

THE ATINIAN PLEBISCITE, TRIBUNES, AND THE SENATE*

We know of the Atinian plebiscite only from a tantalizing reference of Gellius, apparently citing Ateius Capito:¹ 'nam et tribunis, inquit plebis senatus habendi ius erat, quamquam senatores non essent ante Atinium plebiscitum.' Willems was able to note two interpretations,² one of which held that the plebiscite required that all tribunes be senators already, the other that it allowed tribunes the enjoyment of senatorial rights. The first was rightly rejected; since all we know disallows the notion that an aedileship would precede the tribunate, senatorial status could only come after the quaestorship and while there were only eight or less quaestors,³ clearly ten tribunes could hardly all be ex-quaestors. Consequently Willems adopted the second alternative: acquisition of the tribunate entailed the *ius sententiae dicendae* in the senate. In support is cited Zonaras 7.15.1: 'εἰσέπειτα μέντοι καὶ μετέλαβον τῆς βουλείας οἱ δημαρχήσαντες καὶ τέλος καὶ τῶν βουλευτῶν τινας ἤξιώσαν δημαρχεῖν.' Mommsen was of like mind,⁴ as later has been Gabba.⁵ Wiseman wonders if the plebiscite compelled the censors to enrol all ex-tribunes at each *lectio*.⁶

The matter of date has been integral to interpretation. Wiseman's argument was proposed in order to allow the measure to fall in 131 or earlier.⁷ Indeed, 131 seems to offer an appropriate context. In that year the tribune C. Atinius Labeo tried to take vengeance on the censors for omitting him from their *lectio*.⁸ It would seem strange, however, that no source mentions a plebiscite such as ours in connection with his vengeance. Other obstacles have been perceived. In the text of the *lex Acilia repetundarum* we find excluded from the juries 'quei tr. pl., q., IIIvir cap., tr. mil. 1. IIII primis aliqua earum, IIIvir a. d. a. siet fueritve, queive in senatu siet fueritve.'⁹ This seems clearly to envisage the possibility that there would be ex-tribunes and ex-quaestors who had not entered the senate permanently. Willems concluded¹⁰ that tribunes did not have the *ius sententiae dicendae* before the date of the *lex Acilia*, placed in 123. He settled upon 119 as the date of the Atinian plebiscite giving this *ius*, using as evidence the large number of men excluded from the senate by the censors of 115, this being a purge of new elements allowed in since 119.

* My thanks go to Mr. B. A. Marshall for helpful comments on this paper; the responsibility remains mine. All dates are B.C.

¹ NA 14.8.2.

² P. Willems, *Le Sénat de la république romaine*² (Louvain, 1885), i.228 ff.; see also 689 ff. on Lange, *de plebiscitis Ovinio et Atinio* (Leipzig, 1878), p.36, who placed the plebiscite between 216 and 209, but not for good reasons.

³ On the number of quaestors see now W. V. Harris, 'The Development of the Quaestorship, 267–81 B.C.', *CQ* N.S. 26 (1976), 92 ff.

⁴ *Römisches Staatsrecht*, iii.862.

⁵ E. Gabba, 'Note Appianee,' *Athenaeum* 33 (1955), 220.

⁶ T. P. Wiseman, *New Men in the Roman Senate 139 B.C.–A.D. 14* (Oxford, 1971), pp.97 f.

⁷ As Willems pointed out (op. cit. i.229), examples of tribunes being passed over in censorial *lectiones* tell us nothing, as this need mean only that they were eligible for selection, not that they enjoyed senatorial privileges. I think this holds good, despite Gabba, art. cit. 221 n.4.

⁸ See *MRR* i.500 f.; on the Atinii as a whole see A. E. Astin, 'The Atinii', *Hommages à M. Renard* (Coll. Latomus 102, 1969), pp.34 ff.

⁹ Bruns, *Fontes* 10.13, 16.22.

¹⁰ Op. cit. i.230 f.

In opposition to Mommsen,¹¹ Tibiletti thought the mention of tribunes in the *lex Acilia* did not mean they lacked the *ius sententiae dicendae*.¹² Indeed, the *lex Acilia* need only refer to ex-tribunes who had not had the chance to be chosen.¹³ It wishes to exclude all officials and ex-officials of any importance. Within this scheme tribunes, quaestors, etc. are placed in a different category from aediles and above, who must therefore be included in 'qui in senatu siet fueritve.' Now we shall see that a tribune in his year of office could express his opinion in the senate long before 123. One should therefore conclude that at the time of the *lex Acilia*, aediles and above maintained their senatorial right after their year of office, on the grounds that they were automatic choices for the senate at the next *lectio*; ex-tribunes and ex-quaestors were eligible to be chosen, indeed some of them would have to be chosen to fill the complement of the senate, but they only enjoyed senatorial privilege during their year of office.

On this basis, if the Atinian plebiscite conferred the *ius sententiae dicendae* on tribunes, its date will have to be put back considerably. For the first example we have of a tribune giving his opinion in the senate is in 326.¹⁴ There may be those who would wish to discount this evidence, but we can hardly doubt that tribunes could hold a senatorial meeting by 216¹⁵ and it would be unreasonable to suppose that, this being so, they were not able to give their opinion in the senate by this date. This raises the difficulty of finding an Atinius to whom we can attach the plebiscite; the first Atinius of whom we know appears in 212.

In view of our scanty knowledge of tribunes, this latter problem is hardly a serious obstacle. And yet it seems to me that there is a case for reinterpreting the content of the plebiscite. The possibility arises that this law for the first time *allowed* senators to become tribunes and I believe that the text of Gellius supports this. I quote it here in its entirety:¹⁶

Praefectum urbi Latinorum causa relictum senatum habere posse Iunius negat, quoniam ne senator quidem sit neque ius habeat sententiae dicendae, cum ex aetate praefectus fiat quae non sit senatoria. M. autem Varro in IIII epistolicarum quaestionum et Ateius Capito in coniectaneorum VIII ius esse praefecto senatus habendi dicunt; deque ea re adsensum esse Capito <Varro> nem Tuberoni contra sententiam Iunii refert: nam et tribunis, inquit, plebis senatus habendi ius erat, quamquam senatores non essent ante Atinium plebiscitum.

Varro (and Capito) was opposing the argument of Iunius, who said that a prefect left behind to hold the Latin festival could not call the senate because he was not a senator and did not have the *ius sententiae dicendae* since he was of an age which was not senatorial (presumably because he was not of an age to hold an office which would allow access to the senate). The reply, therefore, ought to be that tribunes too were not senators at one time, but they could hold a meeting of the senate. In other words, 'senatores non essent' ought to be parallel to 'ne senator quidem sit'; the prefect *Latinorum causa* was not, indeed *could* not be, a senator when chosen. So until the Atinian plebiscite, anyone who was a senator was not allowed to be a tribune.

There is nothing implausible about this. The tribunate was an office which might be required to serve for the plebs against the senate. If a tribune was also

¹¹ Op. cit. iii.858 n.2.

¹² G. Tibiletti, 'Le leggi de iudiciis repetundarum fino alla guerra sociale', *Athenaeum* 31 (1953), 68, accepted by Gabba, art. cit. 220 f.

¹³ Cf. Wiseman, op. cit., p.97.

¹⁴ Livy 8.23.12.

¹⁵ Livy 22.61.5.

¹⁶ N.A. 14.8.

a senator, there was the possibility of a conflict of interest. As the senate could hardly have objected to such a conflict, the initiative for this rule must have come from plebeian leaders at such time as plebeians gained entry to the senate and perhaps sought to gain the tribunate thereafter. This would be difficult to date. The C. Poetilius who was tribune in 358 need by no means be the consul of 360. We know from Festus 290 L. that plebeians had been made senators before the Ovinian plebiscite, probably to be dated shortly before 312, but precision cannot go beyond saying that plebeians did enter the senate before the permanent reinstatement of the consulship.¹⁷

We may look for a plausible example of a tribune who could have been quaestor and thus could have been a senator when tribune. L. Caecilius Metellus (if he was a Lucius) was quaestor in 214, tribune in 213. He was reduced to an *aerarius* by the censors of 214 and was overlooked in the *lectio* of 209.¹⁸ This man had certainly not been made a senator in 214. That Q. Petillius Spurius' quaestorship preceded his tribunate of 187 is only conjectural, though very likely.¹⁹ Ti. Gracchus was quaestor in 137, tribune in 133, but it is possible that his involvement with the disgrace of Mancinus kept him off the senatorial roll, even though his father-in-law Ap. Claudius Pulcher was censor in 136. C. Gracchus was quaestor in 127, tribune in 123; was he possibly omitted from the senate by the censors of 125, who did criticize him for returning home before his commander?²⁰ But by this time senators could be tribunes; witness the extraordinary tribunate in 122 of M. Fulvius Flaccus, consul in 125. I would think it probable that Q. Petillius Spurius provides the *terminus ante quem*.

We may wish to attach the plebiscite to a known Atinius. The tribune of 131 is no longer so appropriate a figure; his quarrel with the censors is not at all related to the issue of senators becoming tribunes. Rossbach, the Teubner editor of the Oxyrhynchus epitome of Livy, restored the summary of Book 50 to mention a *lex Atinia*. But the subject matter of the measure is completely hypothetical and the law itself is reconstructed from the letters 'lat . . . 1 . . . at.' However, certain these traces may be, they are too little to establish an unknown Atinius in 149.²¹ So for our law we may just as well select one of the earlier Atinii, one of whom we know to have been tribune in 196. Others who may have been tribune are the praetors of 190 and 188 and the prefect at Thurii in 212; another Atinius died as *praefectus socium* in 194. This relative plethora of Atinii might suggest the period 212–190 for the law. Can we find a suitable historical context?

One particular circumstance suggests itself. In 216 an extraordinary *lectio* was accomplished by a dictator to fill 177 vacancies.²² This necessitated the choice of considerable numbers of men who had not held magistracies. Under the assumed rule the plebeians among them will have been excluded from the tribunate, an office perhaps essential to the ambitions of at least the less well known among them. This could have provoked the plebiscite. Alternatively, the

¹⁷ The Festus passage tells us that consuls and military tribunes used to choose patricians and then plebeians closest to them until the Ovinian plebiscite. Willems, op. cit. i.42 ff., thought the senate was wholly patrician until the end of the fifth century.

¹⁸ MRR i.260, 285. Gabba, art. cit. 221 f., avoids drawing a firm conclusion from these events.

¹⁹ MRR i.366.

²⁰ MRR i.512.

²¹ As did G. Niccolini, *I fasti dei tribuni della plebe* (Milan, 1934), p.129; the possibility is included by MRR i.458 f. It is hardly worth suggesting an alternative restoration, but see Astin, art. cit. 34.

²² See Willems, op. cit. i.285 ff.

needs of war at this time may have caused difficulty in filling the tribunate with non-senatorial candidates. Or the measure may simply have removed an unnecessary regulation at a time when it seemed that such a restriction was no longer required to protect plebeian interests. In any event, the period when the Atinii emerged is appropriate to the passing of the plebiscite as here interpreted.

The explanation offered seems to satisfy all the evidence, including Zonaras 7.15.1 (καὶ τέλος καὶ τῶν βουλευτῶν τινες ἤξιωσαν δημαρχεῖν). Earlier tribunes were either ex-quaestors who had not been selected for the senate or men who had not held the quaestorship; now ex-quaestors who *had* been made senators could be tribunes. The phrasing of the *lex Acilia* covers all three categories, as well as those who had not had the chance to be considered for the senate. If my interpretation is correct, calculations of the composition of the senate will have to be revised,²³ at least in the era before the Hannibalic War. If all the ex-quaestors in a five-year period were made senators by the censors, the next ten tribunes could not include quaestorians and there would be very little possibility of men holding both offices, unless between censorships. Thus any assumption that six or so tribunes were ex-quaestors must be abandoned and it must be presumed that the two offices accommodated more individuals than has seemed to be the case. Most tribunes entered the senate as tribunicians, not earlier as quaestorians. I shall not pursue this further here.

University of Melbourne

ROBERT DEVELIN

²³ As those by Willems, op. cit. i.153 ff., étude démographique', *REL* 10 (1932), 279 ff.; E. Cavaignac, 'Le Sénat de 220; 458 ff.