincia* (204 BC) [*de donis et muneribus* Rotondi]

The *lex Publicia* of 209 BC, as we have already mentioned, must be regarded as a specific moment of a wider legislative development that had its final and most significant point with the enactment of the *lex Cincia*, the pivotal piece of tribunician legislation put forward by the tribune M. Cincius Alimentus in 204 BC.¹⁶³

Before addressing the content of the statute and the role that the tribune played, with the specific aim of exploring the legislative and political context in which the law was enacted, we are called to deal with a preliminary issue: the chronology of the *lex Cincia*. In this regard, we have two different accounts that clearly identify the year 204 BC as the date when the bill was

¹⁶¹ Càssola (1962) 326; Deniaux (1993).

¹⁶² See Clemente (1981) 4-5.

¹⁶³ On the tribune Cincius Alimentus see Münzer, *RE* (1899) col. 2557; Niccolini (1934) 101; Broughton (1951) 307. On the *lex Cincia*, see Rotondi (1912) 261-263; Casavola (1960); Sauerwein (1970); Dénoyez (1971) 7-14; Shatzman (1975) 70-73; Clemente (1981) 4-7; Churchin (1983) 38-45; Millar (1984) 9-12; Stein (1985) 145-153; Gonzalez (1987) 161-171; Baltrusch (1988); Lintott (1990) 4; Feig Vishnia (1996) 94-99; Sandberg (2001) 69; Elster (2003) 255-261; Zanda (2011) 118-119; Ferrary (2012) 128; Reichard (2013) 289-307.

passed.¹⁶⁴ Cicero, in the *De senectute* (10), says: [...] *quaestor deinde quadriennio post factus sum, quem magistratum gessi consulibus Tuditano et Cethego, cum quidem ille admodum senex suasor legis Cinciae de donis et mulieribus fuit* ('[...] therefore, after four years I was elected quaestor, and I held that office under the consulship of Tuditanus and Cethegus. In that year, despite his age, he [i.e. Fabius] openly supported the *lex Cincia* on fees and gifts'). Cicero's reference is corroborated by a notice in Livy (29.20.11): [...] *tribuni plebis cum praetore et decem legatis profecti M. Claudius Marcellus et M. Cincius Alimentus* ('[...] the tribunes of the *plebs* M. Claudius Marcellus and M. Cincius Alimentus left with the praetor and ten *legati*'). M. Claudius Marcellus was tribune of the plebs in 204 BC, and together with Cincius Alimentus he was involved in the Pleminius affair.¹⁶⁵

If Livy confirms the year of the tribunate of Cincius Alimentus, unlike Cicero he does not add other elements about the legislative process that led to the passing of the *lex Cincia*. Cicero's account, instead, is far more instructive in this respect: the protagonist of the dialogue in which it is set is Cato, a key figure in the Roman political history of that very period, notably in the controversy on the *leges sumptuariae* enacted at the end of the third century.¹⁶⁶ Cicero, in fact, sets the reference to the *lex Cincia* within the wider description of the relationship between Cato himself and Q. Fabius Maximus, the man that recaptured Tarentum during his consulship of 209 BC.¹⁶⁷ Fabius is depicted as a man of *gravitas* and *comitas*; he was also, according to Cicero, the distinguished and outspoken promoter of the *lex Cincia*: [...] *ille admodum senex suasor legis Cinciae de donis et muneribus fuit*.¹⁶⁸ It is worth establishing a comparison between the political choice made by the *Cunctator* in 204 BC and the course of action of Cato himself a decade later, in 195 BC, who defended the value of the *lex Oppia* against the attempt made by the tribunes M. Fundanius and L. Valerius Tuditanus to abolish it.

¹⁶⁴ Ferrary (2012) 128.

¹⁶⁵ Liv. 29. 20-22. On this specific problem see Brennan (2000) 141-142). The praetor of 204 BC to whom Livy refers was M. Pomponius Matho, Broughton (1951) 306. All the political and juridical debate of 204 BC was indeed not aimed to question the role played by Q. Pleminius, but his direct superior magistrate: P. Cornelius Scipio, who, at that time, was going to move the war from Italy to North Africa.

¹⁶⁶ It is noteworthy that Cato was the protagonist of the political debate around the abrogation of the *lex Oppia*, enacted in 215 BC (Liv. 34. 1-8), see [1.5] 38-42.

¹⁶⁷ The way in which Cicero/Cato introduces the relationship between the great conqueror of Tarentum and the future censor of 184 BC is significant: *Cato* 10 [...] *ego Q. Maximum, eum qui Tarentum recepit, senem adulescens ita dilexi, ut aequalem. erat enim in illo viro comitate condita gravitas, nec senectus mores mutaverat* ('[...] despite my young age, I respected and loved Q. Fabius Maximus, the man who recovered Tarentum, as a man of my age. There was, in fact, at the same time in him dignity and courtesy, and the old age had not changed his character').

¹⁶⁸ On the role of the *suasor legis* and its relevance within the Roman legislative process see Ferrary (2012) 19 n. 61, with specific reference to the role played by Cato as *suasor* and *dissuasor* of several pieces of legislation.

What is especially relevant about the developments of 204 BC is that a man of such *gravitas*, who had been consul five times, spent all his political influence, and part of the last year of his life, to support a law whose *rogator* was not a political figure of primary importance.¹⁶⁹ This leads to a further problem: the legislative and political meaning of the *lex Cincia*. This should be pursued by focusing on two specific and crucial issues: the actual relevance of the men involved in the complex process that brought to the final enactment of the law, and, on the other hand, their political aims in promoting such a statute. This two-pronged approach shall hopefully provide a broader understanding of the less-studied features of the law put forward by the tribune Cincius Alimentus. In this regard, as argued above, the figure of Fabius Maximus emerges as one of the main actors within the legislative process: one could say that he was more than a mere *suasor legis*, and became the effective and politically weighty *adscriptor* of a law that we find still in force in the fourth century AD.¹⁷⁰ In this regard, it is worth stressing that we do not have any clear evidence supporting this historical interpretation of the role played by Fabius; however, it seems somewhat unsatisfactory to envisage the reductive role of *suasor* for such an extraordinary political figure.¹⁷¹ Our analysis, which establishes a strong and explicit connection between the *lex Publicia* of 209 BC and its legislative accomplishment achieved with the *lex Cincia* of five years later, sketches a new and more logical political scenario.

We can rely on two important accounts of the contents of the statute, by Livy and Tacitus respectively. However, the closest source to the time in which the law was enacted

¹⁶⁹ It worth stressing that during the Republican period, and especially in the late Roman Republic, the majority of *contiones* were held by tribunes. On this see Pina Polo (1996) 52, 186-187; Russell (2013) 103 draws attention to the numbers of the tribunes in office every year and the incumbent duties of the other magistracies.

¹⁷⁰ Ferrary (2012) 368-373.

¹⁷¹ Càssola (1962) 285) stresses the complexity of the political commitment of Fabius, stressing his original approach towards the whole Roman society: '[...] il *Cunctator* non era affatto solidale con la maggioranza dell'aristocrazia, né influenzato da pregiudizi di casta, né sostenitore dei vecchi privilegi'. Feig Vishnia (1996) 94 challenged the historical perspective put forward by Càssola: '[...] it does not seem, however, that Fabius and his supporters were guided either by economic motivation or concern for the people's needs'. The general economic and financial improvement that concerned the Republic at the end of the second century BC, and that we find confirmed by Livy at several stages of his narrative (27. 51. 10; 28. 11. 8; 29. 6. 1-4; 30. 26. 5-6), has been interpreted by Feig Vishnia as clear evidence for Fabius' impossibility to act, through the *lex Cincia*, in favour of the common people's interests. This suggestion is not altogether convincing, as it does not consider at all the possibility that the improved military situation may have led Fabius to regard that as the right moment to question with even greater energy the political influence gained by the sector of the *nobilitas* against which the *lex Cincia* was devised and passed.

does not address the complexities of the *lex Cincia*.¹⁷² Livy's evidence (34. 4. 7-9), in fact, is contextualized within the long debate on the abrogation of the *lex Oppia*, which took place in 195 BC, and notably in the long speech that Cato gave in the Senate on that occasion. In this challenging historical landscape, we find the specific reference to the enactment of the *lex Cincia*:

[...] *nondum lex Oppia ad coercendam luxuriam muliebrem lata erat; tamen nulla accepit. quam causam fuisse censetis? eadem fuit quae maioribus nostris nihil de hac re lege sanciundi; nulla erat luxuria quae coereretur. sicut ante morbos necesse est cognitos esse quam remedia eorum, sic cupiditates Prius natae sunt quam leges quae iis modum facerent. quid legem Liciniam excitavit de quingentis iugeribus nisi ingens cupido agros continuandi? quid legem Cinciam de donis et muneribus nisi quia vectigalis iam et stipendiaria plebs esse senatui coeperat?*

The *lex Oppia* had not yet been passed to restrict female extravagance; yet no woman took her gifts. What do you think was the reason? I reckon that it was the same cause which pushed our ancestors to pass no law on the subject: there was no luxury to be restrained. As it is necessary that diseases be known before their cures, so passions are born before the laws that keep them within bounds. What brought to the enactment of the *lex Licinia* about the limit of five hundred *iugera*, except the uncontrolled desire of joining field to field? What brought about the *lex Cincia*, except that the plebeians had already begun to be vassals and tributaries to the Senate?

As it is apparent from Livy's text, the political, cultural and social causes that led to the passing of the *lex Cincia* are to be found within the contrast that the historian builds between a mythical past, in which *nulla erat luxuria*, and a decadent present, in which Roman society had been increasingly been affected by those that, with a medical term, Livy calls *morbi: luxuria, cupido*, and, with respect to the *lex Cincia*, the fact that the plebs became *vectigalis* and *stipendiaria* to the Senate.¹⁷³ The historical perspective on Livy's approach to the *lex Cincia* and its further consequences put forward by Lintott seems to imply a somewhat reductive view of the difficult and troubled social context in response to which the law was passed: '[...] by the end of the war there was some discontent over the workings of aristocratic patronage, to judge from the

¹⁷² See Badian (1996) 189, who is especially helpful on the historical context in which Livy frames his account of the *lex Cincia*: '[...] Livy's lack of interest in tribunes and the tribunate is shown by his very haphazard references, not only to their actions, but to their names [...] four, in one year, from the debate on the *lex Oppia*'.

¹⁷³ See Gonzalez (1987) 169: '[...] the political and social circumstances which motivated the law in question would have more remote origins, since Livy's paragraph is found in a «de lege Oppia» discourse attributed by Livy to Cato the Elder'. Briscoe (2003) 53 regards the condition of the *plebs* presented by Cato as 'doubtless highly exaggerated', but does not argue the point any further.

lex Cincia de donis which forbade the receipt of gifts by patrons'.¹⁷⁴ There was more than 'some discontent' among part of the Roman elite towards the promulgation of the *lex Cincia*. A passage from Cicero's *De oratore* (2.286) provides clear evidence of what the feeling was: '[...] *saepe etiam sententiose ridicula dicuntur, ut M. Cincius, quo die legem de donis et muneribus tulit, cum C. Cento prodisset et satis contumeliose, 'quid fers, Cinciole?' quaesisset, 'ut emas', inquit, 'Gai, si uti velis'* ('Jokes are also often made in the form of pointed remarks [*sententiae*] For example, on the day that Marcus Cincius proposed a law on giving gifts and fees, Gaius Centho came forward and rather insulting asked, 'What are you offering, my little Cincius?' Cincius retorted, 'A law, my dear Gaius, that will force you to pay for what you want to use').¹⁷⁵ The tone of Cicero's account, the difficult circumstances of the time when the bill was carried out, and the previous episode of the *lex Publicia*, suggest that the contrasts between the *clientes* and the *patroni* (patrons, advocates) represented much more than a simple and usual dispute within Roman society. The legislative initiative of the tribune Cincius set out to address a question that was especially topical at the end of the third century BC.¹⁷⁶ In this regard, Tacitus' reference to the law (*Ann.* 11.5) is especially relevant, because it allows us to define in greater detail the political impact of the tribune's action and the significance of Fabius' involvement:

[...] *igitur incipiente C. Silio consule designato, cuius de potentia et exitio in tempore memorabo, consurgunt patres legemque Cinciam flagitant, qua cavetur antiquitus ne qui ob causam orandam pecuniam donumve accipiat.*

Therefore, following the example of the consul designate C. Silius, whose power and ruin I shall recall further on, the senators rose all together and asked for the *lex Cincia*, which in ancient times had forbidden to accept any money or gift for supporting a cause.¹⁷⁷

Tacitus' account gives a valuable insight into the political aims of the *lex Cincia*, particularly if we give weight to the reference to advocacy (*ob causam orandam*). The point made by

¹⁷⁴ Lintott (1990) 4.

¹⁷⁵ The translation has been taken from May, Wisse (2001) 203.

¹⁷⁶ Stein (1985) 148 aptly captures the interplay of political and economic factors in this period: '[...] with the general increase in wealth in the third century B.C. public policy seems to have demanded some limitations on gifts, as part of a general move to curb undue luxury, and more particularly to protect the interests of those citizens who might be put under pressure to make large gifts, that they could ill afford, to powerful magnates'.

¹⁷⁷ C. Silius was son of P. Silius Nerva. He was elected consul in AD 13 On the consuls of AD 13, see Gorostidi Pi (2014) 265-275.

Càssola in this regard is very persuasive: '[...] l'esercizio dell'oratoria richiedeva, infatti, una dottrina giuridica e un'esperienza pratica irraggiungibili per la massa dei cittadini [...] solo i rampolli di famiglie nobili, abituati fin dall'infanzia a seguire la vita pubblica [...] avevano la possibilità di conseguire la necessaria preparazione'.¹⁷⁸ Oratory becomes, at the end of the third century BC, an increasingly significant and effective instrument of political power, especially in a context like that of the city of Rome, where the competition dynamics within the most politically influential social groups had been hugely affected, and in some respects enhanced, by the consequences of the Hannibalic War.¹⁷⁹

The tribunician legislative commitment across the last two decades of the third century BC spanned from the *plebiscitum Claudianum* of 218 to the *lex Cincia* of 204. In the foregoing analysis, we have attempted to address the most relevant political, economic and social issues that the tribunes of the *plebs* dealt with, especially underlining the increasing importance of the tribunate within the legislative production that took shape during the troubled years of the Second Punic War.

In this final section, by way of conclusion, it is worth stressing and discussing in more detail an historiographical matter that has emerged as a key feature of this first section of the thesis: the attitude of Livy towards the tribunate and the main reasons that led the Roman historian to handle tribunician legislation in an often cursory and inconsistent fashion.

Reference has been made on several occasions to the key works of Badian and Ferrary, who have opened a new historiographical pathway towards a better and more extensive comprehension of the fundamental role played by the tribunes.¹⁸⁰ However, both those major scholars have focused their attention on the fact that Livy failed to give a proper historical account of the activity of many tribunes, especially of those who held office in the Mid-Republican period. In doing so, they have not investigated the other side of the coin: the main

¹⁷⁸ Càssola (1962) 285.

¹⁷⁹ On rhetoric and politics in the mid-Republican period see Millar (1998) 217-218; Morstein-Marx (2004) 212-223; Hölkeskamp (2013) 21-25; Morstein-Marx (2013) 34-37; Jehne (2013) 55-58.

¹⁸⁰ Badian (1996) 187-213; Ferrary (2012) 134.

brief that the historian had set himself. It is not by chance, in fact, that every time Livy specifically mentions the name of a tribune, this happens within the context in which a prominent political figure is involved. In this first chapter, we have had the chance to establish that those historical protagonists of the Middle Roman Republic were in fact the actual and main target of Livy's historical narrative, overshadowing the significance of the tribunes' political activity, and, more importantly, overshadowing their legislative role and political autonomy. It is from this historiographical perspective that we should challenge the notorious point made by Badian on a crucial point: 'there was nothing quite so exciting in tribunician history in the Middle Republic. His account [i.e. Livy's] of it, where he clearly must have had much better sources to follow, shows his lack of interest in what had become an accepted institution, both when events proceeded normally and surprisingly at times when there must have been conflicts recorded in his sources'.¹⁸¹

Two major questions must be addressed on the back of Badian's comment. Firstly, we should ask what a 'tribunician history' amounts to: if we deal with the Republican period by thinking of different and completely separated 'histories' based on the political significance of each magistracy, the immediate consequence would be to lose an overall historical understanding of a process that is marked by a considerable degree of interdependence and complexity. Secondly, one should recognize a lack of commitment on Livy's part in addressing all the nuances of tribunician political and legislative activity, more than a 'lack of interest' in the tribunician magistracy itself. On that count, this first chapter has tried to put forward a new model of interpreting the political presence and legislative initiatives of the tribunes of the *plebs* within the specific historical context of the years 218-204 BC. Livy's silence on the names of many of the tribunes may be explained as the result of a conception of history viewed like a jigsaw puzzle, a mere aggregate of pieces. If that is the case, though, we would be entitled to speak also of 'consular history', with the inevitable risk of failing to do justice to the activity of the tribunes as a vital and politically integrated factor of Mid-Republican history.

¹⁸¹ Badian (1996) 187.

Chapter Two

The tribunician statutes from the *plebiscita* on Scipio Africanus to the *lex Sempronia* (204-193 BC)

The second chapter of this thesis will address crucial political, economic and cultural issues, which the tribunes and tribunician legislation addressed in the immediate aftermath of the Second Punic War. The chronological framework will span from the *plebiscita* of 204 BC concerning the *imperium* of Scipio Africanus, the most prominent and influential political figure of that time, to the much-debated *lex Sempronia* of 193 BC. This chapter will also focus on another paramount question that emerged at the end of the war, and, it may be said, was a consequence of the war itself: the revival of Roman colonization, especially aimed at strengthening the Roman military and (in the longer term) economic presence in the southern part of the Italian peninsula, which had been heavily affected by the Carthaginian occupation. In this regard, we shall address, simultaneously, three pivotal pieces of tribunician legislation: the *lex Marcia Atinia* of 196 BC, the *lex Baebia* of 194 BC, and the *lex Aelia*, which was put forward at the end of the same year. It is quite clear from this brief overview that in those years the tribunes dealt with a series of complex and controversial matters, which were to have a profound and lasting influence on the Roman political life of the following decades.

[2.1] rogatio (204 BC) [de imperio P. Scipioni Rotondi]

[2.2] plebiscitum (202 BC) [de imperio in Africa Rotondi]

[2.3] plebiscitum (201 BC) [de imperio in Hispania Rotondi]

In 204 BC the war against Carthage was coming to an end, and the Roman Senate was starting to debate the complex issue of what kind of treaty to impose to the old enemy. In that scenario, Scipio Africanus was the key political and military player of a complex political dynamic, which was going to affect both the domestic and the foreign Roman policy for many years to

come.¹⁸² The institutional position of Scipio in 204 BC, and for the rest of the conflict, was a distinctive one. After his consulship of 205 BC, his consular *imperium* was extended by the Senate until the end of the war itself.¹⁸³ In order to properly contextualize the tribunician activity of 204 BC, it is necessary to analyze the historical and political significance of the *prorogatio imperii* that Scipio could benefit from at that time. Mommsen's assessment still represents a valuable starting point: 'Diese Bezeichnung (i.e. *pro magistratu*) kommt in ihrem technischen Werth denjenigen zu, welche, ohne Magistrate zu sein, berechtigt sind magistratische Functionen zu üben. Der Promagistrat ist also negativ ein Nichtmagistrat, aber zugleich positiv verfassungsmässig berechtigter Inhaber der Beamtengewalt'.¹⁸⁴ Mommsen puts forward the idea of a promagistrate that had the functions and prerogatives of a magistrate without being one. What Mommsen did not underline, in this specific case, was the distinctive situation of the end of the third century BC, when the challenging conditions imposed by the war pushed the Senate to accept and, in some way, to exploit the legal tool of the *prorogatio imperii*, in order to maintain a political balance that would have otherwise been completely compromised.¹⁸⁵ The notion of 'balance' will be at the core of our historical reconstruction of the events of 204 BC, especially when the foreign political and economic interests of the Roman ruling elite will come into discussion.¹⁸⁶ Livy's account is rather confused; his historical narrative, as we have seen at various points in the first chapter, seems to be more interested in describing the contrast between Fabius and Scipio, rather than in giving a thorough reconstruction of the events that took place at that time within the Roman Senate. Nevertheless, it is important to approach the *rogatio* of 204 BC against the background of the assignment of

¹⁸² On the last four years of the Second Punic War, with particular regard to the developments in Africa, see Scullard (1970) 116-162; Caven (1980) 230-259; Bagnall (1999) 267-300; Goldsworthy (2000) 286-310; Diaz Fernandez (2015) 141-154.

¹⁸³ Broughton (1951) 303; Bellomo (2013) 38. The Senate thought it reasonable to confirm Scipio in his command, in order to give continuity to the Roman military strategy against the Carthaginians. That political decision was certainly at the core of the tribunes' legislative activity, and the Senate relied quite strongly on that position assumed by the tribunician college.

¹⁸⁴ Mommsen (1876) 11-12. Kloft (1977) reproduced the same theoretical framework put forward by Mommsen. See further Badian (1979) 792-794.

¹⁸⁵ See Giovannini (1983) 39: 'La deuxième guerre punique le contraignit cependant à recourir systématiquement à la *prorogatio* puis, en 211, à attribuer à un *privatus* un commandement militaire en raison de la gravité de la situation en Espagne (Liv. 26. 18)'. With the growing number of provincial commands, the concept itself of *imperium* was put under an enormous pressure, and turned into something very different from what had been at the beginning of the third century BC. On this process see Beck (2011) 92-93.

¹⁸⁶ Harris (1984); Eckstein (2006) 181-186; Etcheto (2012) 87-97.

the provinces discussed and decided in 205 BC, when Scipio received the province of Sicily and, in spite of the strong opposition of Fabius, the province of Africa too.¹⁸⁷

[...] *provinciae ita decretae: alteri consuli Sicilia et triginta rostratae naves quas C. Servilius superiore anno habuisset; permissumque ut in Africam, si id e re publica esse censeret, traiceret.*

The provinces were assigned as follows: to one of the consuls Sicily and the thirty war-ships that in the previous year Gaius Servilius had commanded. It was also established that he could cross to Africa, in case the interests of the Republic would require so.

From this source, it clearly emerges that, despite the great, and indeed increasing, power and political influence of Scipio, the Roman Senate was willing to support his medium-term military strategy. Even more, in doing so the Senate was providing Scipio with a robust political and legal tool to pursue his own military and economic aim, on the domestic and foreign scene alike. The strategy of Scipio was not aimed only at defeating Carthage once and forever, but more importantly to secure the Republic a new and outstanding range of economic possibilities and financial resources, to which the Roman state had never had access before.¹⁸⁸ Scipio had already planned to cross the Mediterranean, in order to defeat Hannibal on his own ground, and the Senate, foreseeing that decision, gave him considerable scope to reach it autonomously, at the time and in the terms that he deemed fit. It is in this complex and novel political scenario that the *rogatio* of 204 BC should be understood, when the tribunes, as Livy relates, tried to prevent the Senate from extending Scipio's *imperium*.¹⁸⁹

[...] (*Q. Fabius Maximus*) *sententiam deinde aequae truce orationi adiecit: Pleminium legatum vinctum Romam deportari placere et ex vinculis causam dicere ac, si vera forent quae Locrenses quererentur, in carcere necari*

¹⁸⁷ Liv. 28. 45. 8.

¹⁸⁸ Kay (2014) 290-291. As Kay points out, we have no decisive tools to determine the amount of wealth of any single political figure of the Mid-Republic. What we can argue with a certain degree of any confidence is that Scipio was one of the wealthiest men of his own time, and that his economic policy had been deeply affected by the military and political decisions he took during the second half of the Second Punic War. On this see Bleckmann (2016) 88, who stresses a significant economic facet of the Second Punic War: 'The age of the Punic Wars witnessed the development of a monetized economy, and the introduction of precious metal coinage'. This new kind of coinage provided the members of the Roman *nobilitas* with further and more effective ways of maintaining their long-term influence on the armies that they were called to command. See also Tan (2017) 15-20, who establishes a strong link between private and public wealth, and stresses the importance of the long-term economic strategies that had resulted from the choices of the Roman elite at the end of the Hannibalic War.

¹⁸⁹ Liv. 29. 19. 5-6. See Rotondi (1912) 263; Elster (2003) 265-266.

bonaque eius publicari; P. Scipionem, quod de provincia decessisset iniussu senatus, revocari, agique cum tribunis plebis ut de imperio eius abrogando ferrent ad populum.

Q. Fabius Maximus added a harsh statement to his own speech: the legate Pleminius should be brought back to Rome in chains, and in the same status he should be called to plead his case, and, in the case that what had been said by the Locrians was true, he should be killed and his own properties sold. As for P. Scipio, because he had left his province without the order of the Senate, he should be recalled and the tribunes should bring a bill before the *plebs* to abrogate his command.

Livy here juxtaposes the account of the Pleminius affair, and the request put forward by Fabius to recall Scipio and, through the legislative action of the tribunes, to abrogate his military command.¹⁹⁰ It is evident that the political attempt made by Fabius was to attack and weaken the strong position secured by Scipio in Sicily. The clear exploitation of the tribunate and its legislative prerogatives put in place by Fabius in order to diminish Scipio's political influence within the Senate, and more widely in the Republic as a whole, did not achieve the intended result. Livy's text is also rather confusing in this instance: it does not provide any of the tribunes' names, although a few lines below the historian himself tells us that a committee was sent by the Senate to investigate the cases that had taken place in Sicily, and among those men there were also the tribunes M. Cincius Alimentus and M. Claudius Marcellus.¹⁹¹ As we have seen, Cincius Alimentus was the tribune that in the same year had put forward the sumptuary law setting limitation on gifts and fees.¹⁹² We have also discussed a number of instances in which Livy's approach to the legislative activity of the tribunes is inconsistent and follows trajectories that are not easily determined according to hard-and-fast principles.¹⁹³ However, the most problematic issue is that Livy simply refers to the generic word 'tribunes' when, for the cases that occurred in the same years, he openly attests the initiative put in place by Cincius Alimentus and Claudius Marcellus. We might infer that the *tribuni plebis* that were called by Fabius to act against the political and military determinations of Scipio were none other than Alimentus and Marcellus, and that would be a further element in support of Badian's historical reconstruction of the tribunes' lack of political independence from the most influential men of

¹⁹⁰ On the Pleminius affair see Brennan (2000) 141-142. Pleminius, after Scipio had recaptured the city of Locri, hold the town as his *legatus*. Under his command, Locri was exposed to terrible acts of violence, the temple of Proserpina was plundered, and many of the citizens were killed during the clashes that followed the uprising of the population.

¹⁹¹ Liv. 29. 20. 11. See Broughton (1951) 307.

¹⁹² See [1.11] *lex Cincia*, 204 BC.

¹⁹³ See Badian (1996) 189; Ferrary (2012) 3-37; Smith (2012) 108.

the Mid-Republic. In this regard, and with special reference to the peculiar situation of the Second Punic War, Badian described the tribunes as the magistrates called ‘[...] to watch over the interests of the Plebs and prevent needless sacrifice of lives, [...], yet to support in the general interest, all actions necessary to defeat Hannibal’.¹⁹⁴ However, this perspective fails to take into due consideration the fact that the tribunes were not only responsible for defending what Badian calls the ‘interests of the *plebs*’, but, more importantly, were in the position to put forward and promote a more complex and well-structured political and legislative framework, which could determine the course of the Roman domestic and foreign policy, rather than being determined by it. It is in light of this background that we should question the reliability of Livy’s account of the *rogatio* of 204 BC. It is conceivable, in fact, that the historian was aiming to imagine a tribunician piece of legislation that was only aimed at better supporting the political intervention of Fabius - the figure that, along with Scipio, represents the real focus of Livy’s historical narrative. Furthermore, it is worth considering whether a *rogatio* promoted by the tribunes on such a serious matter, without the support of the Roman Senate, can actually be envisaged for this period. We saw, in fact, that, according to Livy himself, the Senate was clearly supportive of Scipio’s strategy, and was already aware of his intentions to bring the war directly to Africa.

This reconstruction is even more convincing if we take into the account the *plebiscitum* of 202 BC, on the *imperium* in Africa. In that case, the tribunes were called to bring a bill before the people in order to ask whom they wanted to lead the military operations in Africa. Livy’s account is in these terms:¹⁹⁵

[...] *consules iussi cum tribunis plebis agere ut, si iis videretur, populum rogarent quem vellet in Africa bellum gerere. omnes tribus Scipionem iusserunt.*

The consuls were ordered by the Senate to arrange with the tribunes to bring before the people a bill, concerning whom they wanted to lead the war in Africa. All the tribes voted for Scipio.

Unlike what we saw at work with the *rogatio* of 204 BC, in this instance we have one fundamental element supporting the legislative and political credibility of the tribunician statute: the intervention of the Senate. Moreover, the senatorial initiative, (*ita senatus decreverat*), is in complete accordance with Livy 28. 45. 8, where the assembly is clearly

¹⁹⁴ Badian (1996) 207.

¹⁹⁵ Liv. 30. 27. 3-4.

favourable to a direct involvement of Scipio in the African affairs.¹⁹⁶ The *plebiscitum* of 202 BC had a very different fate, due to its political significance in supporting the war effort against Hannibal, and the weight of the wider interests of the Roman people, which were more effectively represented by an independent and autonomous tribunate. Again, a corrective to the outlook advocated by Badian is in order.

In 201 BC, the tribunes were again involved with a crucial military and political question, concerning the appointment of the officials to Spain. As a matter of fact, that piece of legislation represented the final step of a process in which the tribunate was at the very core of political decisions that deeply affected Roman foreign policy at the end of the Second Punic War.¹⁹⁷ The Spanish command and its assignment represent a hugely significant issue in our reconstruction of the tribunes' political and legislative involvement at the time, and requires to be suitably contextualized.

The analysis should start from the year 211 BC, when the deaths of the proconsuls P. and Cn. Cornelius Scipio led the Senate to instruct the consuls to ask the *comitia centuriata* whom they preferred to be sent with *imperium* to Spain.¹⁹⁸ All the centuries voted for the young P. Cornelius Scipio, who at that time was only twenty-four years old.¹⁹⁹ Livy's account is, in this regard, absolutely significant, albeit from a negative standpoint, as it offers a valuable insight into his imperfect perspective on the political and legislative process, and his understanding of the tribunes' role in supporting the political rise of Scipio, and in strengthening his political influence over the whole of the Roman people:

[...] *ut nemo audeat in Hispaniam imperium accipere, cum subito P. Cornelius, Publi Cornelii eius qui in Hispania ceciderat filius, quattuor et viginti ferme natus, professus se petere, in superiore unde conspici posset loco constitit. In quem postquam omnium ora conversa sunt, clamore ac favore ominati extemplo sunt felix faustumque imperium. iussi deinde inire suffragium ad unum omnes non centuriae modo, sed etiam homines P. Scipioni imperium esse in Hispania iusserunt.*

Since there was nobody who dared to accept the Spanish command, suddenly P. Cornelius, the son of that Publius Cornelius who had perished in Spain, in spite of being about twenty-four years old, stepped forward offering himself as a candidate, and took a higher and more visible place, from which he could be more easily seen. All

¹⁹⁶ Liv. 30. 27. 4.

¹⁹⁷ See Rotondi (1912) 264-265; Sumner (1970) 89-92; Develin (1980) 355-367; Giovannini (1983) 59-72; Feig Vishnia (1996) 116-118; Richardson (1996) 68-70; Brennan (2000) 159-162; Elster (2003) 270; Ferrary (2012) 123; Vervaeke (2014) 205-211; Ferrary LEPOR (2014).

¹⁹⁸ P. and Cn. Cornelius Scipio had been consuls respectively in 218 and 222 BC. See Broughton (1951) 232, 237.

¹⁹⁹ Liv. 26. 18. 6-10.

faces turned towards him, and because of the loud manifestations of favour everybody at once predicted a fortunate and favourable command. Therefore, having been instructed to cast their votes, not only all the centuries, but every single man voted that Publius Scipio should hold the command in Spain.

It is not easy to determine to what extent we can rely on Livy's evidence in this instance. Above all, however, a key point should be stressed, in order to understand the legislative and political complexities that marked the granting of the Spanish military command in 211 BC, and, as we shall see later on, in 201 BC. The Senate, as Livy states at 18. 4, did not instruct the tribunes, but the consuls to ask the *comitia*, probably the centuriate assembly, whom they preferred to send to Spain: [...] *diemque comitiis consules edixerunt* ('and the consuls announced the day of the election'). It is crucial, at this point, to consider why the Senate preferred to deal with the consuls instead of the tribunes of the *plebs*, especially for such a prominent and crucial matter like the Spanish command was, and, even more, whether Livy's narrative of the episode should be accepted. Vervaeet has offered an insightful, if not quite convincing view on this point: '[...] the seriousness of the situation in Spain and, most particularly, the intention to assign the Spanish command to a senior senatorial commander perfectly explain the decision to have the consuls M. Claudius Marcellus and M. Valerius Laevinus put the matter to the *comitia centuriata* instead of operating through the tribunes of the *plebs*'.²⁰⁰ That the Senate was not enthusiastic about sending such a young and inexperienced man to Spain is unquestionable, especially if we take seriously what Livy says at 19. 10: [...] *et M. Iunius Silanus propraetor adiutor ad res gerendas datus est* ('and M. Iunius Silanus was assigned to support the conduct of the war').²⁰¹ However, Vervaeet's historical reconstruction does not take into account two major moments directly related to the facts of 211/210 BC: Livy's previous and alternative account of the assignment of the Spanish command at 26. 2. 5, and the *plebiscitum* of 201 BC, which concerns the same controversial issue. In the passage mentioned

²⁰⁰ Vervaeet (2014) 207, who mentions the consuls of 210 BC, M. Claudius Marcellus and M. Valerius Laevinus, instead of the magistrates of 211 BC, i.e. Cn. Fulvius Centumalus and P. Sulpicius Galba. He justifies his choice at p. 206 n. 25: '[...] Since Scipio was in all likelihood appointed at the outset of the consular year 210, the consuls who convened the *comitia centuriata* at the behest of the Senate were none other than M. Claudius Marcellus and M. Valerius Laevinus'. It is not apparent why, according to Vervaeet, Scipio was appointed proconsul at the beginning of 210 BC, rather than at the end of the previous year. The evidence does not provide any clear and definitive proof of that.

²⁰¹ Livy's account seems to presuppose a decision taken directly by the Roman Senate. On this point see Brennan (2000) 158: '[...] The wording of Livy's notice [...] does seem to suggest an appointment by the Senate – though that is not necessarily the best evidence'. Since 212 BC Silanus had been praetor in Etruria: see Broughton (1951) 268.

above, Livy offers a completely different account. In this case, in fact, the tribunes are directly involved with the political debate on the assignment of the military command in Spain, and the final vote on that matter appears to be eventually entrusted to the *concilium plebis*.²⁰²

[...] *dimissis equitibus, de nulla re prius consules rettulerunt, omniumque in unum sententiae congruebant, agendum cum tribunis plebis esse, primo quoque tempore ad plebem ferrent quem cum imperio mitti placeret in Hispaniam ad eum exercitum cui Cn. Scipio imperator praefuisset.*

When the knights had been dismissed, the consul put forward that matter as a priority, and it was agreed that the tribunes should be instructed to ask the *plebs* as soon as possible whom they wanted to be appointed as commander of the army in Spain, which had been previously led by Cn. Scipio.

This source shows an evident discrepancy with what Livy says at 18. 4, where the consuls are the only protagonists of the entire legislative process. The significant historical contradiction that we find within Livy's text is best explained with yet another instance of his refusal to envisage the involvement of the tribunes with such a complex and highly politically relevant question. The position reached by Blösel is especially helpful in this connection: he underlines the contrast between the two passages of Livy, explaining the commonly accepted version of the vote given by the *comitia centuriata* as an historiographical attempt to downplay the contrast between the candidate of the Roman *plebs* and the senatorial opposition.²⁰³ Furthermore, the vote given by the *comitia centuriata*, according to Livy 18. 6-10, concerning an extraordinary command like Scipio's in 211/210 BC, represents a further critical point. Those kinds of provincial appointments were usually determined by the *comitia tributa*, or, as is the case with the *plebiscitum* of 201 BC shows, by the *concilium plebis*.²⁰⁴ In 201 BC, the tribunes' legislative activity responded, as had already happened in 211/210 BC, to a critical and hugely challenging military and political situation. On the one hand, the end of the Second Punic War had made clear the need for a definitive settlement of the Carthaginian question; on

²⁰² Liv. 30. 27. 3-4.

²⁰³ Blösel (2008) 337 speaks of 'die volksfreundliche und senatskritische Tendenz dieser Version läßt als deren Autor einen Annalisten mit populären Sympathien vermuten'. The tradition to which Blösel is here referring had his most prominent proponent in Valerius Antias (341-343; 346-347), who described Cornelius Scipio as the champion of the Roman *plebs* and fierce antagonist of the *nobilitas*. See Cornell (2013) 293-304.

²⁰⁴ See Ridley (1981) 281 and Sandberg (2001) 106, who stresses, under this particular respect, a crucial development that occurred after the enactment of the *lex Hortensia* in 287 BC: '[...]. The *comitia tributa* were thus essentially a transformation of the plebeian assembly – an exclusively plebeian *concilium plebis* would have remained for the transaction of purely plebeian business, particularly the election of plebeian magistrates'. It is conceivable that the vote of 211/210 BC was also carried out by the *comitia tributa*.

the other hand, the Spanish command, after the long and (in this case too) extraordinary *prorogatio imperii* of L. Cornelius Lentulus and L. Manlius Acidinus (206-200 BC), required an intervention that would bring about substantial change in the constitutional and legislative process.²⁰⁵ As Ferrary notes for the *plebiscitum* put forward by the tribunes in 201 BC, ‘encore une fois les indications fournies par Live sont très insuffisantes’.²⁰⁶ However, what is absolutely clear, as we shall see, is that the Roman historian reports the involvement of both the consuls and the tribunes of the plebs within the entire legislative process, indirectly confirming the key role that the tribunes played in it at the time. Livy describes the military context as follows:

[...] *quod ad Hispanias attineret, aliquot annos iam ibi L. Cornelium Lentulum et L. Manlium Acidinum esse; uti consules cum tribunis agerent ut si iis videretur plebem rogarent cui iuberent in Hispania imperium esse.*

As for the Spanish command, L. Cornelius Lentulus and L. Manlius Acidinus had been there for several years; it was established that the consuls should instruct the tribunes to ask the *plebs* whom they decided to send to Spain with *imperium*.

This passage is of the greatest interest, as it allows us to get a better understanding of the extent to which the tribunes were involved with the crucial decisions that at that time concerned the military and, more widely, the political affairs of the Republic.

On the other hand, we should pause to reflect on two other significant elements. Livy, unlike what we have seen at 26. 18. 6-10 and 29. 13. 7, does not mention the *comitia centuriata*, but refers to the *plebs*, singling it out as the main collective political body that was called up by the tribunes to determine the choice of the commanders to be sent to Spain to replace L. Cornelius Lentulus and L. Manlius Acidinus.²⁰⁷ The tribunes, therefore, reappear as key political and legislative players, in direct connection with the consuls and, ultimately, the

²⁰⁵ Broughton (1951) 299-300. Liv. 28. 38. 1; 29. 13. 7: ‘[...] *de Hispaniae imperio, quos in eam provinciam duos pro consulibus mitti placeret latum ad populum est*’ (‘on the Spanish command, the choice for the appointment of two proconsuls was brought to the people’). This passage shows most clearly the limitations of Livy’s evidence for the legislative process in the Mid-Republican period, especially the appointments of provincial magistrates. Livy refers generically to the legal formula ‘*mitti placeret latum ad populum est*’, without any further detail on who was responsible for that legislative initiative. In this case, Livy also fails to mention the role played by the tribunes of the *plebs*, and, even more, to specify which voting assembly of Roman citizens was involved in the final decision.

²⁰⁶ Ferrary LEPOR (2014).

²⁰⁷ Sumner (1970) 90. Livy fails to clarify what happened after the enactment of the *plebiscitum* of 201 BC. At 31.20 he reports the return of Lentulus in 200 BC, but not that of Acidinus, who came back to Rome only in 199 BC: 32. 7. 4.

Senate. Indeed, the involvement of the Senate is the second crucial aspect of the whole problem. As Beck rightly pointed out, the idea of *imperium* and its very nature during and after the Second Punic War was affected by a fundamental long-term change, both in the legal and the political aspects: ‘[...] Throughout the Second Punic War, the exercise of *imperium* indicates that its defining characteristics – its geographical and temporal restrictions, as well as its grounding in the system of public office-holding – became increasingly blurred, if not altogether unrecognizable’.²⁰⁸ The tribunes acted within that process as key political actors, playing a part in shaping a new concept of *imperium*, and a different vision of what the role of the military commanders should be, not only in connection with their specific duties, but also in relation to their presence within the context of domestic politics. Livy’s narrative must be corrected in one crucial respect, and it provides us with the tools to begin to do so.

[2.4] *lex Licinia* (196 BC) [*de III viris epulonibus creandis* Rotondi]²⁰⁹

So far, our discussion of tribunician legislation has been dealing with the activity put forward by the tribunes of the *plebs* in the military and political domains, both from their domestic and foreign standpoints. We have given close consideration to the role of the magistracy in the crucial period of the Second Punic War, promoting the role of Scipio Africanus and his faction.²¹⁰ With the *lex Licinia* we shall address and analyse another crucial aspect related to the political impact of the tribunate: a magistracy that dealt with religious matters, with a distinctive and eminent connection with the pontifical college. This tribunician initiative presents several open questions. Let us start with the sources that mention the law: Livy, and from a rather different point of view, Cicero.

Livy 33. 42. 1: [...] *Romae eo primum anno tresviri epulones facti C. Licinius Lucullus tribunus plebis, qui legem de creandis iis tulerat, et P. Manlius et P. Porcius Laeca. iis triumviris item ut pontificibus lege datum est togae praetextae habendae ius.*²¹¹

²⁰⁸ Beck (2011) 93.

²⁰⁹ See Elster (2003) 290-291, who accepts the position of Rotondi (1912) 267 on the date of the *lex Licinia*.

²¹⁰ See above the discussions of the *rogatio quem cum imperio mitti placeret in Hispaniam* of 210, the *pl. sc. de imperio in Africa* of 202, and the *pl. sc. de imperio in Hispania* of 201.

²¹¹ See Münzer, *RE*, XIII. 1, col. 372. See Briscoe (1973) 327-328.

In Rome, during that year, the *triumviri epulones* were elected for the first time: the tribune C. Licinius Lucullus, who carried the law, P. Manlius and P. Porcius Laeca. To those three men was recognised the right, according to the law in force for the pontiffs, to wear the *toga praetexta*.

In order to properly understand the political background of this event, and of this new development in the tribunician activity, we need to offer a preliminary historical contextualization, and of the main characters involved in this issue. The consuls of 196 BC were L. Furius Purpurio, who made war upon the Gauls and the Ligurians (Liv. 33. 37. 1-9) and M. Claudius Marcellus, who took on the Boii (Liv. 33. 36. 4-15).²¹² Marcellus was the son of the great M. Claudius Marcellus, the conqueror of Syracuse, five times consul in 222, 215, 214, 210, and 208.²¹³ It is worth stressing that Marcellus belonged to the distinguished *gens Claudia* and that his son, the consul of 196 BC, was the first backer of the legislative initiative put forward by the tribune Licinius. A prominent supporter from an outstanding family, then: was he the only one? There are reasons to doubt it. The question was not just a political one, but one that could directly affect, as previously mentioned, religious matters that had important political and social ramifications. The *tresviri epulonum*, who became *septemviri* with Sulla, helped, and in some cases replaced, the pontiffs in their involvement with the organization of banquets and games in honour of the Capitoline triad.²¹⁴ Their symbol was a *patera* (saucer).²¹⁵ In the passage quoted above, Livy uses a temporal adverb, which is crucial to our analysis: *primum* ('for the first time'). Not earlier, but in the year 196: why? And how should we explain the tribune Licinius Lucullus? Did the pontiffs have a special relationship with this magistrate?

These are challenging questions, especially if we consider that the only other source available is not an historiographical text. Before approaching Cicero's evidence, it is crucial to bring into the discussion a major contribution of Jean-Claude Richard.²¹⁶ The French historian here makes clear that the religious supremacy of the *pontifex maximus* was uncontroversial just during the 'golden age' of the Roman Republic: 'la primauté du grand pontife, en matière

²¹² See Broughton (1951) 335.

²¹³ See Broughton (1951) 273. On Marcellus and his role in the Roman Senate during the Second Punic War, see Càssola (1962) 314-330, who discusses the synergy between the *Cunctator* and his colleague on the consulship of 214 BC. See also Scullard (1951) 64: 'the election results for 210 BC showed the Claudii and Fabii equally balanced'.

²¹⁴ See Klotz, *RE*, II, (1923) 1552.

²¹⁵ See Scheid (2003) 136. On the importance of ritual sacrifice in Rome, see also Scheid (1985) 193-206, pointing out that all official banquets may be viewed as religious rites.

²¹⁶ Richard (1968) 786-801.

religieuse comme en d'autres domaines, est indiscutable à l'âge d'or de la République, mais il est pratiquement impossible de reconstituer l'évolution qui l'a préparée'.²¹⁷ If Richard is right, what sort of balance was in existence, for centuries, between the *pontifex maximus*, the *rex sacrorum*, and the *flamines maiores*? With respect to this last point, one might speak, with Kurt Latte, of a revolution.²¹⁸ That outcome was determined by the pontiffs at the beginning of the second century, in close synergy with the most challenging Roman magistracy: the tribunate. The political support given to the pontiffs by the tribune Licinius allowed the committee of three priests appointed under the new law to take part in crucial moments of the Roman religious life, such as the sacred banquets dedicated to Jupiter. The decisive political role of Licinius is even more evident if we consider that Cicero in *de Leg. agr.* 2. 21 tells us about a *lex Licinia Aebutia*, for which we do not know the exact date, except for the *terminus a quo* (i.e. 195 BC), prohibiting the proponent of a law to take part in any committee put in place by the *plebiscitum* itself.²¹⁹

Cicero's evidence becomes especially significant in this connection. He makes reference to the law on two different texts, respectively in the *De oratore* and the *De haruspicum responso*. These two passages provide a more effective definition of the function of the *IIIviri*, their connection with the pontiffs, and the *ratio* of the tribunician initiative than is the case in Livy's text.

de orat. 3. 73: [...] *sed ut pontifices veteres propter sacrificiorum multitudinem tres viros epulones esse voluerunt, cum essent ipsi a Numa, ut etiam illud ludorum epulare sacrificium facerent, instituti.*

But it is in regard to the old priests. Because of the great number of sacrificial rituals, they requested the institution of a Committee of Three Banquet Supervisors, even though they had themselves been appointed by Numa, in order to supervise also the sacrificial banquet at the games.

²¹⁷ Richard (1968) 786.

²¹⁸ Latte (1960) 195: '[...] die Revolution, die den Pontifex maximus und das ihm unterstellte Kollegium an die Spitze des römischen Sakralwesens gebracht hat'. The reference discussion of the pontifical college is Van Haepere (2002), who does not speak of a 'revolution' within the pontifical college, but, in her discussion of Festus' notice on the *ordo sacerdotum* (Fest. p. 198-200 L: *ORDO SACERDOTUM aestimatur deorum <ordine, ut deus> maximus quisque. Maximus videtur rex, dein Dialis, post hunc Martialis, quarto loco Quirinalis, quinto pontifex maximus. [...] omnes item supra pontificem*), seems to accept the idea that the position of the *pontifex maximus* would be linked to the divinity of Vesta, the last goddess to be invoked during the rituals.

²¹⁹ See Botsford (1909) 347-348: 'this measure, too, was to prevent the formation of governing cliques and dynasties'. However, one of the proponents (i.e. Licinius) was at the same time, in 196 BC, the *rogator* of the bill and a member of the board created by the law itself.

Cic. har. 21: [...] *audio quibus dis violatis expiatio debeatur, sed hominum ob quae delicta quaero. Ludos minus diligenter factos pollutosque. Quos ludos? Te appello, Lentule, tui sacerdotii sunt tensae, curricula, praecentio, ludi, libationes epulaeque ludorum, vosque, pontifices, ad quos epulones Iovis optimi maximi, si quid est praetermissum aut commissum, adferunt.*²²⁰

I am aware of what gods we have to ask expiation for, but I ask myself for what human misdemeanors. For the games that less carefully have been realised, and contaminated.²²¹ What games? I ask you, Lentulus, under your responsibility, in fact, the sacred chariots, the races of cars, the ritual singing, the games, the drink offerings and the *epulum Iovis* are. I also ask you, pontiffs, to whom the *epulones Iovis optimi maximi* report all which has been neglected or transgressed.

In the first passage, Cicero refers to something especially significant to our investigation: *sed ut pontifices veteres [...] tres viros epulones esse voluerunt*. Unlike what Livy states, he presents the creation of this new *collegium* as an initiative promoted firstly by the pontiffs. *Ut*, to be read as a causal conjunction, openly indicates the reason why the tribune Licinius could put forward his bill so promptly. The pontiffs had been appointed by king Numa as the overseers of the *epulum Iovis* ritual. Cicero reports two radical changes within the religious and political Roman Republican context of the beginning of the second century BC: first the pontifical college, responding to the major developments of the time and the increasingly active role of the *plebs*, especially after the Second Punic War, decided to officially sanction these indisputable achievements, entrusting the plebeians with important official duties linked with a crucial aspect of the Roman religious life: the public cult of Jupiter. Secondly, the *lex Licinia* marks an outstanding novelty: the interests represented by the tribunate of the *plebs* combined with the pontiffs' specific aims were successful in establishing a singular and original dynamic that marked the tribunician legislation of 196 BC, and, in a wider chronological perspective, created a new manner of handling political and religious affairs within the increasing complex scenario of the beginning of the second century BC.

²²⁰ Cicero delivered this speech in the first half of May 56 BC. The date can be presumed from the text quoted above, where the author mentions the consulship of Cn. Cornelius Lentulus Marcellinus: see Lenaghan (1969) 11-21. The presence of Cornelius Lentulus, evidently as *septemvir epulonum*, considering as *terminus a quo* Sulla's dictatorship, is remarkable. Lenaghan points out that 'although he is (i.e. Lentulus) the only patrician in the Republican period known to be a member of this college, his very presence in it makes it likely that it was open to both patricians and plebeians'. However, it could be argued, exactly for the reason that we know only this case in which a patrician held the office of *VIIvir epulonum*, this priesthood had been previously envisaged by the pontiffs and the tribune as a plebeian religious institution, very likely with the consensus of the major political protagonists of that period: T. Quinctius Flaminius and the Scipio Africanus.

²²¹ On the evolving meaning of *pollutio* and its and complex implications in Roman religion see Lennon (2014) 30-54.

[2.5] *lex Marcia Atinia* (196 BC) [*de pace cum Philippo facienda* Rotondi]

The law that shall be addressed in this section presents us with a long list of problems, especially because of its distinctive nature of a proposal directly linked with Roman foreign policy at the beginning of the second century, and with the complex political situation of Greece. Therefore, we have to take into consideration the complex relationship between the Roman military presence in the eastern part of the Mediterranean and the developments that the Greek *póleis* were experiencing at that time. The *lex Marcia Atinia* was put forward at the end of the Second Macedonian War, in which the Roman Republic faced Philip V.²²² The bill's main achievement was to put in place a new balance among the Mediterranean regional powers that had fought each other during the previous two decades. The law, as we shall see in analysing the evidence of Polybius and Livy, achieved a fundamental result: sending a clear and strong message to a specific sector of the Roman *nobilitas*.²²³ At the same time, the statute persuaded the Greek communities to accept the Roman political patronage, which was the first step towards the complete military conquest and political annexation of the Macedonian kingdom to the Roman provincial system.²²⁴ Livy's evidence is of central importance in enabling a better understanding of the effects that the law had within the Roman elite, especially if we approach it as a message that the tribunes and their supporters addressed to the Roman people and, notably, their political counterpart, M. Claudius Marcellus:²²⁵

²²² Walbank (1940) remains the reference discussion on Philip V. Errington (1989) 244-289 provides a valuable overview of this phase of Hellenistic history; Eckstein (2006) 244-316 is also a noteworthy discussion.

²²³ On the makeup of the Roman *nobilitas* in the early second century BC see Càssola (1962) 375-403 and Millar (1984) and (1989) 138-150. For a critique of Millar's interpretation on the Roman Republic as a 'democracy', and on the role that legislation played in that political context, see Hölkeskamp (2010) 12-22.

²²⁴ On this key question, the debate has been considerably enriched by Badian (1973). See esp. 326: '[...] he made Roman control psychologically acceptable to many of the Greeks: but for him, the future of Greeks and Romans and their mutual relations might have been very different [...]. He always remained, in essence, a Roman noble'. On this understanding of the Roman *imperium*, which one could regard as the enactment of 'soft power', Ferrary (1988) 99-117, who carefully analysed the 'prétendu machiavélisme' of Flaminius, accepting the idea that Greek freedom was a genuine and meaningful aspect of his attitude towards Greece. The *lex Marcia Atinia* tells us a somewhat different story, especially if one turns to Livy's account of the bill.

²²⁵ The scholarship dealing with the different forms of political communication within the Roman Republic is vast, and the approaches to this issue are informed by the most diverse perspectives. Morstein-Marx (2004) 143-158 is the best introduction; the analysis it puts forward is especially fascinating, notably on Cicero's oratory, and the many and changeable feelings of the crowd before the speeches delivered by the orators (*contiones*). Russell (2013) is also an important contribution, especially on the use that tribunes made of the concept of *libertas*, pushed the present analysis to consider the fact that the *contiones* given to the people by such magistrates represented only the more visible moment of a communication strategy that had its pivotal core in the statutes that the tribunes proposed and, in many cases, successfully enacted.

Liv. 33. 25. 4-7 : [...] *L. Furius et M. Claudius Marcellus consulatu inito, cum de provinciis ageretur et Italiam utrique provinciam senatus decerneret, ut Macedoniam cum Italia sortirentur tendebant. Marcellus, provinciae cupidior, pacem simulatam ac fallacem dicendo et rebellaturum si exercitus inde deportatus esset regem, dubios sententiae patres fecerat. et forsitan obtinisset consul, ni Q. Marcius Ralla et Atinius Labeo tribuni plebis se intercessuros dixissent, ni prius ipsi ad plebem tulissent vellent iuberentne cum rege Philippo pacem esse. ea rogatio in Capitolio ad plebem lata est; omnes quinque et triginta tribus 'uti rogas' iusserunt.*

Lucius Furius and Marcus Claudius Marcellus had entered their consulship when the issue of the assignment of the provinces rose and, since the Senate intended to allocate Italy to both consuls, they pushed to obtain Macedonia as well, along with Italy. Marcellus, who was eager to obtain that province, expressed himself in these terms: firstly, the peace was false and fraudulent; secondly, had Rome withdrawn the army, Philip would have immediately rebelled against Roman authority. He made the senators very uncertain about the decision. The consul might have prevailed, if the two tribunes of the plebs, Quintus Marcius Ralla and Gaius Atinius Labeo, had not said that they would use their veto if the *quaestio* was not, above all, brought to the plebs on the Capitol whether they ordered that peace be stipulated with King Philip. The bill was, therefore, presented to the *comitia*. All the thirty-five tribes voted 'as you propose'.

The unquestionable significance of this moment is made apparent by Livy's choice to mention the names of both of the tribunes that were directly involved: Atinius Labeo and Marcius Ralla.²²⁶ While for the second individual we know that he was later '*IIvir* for the dedication of temples in 194 and 192' (34. 53. 5), for Atinius Labeo we can refer to a more relevant incident, which may assist an attempt to define his political engagement in 196 BC against Claudius Marcellus and, consequently, to understand the audience and aims that he was seeking to address with his legislative action.²²⁷ According to Livy (32. 29. 3-4), in 197 BC the same man was involved, as tribune, in promoting the *lex Atinia de coloniis quinque deducendis*.²²⁸ The law authorized the foundation of five colonies of Roman citizens at coastal sites on the Tyrrhenian Sea: *quinque coloniae in oram maritimam: duae ad ostia fluminum Vulturni Liternique, una Puteolos, una ad Castrum Salerni: his Buxentum adiectum* ('Five colonies were established on the coast: two at the mouths of rivers Vulturnus and Liternus, one at

²²⁶ See Klebs, *RE* II (1896) 2105-2106; Münzer, *RE* XIV (1930) 1581; Broughton (1951) 336, 366; Badian (1996) 187-213.

²²⁷ See Briscoe (1973) 297.

²²⁸ Briscoe (1973) 292. It is safe to identify in the tribune cited by Livy in 33. 22. 2, *C. Atinius Labeo et C. Afranius tribuni plebis*, with the same Atinius Labeo of 33. 25. 4-7, and the magistrate cited for the *lex Atinia* of 197 BC in Liv. 32. 29. 3-4.

Puteoli, one at Castrum Salerni; to these colonies Buxentum was added)'.²²⁹ Although the present discussion does not aim to address the major issue of Roman colonization at the beginning of the second century, it may be argued that the actual reason of the *intercessio* put forward by the tribunes in 196 BC has to be sought in the power balance within the Roman *nobilitas*.²³⁰ The legislative support to the colonization of the southern part of the peninsula was a clear message to a specific sector of the Roman society, notably the veterans of the Second Punic War. It was also a significant statement to that sector of the senatorial elite, whose most prominent exponent was Scipio Africanus, whose priority at the time was to promote a stabilization of the region, in the attempt to establish, through the foundation of new colonies, a solid and prosperous class of small and middle landowners, who would consequently maintain a loyal relationship with the political centre. Behind this complex project there was, as mentioned above, the prominent figure of P. Cornelius Scipio Africanus.

It is in this context that we have to explain the decision made by the Senate to reject the attempt of Marcellus to continue the war against Philip. It was not a concession to the policy of Flamininus in the East, as Eckstein wrote, followed by Pfeilschifter, but a full endorsement of Scipio's political view.²³¹ From this perspective, we can also understand why Livy left out the name of Flamininus from his historical narrative. Reporting the name of the proconsul would have entailed the need to openly refer to the man truly responsible for the legislative choices put in place by the two tribunes. In this way Livy also achieved a further goal: to present his readers with a major political debate, firmly embedded within the internal dynamics of the Roman elite, on an issue that was related to the foreign policy that Rome pursued during those years. In the same vein, we can also appreciate the effects of this historiographical approach in the final section of Livy's account, when the tribunes addressed the assembly of the *concilium plebis* and the Roman citizens, who '*uti rogas*' *iusserunt*. We are clearly

²²⁹ On the significance of the *coloniae maritimae* in the history of Roman colonization see Salmon (1970) 97: '[...] the decision to plant these colonies was taken in the Roman senate, dominated at the time by Scipio Africanus and his faction, and it may be that this colonization programme was a favourite project of his'. On the outstanding influence the Africanus had over the first decade of the century, particularly with reference to Flamininus' policy, see Scullard (1973) 97-109. On the close correspondence between domestic and foreign Roman politics, and the relevance of Scipio Africanus in shaping such integration, see Etcheto (2012) 110-114.

²³⁰ See Gabba (1994) 33-43, stressing the significance of land distributions to Scipio's soldiers, especially in Samnium and Apulia. In his innovative study Bispham (2007) 113-160, inspired by Mouritsen (1998), put forward the view of an effective relationship between the local political elite and the *nobilitas* based in Rome, especially from the second half of the third century BC. Such links were not aimed at achieving a territorial unification under the rule of Rome, but a better exploitation of the resources that the overseas wars had made available.

²³¹ Eckstein (1987) 294: '[...] the senate's acceptance of Flamininus' peace with Philip, despite the opposition of the consul Marcellus and of the Aetolians, is simply more confirmation of the strong senatorial tendency to support the judgments and volition of the Roman commander in the field'. Cf. Pfeilschifter (2005) 333.

presented with a tribunician strategy of communication whose main aspect lies in what we can regard as a sophisticated, and yet deceptively simple, message. The magistrates are asking the people a specific question: do you want war or peace? The answer was exactly as they expected: *omnes quinque et triginta tribus* chose peace. They grasped only the more superficial aspect of the bill, in keeping with the political aims of the tribunician *rogatio*.

If the analysis of Livy's text, on the one hand, revealed the presence, within the *lex Marcia Atinia*, of two different political messages, which were aimed at two very different audiences, Polybius, on the other, gives us the possibility to examine the same historical moment from another perspective. He does not comment on the responsibility the tribunes had at that pivotal time, focusing his narrative only on those men, whom he regards as the protagonists of the complex controversy between Rome and Philip V of Macedon, Claudius Marcellus and Flamininus.

Pol., 18. 42. 1-5: (*Res Italiae*) Ὅτι ἐπὶ Μαρκέλλου Κλαυδίου ὑπάτου παρεληφότος τὴν ὑπατον ἀρχὴν ἦκον εἰς τὴν Ῥώμην οἱ τε παρὰ τοῦ Φιλίππου πρέσβεις οἱ τε παρὰ τοῦ Τίτου καὶ τῶν συμμάχων ὑπὲρ τῶν πρὸς Φίλιππον συνθηκῶν. λόγων δὲ πλείονων γενομένων ἐν τῇ συγκλήτῳ, ταύτη μὲν ἐδόκει βεβαιοῦν τὰς ὁμολογίας· εἰς δὲ τὸν δῆμον εἰσενεχθέντος τοῦ διαβουλίου Μάρκος, αὐτὸς ἐπιθυμῶν τῆς εἰς τὴν Ἑλλάδα διαβάσεως, ἀντέλεγε καὶ πολλὴν ἐποιεῖτο σπουδὴν εἰς τὸ διακόψαι τὰς συνθήκας. οὐ μὴν ἀλλ' ὅ γε δῆμος κατὰ τὴν τοῦ Τίτου προαίρεσιν ἐπεκύρωσε τὰς διαλύσεις. ὧν ἐπιτελεσθεισῶν εὐθέως ἡ σύγκλητος ἄνδρας δέκα καταστήσασα τῶν ἐπιφανῶν ἐξέπεμπε τοὺς χειριοῦντας τὰ κατὰ τὴν Ἑλλάδα μετὰ τοῦ Τίτου καὶ βεβαιώσοντας τοῖς Ἑλλήσι τὴν ἐλευθερίαν.

When Claudius Marcellus had just started his consulship, the ambassadors sent by Philip, the envoys on behalf of Titus and the allies arrived in Rome, in order to debate the peace with the king of Macedon.²³² After a serious discussion in the Senate, it was decided to accept the peace. But, when the resolution was brought to the people, Marcus, who eagerly desired to pass himself to Greece, spoke against and tried, as much as possible, to push for a failure of the treaty. Nevertheless, the people sustained Titus' proposition and voted for the peace. In the aftermath of the treaty, the Senate chose, from its ranks, ten outstanding men and sent them to support Flamininus, in the attempt to look after the Greek matters and support the freedom of Greece.

²³² See Broughton (1951) 335. On the *gens* Claudia and its two branches, see Groag, *RE*, III.2 (1899), 2663: 'Es gab in Rom eine patricische und eine plebeische Familie dieses Namens: die Hauptlinie der ersten waren die Pulchri, die der zweiten die Marcelli'. Remarkable what Suet. wrote, in this regard, in *Tib.* 1: *patricia gens Claudia orta est ex Regillis, oppido Sabinorum. inde Romam recens conditam cum magna clientium manu commigravit*. On the Claudii Marcelli see Münzer, *RE*, III.2 (1899), coll. 2731-2732. In this case we also have a remarkable piece literary evidence: Cic. *de or.* I, 176: *inter Marcellos et Claudios patricos centumviri iudicarunt, cum Marcelli ab liberti filio stirpe, Claudii patricii eiusdem hominis hereditatem gente ad se redisse dicerent*. On M. Claudius Marcellus see Münzer, *RE*, III.2 (1899), coll. 2755-2757.

Despite his considerable knowledge of the Roman political system, the Greek historian fails to mention, the crucial involvement of the two tribunes, who, as we have seen in Livy, openly opposed the proposal put forward by Marcellus, who was keen to resume the war against Philip. If we compare what we read in Livy's text with Polybius' account, valuable insights may be drawn. While Livy presents the debate around the treaty as something that took place entirely within the *curia* (*Marcellus, provinciae cupidior, pacem simulatam ac fallacem dicendo et rebellaturum si exercitus inde deportatus esset regem, dubios sententiae patres fecerat*), Polybius, in spite of his reference to a senatorial debate (λόγων δὲ πλειόνων γενομένων ἐν τῇ συγκλήτῳ) describes the core of the consul's action as a process that unfolds in the *comitium*, and revolves around a speech to the Roman people (ἀντέλεγε καὶ πολλὴν ἐποιεῖτο σπουδὴν εἰς τὸ διακόψαι τὰς συνθήκας). Polybius' point of view bypasses the legislative aspect of the question, which Livy clearly relates to the bill proposed by Marcus Ralla and Atinius Labeo, and presents a more direct way of communication between the members of the Roman *nobilitas* and the people: the *contio*. The political and institutional diaphragm of the tribunate represents a key feature in Livy's account, and we are accordingly entitled to interpret this magistracy and its involvement in the legislative process as a *trait d'union* between the Senate and the Roman people. In Polybius, on the other hand, it simply does not exist. While the Latin source calls us to deal with a public law that is the main vehicle of the political message, the Greek historian focuses all his interest on the direct relationship that binds together the leader with the people. We can infer that Polybius closely focused his attention on what, in his own view, was the driving force in the Roman state between the third and the second century BC: the senatorial elite as the key factor of the development of Roman policy, both under its internal and external aspects. The Greek historian seems to neutralize the peculiar nature of the tribunate, absorbing it into his overall conception of the historical role of the Roman *nobilitas*. On this point, a reference to another Greek source on a different historical period may prove helpful. A passage of Zonaras (7. 15), which summarises Cassius Dio's account and discusses the political nature of the tribunate in its early stages, during the first half of the fifth century BC, is of great relevance in the attempt to understand what is meant by 'neutralization' of the strength of the tribunate of the *plebs* in the context of our discussion:

[...] τὸ μὲν οὖν πρῶτον οὐκ εἰσήσαν εἰς τὸ βουλευτήριον, καθήμενοι δὲ ἐπὶ τῆς εἰσόδου τὰ ποιούμενα παρατήρουν, καὶ εἴ τι μὴ αὐτοῖς ἤρεσκε, παραχρῆμα ἀνθίσταντο· εἶτα καὶ εἰσεκαλοῦντο ἐντός. εἰσέπειτα μέντοι καὶ μετέλαβον τῆς βουλείας οἱ δημαρχήσαντες, καὶ τέλος κάκ τῶν βουλευτῶν τινες ἠξίωσαν δημαρχεῖν.

Now at first, they did not enter the Senate-house, but sat at the entrance and watched proceedings, and in case anything failed to please them, they would there and then oppose it. Next, they were invited inside. Later, however, the ex-tribunes became members of the Senate, and finally some of the senators sought to be tribunes.²³³

Zonaras offers further and effective insight into the perspective that we already saw at work in Polybius' account. The reference made by Zonaras to the tribunes of the *plebs* presents a magistracy that is placed, at its early stage, on a side of the Roman political debate, and completely subjected to the will of the senior politicians gathered in the Senate. Zonaras' evidence strengthens, in this sense, the Greek view of a tribunate of the *plebs* that is, on one hand, unable to set the agenda of the domestic and foreign political debate, and on the other, a mere instrument of the most prominent men of the time.

Behind the interpretation of the events offered by Polybius, there is a distinctive view of the role the political assembly, i.e. ἐκκλησία, of the citizens had in the Greek world, and, at the same time, the significant role that the political leaders and their initiatives had in that context. Nevertheless, beyond this explanation, which we could regard as ideologically based, there is a more contingent reason. Polybius experienced Roman political life from a privileged perspective. The direct contacts he had with the protagonists of the crucial events that took place in the half of the second century, above all his connection with Scipio Aemilianus, determined an analysis of the historical facts that were described as the outcome of the political aims pursued by the consuls and military commanders. Polybius' account of the treaty between Rome and Philip V is firmly shaped around the two figures of Marcellus and Flaminius, and, again, behind the man who was then at the peak of his political trajectory: P. Cornelius Scipio Africanus. The message to the readers of Polybius' *Histories* could not have been clearer: in Rome, crucial political matters are discussed and solved within the most distinguished *gentes*, and there are no effective mediators between the members of those clans and the Roman *populus*, which is simply called to ratify what has been established elsewhere. The perspective that Polybius offered on those protagonists of the first half of the century to his Greek and Roman audience may be considered as a prelude to what the *nobilitas* would become after the pivotal moment of the Third Punic War. The military commands, after that major turning point, will represent the key feature of any successful political career, paving the way for a century of dramatic and, one might say, revolutionary developments. The speech that Marcellus put in place addressing the crowd was not a simple *contio* summoned by a magistrate. In this episode,

²³³ English translation has been taken from the Loeb Classical Library.

we can easily recognize the experience that Polybius had during his time in Rome. All history is contemporary history. Finally, in response of Zonaras' account, we mention Livy's evidence concerning the creation of the tribunate of the plebs in 494/493 BC (2. 33. 1-3):

[...] *agi deinde de concordia coeptum, concessumque in condiciones ut plebi sui magistratus essent sacrosancti quibus auxilii latio adversus consules esset, neve cui patrum capere eum magistratum liceret. Ita tribuni plebei creati duo, C. Licinius et L. Albinus, ii tres collegas sibi creaverunt, in his Sicinium fuisse seditionis auctorem; de duobus qui fuerint minus convenit. Sunt qui duos tantum in Sacro monte creatos tribunos esse dicant, ibique sacratam legem datam.*

Steps were then taken towards reconciliation, and a compromise was effected on these terms: the plebeians were to have magistrates of their own, who should be inviolable, and in them should lie the right to aid the people against the consuls, nor should any senator be permitted to take this magistracy. And so, they chose two 'tribunes of the *plebs*' Gaius Licinius and Lucius Albinus. These appointed three others to be their colleagues. Amongst the latter, Sicinius, the promoter of the revolt, was one as all agree; the identity of the other two is less certain. Some hold that there were only two tribunes elected on the Sacred Mount, and that the law of inviolability was enacted there.²³⁴

Livy's passage describing the historical origins of the tribunate is key in order to achieve a deep understanding of the political and legislative significance of such magistracy. The very opening of this text is of special relevance: [...] *agi deinde de concordia coeptum, concessumque in condiciones ut plebi sui magistratus essent*. Unlike Polybius' historiographical perspective on the tribunes' role and from what we find in Zonaras' source about the initial separation between the tribunate and the Roman Senate, Livy openly presents the creation of the tribunate as the political and institutional outcome of the *concordia* secured within the Roman ruling elite of the time. In this regard, it is noteworthy that the Roman historian put forward a second hypothesis about the birth of such magistracy only at the end of his narrative, an oblique reference to some sources that had presented the tribunate as the result of a *lex sacrata*, the legislative instrument by which the plebeians established themselves as a separate political body, autonomous from the deliberations assumed by the patricians. Despite the lack of Livy's specific historiographical references, it is in this sense that we are entitled to consider, at least at the beginning of its history, the tribunate of the *plebs* as a revolutionary magistracy, exactly because of its need to use violence as a political instrument to impose the respect of its two main prerogatives: the *intercessio* and the *ius auxilii*.

²³⁴ English translation has been taken from the Loeb Classical Library.

[2.6] *lex Valeria Fundania* (195 BC) [*de lege Oppia sumptuaria abroganda* Rotondi] ²³⁵

The year 195 BC represented, for the tribunate of the *plebs*, a challenging moment. At this stage of our discussion, two key issues related to the political activity of the tribunes should come into close focus: first, the question of luxury in Rome in the aftermath of the Second Punic War, and the variety of economic and social changes that it brought about among the Roman *nobilitas*;²³⁶ secondly, the historical significance of *provocatio*, on which, as we shall see below, the scholarly debate remains open.²³⁷ Tribunician activity expressed itself in both directions in 195 BC: the most suitable starting point is its engagement with the institution of *provocatio*, as the *leges Porciae* represented a decisive moment for a further development of plebeian politics in Rome, both in the constitutional domain and in the economic one. By way of introduction it is worthy tracing the historical development of *provocatio* throughout the Mid-Republican age, in order to fully appreciate the value of the reform put in place with the legislative initiative of 195 BC.

The clearest and most explicit literary evidence for the *leges Porciae* is in Cicero's *De re publica*, where a comment on the relative extent of innovation brought about by the laws themselves may be found.

rep. 2. 53-54: [...] *idemque, in quo fuit Publicola maxime, legem ad populum tulit eam, quae centuriatis comitiis prima lata est, ne quis magistratus civem Romanum adversus provocationem necaret neve verberaret. Provocationem autem etiam a regibus fuisse declarant pontificii libri, significant nostri etiam augurales, itemque*

²³⁵ See Rotondi (1912) 267-270, who stresses the absence of any clear evidence for the *leges Porciae* in Livy: 'Sull'autore, la data e il contenuto di ciascuna ben poco si può ritenere, e forse il silenzio di Livio, che pur le conosce (Liv. 10. 9. 4), deve far inclinare a una data recente'. See also Elster (2003) 296-301.

²³⁶ On this important aspect of Roman society see Clemente (1981), who argued that the sumptuary laws of that period were supported by a natural desire of the Roman elite to avoid an increasingly dangerous presence of wealth in Rome, potentially disruptive for the existing political balance. Despite the valuable perspective adopted in this study, the envisaged connection between tribunician sumptuary legislation and the policies enacted by the Roman elite does not completely focus on the main question. See Zanda (2011) 114-117, which represents a good summary of the law, but is too heavily focused on the moral aspects of the problem. The approach proposed by Kay (2014) 21-42 better reflects the complexity of the problem, as it aims to provide a comprehensive picture of the changes that affected the ideological and political use of wealth by the Roman ruling classes in the aftermath of the Hannibalic War.

²³⁷ On this problem, especially the constitutional aspects of *provocatio*, see Bleicken, *RE* XXIII (1959) 2448-2449; Lintott (1972) 249-250; De Martino (1973) 425; Kunkel-Wittmann (1995) 167. On the historical reconstruction of this juridical tool, see Bauman (1973) 34-47 and Develin (1978) 45-60.

ab omni iudicio poenaeque provocari licere indicant duodecim tabulae conpluribus legibus; et quod proditum memoriae est decemviros, qui leges scripserint, sine provocatione creatos, satis ostendit reliquos sine provocatione magistratus non fuisse; Luciique Valerii Potiti et M. Horatii Barbati, hominum concordiae causa sapienter popularium, consularis lex sanxit, ne qui magistratus sine provocatione crearetur; neque vero leges Porciae, quae tres sunt trium Porciorum, ut scitis, quicquam praeter sanctionem attulerunt novi.

It was the same man (*scil.* P. Valerius) who, with an initiative by which he achieved popular favour, put forward a bill before the people, which was the first voted by the *comitia centuriata*, and by which any magistrate was forbidden to execute or whip a Roman citizen before he was given the right of appealing.²³⁸ The pontiffs' chronicles, however, say that the *ius provocationis* was effective also at the time of the kings, and our augural books confirm this fact. At the same time, many laws of the Twelve Tables demonstrate that an appeal from any sort of judgement or punishment was possible; and the transmitted memory, for which the *decemviri*, who wrote the laws, were elected without any chance to appeal against their decisions, clearly shows that the other magistrates were affected by that institution. Again, the law proposed by the consuls Valerius Potitus and Horatius Barbatus, who supported the rights of the people in order to preserve peace, stated that no magistrate, for whom *provocatio* was not applicable, will be elected.²³⁹ Indeed, the Porcian laws, which were three and put forward by three members of the *gens* Porcia, did not add anything relevant to the previous statutes, except for the punishment.

Three preliminary questions arise from Cicero's text: first, the meaning of the attempt to set in the early times of the Republic the origins of *provocatio*, whose earliest backer is said to have been P. Valerius Publicola; secondly, the questionable choice to mention, on the one hand, the *lex Valeria Horatia de provocatione* (449 BC), adding a remark that is closely related to Cicero's own time and makes a loaded reference to the idea of *concordia*,²⁴⁰ whilst overlooking that *lex Valeria de provocatione* that was put forward in 300 BC by the consul M. Valerius Corvus, and represented the political and legal recognition of *provocatio*.²⁴¹ Finally, the key

²³⁸ Broughton (1951) 2. See also Volkmann, Valerius Poplicola, *RE*, VIII, (1955) 180-188.

²³⁹ Broughton (1951) 47-48 underlines the crucial role played by the *nobilitas* in 'bringing the orders into agreement', especially after the enactment of the Valerio-Horatian laws in 449 BC. While it is important to stress the key role played by the Roman elite, it is also important to recognize with Momigliano (1986) 184 that, from the very beginning of the Republican period, a clear distinction existed between the concepts of *populus* and *plebs*: '[...] confirmation that the *plebs* was outside the *populus* -the people in arms- comes from a brief consideration of the structure of the plebeian institutions. When the plebeian set up their own organization in the first decades of the Republic, they took the institutions of the *populus* as their model; but they did so in a manner characteristic of people who seek to imitate institutions from which they are themselves excluded'. Our understanding of *provocatio* should be revisited in light of this fundamental assumption.

²⁴⁰ On this point, especially on the use and political implications of the notion of *concordia ordinum*, see Nicolet (1966) 41: '[...] l'expression, en effet, est très nettement cicéronienne'. The entry in *T. L. L.*, IV, 83, lists only instances from Cicero and Livy, except for a statement in Tacitus, *Ann.* 3. 27: *adversum patrum factiones multa populus paravit [...] firmandae concordiae. nam secutae leges saepius dissensione ordinum [...] latae sunt.*

²⁴¹ Broughton (1951) 172. On M. Valerius Corvus see Volkmann, *RE*, VII (1948) 2413-2418. Cf. Bauman (1973) 34, n. 2: 'striking omission'.

issue that should shed light on the previous two and represents a significant step towards the contextualization of the *Leges Porciae* of 195 BC: why Cicero chose to downplay not just the significance of these laws, but also the political rationale (*neque vero leges Porciae [...] quicquam [...] attulerunt novi*), behind the proposals under examination, and why he did not give the names of the three *rogatores*, if the bills and their proponents were so well known (*ut scitis*).

Cicero needed a long-term framework for his discussion of *provocatio*, his aim was not to stress the importance of that political and juridical achievement, but to better support his own political project, in which the idea of civic *concordia* had a central role. In doing so, he conferred historical legitimacy to his political attempt. Moreover, he tried to retroject the right of appeal to the regal period, calling in support of his argument old priest records, the *pontificii libri* and the *libri augurales*: *provocationem autem etiam a regibus fuisse declarant pontificii libri*. This may be one of the reasons why he avoided to mention the *lex Valeria* of 300 BC.²⁴² It dealt with a time when the political conflicts had not been resolved, and the *plebs*, led by the tribunate, was arising as a key force in Roman society. Dyck, in his discussion of this text, rightly noted that: '[...] Cicero/Scipio wants to take the wind out of the sails of Publicola, constructed as a *popularis*-style leader'. Furthermore, Cicero discussed the *lex Valeria-Horatia* (449 BC) as an historical fact, claiming that this bill stated that no magistrates could be elected if they were not subject to the constraints of the *provocatio*.²⁴³ The example he makes is that of the *decemviri legibus scribendis*, who, according to the tradition, were not subject to the right of appeal. It is important to stress that, even if the *decemviri* were *sine provocatione creati*, this should not necessarily bring us to accept that *provocatio* was a normal juridical procedure at that time. The historicity and scope of the statute of 449 BC remain at the very least problematic. Even more, the uncertain reliability of the *lex Valeria Horatia* should have suggested to Cicero to refer with more caution to the *lex Valeria* of 300 BC, but, as previously mentioned, there is no mention of this bill in his account.

The same, interestingly, happens in Livy, although his account focuses on a much earlier period of Republican history. His treatment of *provocatio* adds a further element to our discussion:

²⁴² On the remarkable importance of the *lex Valeria* of 300 BC and on the reliability of the two earlier statutes concerning *provocatio*, see also the critical remarks of Drummond (1990) 219-220: '[...] According to our sources such a right of appeal had been formally guaranteed against execution or scourging by a *lex Valeria* of 509 BC. This was reinforced by a *lex Valeria Horatia* [...] of 449 BC prohibiting the appointment of magistrates not subject to appeal and its provisions were repeated by a *lex Valeria* of 300. Only the last of these can be authentic'.

²⁴³ Dyck (1998) 566.

2. 8. 1-3: [...] *latae deinde leges, non solum quae regni suspicione consulem absolvent, sed quae adeo in contrarium verterent ut popularem etiam facerent: inde cognomen factum Publicolae est. Ante omnes de provocatione adversus magistratus ad populum sacrandoque cum bonis capite eius qui regni occupandi consilia inisset gratae in volgus leges fuere. quas cum solus pertulisset, ut sua unius in his gratia esset, tum deinde comitia collegae subrogando habuit.*

Laws were then proposed which not only cleared the consul from the suspicion of seeking kingly power, but took such an opposite turn that they even made him popular and caused him to be styled Publicola, [the People's Friend]. Above all, the law about appealing from the magistrates to the people, and the one that pronounced a curse on the life and property of a man who should plot to make himself king, were welcome to the commons. When he had carried through these measures alone, that he might enjoy without a rival all the favour arising out of them, he finally held an election to choose a colleague for the unexpired term.²⁴⁴

Livy, in considering the role played by Valerius Publicola in relation to the institution of *provocatio*, broadly shares Cicero's political outlook: as a member of the patriciate who promoted the rights of the common people, he was given the name *Publicola*. Cicero uses the adverb *maxime*, Livy the adjective *solus*. The historian, offering a further element to corroborate Cicero/Scipio's discussion of this episode of the early Republic, openly writes *popularem*, surely in an anachronistic way, clearly influenced by his own time, but certainly offering a key indication about his own political thinking, especially in light of the fact that he mentions the *leges Porciae de provocatione* in just one line of text.²⁴⁵ His key message is that the main actor of Roman politics is the *nobilitas*, even when the subject involved are the *populus* and its rights. In his detailed discussion of Livy's text, Ogilvie rejects the possibility to regard the first law (*de provocatione*) mentioned by Livy as historical: '[...] such democratic privileges are the end-product of a long evolution and we can trace the beginning of it to the creation of the tribunate and the provisions of the Twelve Tables [...]. The law of 509 BC is fictitious'.²⁴⁶ In this reading, therefore, the bill of 509 BC must be considered a doublet of the identical law put forward by the consul Valerius in 300 BC. The *provocatio ad populum*, as Ogilvie correctly pointed out, has to be defined within more complex and less stereotypical political dynamics than those sketched in the accounts of Cicero and Livy.

Considering what has been discussed so far, it seems that the historical and juridical question concerning the *provocatio*, especially for the peculiar political contingency in which

²⁴⁴ English translation has been taken from the Loeb Classical Library.

²⁴⁵ Liv. 2. 8. 1.

²⁴⁶ Ogilvie (1965) 252-253.

it emerged, must be linked with the theme of *concordia*.²⁴⁷ This relationship warrants close scrutiny from the ideological standpoint and, more important to our purposes, with reference to the developments of the year 195 BC. Another major figure of the early Republic is central to any discussion of concord: M. Furius Camillus.²⁴⁸ Despite the chronological distance with the events of 195 BC, the comparison will not be irrelevant, especially in understanding the political relevance of the concept of *concordia*, and its legislative development into the *leges de provocatione* of 195 BC. Livy (7. 1. 9) offers a memorable portrait of Camillus, using words with a clear ideological connotation.²⁴⁹ However, this text will help our attempt to reconstruct and contextualize the legislative proposals of 195 BC, the role of Cato the Elder and the position of the tribune of 199 BC, Porcius Laeca.²⁵⁰

[...] *fuit enim vere vir unicus in omni fortuna, princeps pace belloque priusquam exsulatum iret, clarior in exsilio, vel desiderio civitatis quae capta absentis imploravit opem vel felicitate qua restitutus in patriam secum patriam ipsam restituit; par deinde per quinque et viginti annos- tot enim postea vixit- titulo tantae gloriae fuit dignusque habitus quem secundum a Romulo conditorem urbis Romanae ferrent.*

He was, without any doubt, a unique man in every circumstance, always the most illustrious either in peace as in war times, before he was expelled. Even more noticeable during the exile, both for his desire to come back to Rome, which, taken by the enemies, was desperately looking for his return, and, after, for his happiness, that he demonstrated when, after he returned, he gave back also the fatherland. He maintained himself at such a level of glory for the rest of his life, for another twenty-five years, and well deserved the title of ‘father of the fatherland’, the second after Romulus.

²⁴⁷ See *TLL*, IV (1906-1909) 83-85. In Livy, we can find the formula: *concordia civium* at 2. 32. 7 and in 2. 33. 11: 1) *nullam [...] nisi in concordia civium spem reliquam ducere*. 2) *huic interpreti arbitroque concordiae civium*. At 3. 58. 4; 68, 11; 69, 4, Livy refers openly to *concordia ordinum*, possibly influenced by Cicero’s example that we read in *ep.* 12, 15, 3: *concordiam et conspirationem omnium ordinum*. See also 2. 33. 1: [...] *agi [...] de concordia plebis ac patrum*. See Ogilvie (1965) 312-313.

²⁴⁸ Münzer, *RE*, VII 1, (1910) 324-348 remains a valuable introduction to M. Furius Camillus. On the long and complex political process through which Camillus achieved his outstanding position in the first half of the fourth century BC, see the dated but still absolutely relevant analysis of Mommsen (1864) 297-381. See Momigliano (1942) 111-112: ‘if a plebeian consul appears first in 366, Camillus, who in 368 had been replaced by another dictator more favourable to the plebs, must have changed his mind in 367; he accepted a solution that he had wanted to avoid a year earlier’. De Sanctis (1960) 202-203, who was sceptical, to say the least, about the reality of Camillus’ intervention: ‘persino intorno al racconto del vecchio Camillo che, rinunciando a difendere più oltre i privilegi dell’aristocrazia, salva per una seconda volta la patria, già da lui salvata al tempo dell’incendio gallico, può sorgere il sospetto che questo secondo salvamento sia ricopiato sul primo e quindi al pari di esso di scarso valore storico’.

²⁴⁹ Momigliano (1942) 111, n. 290: ‘what is typically Livian from what is generally Augustan’.

²⁵⁰ On the political and legislative involvement of Cato, refer to the discussion concerning the *lex Oppia* [1.5] p. 38.

In the obituary of Camillus, Livy describes the great commander as *vir unicus, princeps pace belloque*, and *secundum a Romulo conditorem urbis Romanae*.²⁵¹ It is obvious why the historian is employing the expression *princeps bello*: the reference is to the victory over Veii.²⁵² The choice of the formula *princeps pace* is less straightforward.²⁵³ An explanation could come from the comparison suggested above with the policy promoted in the second century by the Elder Cato. For both men, the aim was *concordia*, and the way to achieve such a significant goal has to be found in the notion of *sapientia*, ‘wisdom’.²⁵⁴ Camillus was *princeps pace* on account of his political ability to promote a possible agreement on a crucial question like the access to the consulship for the plebeians. Cato, as we shall see, displayed *sapientia* most egregiously during his *consulatus*, supporting the *lex Porcia* put forward against the opposition of the most conservative sectors of the Senate. As Momigliano wrote: ‘[...] the Roman *praxis* of Concord emphasizes the extension of privileges from one class to another. The *concordia ordinum* between patricians and plebeians means that the patricians will share the magistracies with the plebeians’.²⁵⁵ We are facing, therefore, not just the notion of *sapientia* in philosophical terms, but a particular idea of this category, a thoroughly Roman interpretation of that. Cato, as Cicero wrote, was the champion of this practical *sapientia*.

In *sen.* 2. 4 Scipio celebrates the virtues of Cato in these terms: [...] *saepenumero admirari soleo cum hoc C. Laelio cum ceterarum rerum tuam excellentem, M. Cato, perfectamque sapientiam*.

In *amic.* 2. 9 Laelius says as follows: [...] *tu autem, Fanni, [...], sed, ut mihi videris, non recte iudicas de Catone: aut enim nemo, quod quidem magis credo, aut, si quisquam, ille sapiens fuit*.

As we can see, the principal virtue of Cato has to be recognized in his wisdom. A political one, which enabled him to deal with the serious issue of the *provocatio* at the beginning of the second century. As we have seen in the previous pages, a fundamental theme of the political history of the fourth century BC is the significant presence of the members of the *gens* Valeria. In 195 BC Cato shared the consulship with another distinguished member of that clan: Valerius

²⁵¹ See Oakley (1998) 35-37.

²⁵² On the importance of the term *princeps* in the Republican context, and on the development of a new way of thinking about political power and social relations, see Lobur (2008), which provides a good analysis of the distance between our idea/s and use/s of the notion of ideology and the ancient historical contexts.

²⁵³ 7. 1. 9. is the only occurrence of *princeps pace* within Livy’s narrative.

²⁵⁴ On *concordia* in the aftermath of the Second Punic War, especially with regard to the political interaction between the nobility and the plebeian families in the Senate, see Akar (2013) 66-101.

²⁵⁵ Momigliano (1942) 119.

Flaccus.²⁵⁶ Possibly the colleague supported the legislative proposal of Cato, for which we can quote, here, two other remarkable sources, both belonging to the first century, and both speaking of just one bill.

Firstly, Cicero again (*Verr. 2. 63. 163*):

[...] *o nomen dulce libertatis! o ius eximium nostrae civitatis! o lex Porcia legesque Semproniae! o graviter desiderata et aliquando reddita plebi Romanae tribunicia potestas! Hucine tandem haec omnia reciderunt ut civis Romanus in provincia populi Romani, in oppido foederatorum, ab eo qui beneficio populi Romani fasces et securas haberet deligatus in foro virgis caederetur? [...] in crucem tu agere ausus es quemquam qui se civem Romanum esse diceret?*

Does freedom, that precious thing, mean nothing? nor the proud privileges of a citizen of Rome? nor the law of Porcius, the laws of Sempronius? nor the tribunes' power, whose loss our people felt so deeply till now at last it has been restored to them? Have all these things come in the end to mean so little that in a Roman province, in a town whose people have special privileges, a Roman citizen could be bound and flogged in the marketplace by a man who owed his rods and axes to the favour of the Roman people?²⁵⁷

Moreover, Sallust makes reference to the provisions of the Porcian law (*Cat. 51. 21*):

[...] *sed, per deos immortalis, quam ob rem in sententiam non addidisti, uti prius verberibus in eos animadvorteretur? an quia lex Porcia vetat?*

But, in the name of the immortal Gods! Why have you not added in your sentence that they should be previously fustigated? Maybe because the Porcian law interdicts such a conduct?

As pointed out above, in Cicero and in Sallust we can read of just one bill named Porcia. However, in Cicero we find elements that further complicate the picture. Interestingly, Cicero establishes concepts in the political landscape of the end of the Republic: *libertas* and *ius civitatis* are linked with ancient laws, such as the *lex Porcia* and the *leges Semproniae*, and, furthermore, with the *tribunicia potestas*. This has to be considered the key feature in the reference to the *leges Semproniae*. The political experience of the Gracchi concluded a very long period of reforms that, in the reconstruction proposed here, started in 367 BC, with the *leges Liciniae-Sextiae* backed by Camillus, passed through the first historically well attested *lex Valeria de provocatione* of 300 BC, promoted by the consul M. Valerius Corvus, eventually

²⁵⁶ Broughton (1951) 339.

²⁵⁷ English translation has been taken from the Loeb Classical Library.

revisited at the beginning of the second century, in 195 BC, with the legislative intervention of M. Porcius Cato. The end of the process, as Cicero pointed out, were the *leges Semproniae* (133-123 BC). It is in this regard that Astin asserted the direct commitment of Cato in promoting and defending the right of *provocatio*: ‘it is likely that during this period of his career Cato was involved with new legislation concerning *provocatio*’.²⁵⁸ He was the *rogator*, as consul of 195 BC, of the same bill that the tribune of the *plebs* of 199 BC, P. Porcius Laeca, had backed four years earlier, and for which we have a denarius issued by a member of that family, with in exergue PROVOCO. The last step could have been the *rogatio* of P. Porcius Licinus as praetor in 193 BC.²⁵⁹ The coin enables us to value the key role played by the *gens* Porcia in addressing the major juridical theme of *provocatio*, and strengthens the chronological link that we have established between the turning point of the year 195 BC and the final step of this long political process represented by the *leges Semproniae* enacted in the decade 133-123 BC.

[2.7] *lex Sempronia* (193 BC) [*de pecunia credita* Rotondi] ²⁶⁰

In the aftermath of the *leges Porciae de provocatione*, the political involvement of the tribunes with matters of economic and social significance had a further development with the *lex Sempronia de pecunia credita* of 193 BC, put forward by the tribune M. Sempronius Tuditanus. The bill dealt with a controversial and complex financial issue, and affected the relationship between the political centre and the territories controlled by Rome across Italy, *coloniae* and *municipia*.²⁶¹ It also addressed a long-standing problem: debt.²⁶² The bill of 193 BC is usually

²⁵⁸ Astin (1978) 21-23.

²⁵⁹ Crawford (1975) n. 301.

²⁶⁰ Broughton (1951) 348; Elster (2003) 305-307. See also Märtin (2012) 324-344, esp. on the technical issue of *ex auctoritate patrum plebem rogare*, which is one of the key features of the bill put forward by M. Sempronius Tuditanus.

²⁶¹ Cf. Badian (1958) 146 n. 3: ‘[...] the question whether laws passed in Rome could normally apply to allied cities is entirely theoretical. When it suited Rome, they did’. The Roman source quoted by Badian is Liv. 35. 7. 4, where the historian mentions the *rogatio* of the tribune M. Sempronius Tuditanus.

²⁶² This issue has been widely debated among modern scholars. However, discussions of debt legislation have tended to focus on specific periods: see e.g. De Martino (1979) 183-224 and Gabba (1989) 570-575; see also Savunen (1993) 143-159. Hölkeskamp (2011) 114-204 recognizes a degree of continuity in some of the main social and economic problems that affected Rome and the parts of the peninsula that had been progressively fallen under Roman rule.

overlooked in the modern treatments of this issue. In what follows we shall suggest that debt is central to the understanding of the *lex Sempronia* of 193 BC. Before doing so, it is necessary to give a brief overview of the Roman legislation on debt before the second century BC.

Rotondi lists the evidence for seven pieces of legislation dealing with debt between 367 BC and 287:

- 1) *lex Licinia Sextia de aere alieno* (367)
- 2) *lex Duilia Menenia de unciario fenore* (357)
- 3) *lex de V viris mensariis creandis* (352)
- 4) *plebiscitum de faenore semunciario* (347)
- 5) *lex Genucia de faeneratione* (342)
- 6) *lex Poetelia Papiria de nexis* (326)
- 7) *rogatio de aere alieno minuendo* (287)

An obvious, but not negligible remark is in order: debt legislation seems to entirely belong to the crucial, final phase of the ‘struggle of the orders’. There were seven laws on the same issue in eighty years, a rate of more than one per decade. In the middle of the fourth century, when Rome was focused on territorial expansion, the problem of debt was clearly linked with the distribution of land, and even more with the increasingly larger number of landless citizens. As Brunt pointed out ‘[...] the debt problem provoked the last great explosion in the struggle of the orders. It drove the plebs to secede once more in 287’.²⁶³ In that year Q. Hortensius, a plebeian, was appointed dictator and promoted the *lex Hortensia de plebiscitis*, and the *rogatio de aere alieno minuendo*, a widely neglected bill, which seems to have made a significant impact. Nevertheless, the evidence suggests a different picture. The financial and eventually political issue of debt endured well into the second century BC, and also had significant, well-attested ramifications in the first century, showing its strength and significance of the problem. What Livy wrote respectively about the *lex Poetelia Papiria de nexis* of 326 BC and the *rogatio* of 287 BC is especially significant:²⁶⁴

²⁶³ Brunt (1971) 57.

²⁶⁴ See Berger, *lex Poetelia Papiria*, in *RE Suppl.* 7 (1940) 405-409. See also Cornell (1990) 331, who builds a direct link between the issue of debt and the consequent form of slavery, the *nexum*, and the occupation of the *ager publicus* by the patricians, in what seems to be a problematic way, if we do not limit it to the fourth and third centuries. As direct consequence, many peasants were reduced to servitude: ‘[...] in this way the majority of the peasants were prevented from rising above the level of subsistence, and from obtaining a share of the surplus, which was entirely expropriated by the patricians and their clients’.

Liv. (8. 28. 1-3, 8-9):

[...] *eo anno plebi Romanae velut aliud initium libertatis factum est quod necti desierunt; mutatum autem ius ob unius faeneratoris simul libidinem, simul crudelitatem insignem. L. Papirius is fuit, cui cum se C. Publilius ob aes alienum paternum nexum dedisset, quae aetas formaque misericordiam elicere poterant, ad libidinem et contumeliam animum accenderunt. [...] victum eo die ob impotentem iniuriam unius ingens vinculum fidei iussique consules ferre ad populum ne quis, nisi qui noxam meruisset, donec poenam lueret in compedibus aut in nervo teneretur; pecuniae creditae bona debitoris, non corpus obnoxium esset. ita nexi soluti, cautumque in posterum ne necterentur.*

In that year the liberty of the Roman *plebs* had as it were a new beginning; for men ceased to be imprisoned for debt. The change in the law was occasioned by the notable lust and cruelty of a single usurer, Lucius Papirius, to whom Gaius Publilius had given himself up for a debt owed by his father. The debtor's youth and beauty, which might well have stirred the creditor's compassion, did but inflame his heart to lust and contumely. [...] On that day, owing to one man's outrageous injury, was broken a strong bond of credit, and the consuls were ordered to carry a proposal to the people that none should be confined in shackles or in the stocks, save those who, having carry a proposal to the people that none should be confined in shackles or in the stocks, save those who, having and that for money lent, the debtor's goods, but not his person, should be distrainable. So those in confinement were released, and it was forbidden that any should be confined thereafter.²⁶⁵

Liv. *Per.* 11:

[...] *plebs propter aes alienum post graves et longas seditiones ad ultimum secessit in Ianiculum, unde a Q. Hortensio dictatore deducta est; isque in ipso magistratu decessit.*

The Roman *plebs*, because of the seriousness of its debt situation, after lengthy rebellions eventually retreated to the Janiculum hill, from where it was led back by the dictator Q. Hortensius, who died during the time of his office.

Livy dates the *lex Poetelia Papiria* back to the 326 BC, unlike Varro, who states that it was passed in 313 BC.²⁶⁶ This chronological issue represents just one of several other questions that we are going to investigate, not least the implausible thesis whereby the problem of the *nexum* would have arisen as the consequence of a personal dispute between Papirius and Publilius, and not as the result of an increasingly deteriorated political situation. *Nexum* remains a key problem, and it is crucial to the understanding of the legislation that the tribunes put forward at the beginning of the second century. Again, Varro is the main primary source on the meaning of this legal term: *nexum Manlius scribit, omne quod per libram et aes geritur,*

²⁶⁵ English translation has been taken from the Loeb Classical Library.

²⁶⁶ Varro *Lat.* 7. 105. See also Watson (1974) 9, who considers Varro's account more reliable than Livy's.

in quo sint mancipia ('Nexum, bound obligation, Manlius writes, is everything which is transacted by cash and balance-scale, including rights of ownership').²⁶⁷ *Nexum* was, therefore, a formal agreement *per libram et aes*, which bound a free person to the creditor, until a debt was paid.²⁶⁸ In spite of the *lex Poetelia Papiria* of 326 BC, the debt problem was not solved, and the issue was addressed again in 287 BC by the *lex Hortensia*. Livy's Epitome singles out debt as the main cause of the last *secessio* of the *plebs* of 287 BC, even if it does not mention at all a bill.²⁶⁹ Unlike Livy, Cassius Dio and Zonaras state that a *rogatio de aere alieno minuendo* was put forward by the tribunes of the *plebs* to bring about a solution to the problem of debt.²⁷⁰ Interestingly, and we believe correctly, Bleicken argued that the *secessio* was first supported by rural workers who mostly aimed to achieve a more equal distribution of the land controlled by Rome after the Samnite Wars.²⁷¹ The German scholar recognized the agrarian question as the crucial issue from which the debt issue derived. The *plebs* was fighting to obtain a better economic condition and, in turn, an equal political role to that of the *nobilitas*.²⁷² The texts of Cassius Dio and Zonaras can be helpfully compared with Livy's account of the *lex Sempronia*, especially because in each of these cases the political controversy linked with the abolition of debt is clearly related to the legislative action of the tribunes.

Cass. Dio 8. fr. 37: [...] Ὅτι Κούριος τὰ πεπραγμένα οἱ ἐν τῷ δήμῳ ἀπολογιζόμενος ἔφη ὅτι γῆν μὲν τοσαύτην προσεκτήσατο ὅσῃν οὐκ ἂν ἄνθρωποι ἐλάττους ἐξεργάσαντο, καὶ ἀνθρώπους τόσους ἐθηράσατο ὅσοις οὐκ ἂν ἐλάττων χώρα ἐξήρκεσεν. Ὅτι χρεῶν ἀποκοπὴν εἰσηγουμένων τῶν δημάρχων ὁ νόμος κελεύων τὴν ἄφεσιν τῶν ὑπερημεριῶν πολλάκις μάλιστα ἐξετέθη.

Curius, in order to present his behaviour positively before the people, said that he had conquered such vast portions of land that only a large number of men could have cultivated it, and that he had captured so many men that they would have needed more territory. When the tribunes put forward the abolition of debts, the law forbidding imprisonment for debt was often proposed with no positive outcome.²⁷³

²⁶⁷ The translation has been taken from the Loeb Classical Library.

²⁶⁸ *Lat.* 7. 105.

²⁶⁹ *Liv. Per.* 11.

²⁷⁰ Broughton (1951) 185.

²⁷¹ Bleicken (1955) 18.

²⁷² See Maddox (1983) 277-286.

²⁷³ Münzer, *RE* IV (1901) 1841 is especially relevant: 'In einem unbekanntem Jahre vor seinem ersten Consulat war er Volkstribun und soll den Senat gezwungen haben, die Wahlen im voraus zu bestätigen'. We know that Curius' first consulship was in 290 BC, and we can therefore argue that he was, as tribune of the *plebs*, one of the leading figures that inspired the *lex Hortensia* of 287 BC, and directly supported it as former consul, particularly as for that aspect of the bill that concerned debt and the use of the *ager publicus*, especially of the land the Romans took after the Third Samnite War. With reference to the impact of public land distribution occurred in the

Zon. 8. 2: [...] Μετὰ δὲ ταῦτα δημάρχων τινῶν χρεῶν ἀποκοπὴν εἰσηγησαμένων, ἐπεὶ μὴ καὶ παρὰ τῶν δανειστῶν αὐτὴ ἐδίδοτο, ἐστασίασε τὸ πλῆθος, καὶ οὐ πρότερον τὰ τῆς στάσεως κατηνύσθη ἕως πολέμοι τῆ πόλει ἐπήλθοσαν.

After this [287 BC? Curius had just conquered a vast portion of land in Samnium], when some of the tribunes decided to put forward the abolition of debt, the people, because of the opposition of the creditors, put in place a rebellion, which did not end until the enemies moved against the city.

Although we do not know the names of the tribunes involved in this affair, we find confirmation in both of our sources of the key role they played on the debt question. Dio, more explicitly than Zonaras, relates that issue to the economic situation that had arisen in the aftermath of the Third Samnite War. This is a crucial element to our attempt to assess the value of the *lex Sempronia* of 193 BC. The precedent of the *lex Hortensia* suggests that it was an initiative grounded in the context of the end of the Second Punic War, when the agrarian question strongly came back to the fore in the Roman political debate. It is not fortuitous that, exactly during the first decade of the second century, the colonization of the southern part of the peninsula was an important focus of the tribunician legislation.

Moreover, it is possible that the initiative of the tribune Sempronius involved, at the same time, the agrarian reform (or at least part of it) that is known as the *lex Licinia de modo agrorum*, and is attributed by the annalistic tradition to the tribunes of 367 BC, Licinius Stolo and L. Sextius Lateranus.²⁷⁴ As was rightly pointed out by Tibiletti in his studies of the *de modo agrorum*, this law should be ascribed to as a much later period: certainly before 167, when Cato mentioned it in a speech.²⁷⁵ Livy's account of the *lex Licinia de modo agrorum* further illustrates the historical link between the debt question and the agrarian issue, and

aftermath of the Samnite Wars, see Roselaar (2010) 48: 'the large amount of *ager publicus* the Romans had appropriated in Samnium could not all be distributed among Roman citizens. Some of it was used for the establishment of colonies, but much *ager publicus* in Samnium remained undistributed for a long time after its confiscation; the most important single part was the *Ager Taurasinus*, which remained undistributed until 180'.

²⁷⁴ Liv. 6 35. 4-5; Varr. *rust.* 1. 2. 9; Plin. 18. 17; Val. Max. 8. 6. 3; Gell., 6. 3. 40. Livy is the only sources who attributes the bill of 367 BC to both of the tribunes. Some scholars have argued that the *lex de modo agrorum*, eventually modified by the reform of Tiberius Gracchus, was passed only at the beginning of the second century BC: see Billows (1989) 112-133; Forsén (1991); Balbo (2010) 311 ('[...] il sistema produttivo che parrebbe meglio adattarsi ad una situazione del genere è quello della villa schiavistica, la cui nascita andrebbe sì retrodatata, [...], al terzo secolo, ma il cui consolidamento appare un fenomeno tipico del II sec. a.C.').

²⁷⁵ Cato *Rhod.* 5 (fr. 122 Sblendorio = *ORF*⁴, 65-66). See Tibiletti (1948) 173-236; (1949) 3-42; (1950) 183-266. Tibiletti's contributions on the agrarian question in the Republican period are now collected in Tibiletti (2007).

corroborates the view of the *lex Sempronia* of 193 BC as a moment in which the problem of *modus agrorum* found a solution.

6. 35. 4-5: [...] *creatique tribuni C. Licinius et L. Sextius promulgavere leges omnes adversus opes patriciorum et pro commodis plebis, unam de aere alieno, ut deducto eo de capite quod usuris pernumeratum esset, id quod superesset triennio aequis pensionibus persolveretur; alteram de modo agrorum, ne quis plus quingenta iugera agri possideret.*²⁷⁶

After C. Licinius and L. Sextius were elected tribunes, all the bills they proposed were against the prerogatives of the patricians, and in favour of the *plebs*. The first one addressed the debt issue, asserting that the money which had been paid as interest should be taken away from the original amount, and the rest divided in three annual instalments of identical size. The second one provided a limit on the ownership of land, forbidding anyone from having more than 500 *iugera*.

Furthermore, as with the *lex Hortensia*, the problem of debt was directly linked with land occupation, notably that of the *ager publicus*.²⁷⁷ However, the debate concerning the amount of land that a single owner could hold, the *quingenta iugera*, remains an open question and a possible answer might eventually be yielded from the analysis of the bill put forward by the tribune Sempronius in 193 BC. Livy is our only source.²⁷⁸

35. 7. 2-5: [...] *instabat enim cura alia, quod civitas faenore laborabat et quod cum multis faenebribus legibus constricta avaritia esset, via fraudis inita erat, ut in socios, qui non tenerentur iis legibus, nomina transcriberent; ita libero faenore obruebantur debitores. cuius coercendi cum ratio quaereretur, diem finiri placuit Feralia quae proxime fuissent, ut, qui post eam diem socii civibus Romanis credidissent pecunias profiterentur, et ex ea die pecuniae creditae, quibus debitor vellet legibus, ius creditori diceretur. deinde postquam professionibus detecta est magnitudo aeris alieni per hanc fraudem contracti, M. Sempronius tribunus plebis ex auctoritate patrum plebem rogavit, plebesque scivit, ut cum sociis ac nomine Latino creditae pecuniae ius idem quod cum civibus Romanis esset. haec in Italia domi militiaeque acta.*

²⁷⁶ On the occurrences of *pensio* and its meaning of ‘instalments’ see Oakley (1997) 669.

²⁷⁷ See Capogrossi Colognesi (1988) 639-650. On the *lex Licinia* on the *ager publicus*, and particularly on Niebuhr’s historiographical distinction between *ager publicus/ager privatus*, see Balbo (2010) 267-289.

²⁷⁸ For a different view cf. Balbo (2013) 75: ‘[...] si è visto che non vi sono delle effettive incompatibilità tra le diverse tradizioni che tramandano l’origine del *modus agrorum*, che non vi sono prove concrete di una sua comparsa solo a partire dagli inizi del II secolo a.C. e che, infine, non è attestato alcun promotore diverso dall’ipotetico Licinio Stolone: non vi è praticamente nulla che ostacoli seriamente l’ipotesi che quella dei 500 iugeri sia una norma arcaica’.

Another issue was upon them, since people were suffering because of interest payments, and despite greed was put under control by a considerable number of laws aimed to restrict usury, a way of elusion was offered, because accounts were transferred to allies, who were not under jurisdiction of these laws. Therefore, debtors were oppressed by huge charges. In order to modify such a situation, it was stated that a day had to be fixed, and it was the day of the festival of the Feralia, on which, whatever allies had given money to Roman citizens, should publicly register to that effect, and that the actions about money in those terms loaned, after that day, should be regulated by the laws of any state the debtor should elect. Then, after the amount of the debt contracted by this bribery was openly declared, Marcus Sempronius, tribune of the *plebs*, with the support of the senate proposed to the assembly, and the assembly voted, that the allies of the Latin confederacy should have the same law with regard to the loan of money that was in use for Roman citizens. This took place in Italy with reference to the civil and military matters.

Like the *lex Hortensia* of 287 BC, which was put forward after the end of the Third Samnite War, the *lex Sempronia* was passed in the aftermath of a major military event, the Hannibalic War. The conflict, in fact, should be regarded as the most significant factor to a proper contextualization of the *plebiscitum* of 193 BC. The political and (especially) economic consequences of that war led to a sharp decline in the number of free Roman citizens.²⁷⁹ That event crucially brought to a remarkable increase in the extent of unoccupied *ager publicus*.²⁸⁰ The political action of the tribune involved not just the debt issue, but also the agrarian question, with which it was closely related. If one takes this historiographical perspective, Livy's account is interesting for three reasons: the figure of the tribune himself, Sempronius Tuditanus, the key role of the senate, and the fact that the historian never mentioned the question of land ownership.²⁸¹ Firstly, Sempronius Tuditanus held his tribunate during the consulship of Cornelius Merula and Minucius Thermus, two protégés of Cornelius Scipio, who held the consulship the year before, in 194. In his discussion of the political context of 193 BC, Scullard spoke of a 'predominance of the Scipionic group', and was directly reflected in the election of the two consuls.²⁸² This analysis is sound, but does not convey the full picture. Such 'predominance' influenced not just the vote for the consulship of 193 BC, but the whole spectrum of the political events of that year, including the deliberations of the Senate and, of course, the *plebiscitum Sempronium*.

²⁷⁹ On this crucial development in the demographic history of Roman Italy see Brunt (1971) 694-696. The theory of the decrease of free citizens has also been supported by Nicolet (1977) and Gabba (1994) 63-103. In more recent times, a new theory has been put forward to explain the shortage of Roman citizens: a process of 'under-registration' that occurred especially in the second half of the second century BC, see Lo Cascio (1994) 23-40.

²⁸⁰ Roselaar (2010) 191-220.

²⁸¹ See Münzer, *RE* II (1923) 1443; Broughton (1951) 348.

²⁸² Scullard (1973) 120.

Secondly, according to Livy, *civitas faenore laborabat et quod, cum multis faenebribus legibus constricta avaritia esset, via fraudis inita erat, ut in socios, qui non tenerentur iis legibus, nomina transcriberent* ('People were suffering because of interest-payments, and that, despite greed was put under control by a considerable number of laws aimed to restrict usury, a way of elusion was offered because accounts were transferred to allies, who were not under the jurisdiction of these laws'). As Briscoe pointed out, 'the increase in debt was caused by a number of factors, among them the desire for cash to buy land when it was at low price'.²⁸³ If the problem has to be framed in these terms, the main focus of the question is to identify who, in early second-century Rome, was capable to lend a considerable amount of money. It may be suggested that the purpose of the debtors was mainly to buy land with the financial resources they received, but we do not know what the social and political position of the creditors was. In order to attempt to answer that question, it is crucial to understand why the Senate gave its political support so promptly to the tribune Sempronius, and finally what the long-term strategy of the magistrate himself was. We have previously mentioned what the situation concerning the *ager publicus* was. Such conditions affected particularly the southern part of the peninsula, where the process of colonisation was mainly focused during the first decade of the second century.²⁸⁴ It is reasonable to assume that the moneylenders came mostly from within the Senate's ranks and part of the equestrian order; it may therefore be argued that, with his proposal, M. Sempronius sought the political engagement of that sector of the senatorial order that was less interested in gaining more land, and was already involved in other economic activities.²⁸⁵

In this respect, the *lex Sempronia* can be regarded as a peculiar development of the process that had brought about the *plebiscitum Claudianum* of 218 BC. The main purpose of that piece of legislation was to limit senatorial involvement with trade, while, with the bill of 193 BC, the tribune tried to limit financial speculation on the *ager publicus*, which the senators put in place exploiting the abnormal increase of the *faenora*.²⁸⁶ Against this background, a further element has to be added to the present analysis of the *lex Sempronia*: in Shatzman's words, '[...] As a

²⁸³ Briscoe (1981) 153.

²⁸⁴ Salmon (1969). Cf. Roselaar (2010) 202: '[...] *Ager publicus*, then, was mainly located outside the old *Ager Romanus*, in areas where most people were not Romans'.

²⁸⁵ On the relevance of the '*equites equo publico*' in the Mid-Republican Rome as moneylenders see Nicolet (1966) 372-373, who registered the name of 17 *equites* based in Rome and devoted to money-lending. See Shatzman (1975) 76; Crawford (1992) 200-202; Kay (2014) 124-128. On the political divisions within the Senate and on how such situations were used by the tribunes to achieve their political goals, especially during the second half of the third century, see Hölkeskamp (2004) 85-103.

²⁸⁶ See the important discussion in Shatzman (1975) 11-46.

result of the Second Punic War public land increased immensely, chiefly in south Italy. [...] Thus it may be inferred that hundreds of people, perhaps thousands, possessed public land exceeding by hundreds of *iugera* the lawful maximum of 500 *iugera*. Surely this group of large proprietors included many a senator'.²⁸⁷ The main political achievement of the tribune Sempronius could therefore have been not just to enforce the same law on *pecunia credita* across the whole peninsula, but to oversee the enforcement of what had just been stated by the *lex Licinia de modo agrorum* in 367 BC in merely formal terms.

²⁸⁷ Shatzman (1975) 14-15. Kay (2014) 141 argues that '[...] before the 120s at least, agricultural exploitation by elite Romans was limited mainly to Italy'.

Chapter Three

From the *lex Valeria* to the *lex Villia*.

Tribunician legislation in a decade of great political and social transformations
(188-180 BC)

This chapter aims at addressing pivotal social and economic matters that were at the core of the political debate throughout the whole of the years from 188 BC to 180 BC. The domestic and foreign affairs affected the legislative involvement of the tribunes in a plurality of ways, as we had the opportunity to see, discussing the statutes put forward by the tribunes in the chronological span from the 218 BC to the end of the first decade of the second century. As we shall see, the military and political consequences of the Second Punic War had deeply changed the ideological content of the laws themselves and, on the other hand, the political dynamics within the Roman elite, which grew more conscious of its own prerogatives, and even more forthright in pursuing its final goals. It is in this complexity that we shall contextualize the tribunician legislation, starting our discussion from the *lex Valeria* of 188 BC, which aimed to push forward that complex process of political and territorial ‘integration’ that would have affected the Roman political strategy for all the duration of the second century and part of the first.

[3.1] *lex Valeria* (188 BC) [de civitate cum suffragio Formianis et Arpinatibus danda Rotondi]

The tribunician activity at the end of the first decade of the second century knew, as far as we know, a hiatus (192-189 BC), during which the consuls seem to have been the main protagonists of the political scene.²⁸⁸ In that brief interlude, the consular legislative initiatives regarded particularly the Roman foreign policy, as one can see from the title of the attested laws: *lex de bello Antiocho indicendo* (191 BC), *lex de pace cum Antiocho facienda* (189 BC),

²⁸⁸ On this see Rotondi (1912)

and *lex de pace cum Aetolis facienda* (189 BC). The consuls of both years were P. Cornelius Scipio Nasica and M'. Acilius Glabrio, and M. Fulvius Nobilior and Cn. Manlius Vulso respectively.²⁸⁹ It is striking that we do not have evidence for the tribunes' involvement in that crucial political phase, especially considering that we have seen the tribunes playing a key role in putting forward fundamental bills, directly relating to foreign policy matters: the *lex Acilia Minucia* (201 BC), and *lex Marcia Atinia* (196 BC).²⁹⁰ We know, and it is widely accepted, that the supreme magistracy of the Roman Republic had noteworthy legislative prerogatives.²⁹¹ We are not able to say why our primary sources, particularly Livy, do not refer to the political commitment of the tribunes across those three years. To avoid overlooking significant factors, it is important to consider what was the nature of the laws put forward by the tribunes during that time, in order to properly contextualize the role played by such magistracy in the second decade of the century. Here there is the list of the tribunes and the statutes they put forward: C. Valerius Tappo, *lex Valeria* (188 BC), Q. Petillius and Q. Petillius Spurius, *rogatio Petillia* (187 BC), C. Orchius, *lex Orchia* (182 BC), L. Villius Annalis, *lex Villia* (180 BC).

Among our sources, particularly Livy, there are two possible reasons which may explain the silence on the activity of the tribunes. On one hand, a real absence of the magistracy's political involvement in issues linked with the foreign Roman policy of that period, supported by the content of the proposals mentioned above, and focused completely on internal political questions, as is also the case with the *rogatio Petillia* of 187 BC, which concerned the charge of corruption put forward against the Scipio brothers.²⁹² On the other hand, Livy's choice to

²⁸⁹ Broughton (1951) 352, 360.

²⁹⁰ On this Jehne (2009) 143-170. Furthermore, Stouder (2015) 43-63.

²⁹¹ On this aspect of the consulship see Bleicken (1975) 103: 'Auch die Consuln stellten zunehmend statt vor den Centuriatcomitien, die die ihnen gemäße Versammlung war, vor den (patricisch-plebejischen) Tributcomitien Anträge und wählten somit für ihre Gesetzesanträge mehr und mehr den Versammlungstyp nach dem äußeren Motiv rationaler Verwaltung'. See also Crawford (1996) 1-38. See Lintott (1999) 105 on the consul's duties in peacetime: 'most legislation took the form of plebiscites introduced by tribunes'. In this regard, see Sandberg (2001) 97: 'the tribunes were believed to have passed most of the laws of the period under consideration here (367-88 BC). It has also been demonstrated that only tribunes are represented as *promulgatores* and *rogatores legum* in the sources'. On the distinction put forward by the scholar between the tribunician and the consular legislative role before Sulla's reforms, see the critical review of Crawford (2004) 171-172. Williamson (2005) 31, considering the period after the Second Punic War, attempted, despite the outstanding relevance of the tribunate, to present a more complex scenario: [...] 'After the Second Punic War, however, the pattern becomes more complicated as the incidence of law-making gathers speed'. On the consuls' law-making role, see, finally, Pina Polo (2011) 99-121.

²⁹² On this complex political and juridical matter see, preliminarily, Mommsen (1879) 417-432; 432-455. Fraccaro (1911) 217; Scullard (1935) 358 accepted the point made by Fraccaro, with particular regard to the key role played by the two Petillii, likely 'instigated' by Cato. Cf. Fraccaro (1939) 3-26. Berger *RE* (1940) 402-403. Gagé (1953) 34-64. The close relationship between the tribunes, their political choices and the leading role played by Cato have been clearly underlined by De Sanctis (1969) 576: [...] 'ma attaccando questi amici politici degli Scipioni e

overlook the tribunician activity in that period to focus his attention on the legislative initiative promoted by the consuls must be taken seriously.²⁹³ Quite interestingly, it is exactly in the second decade of the second century that we find the highest number of the tribunes' names in Livy, with particular reference to the years 188, 187, 184, 182, and 180. The cases of 187 BC and 184 BC, linked with the pivotal issue of the Scipios' trial, are most impressive. For 187 BC, we have five names: M. Aburius, L. Mummius, Q. Mummius, Q. Petillius and Q. Petillius Spurius.²⁹⁴ For 184 BC, M. Caelius, C. Fannius, C. Minucius Augurinus, M. Naevius, and Ti. Sempronius Gracchus are attested.²⁹⁵ For all the dates previously mentioned there is a tribunician bill, except for 184 BC; in spite of that, Livy records the names of five tribunes. We can argue, therefore, that the chronological gap that we found in our analysis of the tribunician legislation, between 193 BC and 188 BC, may be regarded as an historiographical strategy put in place by Livy to emphasize the political presence of the tribunate across the second decade: in other words, tribunician action becomes more prominent after a hiatus of several years. Livy's *modus operandi* has its overture with the proposal of 188 BC, the *lex Valeria de civitate*. With this statute, we are dealing with a major and controversial issue: the spread of Roman citizenship.²⁹⁶ The *civitas* with full voting rights that the tribune Valerius successfully proposed to bestow upon for the communities of Formiae, Fundi and Arpinum was the last grant of that Rome made to municipalities that had been already provided with the *civitas sine suffragio* for a long time.²⁹⁷ Why did the Roman elite decide to avoid extending the

i metodi loro che erano i metodi stessi degli Scipioni, s'era preparata la via a un attacco contro il maggiore uomo di Roma. Istigati da Catone, due tribuni di nome entrambi Q. Petillio richiesero in senato a L. Scipione conto dei 500 talenti'. See Astin (1989) 179. Gruen (1995) 59-90.

²⁹³ On this see Badian (1996) 189: [...] 'Livy's lack of interest in tribunes and the tribunate is shown by his very haphazard references, not only to their actions, but to their names. For the years 200-167 [...], more than one third (13) do not give us the name of a single tribune'.

²⁹⁴ Broughton (1951) 369.

²⁹⁵ Broughton (1951) 375-376.

²⁹⁶ An exhaustive overview of the studies devoted to the Roman citizenship would fall beyond the remit of this study. Sherwin-White (1973) 150-173 still represents a good starting point, with particular respect to the pivotal matter concerning the 'municipalisation' process of the peninsula. On the history of the word *municipium*, examined as a juridical and a political concept, see Kornemann (1933) 570-638. Humbert (1978) 251-286, offers a rich catalogue of primary sources, both literary and epigraphical, on the historical development of the concept of *municipium*.

²⁹⁷ See De Martino (1954) 394. That was also the case of Fundi and Formiae, which became *municipia sine suffragio* in 338 BC, according to Livy 8. 14. 10: [...] *Campanis equitum honoris causa, quia cum Latinis rebellare nolissent, Fundanisque et Formianis, quod per fines eorum tuta pacataque semper fuisset via, civitas sine suffragio data*. For Arpinum, Livy 10. 1. 3 refers to the year 303 BC: [...] *eodem anno Arpinatibus Trebulanisque civitas data*. For the *municipia* of Fundi, Formiae and Arpinum in 188 BC, and the juridical link between the status of *municipium* and the condition of *cives sine suffragio*, see Brunt (1971) 527: [...] 'Livy characterizes the people of Fundi, Formiae and Arpinum as 'municipes' in 188, at the time when they were raised

full citizenship to other communities after 188 BC? Why had the tribune Valerius' initiative been opposed by the *intercessio*, that the other tribunes put forward against his law? And finally, why Formiae, Fundi and Arpinum? In order to address these questions, we have to refer to our main source, Livy 38. 36. 7-9:

[...] *de Formianis Fundanisque municipibus et Arpinatibus C. Valerius Tappo tribunus plebis promulgavit ut iis suffragii latio, nam antea sine suffragio habuerant civitatem, esset. huic rogationi quattuor tribuni plebis, quia non ex auctoritate senatus ferretur, cum intercederent, edocti populi esse, non senatus, ius suffragium quibus velit impertire, destituerunt incepto. rogatio perlata est ut in Aemilia tribu Formiani et Fundani, in Cornelia Arpinates ferrent.*

The tribune of the *plebs* Gaius Valerius Tappo put forward a bill concerning the residents in the municipalities of Formiae, Fundi and Arpinum, in order to allow them to vote, since until that time they had been only granted to the *civitas sine suffragio*. Four tribunes opposed their veto to the bill, claiming that the proposal had not received the sanction of the Senate. When they were informed that the choice to grant the right to vote was a prerogative of the people, and that it did not belong to the Senate, the tribunes renounced. The statute established also that the citizens of Formiae and Fundi should be registered in the tribe called *Aemilia*, while those of Arpinum in the tribe *Cornelia*.

The text, as is very often the case in Livy, presents a number of interpretative challenges. The historian summarizes in just a few lines issues that could have warranted a much more thorough discussion. First, the *nomen* of the tribune: Valerius.²⁹⁸ Notwithstanding the need to exert caution in reconstructing the dynamics within the Roman elite of the first half of the second century, it is indisputable that several members of the *gens Valeria* were involved, between 190 BC and 188 BC, in promoting a process of colonization and integration of the external

to full citizenship. No one indeed can doubt that the communities of *cives sine suffragio* were *municipia*. On this particular issue, see Bispam (2007) 98 n. 120. Oakley (2005) 585, commenting on Livy's passage 9. 44. 16, fully accepts the juridical status of *municipium* for Arpinum: [...] 'in 303 it was incorporated as a *municipium* in the Roman state with *civitas sine suffragio* (10. 1. 3)'.

²⁹⁸ See Volkmann *RE VIII A2* (1948) 2292-2296. As for the tribune, see Volkmann (1955) 228 and Taylor (1960) 307, who stressed that C. Valerius Tappo was the brother of L. Valerius Tappo, tribune in 195 BC and praetor in 192 BC. Taylor, discussing the possible link between those two magistrates, made a considerable mistake, when she wrote: [...] 'L. Valerius Tappo, who, as tribune in 195 BC, proposed the Oppian law'. The reality is that L. Valerius Tappo, with his colleague M. Fundanius, in fact promoted the abrogation of the law itself. On the political debate on the *pl. sc. Valerium* of 188 BC, Taylor envisaged a strong commitment of Scipio in favour of the law: [...] 'to restore his declining political fortunes'. Cf. the opposite view in Briscoe (2008) 124: [...] 'Taylor's suggestion that they were 'adherents of Scipio' is sheer speculation'. Briscoe's view on this point is not acceptable. Scipio's involvement was key to the bill's successful enactment.

communities that Rome had resumed since the beginning of the century.²⁹⁹ In 190 BC L. Valerius Flaccus, consul in 195 BC, and L. Valerius Tappo, tribune in 195 BC and praetor in 192 BC, were, as *triumviri coloniis deducendis*, members of a special committee created in order to supplement the colonies of Placentia and Cremona in the Po Valley.³⁰⁰ One of the consuls of that year was the brother of Scipio Africanus, L. Cornelius Scipio Asiaticus. In 189 BC, again, L. Valerius Flaccus and L. Valerius Tappo, established the colony of Bononia as *triumviri coloniae deducendae*.³⁰¹ In 188 BC, during the consulship of M. Valerius Messalla, we find the proposal for the citizenship *optimo iure* to be recognized to Fundi, Formiae and Arpinum.³⁰² The explanation for the political impact of the *plebiscitum Valerium* lies in the opposition that the four tribunes mounted. We do not think that, as De Martino argued, the veto should be regarded only as the consequence of a lack of senatorial endorsement.³⁰³ The *intercessio* against the proposal of C. Valerius is not merely related to the juridical technicalities in De Martino's view. At the end of his analysis he argues: 'ma l'opposizione venne superata, perché si spiegò ai tribuni che si trattava di concedere il *ius suffragii* e tale concessione spettava ad una deliberazione dell'assemblea popolare, non al Senato'.³⁰⁴ Surely the tribunes already knew that the right to grant the *civitas cum suffragio* legally belonged to the people, and not to the Senate. Furthermore, the number of the tribunes that opposed the bill, *quattuor*, is revealing of the quality of Livy's source. If he had been able to refer to the exact number of the tribunes, why did he fail to quote their names? It is arguable that the historian purposely forgot this key element, in order to offer a misleading account of their political involvement. The opposition of the four tribunes should be understood as the result of a deep contrast within the Senate, and more widely, within the Roman *nobilitas*.³⁰⁵ What seems

²⁹⁹ See Kendall (2012) 105-121, who makes clear a crucial aspect: granting *civitas* to those communities that were in the juridical status of *socii* meant to deprive Rome of fundamental income: soldiers, equipment, taxes.

³⁰⁰ Broughton (1951) 359.

³⁰¹ Liv. 37. 57. 7: [...] *eodem anno ante diem tertium Kal. Ianuarias Bononiam Latinam coloniam ex senatus consulto L. Valerius Flaccus M. Atilius Serranus L. Valerius Tappo triumviri deduxerunt.*

³⁰² On Fundi, its history in the classical period and its relationship with Rome, there are three studies to be considered: see Lo Cascio (2002) 1-17. Storchi Marino (2002) 19-70 and Di Fazio (2006), who has mainly focused on the economic relevance of Fundi, and the importance of the trades that were established between Rome and that community.

³⁰³ De Martino (1954) 394: [...] 'l'opposizione dei tribuni nasceva dal fatto che il proponente della legge non aveva richiesto l'*auctoritas* del Senato; essa quindi si fondava su di un motivo di legalità, non sul merito della proposta'.

³⁰⁴ Broughton, *MRR*, I, 1951, p. 369.

³⁰⁵ Scullard (1980) 322 presented the political act of 188 BC using these words: [...] 'the Romans remembered how to be generous when in 188 they raised Arpinum, Formiae, and Fundi from half- to full citizenship and the Capuans to a probationary stage'.

undisputable is that C. Valerius' main intent was to promote the status of the three *municipia* from *civitates sine suffragio* to communities with a full *ius suffragii*, which entailed a much greater political role for them and the members of their elites. Unlike Scullard, we think that the bill rogated by Valerius should be regarded with a pragmatic approach. In this regard, a twofold political aim may be detected in the *lex Valeria*. On the one hand, by offering the full citizenship to the three Volscan towns, the tribune surely desired to build a closer relation with a district of growing economic significance, especially in the aftermath of the Second Punic War.³⁰⁶ Secondly, Valerius may have sought to address an aspiration of the local elite to be more involved and engaged in Roman political life³⁰⁷. It should also be noted that, from the Roman standpoint, this desire of the local leading communities to become more present into the political debate of the centre, and possibly to affect it through the *ius suffragii*, could be considered by the tribune and his political allies as an ideal strategy to integrate more closely that territory with Rome which historically represented a strategic feature. In this respect, the grant of the *civitas optimo iure* would have worked as a poisoned concession offered to the three communities, in order to politically determine their future once for ever.³⁰⁸

[3.2] *lex Petillia* (187 BC) [*de pecunia regis Antiochi Rotondi*]

The year 187 BC represented an important moment within the troubled scenario of the Roman politics of that time. The sources present us with a long sequence of political deliberations, put

³⁰⁶ On the economic significance of the Volscian territory, and more widely of Central Italy, see Storchi Marino (2002) 34. See also Di Fazio (2008) 39-62.

³⁰⁷ See Mouritsen (2007) 147: [...] 'The *lex Valeria* also met with strong opposition in the senate, probably reflecting concerns about elite competition, which the senate generally sought to restrict and regulate in this period'.

³⁰⁸ Humbert (2006) 17. The scholar, discussing the definition of *municipium* offered by Paulus Diaconus, analyses the passage *participes tamen fuerunt omnium rerum ad munus fungendum una cum Romanis civibus* (Festus, *De verborum significatu cum Pauli epitome*, ed. W. M. Lindsay (1913) 155). Considering the word *munus*, he identifies it as the [...] '*civitas Romana*, offert (en fait imposé) par Rome en contropartie d'un ensemble plus ou moins étendu de charges'. What is particularly stimulating is that *munus*, as a latin word offers two main possible meaning: firstly –office, function, duty-; secondly –present, gift (*A Latin Dictionary*, C. T. Lewis and C. Short, Oxford, 1963). It is exactly this last signification that, I think, we should recognize as a remarkable aspect of the tribune's strategy put in place towards the *municipia* of Fundi, Formiae and Arpinum, and, at the same time, towards, perhaps against, the Roman political balance. A doubly poisoned *donum*.

in place particularly by the tribunes, aiming to subvert the current political balance, which, as we have seen in our analysis of the tribunician legislation of the first decade of the century, had lasted since the end of the Second Punic War. The *lex Petillia* was not just a bill focused on issues that affected the Roman *nobilitas*, but one that also concerned the complex engagement of the Republic was dealing with in order to find a solution to the Syrian issue.³⁰⁹ On a wider scale, the statute addressed the political and economic relations with the eastern part of the Mediterranean world.

Several sources mention the *lex Petillia* and the related issue of the Scipios' trial. Aulus Gellius, is one of those, and represents a key point in our attempt to reconstruct that event. His account mentions all the key players, and records the names of the tribunes (4. 18. 7).³¹⁰ Gellius writes about the request made by the two Petillii to the Scipios to present the outcome of the expenses sustained during the war against the king of Syria: *Petillii quidam tribuni plebis a M., ut aiunt, Catone, inimico Scipionis, comparati*. Gellius also notes that the accusation against Scipio Africanus was put forward by *M. Naevius tribunus plebis* (4. 18. 3), while for Asiaticus we find the name of *C. Minucius Augurinus tribunus plebis* (6. 19. 2).³¹¹ Another tribune of the *plebs*, Ti. Sempronius Gracchus.³¹² Before analysing the position assumed by these individuals and the different stages of the trial(s), it is necessary to take a step back to see why the year 190 BC was so crucial in determining the subsequent developments that we shall find in our discussion of the *lex Petillia*. At that time L. Cornelius Scipio was assigned Greece as his province, and, at the same time, received permission to bring the war into Asia. Livy's text is remarkably important, because it tells us who the key figure that steered the Senate's choice was at that crucial stage in the provincial assignments.

Liv. 37. 1. 7-10: [...] *tum de consulum provinciis coeptum agi est. ambo Graeciam cupiebant. multum Laelius in senatu poterat. is, cum senatus aut sortiri aut comparare inter se provincias consules iussisset, elegantius facturos dixit, si iudicio patrum quam si sorti eam rem permisissent. Scipio responso ad hoc dato cogitaturum, quid sibi faciendum esset, cum fratre uno locutus iussusque ab eo permittere audacter senatui, renuntiat collegae*

³⁰⁹ Rotondi (1912) 275; Elster (2003) 329-332. Berger (1950) 402-403. The scholarship divided itself into two opposite historiographical positions: Bleicken (1975) 114, Millar (1984) 6, and Kunkel-Wittmann (1995) 268, 623-624, accepted the historical reliability of the *rogatio Petillia*. Ferrary (2012) 124 is sceptical: 'loi Petillia (pl. sc.) [...]. Initiative personnelle de deux tribuns. Probablement une invention annalistique'. However, he does not provide any further explanation to justify his choice of rejecting the statute.

³¹⁰ Fraccaro (1939) 5 stressed the importance of Gellius' account, particularly in relation to Polybius: [...] 'gli elementi contenuti in questi estratti da Nepote devono essere considerati subito dopo quelli ricavati da Polibio'.

³¹¹ Broughton (1951) 356.

³¹² Broughton (1951) 358.

facturum se, quod is censeret. cum res aut nova aut vetustate exemplorum memoriae iam exoletae relata expectatione certaminis senatum erexisset, P. Scipio Africanus dixit, si L. Scipioni fratri suo provinciam Graeciam decrevissent, se ei legatum iturum. haec vox magno adsensu audita sustulit certamen; experiri libebat utrum plus regi Antiocho in Hannibale victo an in victore Africano consuli legionibusque Romanis auxilii foret; ac prope omnes Scipioni Graeciam, Laelio Italiam decreverunt.

Then the question of the consular provinces began to be addressed. Both consuls were desirous of Greece. Laelius was very influential in the Senate. Laelius, when the senate had pushed the consuls either to cast lots or to decide the matter of the provinces between themselves, said that they would do better if they entrusted this decision to the political experience of the senators instead of the lot. Scipio, having replied to this that he would consider what was to be done, conferred with his brother alone, and, having been instructed by him to leave the matter to the senate with confidence, told his colleague that he would do as he suggested. When this proposal, either novel or shaped in accordance to ancient precedents that had taken place long time ago, had excited the senate with the expectation of a harsh dispute, Publius Scipio Africanus said that, if they should decree Greece as a province to his brother Lucius Scipio, he would go as his lieutenant. These words, listened to with full consent, ended the contest; they wanted to establish whether King Antiochus would find more robust support in the defeated Hannibal or the Roman consul and legions in his conqueror Africanus: and they decided almost unanimously to assign Greece to Scipio, Italy to Laelius.

The facts that Livy reports in his narrative of the events that took place in Rome in 190 BC, at the beginning of the consulship of Laelius and L. Cornelius Scipio, are fundamental to establish the historical position of those who, three years later, were affected by the impact of the bill of the Petillii. Consequently, we shall start from the very end of Livy's text: *ac prope omnes Scipioni Graeciam, Laelio Italiam decreverunt*. Livy, quite slyly, writes *Scipioni*, a choice that we are entitled to interpret in twofold way: from a constitutional point of view, we have to consider it as objectively referred to L. Cornelius, as he was the consul in charge; however, if we approach the problem from an historical perspective, it is clear that the reality was much different: *Scipioni*, in this case, should be referred to P. Cornelius, instead of his brother. This second possibility is not only the more interesting one for the purposes of our analysis of the political decisions that the Senate reached, but is also supported by what Livy tells us in the opening of his account: *multum Laelius in senatu poterat*. The friend of the Africanus was a key figure in the Roman Senate at the time. He was praetor in 196 BC, and held command in Gaul, which was prorogued also for the year 189 BC (37. 1. 10; 46. 10; 47. 1). By using the adverb *multum*, Livy implicitly wanted to underline the weighty role that the Africanus could also play in the Senate by proxy. Laelius was surely 'very influential', but, in spite of his political clout, he could not obtain the Greek province, which the assembly *magno adsensu*

assigned to Scipio.³¹³ We can regard the title of *legatus* that the senate granted to the Africanus as a juridical justification for his presence in a political and military campaign that would have focused its effects not on Greece, but upon the Syrian Kingdom. Moreover, we should regard the comparison that the Senate wanted to build between the defeated Hannibal, military advisor of Antiochus, and his champion, as another attempt to misrepresent what the political reality was inside the *curia*, and the extent to which the Africanus was still capable to steer the decisions that the Senate was called to make. The message sent to themselves was: we are sending you, only because you have already won against the Punic commander. The reality was that they were sending him as the actual commander in chief of the expedition.

The question of the trial of the Scipios that took place in the year 187 BC has its link in the events of 190 BC, and it is, at the same time, a domestic political affair, which involved a considerable section of the Roman elite of that time. Furthermore, it is an issue that was able to directly influence the foreign policy that Rome was pursuing, towards the Syrian Kingdom³¹⁴. The evidence for the *lex Petillia* is somewhat frustrating.³¹⁵ Polybius, Livy and Gellius are not as informative on matters of detail as one would wish. Polybius discusses the trial of the Scipios in book 23, at the point where he reports the events of the year 183 BC, four years after the passing of the *rogatio Petillia* and the trial itself. Furthermore, as we shall see below, he refers to the facts after reporting the death of P. Cornelius Scipio (183 BC),

³¹³ Briscoe (1981) 291 issues a sceptical note: ‘in Livy’s account Laelius wants the command against Antiochus: this is highly improbable, for Laelius’ attachment to the Scipios is beyond question’. It is not the case here to think that the undoubted close relation between Laelius and the Africanus should be considered as a factor. The real target of the command was not Greece, but Syria. In other words, it was not just a political task, but, above all, a military one, with all the opportunities, especially from an economic point of view, that such war could have yielded to the holder of the command. On the latter point see Rosenstein (2011) 133-158, especially the table, ‘Profits of Roman victories vs. some of their costs, 200-167 BC’.

³¹⁴ See Gruen (1984) 611-671. He has pointed out the importance of the indemnity that the King had to pay to the Roman Republic in the aftermath of the Peace of Apamea (640). The exact financial clauses of the treaty are known from (Liv. 38. 38. 13): [...] *argenti probi talenta Attica duodecim milia dato intra duodecim annos pensionibus aequis, talentum ne minus pondo octoginta Romanis ponderibus pendat, et tritici quingenta quadraginta milia modium*. (‘The king will pay, in twelve years’ time, twelve thousand Attic talents of good quality silver, divided in equal parts, with the clause that the talent will not be under the weight of eighty Roman pounds, moreover he will provide five hundred and forty thousand *modii* of wheat’).

³¹⁵ See Lintott (1972) 254-255, who argues for a clear influence of Valerius Antias on Livy, and a correlation between the narrative of Cornelius Nepos (49, 17) and Gellius: ‘I cannot enter here into the controversy over the reliability of the main account in Livy of the trial of L. Scipio, an account which certainly derived from Valerius Antias but was not necessarily entirely his own creation. From the legal point of view, it seems at least as plausible as the version which Gellius (IV, 19, 1 ff.) took from Cornelius Nepos’. On the use that Livy made of Valerius Antias, especially for his reconstruction of the events of the Mid-Republican period, see Rich (2005) 156. In Cornell (2013) 84, we can appreciate the fact that in Livy’s books 36-40 the biggest number of citations are derived from Valerius Antias.

presenting the entire episode like a tale that can provide moral inspiration to his readers. It is worth asking why a contemporary witness such as Polybius left out in his account more details on the men involved and their political aims (Pol. 23. 14. 1-12):

[...] ὅτι Πόπλιος φιλοδοξήσας ἐν ἀριστοκρατικῷ πολιτεύματι τηλικαύτην περιεποιήσατο παρὰ μὲν τοῖς ὄχλοις εὖνοιαν παρὰ δὲ τῷ συνεδρίῳ πίστιν ὥστ', ἐν μὲν τῷ δήμῳ κρίνειν τινὸς ἐπιβαλομένου κατὰ τὰ Ῥωμαίων ἔθη καὶ πολλὰ κατηγορήσαντος καὶ πικρῶς, ἄλλο μὲν οὐθὲν εἶπε προελθὼν, οὐκ ἔφη δὲ πρέπον εἶναι τῷ δήμῳ τῶν Ῥωμαίων οὐθενὸς ἀκούειν κατηγοροῦντος Ποπλίου Κορνηλίου Σκιπίωνος, δι' ὃν αὐτὴν τὴν τοῦ λέγειν ἐξουσίαν ἔχουσιν οἱ κατηγοροῦντες. ὧν ἀκούσαντες οἱ πολλοὶ παραχρῆμα διελύθησαν πάντες ἐκ τῆς ἐκκλησίας, ἀπολιπόντες τὸν κατηγοροῦντα μόνον.

Ὅτι Πόπλιος ἐν τῷ συνεδρίῳ χρεῖας ποτὲ χρημάτων οὔσης εἰς τινα κατεπείγουσαν οἰκονομίαν, τοῦ δὲ ταμίου διὰ τινα νόμον οὐ φάσκοντος ἀνοίξειν τὸ ταμειῖον κατ' ἐκείνην τὴν ἡμέραν, αὐτὸς ἔφη λαβὼν τὰς κλεῖς ἀνοίξειν· αὐτὸς γὰρ αἴτιος γεγενῆσθαι καὶ τοῦ κλείεσθαι τὸ ταμειῖον. πάλιν δὲ ποτε λόγον ἀπαιτοῦντός τινος ἐν τῷ συνεδρίῳ τῶν χρημάτων ὧν ἔλαβε παρ' Ἀντιόχου πρὸ τῶν συνθηκῶν <εἰς> τὴν τοῦ στρατοπέδου μισθοδοσίαν, ἔχει μὲν ἔφη τὸν λογισμὸν, οὐ δεῖν δ' αὐτὸν ὑποσχεῖν οὐδενὶ λόγον· τοῦ δ' ἐπικειμένου καὶ κελεύοντος φέρειν ἠξίωσε τὸν ἀδελφὸν ἐνεγκεῖν· κομισθέντος δὲ τοῦ βυβλίου, προτείνας αὐτὸ καὶ κατασπαράζας πάντων ὁρώντων τὸν μὲν ἀπαιτοῦντα τὸν λόγον ἐκ τούτων ζητεῖν ἐκέλευσε, τοὺς δ' ἄλλους ἤρετο πῶς τῶν μὲν τρισχιλίων ταλάντων τὸν λόγον ἐπιζητοῦσι πῶς ἔδαπανήθη καὶ διὰ τίνων, τῶν δὲ μυρίων καθόλου καὶ πεντακισχιλίων ὧν παρ' Ἀντιόχου λαμβάνουσιν, οὐκέτι ζητοῦσι πῶς εἰσπορεύεται καὶ διὰ τίνων, οὐδὲ πῶς τῆς Ἀσίας καὶ τῆς Λιβύης, ἔτι δὲ τῆς Ἰβηρίας κεκυριεύκασιν. ὥστε μὴ μόνον καταπλαγῆναι πάντας, ἀλλὰ καὶ τὸν ζητήσαντα τὸν λόγον ἀποσιωπῆσαι. Ταῦτα μὲν οὖν ἡμῖν εἰρήσθω τῆς τε τῶν μετῆλλαχόντων ἀνδρῶν εὐκλείας ἕνεκεν καὶ τῆς τῶν ἐπιγινομένων παρορμήσεως πρὸς τὰ καλὰ τῶν ἔργων.

Because of Publius Scipio sought honour in a state led by aristocratic families, he achieved such a favour among the common people and, at the same time, such great credit in the Senate, that when someone tried to put in place a trial against him before all the Roman citizens, in accordance with their own traditions, harshly accusing Scipio of many faults, he came forward to speak, saying that it was not right for the Roman people to give attention to anyone who was laying the blame on Publius Cornelius Scipio, who was the person that gave them the authority to make that speech. All the people that were there, when they heard those words, left the assembly, leaving the accuser alone.

Publius Cornelius, a time ago in the Senate, since money was needed for an immediate expense, and the quaestor was saying that, he could not open the treasury on that day because he was under obligation of some law, took the keys and offered to open it himself, saying that the treasury was shut due to his responsibility. Another instance, someone in the senate put forward the question of the money he had received from Antiochus before the treaty, in order to pay his army, Scipio replied that he had the register with all the expenses, but there was not any need to render an account to anyone. Since the senator was pressing upon, and ordered him to make the account available, he asked the brother to bring it forth. When he had the book in his hands, he stretched it out and tore it to bits before all the assembly, asking the man who was looking for it to find the evidence of the expenses into the pieces. At the same time, he addressed the assembly asking why they investigated how and by whom the three

thousand talents had been spent, but they omitted to ask in which way and by whose commitment they were receiving from Antiochus fifteen thousand talents, and moreover how they had achieved the control of Asia, Africa and Spain. The assembly and the accuser remained embarrassed.

I have written about those facts in order to celebrate the name of those dead, and to stimulate those who are alive to pursue their example.

This long account presents a number of challenges. First, the order of the narrative: the Greek historian put together three distinct episodes with which he wanted to mark the εὐνοία ('affection') that the Africanus used to get παρὰ τοῖς ὄχλοις ('common people'), and, on the other hand, the πίστις ('confidence') he was awarded παρὰ τῷ συνεδρίῳ ('among the senators'). It is likely that the second event he reports (Publius Cornelius opened the treasury instead of the quaestor) should be considered as the earliest one, since it took place during the second consulship of Scipio, in the year 194 BC.³¹⁶ The last event that Polybius reports is the account of what occurred in 187 BC, when the tribunes Petillii put forward their *rogatio* about the money that Publius Scipio and his brother Lucius received from the king of Syria. What is remarkable is that, unlike Livy, as we shall see, Polybius does not refer in any detail to the actions of the tribunes, and focuses instead his attention on the man that he considers the only protagonist of the event: Scipio Africanus. His approach towards the tribunate follows the same principles we saw at work in our discussion of the *lex Marcia Atinia* (196 BC), when Polybius failed to mention the legislative initiative promoted by the two tribunes. If in that bill the reason for Polybius' choice could be regarded as not immediately apparent, for the facts of the year 187 BC we find the explanation in the historian's narrative. At the beginning of his text, Polybius states: Ὅτι Πόπλιος φιλοδοξήσας ἐν ἀριστοκρατικῷ πολιτεύματι, presenting an

³¹⁶ See Mommsen (1877) 132 n. 2. Willems (1883) 435. Livy 38. 55. 13 reports the same episode. The fact that, except for Polybius, we find that account only in Livy, means, without any doubt, that Livy depends on Polybius. The content of the Latin text is exactly the same of the Greek one: also, Livy, as Polybius before him, underlined that if there was money in the public treasury to be safely guarded, it was thanks to Scipio: '[...] *ab eadem fiducia animi, cum quaestores pecuniam ex aerario contra legem promere non auderent, poposcisse claves et se aperturum aerarium dixisse, qui ut clauderetur effecisset*' ('With the same self-reliance, when the quaestors refused to take money from the treasury against the law, he asked the keys and said that he would open the *aerarium*, which had been shut after his intervention'). Walbank (1979) 244, put forward the hypothesis that Polybius could be wrong in his account of the second episode: '[...] 'consuls might spend money from the *aerarium* [...], but there is no evidence of such a right being exercised without a *senatus consultum*, and P. may be in error'. Despite the undisputed authority of Scipio, particularly in 194 BC, when he was at the peak of his power, Walbank's perspective seems to be reasonable and it is plausible that the episode as it is described by Polybius and Livy should be considered possibly as a simplification. The proof is the lack of evidence for the law that would make it impossible for the quaestors to take money from the treasury. Both our sources are silent on that crucial detail: we read διὰ τινα νόμον in Polybius, *contra legem* in Livy. On the single quaestor in charge see Crawford (1974) 313 n. 299.

understanding of the Roman society that was shaped around the *nobilitas*, which was, at the same time, regarded as the only true responsible for the political deliberations that were taken. When the historian presents the Republic as an ‘aristocratic state’, we are facing a distinctive historiographical interpretation, based on the assumption that the noble clans were the only groups entitled to handle and discuss the main political matters. More importantly for Polybius’ purposes, they were the group from which the men were called to hold the consulship, the magistracy that, in Polybius’ perspective, immediately embodied the idea itself of *imperium*. The second episode, which we accept as the earliest of the three, can be considered as clear evidence for this outlook. Scipio, consul in 194 BC, is presented as the absolute *dominus* of the political scene, manages to bypass the quaestor, and makes the required money available. Again, Polybius explicitly states his view: αὐτὸς γὰρ αἴτιος γεγονέναι καὶ τοῦ κλείεσθαι τὸ ταμειῶν. The treasury had been closed on Scipio’s orders, probably for safety reasons, to better guard the amount of money which at that time was kept in the *aerarium*. Scipio is also presented as the protagonist of the war against Antiochus of 190 BC, as is apparent from the last episode presented by Polybius. As argued above, in the discussion of Livy 37. 1. 7-10, the actual commander of the Roman expedition was not Lucius, but Publius Cornelius, and it is of him that an unknown senator asked the account of the moneys received by Antiochus before the treaty: ἀπαιτοῦντός τινος ἐν τῷ συνεδρίῳ τῶν χρημάτων ὧν ἔλαβε παρ’ Ἀντιόχου πρὸ τῶν συνθηκῶν. As Fraccaro wrote in his well-known study on the Scipios’ trial ‘è ben nota la posizione eccezionale di Publio nella guerra antiochena, legato del fratello di nome, duce supremo di fatto. I tribuni quindi [...] dovevano avere di mira l’Africano, ponendo in discussione la condotta della campagna asiatica del 190’.³¹⁷ Unfortunately, Polybius does not give any information about the member of the Senate that questioned the use that the Scipios made of the funds received by Antiochus. As we have seen from the Greek account, Polybius decided to use the indefinite form τις, possibly in order to avoid explicitly referring to a political protagonist that was chronologically too close to his narrative, and, at the same time, to further highlight by contrast the political weight of the Africanus.³¹⁸

³¹⁷ Fraccaro (1933) 225.

³¹⁸ See Walbank (1979) 245 explains the ‘vagueness’ of Polybius as a result of the source to which the Greek historian referred: ‘due to his source’. This kind of solution does not seem to be quite adequate. Polybius was too chronologically close to the object of his historical narrative to fail to mention such important details, especially if we think of the outstanding relations that had with prominent figures of his own time. The explanation, therefore, can be only found in the specific choice made by the historian to leave out the names of the accusers. See Scullard (1951) 292, who has correctly pointed out the role of the tribunes in raising any issue concerning public interest, with particular reference to issues object of possible prosecution before the people.

Livy's account is without a doubt the most significant source to the understanding of the *lex Petillia* in the history of the tribunician legislation. The first passage is especially significant because it reflects the direct account of the source that Livy used for large sections of his narrative, Valerius Antias.

Liv. 38. 50. 5: [...] *P. Scipioni Africano, ut Valerius Antias auctor est, duo Q. Petillii diem dixerunt.*³¹⁹

P. Scipio Africanus, as it has been said by Valerius Antias, was prosecuted by two Petillii, each of them was named Quintus.

As previously mentioned, the apparent target of the tribunes's legislative action was the Africanus, rather than his brother Lucius, who was, from a legal standpoint, the commander in chief in the war against Antiochus in 190 BC. Furthermore, the order in which the events are reported is inaccurate. The trial against Lucius must be regarded as a sort of overture to the core of the political action put forward by the tribunes, which was specifically aimed at challenging Africanus' prominent position, adopting a more indirect approach. The accusers, who most probably had Cato behind them, were well aware of the prestige of Publius Cornelius and, even more importantly to their political strategy, of the favour in which the Roman people still held him.³²⁰ Scullard's analysis of the Scipios' trial is of interest to our reconstruction: [...] 'the trial of Lucius must be considered first, because it either proceeded the attack on Africanus or formed the main drama in which this attack was only one act'.³²¹ Livy accepts, as we have mentioned, the evidence that he finds in Antias, and speaks of a special *quaestio* under a praetor, which was put in place as the outcome of the *rogatio* put forward by the Petillii before the people.

Liv. 38. 54. 1-6: [...] *morte Africani crevere inimicorum animi, quorum princeps fuit M. Porcius Cato, qui vivo quoque eo adlatrare magnitudinem eius solitus erat. Hoc auctore existimantur Petillii et vivo Africano rem ingressi et mortuo rogationem promulgasse. fuit autem rogatio talis: Velitis, iubeatis, Quirites, quae pecunia capta ablata coacta ab rege Antiocho est quique sub imperio eius fuerunt, quod eius in publicum relatum non est, uti de ea re Ser. Sulpicius praetor urbanus ad senatum referat quem eam rem velit senatus quaerere de iis qui praetores nunc sunt? huic rogationi primo Q. et L. Mummii intercedebant, senatum quaerere de pecunia non*

³¹⁹ Broughton (1951) 369. See also Cornell (2013) 584.

³²⁰ Liv. 38. 54. 1-6.

³²¹ Scullard (1951) 294.

relata in publicum, ita ut antea semper factum esset, aequum censebant. Petillii nobilitatem et regnum in senatu Scipionum accusabant.

When the Africanus died, his enemies gained strength, especially Marcus Porcius Cato among them, who, also when Scipio was alive, had used to speak cynically of his authority. With the support of Cato, the two Petillii started to prosecute the Africanus while he lived and after his death put forward a proposal. The proposal was this one: ‘Do you want and order, citizens, that with regard to the money that was captured, taken, and collected among the Syrian King Antiochus and the men who were ruled by him, and specifically with reference to that part of money that has not been assigned to the state, Servius Sulpicius the praetor of the city will ask to the senate whom, between the men who are now praetors, the assembly want to inquire into this matter?’ This *rogatio* was vetoed by the tribunes Q. and L. Mummius. They said that the Senate should investigate the money that had not been put into the public treasury in the same way which had been used until that time. The Petillii were attacking the Scipios because of their prominent position and tyrannical power in the Senate.

In the source that Livy used (Valerius Antias) the charges against the Africanus, which in Aulus Gellius’ account (4. 18. 3) had been put forward by M. Naevius, tribune of 184 BC, are promoted by the two Petillii in 187 BC, before the death of Scipio.³²² Furthermore, we know, again from Gellius (6. 19. 2), that the prosecutor of Lucius Cornelius was Minucius Augurinus, tribune of 184 BC, and that it was a tribunician trial. The reconstruction of the events proposed by Livy (Antias) in 38. 54. 1-6 is not acceptable. The establishment of a *quaestio* has to be rejected, as it is fully contradicted by Gellius’ account, which speaks of a tribunician trial. Moreover, placing the tribunate of the Petillii to 187 BC also entails serious problems. Briscoe correctly pointed out the lack of ‘independent evidence for their being tribunes in 187’.³²³ The date of the *lex Petillia*, therefore, is unknown, and the political impact of the bill even more doubtful. Livy (Antias) describes it as an attempt to restrain the *regnum in senatu Scipionum* (i.e. Publius Cornelius). In this regard, in accordance to the reflection of Briscoe, the use of the tribunician piece of legislation made by Livy could be regarded as a mere expedient, in order to dramatize the political role of the two Scipios, avoiding the risk of a narrative too much focused on the complex political relationship between the Roman Senate and Scipio Africanus.

³²² Broughton (1951) 376. The tribune is regarded as the protagonist of the ‘non-Antiate’ version of the trial of the Africanus.

³²³ Briscoe (2008) 191.

[3.3] *lex Orchia* (182/181) [*de coenis* Rotondi] ³²⁴

As we have already seen in our discussion of the *lex Oppia* (215 BC) and the *lex Cincia* (204 BC), the *lex Orchia* (182 BC) also targeted luxury and, more specifically, excessive expenses for the organisation of meals. It is noteworthy, first of all, that also in this case, as for the whole *corpus* of the sumptuary laws, the main primary source is Macrobius (*Sat.* 3. 17. 2-4; 17, 13), who openly declares to follow Gellius' account, also with reference to the date of another law concerning sumptuary matters, the *lex Fannia cibaria* (161).³²⁵ Before addressing the content of the law, and investigating its political, social and economic causes and consequences, two preliminary considerations are in order. First, all of the statutes that dealt with luxury and the related issues were passed during or shortly following the Second Punic War, therefore at a time when major, large-scale social and economic change was unfolding in Rome.³²⁶ The *lex Fannia cibaria*, which was supported by the consul C. Fannius, was promoted twentytwo years after the *lex Orchia*, seven years after the battle of Pydna (168 BC), and eleven years before the outbreak of the Third Punic War: *post annum vicesimum secundum legis Orchiae Fannia lex data est, anno post Romam conditam secundum Gellii opinionem quingentesimo octogesimo octavo* ('twenty-two years after the *lex Orchia*, the *lex Fannia* was put forward, according to Gellius, in the 592nd year since the foundation of the city').³²⁷ Secondly, historiographical reconstructions of that issue adopted a perspective from which luxury has been regarded as something that the Romans absorbed from their more frequent contacts with

³²⁴ Rotondi (1912) 276, dated the bill of the tribune C. Orchius to 181 BC: the reasons for this choice are not apparent. The tribunate of C. Orchius, in fact, took place in the year 182 BC, during the consulship of Baebius Tamphilus and Aemilius Paullus. See Münzer (1939) 886: [...] 'im dritten Jahre nach Catos Censur'; cf. Macr. *Sat.* 3. 17. 2: [...] *prima autem omnium de cenis lex ad populum Orchia pervenit, quam tulit C. Orchius tribunus plebis de senatus sententia tertio anno quam Cato censor fuerat*. Cato was elected to the censorship in 184 BC, while 182 BC is accepted as the date of the *lex Orchia* by Broughton (1951) 382; Elster (2003) 337-339; Ferrary (2012) 132; Märtin (2012) 257.

³²⁵ Gell. 2. 24. 2.

³²⁶ On the juridical and political connections between the various *leges sumptuariae* of the third and second century, see Bonnefond-Coudry (2004) 135-171. The specific link that she establishes between Greek legislation and the *leges Orchia* and *Fannia* is noteworthy: [...] 'la loi Orchia et la loi Fannia, comportement, parmi d'autres prescriptions, la limitation du nombre des invités: c'est le seul élément qui autorise un rapprochement avec la législation grecque. Une règle de ce type est attestée en effet, au plus tard à la fin du IV^e siècle, dans la cite carienne de Iasos, pour les banquets nuptiaux'. The relations between the Greek regulation on τρυφή, and the Roman statutes on *luxuria* shed light on the mutual cultural influences from both sides of the Mediterranean. More recently, Zecchini (2016) 25-36 underlined the dichotomy within the Roman *nobilitas*, on such an issue: on the one side the opposition of a part of the elite to the new *mores* coming from the Greek East 'against la *tryphé*', on the other hand the philhellenism of the clans of the Scipiones and Aemilii Paulli.

³²⁷ Macr. *Sat.* 3. 17. 3.

foreign peoples, especially through trade.³²⁸ Considering the latter problem, what Livy wrote in 39. 6. 7-9 may be regarded as paradigmatic, on the one hand, it presents the wider political context in which Macrobius' account of the *lex Orchia de cenis* should be placed, and, on the other hand, provides greater depth to our reconstruction of the historical landscape, and alleviates the lack of detail in Macrobius' account.

39. 6. 7-9: [...] *luxuriae enim peregrinae origo ab exercitu Asiatico invecta in urbem est. Ii primum lectos aëros, vestem stragulam pretiosam, plagulas et alia textilia, et quae tum magnificae suppellectilis habebantur, monopodia et abacos Romam advexerunt. Tunc psaltriae sambucistriaeque et convivalia alia ludorum oblectamenta addita epulis; epulae quoque ipsae et cura et sumptu maiore apparari coeptae. Tum coquus, vilissimum antiquis mancipium et aestimatione et usu, in pretio esse, et quod ministerium fuerat, ars haberi coepta. Vix tamen illa, quae tum conspiciebantur, semina erant futurae luxuriae.*

At the beginning, foreign luxury was brought into the city by the army from Asia. For the first time, they took with them couches of bronze, precious garments, curtains with other pieces of cloth, and, what then was regarded as magnificent articles, tables with one foot and sideboards. At that time, female players of the lute and the harp and other amusements were added to the banquets; the banquets themselves began to be disposed with more care and expense. Then, the cook, that in the past was considered as the least important within the number of slaves both from their standpoint and for the use they made of him, started to have a value and, what previously was regarded as a simple duty, began to be thought as an art. Those elements, that were then very little considered, were the first sign of the coming luxury.

Livy's narrative, which belongs within his account of the Scipios' trial, is significant in several respects. First of all, he presents luxury as the result of the Roman military campaigns in the East. It was something imported from outside the city, and a long-term threat to the community (*semina erant futurae luxuriae*). Of course, this could be regarded as an enduring interpretation, if one thinks of the well-known statement of Horace in *ep.* 2. 1. 156-157 : *Graecia capta ferum victorem cepit, et artes intulit agresti Latio*. Instead of the *artes*, we find in Livy *luxuria*, and instead of *Graecia*, we have *Asia*. What remains unchanged, and is not a secondary element,

³²⁸ On this see Zanda (2011) 7: [...] 'luxury invaded Rome, and this invasion was described by ancient writers in several ways: the metaphor of the illness that corrupts the body of society is one of the most often used'. This interpretation, that we are going to meet and analyse particularly with reference to Livy 39. 6. 7-9, had at its core the assumption that: the houses of the wealthiest families of Rome were not regarded as private spaces, but as public as the *forum* and the *curia* were. Therefore, the laws that had been enacted to regulate luxury regarded the life of the most prominent public figures as something completely identified with their political involvement. Moreover, the *leges sumptuariae* put forward between the third and the second century reflected a considerable increase in private wealth. See also Kay (2014) 205: [...] 'unsurprisingly there is evidence to suggest increasing trade in luxury items to meet the growing demands of the wealthy elite in Rome and Italy'.

is the cause of this historical development: the army (*ab exercitu Asiatico*), and the conquest of the Kingdom of Syria. The historian is reporting the events of 187 BC, exactly three years after the battle of Magnesia, where the Romans defeated Antiochus III. Unlike Livy, Sallust thought that it was with Sulla, more than a century later, that Rome was corrupted by *avaritia*: [...] *ibi primum insuevit exercitus populi Romani amare, potare; signa, tabulas pictas, vasa caelata mirari; ea privatim et publice rapere, delubra spoliare, sacra profanaque omnia polluere*, ('There, for the first time, the Roman soldiers began to have sexual relations with women, and drink; to admire statues, paintings, and decorated vases; to take away them from private houses and public places, to steal from temples, and to treat with great disrespect both the sacred and profane things').³²⁹ However, while Sallust, in spite of the same geographical origin of luxury, i.e. Asia, presented it as a device exploited by Sulla to dominate and control his army more easily: *quo sibi fidum faceret, contra morem maiorum luxuriose nimisque liberaliter habuerat*.³³⁰ Livy does not appear to relate the sumptuary issue to any specific political figure, even if the military commander of the Roman campaign against Antiochus III, Scipio Africanus, is a special focus of interest for the historian. Livy wrote at the end of the last decade of the first century BC, when huge political, military and economic changes were putting forward a completely new political scenario in Rome. However, in his narrative of that event, despite the number of important details that he refers to, regarding the goods that the soldiers brought with them in the aftermath of their eastern campaign, he omitted to mention the man who was, at least from the legislative standpoint, the political supporter of the *lex Orchia*, the tribune C. Orchia, on whom only Macrobius, as previously mentioned, provides us with some information.³³¹

Sat. 3. 17. 2-3: [...] prima autem omnium de cenis lex ad populum Orchia pervenit, quam tulit C. Orchia tribunus plebis de senatus sententia tertio anno quam Cato censor fuerat. Cuius verba quia sunt prolixa praetereo,

³²⁹ *Cat. 11. 6.* See Briscoe (2008) 225. On this crucial historical issue, see Earl (1961). Syme (1964) 124, points out the link that the Roman historian made between Sulla and Catilina, in order to criticise the general view of the similarities that Sallust created between Sulla and Catiline: [...] 'whatever be thought of that notion, Sallust can be convicted of a flagrant exaggeration'. On Sulla as an 'evil preceptor' *Cat. 5. 6: hunc post dominationem L. Sullae libido maxuma invaserat rei publicae capiundae*. See also Cic. *Fin. 3. 75*, where Sulla is described as the main responsible for *tria vitia pestifera: luxuria, avaritia, crudelitas*.

³³⁰ *Cat. 11. 5.*

³³¹ Piso fr. 34P, from Plin. *nat. 34, 14*, claimed that Manlius first has taken to Rome, during his triumph, *triclinia aerata abacosque et monopodia*. On this see Briscoe (2008) 226: [...] 'whether L. derives from Piso himself or from Antias [...] is uncertain'. Lintott (1972) 626-638 suggested that Aemilianus promoted the idea that the moral decline started with the return of Cn. Manlius Vulso from Asia in 187 BC (Liv. 39. 6. 3).

summa autem eius praescribat numerum convivarum, et haec est lex Orchia, de qua Cato mox orationibus suis vociferabatur, quod plures quam praescriptio eius cavebatur ad cenam vocarentur.

The *lex Orchia* was the first law regarding the dinners to come before the People. It was promoted by the tribune C. Orchius, in accordance with the senate, in the third year of Cato's censorship. Due to the length of the law, I will not report it fully, but its main purpose was to precisely indicate the allowed number of guests at a meal. This law was later addressed by Cato in some of his speeches, in which he strongly said that more guests were at the dinners than it was permitted.

We do not know exactly how many speeches Cato gave in support of the *lex Orchia*. We can reasonably infer, from Macrobius' use of the plural, *orationibus suis*, that Cato made more than one intervention about the *lex Orchia*. Festus seems to confirm this hypothesis, writing in two different passages that Cato gave two speeches, one against the bill: (*Cato in ea qua legem Orchiam dissuadet*), and the second in its support: (*Cato in suasionem <ne> de lege Orchia derogaretur*).³³² If these fragments can be regarded as a proof of Cato's political intervention on the *lex Orchia* on more than one occasion, at the same time they present a patent contradiction about the behaviour of the censor himself. It is hard to believe that Cato could have spoken against a sumptuary law, particularly against a tribunician law put forward at such a crucial time, when the *nobilitas* was facing the consequences of the trial that had involved the Scipios.³³³ The *lex Orchia*, despite the few and, as we have seen, in some respects inconsistent literary accounts of it that survive, belongs in the political strategy pursued by the tribunes since the year 218 BC, when the *plebiscitum Claudianum* was put forward by the tribune Claudius. Both laws dealt with an issue that was deeply connected to the political setup within the *nobilitas*. The political action of the two tribunes, Claudius and Orchius, addressed a need that did not stem from the *plebs*. Their political strategy was primarily aimed to reduce the differences of wealth among the leading Roman families, and avoid a degeneration of the political structure of the Republic. The fact that sumptuary laws had to be put forward again in 161 BC (*lex Fannia*) and 143 BC (*lex Didia*) reveals the major difficulty that the tribunate met in seeking to control an historical phenomenon that may have been considered as a mere moral

³³² Malcovati (1976) 54-55, (35) *Dissuasio ne Lex Orchia derogaretur*.

³³³ Zanda (2011) 119-120, offers two reasons for which Cato was in favour of the *lex Orchia*: [...] 'first, he was well known for his firm moral beliefs and second, according to Macrobius this is the law about which Cato complained loudly that more guests were being invited to dinners than it allowed'. See also Scullard (1973) 265: [...] 'it is unlikely that Cato would speak against a sumptuary law. If it was not severe enough for his taste, he would probably have insisted on its being more rigid; further, few would have approved of it, if Cato, the leader of the reform party, disapproved.

issue at the beginning of the second century, but had become a disruptive political matter after the Third Macedonian War.

[3.4] *rogatio Pinaria* (180 BC?) [annalis Rotondi]

[3.5] *lex Villia* (180 BC) [annalis Rotondi]

Approaching the *lex Villia annalis*, the image of Janus the ‘god of door and gate’ springs to mind: he was *biceps* just like the bill of the tribune Villius.³³⁴ Indeed, this piece of legislation must be analysed not only for the political and constitutional consequences that it had in the medium to the long term (a perspective that informs most of the modern studies on the *lex Villia*), but also drawing attention to the premises of that legislative initiative enacted by the tribune Villius in 180 BC. The law represents, within the tribunician legislative corpus, a passage of great significance, which determined the future developments of the political choices made by the senate, the senior magistracies and, what is more, the outstanding individuals that, before and immediately after the Second Punic War, had deeply affected the political life of the Republic. Livy’s account is the only one that records us about the name of the tribune *rogator* of the law, adding, unfortunately, very little information on the content of the bill itself.

40. 44. 1: [...] *eo anno rogatio primum lata est ab L. Villio tribuno plebis, quot annos nati quemque magistratum peterent caperentque. inde cognomen familiae inditum ut Annales appellantur.*

In that year, for the first time, a proposal was put forward by the tribune of the *plebs* L. Villius, establishing the age needed in terms of being appointed to each magistracy. Therefore, on the family of the tribune was bestowed the *cognomen* of *Annales*.

³³⁴ See Kübler (1928) 403-404. Rotondi (1912) 278-279 notes that the *lex Villia*: ‘[...] relativa solo alle magistrature patrizio-plebee deve aver fissato l’età minima almeno per una delle prime cariche, ma nulla ci è direttamente attestato’. This view has been completely accepted by Brennan (2000) 170: [...] ‘in 180 [...] the *lex Villia Annalis* was introduced. This evidently stipulated the minimum ages for candidacy for each (curule) magistracy’. Elster (2003) 344-346 offered a comprehensive overview on the reasons that led to the enactment of the *lex Villia*; Martin (2012) 261-262 does not add anything to Elster’s analysis. For Janus see *OCD* (2003) 793.

As we shall see, Livy is probably inaccurate in saying that a *lex annalis* was proposed in 180 BC *primum*. Cicero in *de orat.* 2 65. 261 speaks of another *rogatio annalis* promoted exactly the year before the *lex Villia*, in 181 BC, and, what is perhaps even more relevant, by the praetor Pinarius Rusca.³³⁵ Cicero's text is also remarkable because it confirms that the question of the regulation of the constitutional aspects related to the curule magistracies was very much at the forefront of the political agenda at the time.

de orat. 2. 65. 261: [...] *ex immutatione, ut olim Rusca cum legem ferret annalem, dissuasor M. Servilius 'dic mihi,' inquit 'M. Pinari, num, si contra te dixero, mihi male dicturus es, ut ceteris fecisti?' 'Ut sementem feceris, ita metes' inquit.*

As for the metonymy-allegory, we have the case of Rusca, who, a long time ago, put forward a *lex annalis*, and since M. Servilius, who argued against the bill, said: 'tell me, M. Pinarius, perhaps are you going to denigrate me, as you have done with the others, if I will speak against you?' And Rusca replied: 'you will get what you have sown.'

In Cicero's account, there are two factors that make the absence of the *rogatio Pinaria* in Livy's narrative even more surprising. First, the *rogator* was a praetor, marking a break from the usual legislative practice of the Republic, where the proponents of the laws were normally consuls and, especially in the second century, tribunes of the *plebs*.³³⁶ The '*iter legis*', as it has been well defined by Ferrary, was a very complex process during the whole of the Republican period.³³⁷ We do not know, for example, whether the *rogatio* of 181 BC was only an initiative of the magistrate, or a proposal promoted by the Senate. What makes the matter even more complex is that, exactly one year later, another *lex annalis* was put forward, this time by a

³³⁵ Münzer (1950) 1404: [...] 'der Antragsteller einer Lex Annalis'. Broughton (1951) 384. De Martino (1960) 362. He argued that the *rogatio Pinaria* was not successful, and that possibly Livy failed to mention that legislative proposal exactly for that reason. Brennan (2000) 170: [...] 'it is strange that Livy pays not attention to what Cicero describes as a quite heated dispute (1.2.3). Presumably, the *lex Villia Annalis* was simply the first law of its type which Livy found in his sources as actually having been passed'. It is not likely that Livy did not find anything in his sources about the *rogatio Pinaria*, especially if we consider that Cicero wrote the *De oratore* in 55-54 BC, roughly a generation before Livy. Moreover, at 40. 18. 2 Livy tells us about Pinarius Rusca, in the list of the *praetores* of the year 181 BC. If he was able to offer a full overview of all the *praetores*, he may be expected to have had some information about what each single magistrate did, particularly if it was related to such an important issue? Briscoe (2008) 457 put forward some doubts, not entirely compelling, about the identity of the *praetor* of 181 BC: [...] 'not necessarily identical with the M. Pinarius Rusca who proposed a *lex annalis*'.

³³⁶ See Sandberg (2001) 65-70, who introduces a clear distinction between the legislative practice led by the tribunes, to which the verbs *promulgare* and *rogare* are usually applied, and the consular initiative, marked by the term *ferre*. See also Pina Polo (2011) 100-101.

³³⁷ Ferrary (2012) 3-12.

tribune. What Ferrary wrote about the legislative prerogatives of the tribunes is especially relevant to the understanding of the *rogatio Pinaria*: [...] ‘Mais la consultation du Sénat n’était pas une obligation, en particulier pour un tribun de la plèbe, et nombreux sont les exemples de rogationes tribunitiennes promulguées, [...], sans que le Sénat en ait été préalablement saisi’.³³⁸ The initiative of the praetor of 181 BC, and the political reasons for its failure may be understood against this background. It is possible, in fact, that Pinarius Rusca, as praetor, was not allowed to bring forward, unlike the tribunes, a piece of legislation without the endorsement of the senate, particularly on such a relevant matter like the *cursus* of the curule magistrates. This reconstruction could also explain why M. Servilius Pulex Geminus, consul of 202 BC, opposed the *rogatio* supported by Rusca. The former consul, as a member of the Senate, appealed to the *auctoritas senatus* with the clear intent to stop the promulgation of a bill that would have reduced the margins for political distinction, particularly for those men who, after the Second Punic War, had seen more spaces available for a faster and more successful career. The opposition of such a man is even more remarkable, if we consider that in the third century the patrician Servilii Gemini moved to the *plebs*.³³⁹ The political strategy of the tribune L. Villius emerges in all its complexity. The bill of 180 BC prevailed on all the political obstacles that we can only imagine there were.

The thesis of De Martino and Brennan is, therefore, an unsatisfactory attempt to make sense of the *rogatio Pinaria* and its links to the *lex Villia*. Moreover, the silence of Livy cannot be regarded as the result of the failure of the proposal of the *praetor*, but as further proof of Livy’s prejudice towards the legislative practice. The *rogatio Pinaria*, however, was not the only attempt to regulate the *cursus honorum* that took place before the *lex Villia*. The adverb *primum* is problematic in two respects. We find in Livy 7. 42 the mention to the *plebiscitum ne quis eundem magistratum intra X annos caperet* of 342 BC. The passage is quite interesting, because of its legislative content and, for what it reveals of Livy’s method.

7. 42. 1: [...] *praeter haec invenio apud quosdam L. Genucium tribunum plebis tulisse ad plebem ne fenerare liceret; item aliis plebi scitis cautum ne quis eundem magistratum intra decem annos caperet neu duos magistratus uno anno gereret utique liceret consules ambos plebeios creari.*

In addition to these questions, I find out in some authors that Lucius Genucius, a tribune of the plebs, proposed to the plebs that should be considered as against the law to lend at interest. I also found that, in other plebiscites, was

³³⁸ Ferrary, (2012) 11.

³³⁹ Brunt (1982) 5.

established that no one could enter the same office twice within ten years, or two magistracies in one year, and that should be regarded as acceptable that both consuls come from the plebeian ranks.³⁴⁰

The account of the *plebiscitum* of 352 BC, in spite of all the issues that such a piece of legislation entails in terms of historical reliability, is methodologically revealing.³⁴¹ He did not explicitly mention his sources, only writing *apud quosdam*, but, indirectly, he tells us that if he had been able to find an account of a *plebiscitum* of the year 342 BC, focusing on the regulation of the *cursus honorum*, his text would have been much more reliable. If, at the same time, we could find evidence also of the *rogatio Pinaria*, addressing the same constitutional matter, and under the ideological profile a development of the law of 342 BC, the entire historical reconstruction of Livy would be considerably more reliable. Furthermore, we can refer to the evidence of Tacitus *Ann.* 6. 16. In the account of the *rogatio tribunicia de faenore* of the tribune Lucius Genucius, the reliability of all the legislation of the same year, i. e. the *plebiscita de cursu honorum*, is accepted: (6, 16): *nam primo duodecim tabulis sanctum ne quis unciario faenore amplius exerceret, cum antea ex libidine locupletium agitaretur; dein rogatione tribunicia ad semuncias redactum, postremo vetita versura.*

It is quite possible, particularly considering the historiographical approach of Livy towards the tribunate, that the *plebiscita* on the career pathway of the magistrates were part of the same legislative project, that also involved the *rogatio de faenore*. All those proposals should be regarded as moments of the political initiative put in place by the tribune Genucius.

The election to the consulship of P. Cornelius Scipio Africanus in 205 BC and that of T. Quinctius Flaminius in 198 BC are generally regarded as the historical background of the bill under discussion.³⁴² Mommsen argued that the *lex Villia* set three fundamental rules: 1) the

³⁴⁰ Stein *RE* (1910) 1207; Broughton (1951) 134.

³⁴¹ See Lanfranchi (2012) 364: [...] ‘Livio non cerca mai veramente di precisare gli aspetti tecnici inerenti al voto delle leggi e delle assemblee mobilitate’. Lanfranchi in this study does not mention the *pl. sc.* of 342 BC, despite its presence in the catalogue of Rotondi (1912) 224 and, as well, in Elster’s catalogue (2003) 40.

³⁴² Liv. 28. 38. 12: [...] *quarto decimo anno Punici belli P. Cornelius Scipio et P. Licinius Crassus ut consulatum inierunt.* (‘during the fourteenth year of the Second Punic War, P. Cornelius Scipio and P. Licinius Crassus were elected to the consulship’). Liv. 32. 7. 12: [...] *creati consules Sex. Aelius Paetus et T. Quinctius Flaminius.* (Sex. Aelius Paetus and T. Quinctius Flaminius were the successful candidates to the consulship). On the early career of T. Quinctius Flaminius see the work of Badian (1971) 102-111. In this paper Badian achieved a significant result: to challenge the idea of the fundamental importance of ‘family alliances’, in order reach the most senior magistracies in the Mid-Roman Republic. The interesting explanation of the very successful *cursus* of Flaminius has been found, by the scholar, in the undoubtable shortage of commanders (p. 109) in the very last years of the Second Punic War. Flaminius, *tribunus militum* in 208 BC under the consul Marcellus, only three years later, in 205 BC, received from the Senate an extraordinary praetorian *imperium* at Tarentum: Broughton (1951) 303. See Badian (1973) 299: [...] ‘after his commander’s death Titus stayed on and was asked, in the general shortage of commanders, to take over the garrison, with the rank of *pro praetore*’. On this, see also the

candidate, before seeking a magistracy, had to complete the military service of ten years; it is remarkable that we do not find this piece of regulation in Livy, but in Polybius, who was referring to his own time; 2) the mandatory compliance with the *cursus*: quaestorship, praetorship, consulship; 3) the requirement of a *biennium* free of office.³⁴³ Differently from Mommsen, De Martino³⁴⁴ argued that there are no sufficient elements to support the need for the compulsory *cursus* before the reform put in place by Sulla.³⁴⁵ If there are no doubts about the existence in the late Republic of a mandatory *cursus*, for the pre-Sullan period the issue is different.³⁴⁶ If we take a look at the years after the promulgation of the *lex Villia annalis*, we find that within the 172-165 period there are five consuls for whom we do not have any record of their praetorship.³⁴⁷

contribution of Millar (2002) 126, who stressed, following the study of Brunt (1982) 9-11, the relevance of such an approach aimed at not overestimating the role of the *gens* in terms of personal political achievements: [...] ‘there is no clear proof, as regards the historical period, that a Roman *gens* was a significant element in society, with a known membership and boundaries, defined functions or common interests’. The perspectives of Brunt and Millar, undoubtedly, had the merit to overcome Gelzer’s approach (1912) which was totally focused on the ‘aristocratic’ aspect of the Roman society and, consequently, of the political praxis. What remains too much in the shade of the historiographical debate and would deserve to be widely explored, is the difference that we consistently find in the *cursus* of the Roman political men before and after the Hannibalic War. In the light of this, the issue concerning the role and the impact of the *gens* would appear not as much decisive as Gelzer, Münzer (1920) and Syme (1939) pointed out. See the contribution of Jehne (2011) 226-231.

³⁴³ Mommsen (1888) 505-530. 6. 19. 4: [...] πολιτικὴν δὲ λαβεῖν ἀρχὴν οὐκ ἔξεστιν οὐδενὶ πρότερον, ἐὰν μὴ δέκα στρατείας ἐνιαυσίους ἢ τετελεκώς (‘nobody can access any public office, before to have completed ten years of military service’).

³⁴⁴ De Martino (1960) 365: [...] ‘per quanto concerne il *certus ordo magistratuum* nulla ci autorizza ad attribuirlo alla *lex Villia* [...]. Non riteniamo dunque provato che la *lex Villia* avrebbe introdotto un obbligo rigoroso di percorrere i gradi della carriera e non ci spiegheremmo il silenzio di Livio, se una riforma tanto importante fosse stata allora codificata’. What De Martino says about the silence of Livy is not such solid proof. We know that in many cases Livy’s account is absolutely inaccurate in terms of referring the political and legislative actions of the tribunes, see Badian (1996) 211. Ferrary (2012) 134, pointed out, especially in connection with the *lex Cornelia Baebia de ambitu* and the *lex Villia*, the noticeable lack of informations that we see in Livy: [...] ‘à ces omissions, sans aucun doute plus nombreuses que celles que nous pouvons établir ou soupçonner, il faut ajouter le laconisme des lignes consacrées à des mesures comme la loi Cornelia Baebia de ambitu ou même la loi Villia annalis’.

³⁴⁵ Astin (1957-1958) 49-64; 602-611 voices doubt on the provision regarding the compulsory *cursus*, from the quaestorship to the consulship. See also Evans and Kleijwegt (1992) 181-195. Cf. Cic. *Phil.* 5. 47: [...] *legibus enim annalibus cum grandiore aetate ad consulatum constituebant, adulescentiae temeritatem verebantur*: C. Caesar ineunte aetate docuit ab excellenti eximiaque virtute progressum aetatis exspectari non oportere. Manuwald (2007) 711. It was definitely not, at that time, a good choice to question the compliance with the legislation on a matter like the *cursus honorum*.

³⁴⁶ Cic., *De Leg. Agr.* 2. 24 : *certus ordo magistratuum*.

³⁴⁷ Astin (1957) 607, following the clause of the *biennium* between each magistracy, filled the vacancies as follows: praetors of 175 BC, P. Aelius Ligus, C. Popillius Laenas, Cn. Lutatius Cerco and Q. Baebius Sulca; praetors of 174 BC, C. Cassius Longinus; praetors of 170 BC, Q. Aelius Paetus, T. Manlius Torquatus and C. Tremellius. Broughton presents the same reconstruction, but regards the praetorship of T. Manlius Torquatus in 170 BC as uncertain (420).

- 1) P. Aelius Ligus and C. Popillius Laenas *cos.* of 172 (the first plebeian consular pair)³⁴⁸
- 2) C. Cassius Longinus *cos.* 171
- 3) Q. Aelius Paetus *cos.* 167
- 4) T. Manlius Torquatus *cos.* 165

Five cases are absolutely remarkable, and represent only a moment of what we are going to face in the second half of the second century, when the figure of Scipio Aemilianus will emerge as the key force in Roman politics and an element of strong contradiction to the clauses of the *lex Villia* of 180 BC. This statute, as we have tried to stress throughout this analysis, attempted to create a new and more robust balance within the Roman political elite, in accordance to the emerging needs of a Republic that, after the Second Punic War and the expansion towards the Greek East, would soon face major problems, especially because of the extraordinary wealth to which the military victories had given the Roman elite access. The legislative attempt of the tribune Villius, it may fairly be said, was not successful.

³⁴⁸ Broughton (1951) 410.

Conclusions

This dissertation has analysed the tribunician legislation of a segment of the Mid-Republican period, from the *plebiscitum Claudianum* of 218 BC to the *lex Villia* of 180 BC. Its central aim was to explain and identify the important points and changes that the laws put forward by the tribunes determined. Its main argument has been that the tribunician activity produced a major shift within the political Roman context of the time, bringing to a significant destabilization of the previous social and economic dynamics.

We have seen, especially in the discussion of the *plebiscitum Claudianum*, how the military and economic expansion of Rome was at the core of the legislative initiative of the tribune Claudius, and how significant the role of Flaminius as the most prominent backer of that statute was. In this connection, we have also sought to build a wider and more complex discussion of the tribunician involvement in the Roman political scenario, developing a new approach to the connections between the major political actors of Rome at the time and the tribunate, which proved remarkably flexible in dealing with the most prominent and pressing political issues between the end of the third and the beginning of the second century BC. In doing so, we have also discussed and challenged Badian's view of the role played by the tribunate, both from a methodological standpoint and a more specifically political perspective. We have discussed in detail the importance of the tribunician laws as the main vehicle through which this magistracy successfully established itself as a key political force. This approach has also enabled us to pursue a new path in our analysis of the primary sources, mostly literary, which we have discussed throughout our work. In this respect, our discussion has an avowed debt to the work of Ferrary, who put forward a vivid and compelling critique of the previous scholarship, aiming to further probe and problematise the accounts of authors like Polybius and Livy. Ferrary's insights have been key to our analysis, especially the discussion of the lack of evidence for the tribunes' political involvement in crucial domestic and foreign matters. We have endeavoured to push Ferrary's argument further, engaging with the complexity of the historical debate, and seeking to offer, whenever possible, original solutions.

It is important to note the meaning of the chronological range covered by this work. This will also allow us to frame what the possible and further developments of the project might be. The thirty-eight years chosen as the focus of this study represent a coherent period, in which the foremost political, social and economic questions were the consequences (both direct and indirect) of the most significant event of the time: the Second Punic War. Against

that background, this study had the scope to set its analysis within a distinctive historical scenario.

However, this important feature could potentially be the beginning of a different and, at the same time, closely connected study. The law analysed at the end of this thesis, the *lex Villia* of 180 BC, represents in fact a legislative ‘bridge’ between two distinctive moments of a long and tortuous process, through which the tribunate of the plebs made an increasingly significant impact, determining a series of political and economic consequences that led to the troubled last thirty years of the second century. The boundaries that the statute of 180 BC had sought to set would soon be infringed in accordance to the needs of one of the most prominent political actors of the mid-second century: M. Claudius Marcellus. On the other hand, the statutes put forward by the tribunes in the attempt to limit and regulate luxury, starting with the *lex Oppia* of 215 BC, were also soon contravened, requiring a new and more robust intervention with further pieces of tribunician legislation: the *lex Voconia* of 169 BC, the *lex Fannia* of 161 BC, and the *lex Didia* of 143 BC. There can be no doubt, therefore, that this study, which started from 218 BC, is merely the first step of a longer and more stimulating investigation, which will address the main methodological, political, and juridical problems presented by the initiatives that the tribunes took between the beginning of the third decade of the second century, and 139 BC, when the *lex Gabinia* was enacted. That project would lead to a general reassessment of the Mid-Republican period as a whole, and will also contribute to a better understanding of the much-debated years that witnessed the initiatives of the Gracchi.

The tribunician legislative and political activity has been discussed and analysed in this dissertation in close connection with the complex and ever-changing role of the Roman elite, which played across the forty decades taken under our scrutiny both as a political backer and a fierce antagonist of the laws put forward by the tribunes. In this regard, the many initiatives of the tribunes showed how competitive, flexible, and adaptable to an ever-changing and evolving political context this magistracy was. This adaptability could also be regarded as the main reason why it is so difficult to draw a definitive picture of the political and ideological nature of the tribunate itself. The tribunes were the most dynamic magistracy of the whole Roman Republic, and this distinctive characteristic affected all their activity, saving them from the risk of becoming an ossified institution. The analysis conducted on their Mid-Republican legislative activity has challenged the conclusions of previous scholars, notably Bleicken and Badian, mainly on this crucial topic: the impossibility of establishing once and for all the actual political goals of the tribunate.

This last point takes us to a further point concerning the possibility, and indeed the opportunity to develop this research on the political and legislative activity of the tribunes. In this regard, a considerable historical gap remains to be covered, ranging from the enactment of the *lex Hortensia* in 287 BC to the year in which the *plebiscitum Claudianum* was put forward in 218 BC. In this light, the chronological choice that has been made for the purposes of the present work would be corroborated by a link with Lanfranchi's recent monograph on the tribunate and its chronological endpoint. The third century BC still offers considerable scope for research, and would enable a better contextualization of the tribunician political and legislative outcomes that took place at the end of the century. Moreover, the two dates (218 BC/180 BC) that have been chosen as the starting and final points of this research, will find a complete and compelling justification in light of these further developments of the modern research on the tribunate, which we are reasonably entitled to regard as an important and necessary historiographical aim. The progress of the work will also pursue a further, but not secondary goal: to analyse what role the Roman nobility had in shaping the role of the tribunate across the whole of the third century BC, addressing, at the same time, the key question of what the social and political background behind the legislative activity of the tribunes was, and how it changed over time.

The way in which the work has addressed the tribunician legislation has allowed us to achieve a diachronic and thoughtful analysis of the laws put forward during crucial and challenging decades, both for the stability and the political continuity of the Roman Republic. Furthermore, it is worth underlining that we have been in the condition to investigate what were the main and most relevant differences between the Roman and the Greek historical standpoint on the political and legislative engagement of the tribunate of the *plebs*. This has been the case of the *lex Marcia Atinia* of 196 BC, whose analysis and historical contextualisation has enabled us to understand the perspective that an intellectual like Polybius developed about the significance of the tribunate within the complex dynamics of the Roman political and constitutional setting. Through his silence on the tribunes' legislative activity, especially at such a crucial moment and on such a pivotal matter, the Greek historian intended to put forward a 'simplified' political picture, in which he only took into serious account the political agenda pursued by the consuls and the Senate. On the other hand, a Greek historical and economic model had influenced the enactment, twenty years earlier, of the *lex Minucia* (216 BC), concerning the creation of a special committee of *triumviri mensarii*. In this specific case, the tribune Minucius was successful in developing and strengthening the vision of a new way of doing and promoting business and trade across the Mediterranean, pursuing also the

establishment of a financial convergence between the Greek and the Roman perspective on what should have been the responsibilities and the aims of a banker. In light of this, the tribunate of the *plebs* can be seen and understood not just as the main Roman legislative magistracy of the time, but as the political instrument through which some of the most relevant social, cultural and economic matters that had been defined and addressed within the Greek world were newly interpreted and implemented inside the Roman Republican context.

The tribunate of the *plebs* still presents a considerable set of historiographical problems that are worth investigating in detail. In this regard, this study on the tribunician legislation of the Mid-Republican period is only the first step along a much longer route; moreover, it is meant to represent the link between the previously mentioned twofold chronological developments, which will hopefully cover the whole of the third and second century BC.

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