LEGAL FICTION AND POLITICAL REFORM AT ROME IN THE EARLY SECOND CENTURY B.C.

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IN THE PROCESS WHICH CREATED the developed Roman Republic of the third to the first centuries B.C., one of the most crucial developments was the opening of the important political magistracies and priesthoods, and especially the consulship, to the plebeian majority, instead of keeping them reserved for the patrician aristocracy as in the fifth and early fourth centuries. This development, according to the annalistic tradition as represented (in its most fully worked up form) by Livy, occurred in several stages during the fourth century, with key legislation concerning the consulship coming in 367 (the *Leges Liciniae-Sextiae*) and 342 (the *Leges Genuciae*). It has long been noticed, however, that the consular *fasti*—the list of annual consuls holding office at Rome—does not accord with the legislative stages recorded by Livy. This has led to two opposed lines of historical treatment of this problem: one, represented in recent times by J. Pinsent and M. Elster, for example, is sceptical of the annalistic/literary tradition and produces alternative accounts of the development of plebeian socio-political power; the other, represented notably in recent years by R. Develin, accepts the literary evidence as fundamentally reliable and seeks to reconcile it with the consular *fasti* by juggling with hypotheses of special exceptions and military emergencies leading to breaches of genuine and normally valid laws.[1]

Both approaches to the problem, at least as thus far put into practice, seem to me methodologically flawed. One cannot, as Develin and others

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[1]For the sceptical approach see J. Pinsent, *Military Tribunes and Plebeian Consuls: The Fasti from 444 to 342* (Wiesbaden 1975, *Historia* Einzelschriften 24) and M. Elster, *Studien zur Gesetzgebung der frühen römischen Republik: Gesetzesanhäufungen und -wiederholungen* (Frankfurt 1976) 13–30, 103–105. For the other approach see R. Develin, *Patterns in Office-Holding 366–49 B.C.* (Brussels 1979, Collection *Latomus* 161); *id.*, *The Practice of Politics at Rome 366–167 B.C.* (Brussels 1985, Collection *Latomus* 188); *id.*, "The Integration of the Plebeians into the Political Order after 366 B.C.," in K. Raaflaub, ed., *Social Struggles in Archaic Rome: New Perspectives on the Conflict of the Orders* (Berkeley 1986) 327–352. These works are cited hereafter by author's name alone or in an abbreviated form. Note that all dates in this paper are B.C.

before him have sought to do, credibly reconcile the literary evidence and the *fasti* by theories of exceptions and emergencies: the disjunction between the laws reported and the actual practice as recorded in the *fasti* is simply too radical. The only way in which one can in strict logic and sound method accept both the literary tradition and the evidence of the *fasti* is by arguing that the Romans really passed the laws reported by Livy, but then simply ignored them in practice. Whether this is a plausible view is for the reader to decide: evidently Develin and his predecessors who sought to reconcile the two traditions did not think so. The sceptical approach is methodologically sounder in that it recognises the need to make a choice between irreconcilable strands of evidence, and moreover its exponents certainly by and large make the right choice: they note that the literary tradition is contaminated by falsifications and inventions and so cannot be accepted over the *fasti*, which are more likely to preserve a true contemporary record. What the exponents of the sceptical approach have by and large failed to do, and this has I think contributed to their failure to be generally accepted, is to provide a convincing explanation of how, why, and when the literary tradition developed the false account of fourth-century constitutional reform handed down to us by Livy and others. That is what I aim to do in this paper.

The key fact is that the legal stipulations concerning the consulship recorded by Livy as established in the years 367 and 342 really did become part of Roman constitutional practice—but not in those years. In point of fact the stipulations recorded for 367 were only consistently observed at Rome after 342, and the stipulations recorded for 342 were only observed after 200 B.C. The early second century therefore, as the period in which the rules recorded for 342 were actually in effect, must be the period when the falsification of the tradition occurred. It is no coincidence that the end of the third and the beginning of the second century is also the period when historical, antiquarian, and juristic writing first began at Rome, in other words when the literary tradition began to be created. In what follows therefore, I shall: 1) describe the development of rules for consular eligibility as given by the literary tradition and as indicated by the *fasti*, and argue that the latter is more credible and consistent; 2) bolster this conclusion by an examination of the nature of politics at Rome in the fourth and second centuries, showing that the supposed laws of 342 are inconsistent with the former but consistent with the latter; 3) propose a hypothesis as to how and why early second-century reforms were retrojected in the literary tradition to the fourth century; and 4) show how all of the above profoundly affects our understanding of politics and society in second-century Rome. I shall not argue in detail against the views of earlier scholars—to do so would be both tedious and invidious—but shall concentrate on building a positive account of fourth- and above all second-century reforms from the available evidence.

THE DEVELOPMENT OF ELIGIBILITY FOR THE CONSULSHIP

The received tradition about the development of legal qualifications for the consulship at Rome as presented by Livy is as follows. In 367 the Licinio-Sextian Rogations became law at Rome. They stipulated among other things that one of the two consuls elected annually as chief magistrates of Rome *must* in future be plebeian, as opposed to the previous situation in which only patricians were eligible for the consulship.[2] After 25 years it was deemed necessary to legislate further on the matter, and a law passed in 342, probably by the tribune L. Genucius, opened *both* annual consulships to the plebeian class, and stipulated further that no man was to hold a magistracy he had once held until after a ten-year interval.[3] The rules about iteration were suspended during the Hannibalic War, after the disastrous defeat at Lake Trasimene in 217, so that experienced commanders could be elected each year to guide the state, but only for the duration of hostilities in Italy (Livy 27.6.7).[4] This tradition is accepted, at least in its essential outlines, by many modern scholars.[5]

[2]Sources for the Licinio-Sextian laws are conveniently listed in Broughton *MRR sub anno* 376, when they were supposedly first proposed; cf. also Elster 13–30, esp. at 25–29. The relevant law is quoted by Livy as *ne tribunorum militum comitia fierent consulumque utique alter ex plebe crearetur* (6.35.5).

[3]Livy 7.42.1–2 and Zonaras 7.25.9 are the sole sources for this legislation. Livy presents it somewhat tentatively, as found only in a few of his sources: *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.* Though only the law on usury is explicitly attributed to Genucius, the inference that he was responsible for all of this legislation seems to me a strong one. The law concerning iteration is referred to once more by Livy at 10.13.8 where Q. Fabius Rullianus at the consular elections of 298 is said to have objected to his own election, ordering to be read out to the assembled electorate the *legem . . . qua intra decem annos eundem consulem refici non liceret* (see on this further below, n. 31).

[4]Livy 27.6.7 reports that after the disastrous battle of Trasimene in 217: *ex auctoritate patrum ad plebem latum, plebemque scivisse ut, quoad bellum in Italia esset, ex iis qui consules fuissent quos et quotiens vellet reficiendi consules populo ius esset.* This comes à propos of the elections in 210 of consuls for 209, at which some tribunes objected to the dictator Q. Fulvius Flaccus as presiding officer having himself elected to his fourth consulship. Although the law was quoted by Flaccus to justify his presiding at his own election, it is clear from the wording ("that it shall be legal for the people to re-elect as consuls, from among those who have been consuls, whomever they like as many times as they like") that it was actually a law about iteration that was supposedly suspended by this measure (see further below, n. 31).

[5]T. Mommsen accepted this tradition, with minor modifications, in his magisterial *Römisches Staatsrecht*[3] (Berlin 1887) 1.519–520, and nn. 3, 4, and 5; and despite the reservations expressed by some scholars (see, e.g., recently Elster 13–30, 103–105) the authority of Mommsen has largely fixed this tradition in the modern scholarship: see, e.g., the widely used *History of Rome* by M. Cary and H. H. Scullard (fourth ed.,

In fact, however, the consular *fasti* for the period 367–217 do not at all accord with this tradition. From 366 to 356, to be sure, one consul each year was plebeian; but a conservative reaction then set in and half of the next fourteen consular colleges were patrician, while even the seven plebeian consuls elected during these fourteen years were all from the handful of *gentes* which had already reached consular status in the eleven years after 367—indeed all but one of the seven had been consul before already.[6] The *Lex Licinia-Sextia* was thus clearly failing to achieve its aim of equality in the consular elections between patricians and plebeians, and this is the problem addressed by the tribune L. Genucius in 342.

Curiously, however, Genucius did not seek to reform election procedures to enforce the *Lex Licinia-Sextia*, or introduce penalties for patricians who sought or held the consulship without a plebeian colleague. Instead he made plebeians *eligible for both consulships* and introduced the rule about iteration, requiring a ten-year hiatus. Even more curious is the effect of this legislation as reflected in the *fasti*: the *Lex Licinia-Sextia* was henceforth obeyed but the new legislation of Genucius was ignored! From 342 onwards a plebeian was always elected to at least one of the two annual consulships until the chaotic time of the Civil Wars at the end of the Republic. However, not until 173, nearly one hundred and seventy years after Genucius' law, was his supposed opening of both consulships to the plebeian class acted upon, and as late as 216/5 we hear of the necessity for a patrician consul each year being stated as a guiding principle of the Roman state.[7] Moreover,

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London 1980) and M. Crawford, *The Roman Republic* (Atlantic Highlands, N.J. 1978), accepting 342 as the date for the rule on iteration at 77, n. 3; for a juristic work see, e.g., B. Nicholas, *An Introduction to Roman Law*[3] (Oxford 1962) 3–7. More recently the tradition was essentially accepted as true by Develin in his works listed above, n. 1.

[6]The exclusively patrician colleges occurred in 355 (C. Sulpicius Peticus and M. Valerius Poplicola), 354 (M. Fabius Ambustus and T. Quinctius Poenus), 353 (C. Sulpicius Peticus and M. Valerius Poplicola), 351 (C. Sulpicius Peticus and T. Quinctius Poenus), 349 (L. Furius Camillus and Ap. Claudius Crassus), 345 (M. Fabius Dorsuo and Ser. Sulpicius Camerinus), and 343 (M. Valerius Corvus and A. Cornelius Cossus): sources and details in *MRR sub annis*. In the eleven years 366–356 nine individuals from seven plebeian *gentes* reached the consulship (see *MRR* for details: L. Genucius Aventinensis [365 and 362] and M. Popillius Laenas [359 and 356] each held two consulships); in the fourteen years 355–342 three of these nine plebeians held another six consulships between them, and C. Plautius Venno—a *gentilis* of C. Plautius Proculus *cos.* 358—reached the consulship in 347 (*MRR* for sources and details).

[7]The plebeians C. Popillius Laenas and P. Aelius Ligus were elected in 173 as consuls for 172, the first exclusively plebeian college (see *MRR sub anno*); against R. E. A. Palmer's contention (*The Archaic Community of the Romans* [Cambridge 1970] 294–295) that L. Veturius Philo and Q. Caecilius Metellus the consuls of 206 were both plebeian see I. Shatzman's decisive proof that Veturius Philo was patrician in "Patricians and Plebeians: The Case of the Veturii," *CQ* NS 23 (1973) 65–77. At the election in 216 of consuls for 215 Ti. Sempronius Gracchus and L. Postumius Albinus were elected, but

from the very year of its supposed enactment in 342, Genucius' prohibition of iteration of magistracies within ten years was systematically broken, and was never observed during any period until the end of the Hannibalic War. This purported law forbidding iteration within ten years was broken by the Roman electorate on some forty occasions spread throughout the years 342–217 in the consular elections alone, and all of the most eminent men of Rome during this period were guilty of holding illegal consulships according to the supposed *Lex Genucia*.[8]

Now it is certainly formally possible that the Roman people passed a law and subsequently ignored it, but one would expect at least a brief duration of obedience to it, and given the intensely competitive nature of Roman politics one might have expected to hear of attacks by political enemies upon the many Roman nobles who held technically illegal consulships in the years 341–217. In view of the utter variance of the consular *fasti* with the claimed stipulations of the *Leges Licinia-Sextia* and *Genucia*, it is reasonable to question the validity of the literary tradition on those laws, and to see if an alternative reconstruction of this legislation is possible that would bring it into line with the *fasti*.[9] It is, in fact, easy enough to do this. The

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the latter—a patrician—died in battle before taking office and the plebeian M. Claudius Marcellus was elected in his place. The augurs, however, intervened with a vitiating prodigy, forcing Marcellus to resign. It was declared displeasing to the gods for 2 plebeians to be consuls in the same year, and the patrician Q. Fabius Maximus was then elected to the vacant consulship: full story in Livy 22.24.1–3 and 6–13; 22.31.12–14; and cf. *MRR sub anno* 215. In this context silence about the supposed *lex Genucia* permitting both consulships to be held by plebeians is obviously remarkable!

[8]The law restricting iteration was purportedly passed in 342: in that same year C. Plautius Venno, *cos.* 347, was elected *cos.* for 341; at the elections in 341 T. Manlius Torquatus, *cos.* 347 and 344, was elected *cos.* for 340. The "law" was thus broken as soon as it was passed. The other careers which broke this "law" are: Q. Publilius Philo *cos.* 339, 327, 320, 315; C. Sulpicius Longus *cos.* 337, 323, 314; L. Papirius Crassus *cos.* 336, 330; M. Valerius Corvus *cos.* 348, 346, 343, 335, 300, 299; L. Papirius Cursor *cos.* 326, 320, 319, 315, 313; Q. Fabius Rullianus *cos.* 322, 310, 308, 297, 295; Q. Aulius Cerretanus *cos.* 323, 319; C. Iunius Bubulcus *cos.* 317, 313, 311; Q. Aemilius Barbula *cos.* 317, 311; M. Valerius Maximus *cos.* 312, 289, 286(?); P. Decius Mus *cos.* 312, 308, 297, 295; L. Postumius Megellus *cos.* 305, 294, 291; M' Curius Dentatus *cos.* 290, 275, 274; C. Fabricius Luscinus *cos.* 282, 278; Q. Aemilius Papus *cos.* 282, 278; C. Genucius Clepsina *cos.* 276, 270; Cn. Cornelius Scipio *cos.* 260, 254; A. Atilius Caiatinus *cos.* 258, 254; C. Atilius Regulus *cos.* 257, 250; L. Manlius Vulso *cos.* 256, 250; C. Sempronius Blaesus *cos.* 253, 244; C. Aurelius Cotta *cos.* 252, 248; P. Servilius Geminus *cos.* 252, 248; L. Caecilius Metellus *cos.* 251, 247; A. Manlius Torquatus *cos.* 244, 241; A. Atilius Bulbus *cos.* 245, 235; L. Postumius Albinus *cos.* 234, 229, [215]; Sp. Carvilius Maximus *cos.* 234, 228; Q. Fabius Maximus *cos.* 233, 228, [215, 214, 209]; C. Flaminius *cos.* 223, 217; and possibly M. Aemilius Lepidus *cos.* 232 and apparently again before 219 (see *MRR* for these careers).

[9]Mommsen *RStR* 1.519, n. 5, was aware of the discrepancy between the literary tradition and the *fasti*, and tried to solve this by proposing that the law on iteration

fasti suggest that no ban on iteration was in effect before the end of the Hannibalic War: such a ban may therefore have been first instituted rather than revived ca 201. Likewise, the idea that both consuls might legitimately be plebeian seems to belong after the Hannibalic War, rather than in the mid-fourth century. Taken by itself, the list of consuls actually elected at Rome suggests that the *Lex Licinia-Sextia* made plebeians *eligible* for the consulship; and that the *Lex Genucia* reacted to continued plebeian lack of success in the conservative electoral assembly by decreeing that *one* consul each year *must* be plebeian.

The problem is then to decide whether we should follow the lead of the consular *fasti* and accept the revision of the laws I have just outlined, or adhere to the literary tradition and accept the lack of congruence with the *fasti* as best we can. Now the list of annual consuls has a reasonable claim to be a genuine record maintained annually of who actually held the consulship, at least from the time of the Gallic sack (390), and setting aside the Varronian interpolation of the "dictator years."[10] The literary sources, historical and juristic, can make no such claim to being a factual record based on contemporary documentary evidence. Historical and juristic writing began

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was actually passed only in ca 330, that it was suspended during the Samnite, Pyrrhic and Punic Wars, and that contraventions of it in other years are just exceptions. This seems to me an arbitrary and unsatisfactory way of dealing with the evidence. Develin, *Practice of Politics* 105–118, argues that as a plebiscite the *Lex Genucia* was only binding on plebeians, and adds a long series of hypotheses about military emergencies and other events which caused resort to the known illegal iterations. While it is true that there is a problem about the validity of plebiscites prior to the *Lex Hortensia* of 287 (see on this further Elster 75–119), it does not help Develin's case that the only later attestation of the law was in connection with the re-election of a *patrician*, Q. Fabius Rullianus (see above, n. 3). In addition plebeians were not, despite Develin's claim, notably less frequently re-elected contrary to the supposed *Lex Genucia* than were patricians (see the list above, n. 8). And the simple truth is that no very obvious emergency situation dictated the iterations of, e.g., C. Genucius Clepsina *cos.* 276 and 270, A. Atilius Bulbus *cos.* 245 and 235, or Sp. Carvilius Maximus *cos.* 234 and 228. Elster's argument (25–30 and 103–105) that no laws were really passed in 367 or 342 concerning the consulship, both years simply marking political compromises, seems to me excessively sceptical (see further below, n. 17). Pinsent performs radical surgery on the *fasti* of 367–342 as well as on the literary tradition, and seems to me to have been well and sufficiently refuted by Develin, *Patterns*.

[10]The standard dates accepted for the early Republic in modern scholarship are those worked out by the mid-first-century B.C. antiquarian M. Terentius Varro, though it is well known that he distorted the chronological tradition by, among other things, introducing four so-called "dictator years" during the late fourth century: see, e.g., R. Werner, *Der Beginn der römischen Republik* (Munich 1963), esp. 192–209; and cf. *MRR sub annis* 324, 313, 309, 301. On the likelihood of annual record having been kept of the consuls and other main magistrates at Rome, at least in the fourth and subsequent centuries, see, e.g., B. W. Frier, *Libri Annales Pontificum Maximorum: The Origins of the Annalistic Tradition* (Rome 1979), esp. at 88–89, 100–105, and 271–274.

at Rome only at the end of the third century, and from the beginning were strongly influenced by partisan distortions of the truth. The men who set out to write about the Roman past were not objective and disinterested scholars seeking merely to give the true facts, even if we grant that genuine records survived for them to base their writings upon.[11] Deliberate misrepresentation of the development of Roman constitutional law by writers with some political axe to grind is a distinct possibility, and in view of this the evidence of the *fasti* surely deserves to be given priority over the literary sources. I believe that investigation of the socio-political and legislative climates of the periods 367–342 and 201–150 will confirm the revised view of the Licinio-Sextian and Genucian laws I have proposed.

ROMAN POLITICS IN THE FOURTH AND SECOND CENTURIES

The question at issue is whether the mid-fourth or the early second century provides the more plausible context for the legislation attributed to L. Genucius. Rome in the fourth century was of course a much smaller state than second-century Rome, with a smaller governing class and fewer magistracies: only one annual praetorship, for example, compared to the four and six praetorships in alternate years of the second century. Regulations governing eligibility for magistracies were few, and there was no regular *cursus honorum*. Magistracies, including the consulship, were often held repeatedly, and the length of the careers of the more important leaders indicates that high offices were often attained at quite a young age.[12] In each generation during the fourth century Rome was dominated by a handful of great men who each held many times the offices of praetor, consul, dictator, *magister equitum*, etc.[13] This was the time when Rome was

[11]For the possibility of records the analysis of Frier (above, n. 10) is excellent; see esp. his discussion of forged or fictive documents at 121–127 and 150–152; on the nature of Roman Republican historical and antiquarian writing the best recent treatment in my view is that of T. P. Wiseman, *Clio's Cosmetics* (Leicester 1979), esp. part I at 3–56, showing conclusively that the aims and methods of Roman writers were not historical in the modern sense of the word.

[12]The extreme case is that of M. Valerius Corvus, reputedly only twenty-three years old at the time of his first consulship in 348 (Livy 7.40.8; Val. Max. 8.13.1), and whose last consulship came nearly fifty years later in 299 (see *MRR* for sources). Some other long careers are those of Ap. Claudius Crassus (*tr. mil. c. p.* 403, *cos.* 349), M. Furius Camillus (*tr. mil. c. p.* 401, *dict.* 367), C. Sulpicius Peticus (*tr. mil. c. p.* 380, *cos.* 351), Q. Fabius Rullianus (*cos.* 322, *cos.* 295): see *MRR* for sources and details. I note that Develin, *Patterns* 58–63, tentatively gives ca thirty-five as a fairly normal age for a first consulship in this period, but with considerable variation possible either way.

[13]Again M. Valerius Corvus is a paradigm, having reputedly held curule office on 21 occasions, including six consulships (see *RE* 7A [1948] 2413–18, Valerius no. 137). Other instances are M. Furius Camillus with six consular tribunates and five dictatorships (see *RE* 7 [1910] 324–348, Furius no. 44); C. Sulpicius Peticus with five consulships, a

first expanding to take over Italy; specifically the second half of the fourth century was the period of the difficult and crucial Samnite Wars, and the need for military and administrative expertise at the head of the state was met by this frequent iteration of high office. The idea of pro-rogation of command was barely in its infancy.[14]

That is the political reality of fourth-century Rome. A ban on iteration of magistracies within ten years would have been a very radical measure, had such a ban been established in 342: certainly as we have seen (above, note 8) no such ban was ever obeyed before 201. Given the political fact of domination of the state by a handful of great men, and the much smaller governing class only just beginning to be enlarged by the inclusion of plebeian *gentes*, it is hard to conceive of such a ban being passed into law. The same goes for the specific opening of both consulships to the plebeian class, a measure more than a hundred and fifty years ahead of its time in 342.

When we look at the legislative climate of the mid-fourth century, I think scepticism about the purported content of the *Lex Genucia* is confirmed. In 339, three years after Genucius' legislation, the plebeian dictator Q. Publilius Philo passed further legislation about eligibility for magistracies, this time concerning the censorship. His law stated that *one* of the two censors elected every five years *must* be plebeian.[15] This law, nearly contemporary with the *Lex Genucia*, displays the concern with an *equal* apportionment of political office between the plebeian and patrician classes which I have suggested was the *real* point of Genucius' legislation. Besides the

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censorship, a consular tribunate, and a dictatorship, a dominating figure in the 360s and 350s (*RE* 4A [1931] 817–820, Sulpicius no. 83); T. Manlius Imperiosus Torquatus with three consulships and three dictatorships (*RE* 14 [1928] 1179–90, Manlius no. 57); Q. Publilius Philo, consul four times, dictator, censor, praetor (*RE* 23 [1959] 1912–16, Publilius no. 11); L. Papirius Cursor, five times consul, twice dictator, three times *mag. eq.*, praetor (*RE* 18 [1949] 1039–51, Papirius no. 52); Q. Fabius Rullianus, consul five times, dictator, censor, twice *mag. eq.*, twice *aed. cur.*, *princeps senatus* (*RE* 6 [1909] 1800–11, Fabius no. 114); P. Decius Mus, consul four times, censor, *mag. eq.*, pontifex (*RE* 4 [1901] 2281–84, Decius no. 16).

[14]The first pro-rogation of consular imperium was apparently that of Q. Publilius Philo, *cos.* 327, in 326 according to Livy 8.23.11–12 and 26.7; cf. also the *Act. Tr.* of 326: *primus procos.* (see *MRR sub anno*).

[15]Livy 8.12.14–16; cf. Elster 61–73. Elster is slightly doubtful of the historicity of the law *ut alter utique ex plebe ... censor crearetur*, but without good reason as far as I can see: there can be no doubt that exclusively patrician colleges of censors were at times elected during the years 367–339 (see *MRR sub annis* 366, 363, 340), whereas no such colleges of censors are known after 339 (admittedly the censors between 332 and 318, i.e., one or two colleges, are unknown). The tradition that a law established a plebeian right to one censorship makes sense; the growing importance of the censorship in the later fourth century makes this an appropriate time for such a law; and there consequently seems no good reason to doubt Livy's report that Publilius enacted this law.

high magistracies such as the consulship and censorship, important political influence was also exercised through certain major priesthoods at Rome: the augurate and the pontificate. It was not until 300 that the tribunes Q. and Cn. Ogulnius passed a law providing equal plebeian access to these priesthoods.[16]

The key to the constitutional legislation of the fourth century, therefore, was the rise of the plebeian class to *equal* political privilege in the state with the patrician class. The supposed Genucian opening of *both* consulships to the plebeians, clearly aimed at plebeian *predominance*, is therefore an anachronism, a fact which again supports my proposed revision of the *Lex Genucia*. Taking into account the socio-political realities of fourth-century Rome, the following progression makes better sense. In 367, after a protracted struggle, the plebeian class finally won from the patricians the passage of the Licinio-Sextian Law making plebeians *eligible* for the consulship. Immediately thereupon a handful of plebeian families attained consular status: the Sextii, the Genucii, the Licinii, the Poetilii, the Popillii, the Plautii, the Marcii. However, Sextius and Licinius had underestimated the conservatism of the *comitia centuriata*, the Roman electoral assembly. In 356 a reaction set in and no further plebeian *gentes* reached the consulship, while half of the next fourteen consular colleges were exclusively patrician. Consequently the tribune L. Genucius in 342 passed a law that one consul *must* in future be plebeian, and a little later Publilius Philo enacted the same for the censorship. The effect of the *Lex Genucia* was that in the following years a large number of new plebeian *gentes* reached the consulship: the Decii in 340, the Publilii in 339, the Maenii in 338, the Aelii in 337, the Duillii in 336, the Atilii in 335, the Domitii in 332, the Claudii Marcelli in 331, the Iunii in 325, the Fulvii in 322, etc. (sources in *MRR*). Henceforth one of the consuls and one of the censors were always plebeian, and the *Lex Ogulnia* of 300 completed this political equalisation with respect to the major political priesthoods.[17]

If the political and legislative atmosphere of the fourth century is, then, at odds with the opening of both consulships to plebeians and the ban on

[16] See *MRR sub anno* for sources.

[17] Similar reconstructions of the course of opening magistracies to plebeians during the fourth century, revising the purport of the *Lex Licinia-Sextia* and/or the "*Lex Genucia*," have been proposed in the past: see, e.g., F. Münzer, *Römische Adelsparteien und Adelsfamilien* (Stuttgart 1920) 21–37; K. von Fritz, "The Reorganisation of the Roman Government in 366 B.C. and the So-called Licinio-Sextian Laws," *Historia* 1 (1950) 3–44; Elster 25–30 and 103–105. I want to emphasize that the *fasti* strongly indicate that changes occurred in 367 and 342; that the *fasti* are our best and most reliable evidence, and show that the changes instituted were not quite those indicated by the literary sources; but that the strong insistence of the literary sources that the changes were instituted by *legislation* in my view (*contra* the slightly excessive scepticism of Elster) deserves respect.

iteration within ten years, we must turn to the second century and see how such measures fit in there. Not surprisingly, they fit in extremely well. It is from the beginning of the second century on that the *fasti* show the rule of a ten-year interval before iteration to have been in effect.[18] A marked feature of this period is the antipathy towards the idea of the extraordinary political careers of repeated high office which had hitherto marked out Rome's greatest men (see above, nn. 12 and 13). Men like M. Furius Camillus, L. Papirius Cursor and Q. Fabius Rullianus had dominated the state in their day; and though after about 290 there is observable in the *fasti* a strong propensity to limit individuals to no more than two consulships (see below, note 27), the Hannibalic war had seen a reversal of that trend with the likes of Q. Fabius Maximus, M. Claudius Marcellus and Q. Fulvius Flaccus dominating the state again in the old way. But in the early second century the man who most clearly threatened to assume the same kind of dominant position in the state, namely Scipio Africanus, was subjected during the late 190s and early 180s to a series of obscure but vicious and persistent persecutions which ultimately drove him into voluntary exile.[19] Nor was any other leader permitted to attain a dominant position. Each praetor and consul had a year of command, and most then went into retirement from office-holding. Some magistrates, it is true, had their commands prorogued for a year or two, a third of the six annual praetors achieved a second year of command as consuls, and a few of the most politically influential men were able to achieve censorships and/or second consulships after a suitable interval. But the pattern was essentially for new commanders to be elected and sent out from Rome each year, regardless of ability to govern or command.

Another feature of the period which reinforced the trend outlined above was the development of a set career ladder. Already in 199 there was a

[18]Iteration of the consulship was uncommon in the second century (before the career of Marius, that is): P. Sulpicius Galba Maximus *cos.* 211, 200 already illustrates the ten-year interval; thereafter P. Cornelius Scipio Africanus *cos.* 205, 194; M. Aemilius Lepidus *cos.* 187, 175; Q. Marcius Philippus *cos.* 186, 169; L. Aemilius Paullus *cos.* 182, 168; Ti. Sempronius Gracchus *cos.* 177, 163; C. Popillius Laenas *cos.* 172, 158; M. Claudius Marcellus *cos.* 166, 155. The apparent exceptions of P. Cornelius Scipio Nasica *cos.* 162 and 155 and C. Marcius Figulus *cos.* 162 and 156 are explained by the fact that they were forced to resign as *vitio creati* almost immediately after taking office in 162, so that these were not counted as full consulships. The only real exception is that M. Claudius Marcellus held a third consulship in 152, only three years after his second in 155. It will be no coincidence that in the very next year (151) was passed, apparently with the backing of Cato, a *Lex de consulatu non iterando* (see G. Rotondi *Leges publicae populi romani* [Milan 1912] 290–291; Mommsen, *RStR* 1.521, n. 1; Plutarch *Marius* 12 presumably refers to this law).

[19]On the "trials of the Scipios," about which almost everything is disputed except that some sort of persecution of Scipio Africanus and his brother occurred, see, e.g., H. H. Scullard, *Roman Politics 220–150 B.C.* (second ed., Oxford 1973) app. IV 290–303; Frier (above, n. 10) 150–151.

controversy when T. Quinctius Flamininus stood for the consulship of 198 without having held any lower curule office first. Two tribunes, M. Fulvius and M' Curius, objected to Flamininus' candidacy in terms which suggest that they considered it to be normal for a man to demonstrate his fitness for command by holding a curule aedileship and/or praetorship before aspiring to the consulship, and Livy seems to imply that custom had already established a *honorum gradus* from lower to higher magistracies, which is certainly untrue.[20] Nevertheless, it seems that an appeal to such a (fictitious) *mos maiorum* was made, for since Livy's report of the Senate's decision permitting Flamininus' candidacy shows that no law prevented it, Plutarch's statement (*Flam.* 2) that Flamininus' candidacy was παρὰ τοὺς νόμους (against the law *or* custom) must presumably translate a reference to *mos* in his source. In the years after 199 the idea of a *cursus* of magistracies was gradually enforced, and was finally established by the *Lex Villia Annalis* in 180, which set minimum age-limits for the quaestorship, praetorship, and consulship and decreed that these offices must be held in that order.[21]

Surely it is in this political and legislative atmosphere of limitation and regulation of political careers that the ban on iteration of magistracies until after a ten year interval belongs. The same can be said of the opening of both consulships to the plebeians. An effect, no doubt intended, of the rule about iteration was to distribute the available consulships among more individuals, with the result that some eighteen new *gentes* attained consular status in the period 200–140: the Villii, the Porcii, the Acilii, the Laelii, the Baebii, the Calpurnii, and others.[22] In addition a number of plebeian

[20]Livy 32.7.8–11 gives the fullest report of the controversy, indicating that what was objected to was that Flamininus had held no office higher than the quaestorship, and that the argument was put forward that it was inappropriate for men to go straight from the lower magistracies to the consulship, treating the aedileship and praetorship with contempt and not passing through the succession of offices: *iam aedilitatem praeturamque fastidiri, nec per honorum gradus, documentum sui dantes, nobiles homines tendere ad consulatum, sed transcendendo media summa imis continuare.* The implication that custom already established a *honorum gradus* from the lower offices (quaestorship) via the middle offices (aedileship and praetorship) to the consulship is false: prior to the institution of a second annual praetorship about 241 (Livy *Per.* 19) it would have been impossible for both annual consuls always to have held the praetorship first; and even later in the third century it was still not unusual for men to hold the praetorship *after* rather than *before* the consulship—see Broughton's remarks at *MRR sub anno* 233 on the praetor L. Postumius Albinus. Note that the Senate permitted Flamininus' candidacy on the grounds that no law opposed it: *patres censuerunt, qui honorem quem sibi per leges liceret peteret, in eo populo creandi velit potestatem fieri aequum esse.*

[21]Sources on the *Lex Villia Annalis* are conveniently listed in *MRR sub anno* 180.

[22]The following consuls were the first of their respective *gentes* to reach the consulship: P. Villius Tappulus 199; M. Porcius Cato 195; M' Acilius Glabrio 191; C. Laelius 190; Cn. Baebius Tamphilus 182; C. Calpurnius Piso 180; Q. Petillius Spurinus 176; C. Cassius Longinus 171; A. Hostilius Mancinus 170; Cn. Octavius 165; M' Iuventius Thalna 163;

families which had reached consular rank in the fourth century but had been shut out from the consulship for several generations, now again held consulships: e.g., the Aelii, the Domitii, the Marcii, and the Popillii.[23] In this way the plebeian nobility, defined by the holding of the consulship, was growing, while the patriciate, being a closed caste, could only decline in numbers.[24]

The degree to which new families were constantly breaking through to consular status during the second and first centuries is generally greatly underestimated, deceived as modern scholars have been by the successful propaganda of those two able and literary *novi homines* Cato and Cicero, who greatly exaggerated the difficulties they faced as new men so as to highlight their achievements.[25] M. Porcius Cato, for example, was not in fact the first Porcius to attain a curule magistracy: that was L. Porcius Licinus praetor in 207, probably a close kinsman of Cato (both were M. f.—Licinus' father may have been Cato's grandfather). Though it was unusual for a man whose father had not been even a senator to reach the consulship and censorship, as Cato did in 195 and 184, the feat is not necessarily unique: C. Cassius Longinus was consul in 171 and censor in 154 and no earlier Cassius is known as magistrate or senator except the dubious military tribune Q. Cassius in 252 (note, however, that C. Cassius was C. f. C. n.); Q. Pompeius A. f. *cos.* 141 and *cens.* 131 is another probable case (see *MRR sub annis* and *RE sub nom.* for all this). Likewise when

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C. Fannius Strabo 161; L. Anicius Gallus 160; Q. Opimius 154; T. Annius Luscus 153; M' Manilius 149; L. Mummius 146; Q. Pompeius 141 (sources in *MRR sub annis*).

[23]P. Aelius Paetus *cos.* 201 was the first Aelian consul since C. Aelius Paetus *cos.* 286; Cn. Domitius Ahenobarbus *cos.* 192 was the first of his *gens* since Cn. Domitius Calvinus Maximus *cos.* 283; Q. Marcius Philippus *cos.* 186 was the first since Q. Marcius Philippus *cos.* 281; M. Popillius Laenas *cos.* 173 was the first since M. Popillius Laenas *cos.* 316 (see, e.g., the "Index of Careers" in *MRR* 2.524–636).

[24]There are 16 patrician *gentes* which continued to hold consulships after 367 (the Licinio-Sextian Laws): the Aemilii, Claudii, Cornelii, Fabii, Foslii, Furii, Iulii, Manlii, Nautii, Papirii, Postumii, Quinctii, Servilii, Sulpicii, Valerii, and Veturii. Of these the Foslii held their last consulship in 318; the Nautii in 287; the Papirii in 231; the Veturii in 206; the Furii in 136; the Quinctii in 123; and the Postumii in 99 (not counting brief revivals attained by the Furii and Quinctii under the patronage of Augustus). It is true that this decline was to some extent made up by the extraordinary branching out of the Cornelian *gens* into many consular families (Scipiones, Lentuli, Cethegi, Dolabellae, Sullae, Merulae, etc.), but the decline was nevertheless a fact.

[25]For a corrective to the idea that very few new families reached the consulship in the middle and late Republic see K. Hopkins, *Death and Renewal* (Cambridge 1983) ch. 2, "Political Succession in the Late Republic (249–50 B.C.)," (with G. Burton). For the propaganda about his own achievements and family background put about by Cato see, e.g., A. E. Astin, *Cato the Censor* (Oxford 1978), esp. chs. 1, 7, and 10. Cicero's vanity and self-boosting are so widely known as to need no comment: see, e.g., T. P. Wiseman, *New Men in the Roman Senate, 139 B.C.–A.D. 14* (Oxford 1971) *passim* via index, but esp. 100–130.

Cicero tells us that he was the first *novus homo* to reach the consulship in living memory (*de Lege Agr.* 2.3: *me perlongo intervallo prope memoriae temporumque nostrorum primum hominem novum consulem fecistis*), it is legitimate to point out that no magisterial or senatorial antecedents are known for such men as L. Volcacius Tullus *cos.* 66, L. Gellius Poplicola *cos.* 72, M. Tullius Decula *cos.* 81, and C. Norbanus *cos.* 83.[26]

There was in short a great deal of upward mobility of new plebeian families into senatorial and even consular ranks during the first half of the second century and later: for example some three new families reached the consulship each decade from 200–140 (see above, note 22), and the rate did not slacken off appreciably after 140, as can be readily discerned from careful perusal of *MRR*. It is this situation which explains the phenomenon of two

[26]Cicero's claim to uniqueness as a *novus homo* is widely accepted at face value: so, e.g., Wiseman (above, n. 25) 276, no. 506, argues from it that L. Volcacius Tullus must have had senatorial ancestry, and at 109 states that "[M. Tullius] Decula . . . may well have been of obscure senatorial family," though he acknowledges that C. Norbanus—a new citizen after the Social War it seems—was certainly a *novus* (17 and 109). Wiseman also posits senatorial ancestry for L. Gellius Poplicola (*Roman Studies* [Oxford 1987] 303), based on an undated speech by the elder Cato *pro L. Turio contra Cn. Gellium* and on the moneyer Cn. Gellius of 138 whom he (rightly in my view) takes to be the same man as the late second-century historian Cn. Gellius. Wiseman suggests that the latter Cn. Gellius could have been the father of L. Gellius Poplicola; but Poplicola was in fact L. f. L. n. (see *MRR sub anno* 72), and since he was praetor in 94 and thus born in 135/4 at the latest, neither of the Cn. Gellii adduced by Wiseman can in fact have been his direct ascendants. Even if we concede to the Cn. Gellii senatorial status, then—which is in fact far from certain—they were at best related to L. Gellius as uncles or cousins; but it is also perfectly possible that they were no more related to L. Gellius than was M. Tullius Decula *cos.* 81 to M. Tullius Cicero *cos.* 63! Though we know the names of only a minority of the Roman senators of the second and early first centuries, therefore, the fact remains that senatorial Tullii, Gellii and Volcacii as ancestors of the consuls of 81, 72, and 66 can only be assumed based on Cicero's claim, and will at best have been minor and obscure *senatores pedarii*. But given Cicero's known habit of exaggerating his own achievements and propensity for using "*mendaciuncula*" in his orations, we should take his claim at *de Lege Agr.* 2.3 with a sizeable grain of salt: Cicero never hesitated if it suited his purpose to lie blithely about even the immediate past, any more than did any other ancient orator, and did not worry about the possibility of being refuted. Note, e.g., his claim in *Phil.* 13.29 that Ser. Sulpicius Rufus *cos.* 51 had been a Pompeian and in Pompey's camp at Pharsalos in 48, though his audience must have remembered perfectly well that Rufus had in fact been a neutral in the Civil War with decided Caesarian leanings (see R. Syme, *Roman Revolution* [Oxford 1939] 45, n. 1, following F. Münzer *RE* 4 (1931) 851–860, Sulpicius no. 95; *contra* D. R. Shackleton Bailey, "The Roman Nobility in the Second Civil War," *CQ* NS 10 [1960] 253–267, at 253, n. 7, but note that Cicero's friend Atticus—who was certainly in a position to know—evidently did not consider Rufus a Pompeian: Cic. *Att.* 13.10). For the lengths to which ancient orators might take such lies, see, e.g., Demosthenes' misrepresentation of events leading to the exclusion of the Thracian king Kersobleptes from the Peace of Philokrates in *On the Embassy* 150–180, immediately refuted from public records in Aischines' reply to Demosthenes' speech (Aisch. 2.81–95).

plebeian consuls, which first occurred in 172. It is no doubt significant that the first exclusively plebeian consular college was made up of an Aelius and a Popillius—P. Aelius Ligus and C. Popillius Laenas—clans which had long been obscure and which no doubt helped to promote the constitutional reforms of the early second century from which they benefited by renewed access to high office.

To sum up so far, then, the purported stipulations of the *Lex Genucia* of 342 requiring a ten-year interval before iteration of a magistracy and opening both consulships to the plebeians are shown by the *fasti* not to have been in effect before 200 B.C., were in effect in the early second century, are clearly at variance with the political and legislative atmosphere of the mid-fourth century, and fit in very well with the atmosphere of the early second century. I regard it therefore as essentially proved that these stipulations first came into effect early in the second century, and that the literary tradition concerning the *Lex Licinia-Sextia* and the *Lex Genucia* falsified the stipulations of those laws with regard to eligibility for the higher magistracies. How and why did such falsification take place?

THE METHOD OF AND REASON FOR FALSIFICATION OF EARLY LAWS

Rome was, or at any rate liked to think of itself as being, an intensely traditional society, wedded to the principle of maintaining ancestral custom—*mos maiorum* as the Romans called it. Consequently there was a strong tendency for people proposing political reforms to present the new as in fact a reversion to some neglected aspect of *mos maiorum*. Flamininus' consular candidacy in 199, discussed above, is a case in point. The idea of a *cursus honorum* with the praetorship preceding the consulship was an innovation of the early second century, formalised eventually in the *Lex Villia* of 180, yet this idea was already being pressed in 199 with a strong implication that ancestral custom established a *honorum gradus* (Livy 32.7.9; Plutarch *Flam.* 2). It is clearly this same tendency to represent new ideas as ancestral custom which was behind the retrojection of the new rule on iteration of magistracies, first instituted about 201, back to the *Lex Genucia* of 342. Likewise with the opening of both consulships to plebeians. For the latter no special legislation will in fact ever have been necessary, since there was no law specifically reserving one of the consulships for patricians. If there had really been a law on the books specifically opening both consulships to plebeians, we might have expected to hear of it in the context of the elections for 215, when the electorate voted two plebeians into office only to have this nullified by the augurs (see above, note 7). The pretence of an ancient law granting the plebeian class the specific right to hold both consulships was, therefore, merely intended to give a suitably venerable pedigree

to a new practice which, though first put into effect at the consular elections in 173, could in principle have been effected at any time since the *Lex Licinia-Sextia* had opened the consulship to plebeians without reserving one consulship for the patriciate.

The situation is a little different with regard to the rule about iteration. This involved the invention of a law which had a substantive effect on the electoral and governing system, aimed at enabling more individuals to hold the high magistracies and giving all Romans of the governing class an equal chance to hold commands and win glory. The false representation of this law as the "revival" of a temporarily neglected ancient law was no doubt aided by two facts: most of the generation who had been politically mature already before the Hannibalic War were dead; and though iteration of the consulship within ten years had occurred in the decades before the Hannibalic War, it had been by no means as common as in the fourth and early third centuries.[27]

The problem is to determine who was/were behind the rule about iteration and how it was instituted, and how the retrojection of this rule and the purported law permitting both consuls to be plebeian to the *Lex Genucia* of 342 took place.

On the former matter, the key fact, as was pointed out to me by Nathan Rosenstein, is most probably the extraordinary adlection of 177 new senators in 216 (Livy 23.23.7), to fill the places made vacant by the disasters of Trebia, Trasimene, and Cannae in the previous years. I have noted above that among those who benefited directly from the rules about iteration of magistracies and eligibility of plebeians for both consulships were a number of new plebeian *gentes* (new to high office that is), and a number of formerly important *gentes* which had been shut out of the consulship for several generations (see above, notes 22 and 23). The rise or return of these families to senatorial status and successful competition for high honors most likely originated with the enormous casualties suffered by the ruling class in the early years of the Hannibalic War and the consequent adlection of 216: that is to say that the men who raised or returned their

[27]The list of iterations within 10 years given above, n. 8, shows that, while it was not uncommon down to the 290s for men to hold three or more consulships at quite short intervals, it became rare thereafter for anyone to hold more than two consulships: the exceptions are M' Curius Dentatus *cos.* 290, 275, 274 and Q. Fabius Maximus Gurges *cos.* 292, 276, 265 (see G. V. Sumner, *The Orators in Cicero's* Brutus: *Prosopography and Chronology* [Toronto 1973] 30–32, for the attribution of these three consulships to the same man). Even under these conditions, it was possible for men to have dominating careers: see, e.g., A. Atilius Caiatinus *cos.* 258, *pr.* 257, *cos.* II 254, *dict.* 249, *cens.* 247. The trend towards equalisation was reversed during the Hannibalic War, when repeated iteration again became common, esp. in the persons of Q. Fabius Maximus *cos.* 233, 228, 215, 214, 209, *dict.* 217; Q. Fulvius Flaccus *cos.* 237, 224, 212, 209, *dict.* 210, *pr.* 215, 214, *mag. eq.* 213; M. Claudius Marcellus *cos.* 222, 215, 214, 210, 208, *pr.* 216.

families to consular standing in the early second century were presumably drawn from the 177 new senators of 216 and their descendants. As the people who benefited by access to high office due to the new rules on office holding instituted in the early second century, the enormous new wave of Hannibalic War senators are clearly indicated by the Roman legal principle of *cui bono* to be the people most likely responsible for those rules. They certainly had the motive, and their numbers gave them the ability to impose their will; and the *Lex Villia Annalis* provides confirmatory evidence, for the Villii were one of these new *gentes*—attested by an *aed. pleb.* in 213 and a *IIIvir noct.* in 211, and achieving their first consulship in 199.

Whether the limitation on iteration of a magistracy till after a ten-year interval was established by a law passed ca 201 or a little earlier, or simply enforced by the weight of senatorial opinion bolstered by a spurious appeal to *mos maiorum*, like that less successfully put forward in favor of a *honorum gradus* in 199, remains uncertain. In view of the utter silence of the sources about any legislation—unlike the plentiful testimony on the *Lex Villia Annalis*—the latter is perhaps more likely. The career of M. Claudius Marcellus *cos.* 166, 155, and 152 may support this conclusion: his third consulship would be easier to explain if nothing more than "*mos maiorum*" and the invented stipulations of the "*Lex Genucia*" opposed it. The law of 151 forbidding any iteration of the consulship may well therefore be the first genuine legislation on this matter. The process of regulation of the political career would then be as follows. Towards the end of the Hannibalic War a consensus of opinion in the senatorial class established the principle that in future there should be a ten-year interval between iterations of a magistracy, so as to allow more people access to the higher magistracies. Early in the second century a similar consensus developed to require the holding of the curule aedileship and/or praetorship before standing for the consulship. All of this was retroactively declared to be required by *mos maiorum*, and the stages of the official career were then further rigidified by the *Lex Villia Annalis* of 180. In 173 two plebeians were elected consuls for 172, and in 151 iteration of the consulship was forbidden by law. At some point between ca 201 and the 170s or 160s must have occurred the falsification of the *Lex Licinia-Sextia* and the *Lex Genucia* which retrojected the new rules about iteration of magistracies and plebeian eligibility for the consulship to 342 in order to bolster their claim to being in accordance with *mos maiorum*, and cleared up the real stipulation of the *Lex Genucia* by similarly retrojecting it to the *Lex Licinia-Sextia* of 367. It remains to determine how and by whom this was done.

Fortunately, a plausible hypothesis lies ready to hand. It was precisely at the end of the third and beginning of the second centuries that Romans first began to investigate their past and write about what they discovered—or claimed to have discovered. Specifically, the founder of the study of Roman

law was Sex. Aelius Paetus Catus, consul in 198 B.C.[28] The Aelii were among the decayed families which returned to consular status after the Hannibalic War: consulships in 337 and 286 had been followed by a long hiatus until the brothers P. and Sex. Aelius Paetus attained consulships in 201 and 198 respectively (sources in *MRR*). Moreover P. Aelius Ligus, presumably a younger cousin of the Paetus brothers, was part of the first all-plebeian consular college in 172.[29] I have argued that the group of old and new plebeian *gentes* who benefited from the new rules on eligibility for magistracies must have been responsible for those rules, and the falsification of the *Lex Genucia* was clearly intended to bolster those rules with the authority of *mos maiorum*. Sex. Aelius Paetus' legal researches and writings, and the authority he obtained thereby, would have provided him with the means and opportunity to perpetrate this falsification by retrojection.

Paetus wrote a work called *Tripertita*, a commentary on the law code of the XII Tables incorporating a text of that law code, an *interpretatio* of each law, and the *legis actiones* or procedural rules whereby the laws were put into effect. Table IX of the law code concerned public law, and will almost certainly have included the stipulation that only patricians were eligible for the consulship. In his *interpretatio* of this law Paetus must have described when and how this was changed to the very different rule on consular eligibility in effect in his own day, and in doing this he could have falsified the record concerning the Licinio-Sextian and Genucian Laws. It has been suggested before on other grounds that Sex. Paetus was associated with a specifically plebeian political grouping and that his writings were in some sense connected with and in the interests of that group, and this would be one more strong indication of the same.[30] From Paetus' writings and

[28]On Sex. Aelius Paetus Catus as the first to write about Roman law see recently, e.g., F. D'Ippolito, *I giuristi e la città* (Naples 1978) 51–70; R. Bauman, *Lawyers in Roman Republican Politics: A Study of the Roman Jurists in their Political Setting, 316–82 B.C.* (Munich 1983) 121–147.

[29]P. and Sex. Aelius Paetus were Q. f. P. n. (see *MRR sub annis* 201, 198); P. Aelius Ligus was P. f. P. n. (*MRR sub anno* 172); I assume that Ligus' grandfather P. Aelius was the brother of Q. Aelius the father of the Paeti, both being sons of the P. Aelius attested as the grandfather of the Paeti. Ligus was therefore the first cousin once removed of the Paeti.

[30]Bauman (above, n. 28) 121–147 convincingly describes the nature and form of the *Tripertita*, with sources and earlier bibliography, and plausibly connects Paetus with a reformist plebeian socio-political group centred on the Aventine district in Rome. A text of the remains of the XII Tables can be found in E. H. Warmington, *The Remains of Old Latin*[2] (Harvard 1967, Loeb Classical Library) 3.424–515, indicating that Table IX dealt with public law (see further in general on the XII Tables A. Watson, *Rome of the XII Tables* [Oxford 1975]). That the law of the XII Tables will have explicitly restricted the consulship to patricians is inherently probable, and rendered virtually certain by the following. A few years after the enactment of the XII Tables law code,

authority the fictions would then have passed into part of the annalistic tradition with suitable embellishments.[31] This is just one possible account of how the falsification of the Licinio-Sextian and Genucian Laws could have entered the Roman historical tradition. Others could be imagined: one might for example suspect that one of the early plebeian historians like M. Porcius Cato (also a renowned legal expert) or C. Acilius could have been responsible.

Again we are reminded that Roman historical and legal research was as much a vehicle for social and political propaganda as for the conveyance of accurate information about the past. The whole annalistic tradition about the Licinio-Sextian Rogations is highly suspect for example, not just the law about the consulship. As we read it in Livy, the struggle between the plebeians under their leaders, the tribunes C. Licinius Stolo and L. Sextius Lateranus, and the patricians was an epic confrontation lasting an appropriate ten years and ending when the legendary hero M. Furius Camillus as dictator finally permitted passage of the Licinio-Sextian laws. A notable parallel to the falsification of the law on the consulship I have proposed, is the case of the Licinio-Sextian law on the leasing of *ager publicus*, restricting individuals to no more than 500 *iugera*. A strong case can be made that

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attacks began to be made on certain features of the code which disadvantaged plebeians. Specifically, we are told that in 445 the tribune C. Canuleius sought to reverse laws forbidding intermarriage between plebeians and patricians and restricting the consulship to patricians (see *MRR sub anno* for sources). The law forbidding intermarriage is definitely attested as being from the XII Tables (Cicero *Rep.* 2.63), and it is reasonable to assume that the law restricting the consulship to patricians is also, by association, from the XII Tables.

[31] It is worth noting that the two references to the law on iteration later than 342—Livy 10.13.8 on the elections for 297 and Livy 27.6.7 on the elections for 209—show all the hallmarks of annalistic invention: both references occur in reports of speeches made in the course of electoral contention by candidates at the elections. Livy 10.13, where Fabius Rullianus supposedly objected to his own election contrary to the law, is clearly a set piece boosting Rullianus as the archetype of legal scrupulousness and avoidance of excessive ambition. Among the questions it raises are why Rullianus had apparently not objected to his election to the consulship of 308 after being consul in 310, why indeed no other objections to the continual breaking of the law are attested, and how knowledge of Rullianus' objection in 298 survived: this is hardly the sort of matter that would have been noted by the Pontifex Maximus on his famous whitened board, the putative main source for early Roman history. Private Fabian family tradition seems the only plausible source for such material, but that is not exactly unquestionably authoritative. As to Q. Fulvius Flaccus' citing of the law temporarily suspending the rule on iteration, the oddity here is that this suspension of restrictions on iteration, though obviously of great importance if true, is mentioned neither by Livy nor by any other source in their accounts of the aftermath of the battle of Lake Trasimene, when it was supposedly passed. Both of these passages in Livy, then, look like invented elaborations to give greater plausibility to the claim that a fourth-century law had forbidden iteration within ten years.

a law restricting the use of public land was passed between the end of the Hannibalic War and 167, perhaps in fact by 196 already.[32] Though it is possible that this was a renewal and/or alteration of the Licinio-Sextian land law, it is perhaps more likely that it was the first law on public land, and the Licinio-Sextian land law a fiction. For the amount of *ager publicus* owned by the Roman state in the 370s and 360s—shortly after the disaster of the Gallic sack—is not likely to have been great, and it is not clear why its use should have been an issue so early. Moreover, 500 *iugera* seems a suspiciously large limit at a time when we know from colonial foundations and legends of the *prisca virtus* of great men that the size of a standard small-holding was seven *iugera* or less.[33]

The Gracchan efforts in the later second century to "re-establish" what they claimed were the provisions of the Licinio-Sextian Rogations concerning the leasing of public land are an obvious context for the retrojection of legislation concerning public land to the respectably distant past of the Licinio-Sextian Rogations. No Roman literary tradition concerning a more or less remote past should ever be accepted at face value, therefore; all such traditions must be subjected to a cautious and critical examination of

[32]For a discussion of this see, e.g., Elster 17–25, with earlier bibliography. The relevant sources are Cato *Orig.* 5.95e (= Gellius *NA* 6.3.37–38); Plutarch *Ti. Gracchus* 8.1; Appian *BC* 1.8. It was B. Niese who first clearly established that this evidence is incompatible with and probably more believable than the tradition about the Licinio-Sextian land law in his article "Das sogenannte licinisch-sextische Ackergesetz," *Hermes* 23 (1888) 410–423. The date 196 is suggested by Livy's testimony to prosecutions of persons herding cattle, apparently on *ager publicus*, at 33.42.10 and 35.10.11–12, and cf. Elster's discussion (21–22).

[33]The agitation connected with the tribunes Licinius and Sextius ca 367 was evidently between the patrician aristocracy and the wealthy "oberschicht" of the plebeians, and was over eligibility for magistracies (i.e., political equality): see Elster 23–24. Why limiting the *possessio* of *ager publicus* should have been an issue here is not clear, unless we are to understand it as a bribe to the poorer plebeians for their political support, but that first century practice is surely an anachronism if applied to the fourth century. Niese (above, n. 32) raised the question of the extent of Roman *ager publicus* at this time (367), and though it must be admitted that we just do not have any figures to go on, his conclusion that Rome cannot have had much public land seems to me highly likely to be correct. The traditional *heredium* (patrimony) of a Roman citizen, presumably indicating the minimum allotment requiring military service from its holder, is said to have been two *iugera* (Varro *Rust.* 1.10; Pliny *HN* 18.7; cf. Cicero *Rep.* 2.26). The same two *iugera* are attested as the allotments granted to members of Roman citizen colonies in the fourth and third centuries (see E. T. Salmon, *Roman Colonization under the Republic* (London 1969) 72, and n. 110), and even in the second century colonial allotments were on the order of 5–10 *iugera* in all but a few exceptional cases: Salmon *op. cit.* 101–109 and cf. n. 111. *agelli* (farmsteads) of ca seven *iugera* are attested as the holdings of such exemplars of *prisca virtus* as L. Quinctius Cincinnatus and M' Curius Dentatus (see, e.g., the discussion of Wiseman (above, n. 25) in his section on *prisca virtus* in ch. 3). All in all it is clear that 500 *iugera* was a very considerable estate even in the second century, and in the fourth century would have represented vast wealth.

possible sources, biases and plausibility before they deserve to be accepted as possibly representing the truth.

THE HISTORICAL EFFECTS OF THE PROPOSED REVISIONS

I have argued, based on a contradiction between the evidence of the consular *fasti* and the literary tradition, that the literary tradition which claimed that the Licinio-Sextian Rogations decreed that one consul each year must be plebeian, and that the *Lex Genucia* of 342 opened both consulships to the plebeians and forbade iteration within ten years, is false. The provisions attributed to the *Lex Genucia* really belong to the early second century, and it was at that time that they were falsely retrojected to 342. Nevertheless, the *fasti* mark 342 as a watershed year, and I maintain that there was a *Lex Genucia* passed in that year, but it really ordered that one consul each year must be plebeian. This rule was retrojected to the Licinio-Sextian Rogations, which actually merely made plebeians eligible for the consulship. The original perpetrators of this falsification were probably Sex. Aelius Paetus and his circle. Thence it passed into the annalistic tradition and in modern times was bolstered by the authority of Mommsen.

The revision of the development of eligibility for the consulship proposed above has interesting historical consequences. In the first place the rise of the plebeians to an equal position in the state in the fourth century is now seen to have proceeded more gradually than received tradition has it; and the *Lex Genucia*, instead of being a still-born law which remained a dead letter for about a century and a half, is now shown to have been the effective and influential piece of legislation which the consular *fasti* have always indicated it must have been. More important, however, are the consequences for our understanding of the early second century, where the changes I have outlined can be taken as complementary to the thesis of A. J. Toynbee in his great work *Hannibal's Legacy* that the Hannibalic War led to decisive changes in every aspect of Roman life. The restriction of iteration of magistracies till after a ten-year interval, taken together with the *Lex Villia Annalis* of 180, the first all-plebeian consular college of 172, and the banning of iteration of the consulship entirely in 151, makes the first half of the second century an era of very radical reform of the Roman governing structure and class, a radicalism which has generally gone unrecognised.[34]

From M. Furius Camillus in the early fourth century through to Q. Fabius Maximus and M. Claudius Marcellus at the end of the third, Rome was a state ruled by a handful of men of outstanding ability who held repeated offices and commands and thereby guided the destiny of the state, though there had been already a marked tendency away from this system in the

[34]For a typical illustration of this see, e.g., F. Millar's recent article "The Political Character of the Classical Roman Republic, 200–151," *JRS* 74 (1984) 1–29.

mid-third century (see above, notes 8, 13, and 27). At the beginning of the second century, at the very time when Roman power, Roman overseas commitments, the importance of Roman magistrates and the average ability required of them were all increasing rapidly and dramatically, the governing system of Rome was altered to a kind of "Buggins' turn" system. There were to be no more great men dominating Rome; instead brand new magistrates were to be appointed each year, each of whom was to have as far as possible the same chance to demonstrate military and administrative ability and thus win glory. The reason for this was that the great increase in the governing class and the unprecedented scale of the opportunities presented by the new era of overseas conquest made for very much sharper aristocratic competition for the posts of power. Though the number of praetorships had risen between ca 241 and 197 from one to six, that was not enough to satisfy the ambition of all who pursued political careers, particularly as the consulships remained at two per year. The restriction on iteration and regulation of the *cursus honorum* were to ensure that at least all members of the governing class would have a roughly fair and equal chance to reach high office.

The consequences of this system were that many more men indeed held high office, but the average experience and ability of Roman magistrates declined: many of the praetors and consuls who ruled Roman provinces and led Roman armies during the second and first centuries B.C. were unfitted for such high responsibilities. The result was that while experienced men of demonstrated capacity whiled away their time in Rome, there was misrule of the provinces and incompetent leadership of military campaigns. Only rarely was the system set aside to allow a man of demonstrated ability to handle a critical situation, as when L. Aemilius Paullus was elected to his second consulship in 168 and sent out to finish the war against Macedon. The overall effect of creating a governing system which deliberately ignored experience and expertise in electing magistrates is shown at length by the record of misrule and military disaster in Spain during the middle decades of the second century, and demonstrated more dramatically by the military disasters suffered at the hands of the Cimbri and Teutones at the end of the century. Indeed the system seems to have gone so far as to create what was practically an ideology of honor in defeat to shield the defeated generals from the political consequences of their own incompetence.[35]

[35]On the Spanish misrule during the mid-second century see, e.g., H. Simon, *Roms Kriege in Spanien, 154–133 v. Chr.* (Frankfurt 1962); and on the German disasters see, e.g., the brief but excellent account of W. V. Harris, *War and Imperialism in Republican Rome 327–70 B.C.* (Oxford 1979) 245–247, with defeats suffered by Cn. Papirius Carbo in 113, M. Iunius Silanus in 109, L. Cassius Longinus in 107, and Cn. Mallius Maximus and Q. Servilius Caepio jointly in 105 (see further *MRR sub annis* for sources). For the quasi-ideology of defeat see N. Rosenstein, "*Imperatores Victi*: The Case of C. Hostilius Mancinus," *CA* 5 (1986) 230–252, esp. 244–252; the notion is worked out more

Misrule of the provinces, though potentially dangerous in the disaffection with Roman rule it created, and in the ammunition it provided for rivalry and discord in Roman politics, was unlikely to cause serious strains at Rome. Legislation was passed from time to time to try to curb the more unpleasant activities of Roman governors, but the Roman system was not seriously affected.[36] The situation was different with regard to incompetent military leadership, however. The sufferers from this were the general citizenry of Rome in their capacity of legionary troops. Disasters directly due to the incapacity of the generals, with consequent loss of citizen lives, caused widespread demoralisation in the citizen body which expressed itself in resistance to military levies, support for radical programs of tribunicial legislation, and ultimately support of the great military specialists from Marius on whose policies and rivalries ultimately destroyed the republican system at Rome.[37] The so-called "Roman Revolution" of the late second and first centuries therefore has roots in the reform of office-holding I have outlined in the early second century. This fact has always been obscured by the successful misrepresentation of some of those reforms as fourth century laws merely revived in 201, aided by the later idealisation of the early second century by Cicero and his contemporaries as a period of responsible, conservative government.[38] It was no such thing, but rather a period of radical and fundamental reform which calls out for complete re-appraisal by modern historians.

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fully in his forthcoming monograph (Imperatores Victi: *Military Defeat and Aristocratic Competition in the Middle and Late Republic*), and I thank Prof. Rosenstein very much for allowing me to see a draft of this book.

[36]The best analysis of this matter is still, I think, that of E. S. Gruen, *Roman Politics and the Criminal Courts* (Cambridge, Mass. 1968); see esp. ch. 1, 8–44.

[37]See esp. the disastrous defeats suffered at the hands of the Cimbri and Teutones cited above, n. 35, which led directly to C. Marius' unprecedented string of consulships from 104–100.

[38]Cicero's view of the pre-Gracchan period as the heyday of the Republican system of sound conservative government is illustrated by his location in that period of his *de Republica* and other philosophical discourses (e.g., *Laelius de Amicitia*, *de Senectute*). It is well known likewise that Cicero's younger contemporary Sallust placed the beginning of Rome's decline ca 146 (the destruction of Carthage), with the early second century being implicitly a golden age by contrast (Sallust *Jug.* 41.2; *Cat.* 10.1; cf. *RE* 1A [1920] 1931, Sallustius no. 10 [Funaioli]). The younger Cato also regarded the period of his ancestor Cato the censor (*cos.* 195, died 149) in the same light (Cicero *Mur.* 66; cf. *RE* 22 [1953] 168–211, Porcius no. 16 [Miltner]).