

*F*ROM *SEDITIONES*, *CERTAMINA CIVILIA*, *SECESSIONES*, TO *INTERCESSIO*.
THE ROMAN WAY OF COPING WITH
INTERNAL CRISES DURING THE EARLY AND
MIDDLE REPUBLIC*

Abstract:

The paper examines the significance of political crises (*seditiones*, *certamina civilia*, *secessiones*) in the history of the Early and Late Republic. Its main contentions are as follows. (1) The plebeian organization, created by a part of the 'hoplite class' (*classis*) as a syndicate of self-defence against what they considered persecution by the state authorities, became the champion of the Roman poor only after the virginal assignation of the *ager Veientanus Capenas*, which, by depriving the great landowners, i.e. the patricians, of the client labour force made debt-slavery an acute socio-political problem. Tribunes' *auxilium* offered in 380 to the insolvent debtors led to a prodigious growth of the plebeian organisation which by 367 broke the patricians' monopoly on political power. (2) The military revolt of 342 and the resulting upheaval of 341–339 fixed the democratic formula of the Republic' empire, the principle of constant participation of the whole community in profits it generated, thus making possible the acceptance of horrible losses which went with continuous imperial expansion. (3) The third secession of 287/286 was a part of a revolutionary period when the plebeian organisation reverted to its original position of a counter-state, inherently antagonistic to the state institutions, winning for the tribunes unrestrained political initiative (*lex Hortensia*) and giving them an instrument for paralysing actions of state authorities aiming at thwarting it or putting in peril social, economic and political gains of the preceding century (re-formulation of the tribunes' *intercessio* as their right to veto actions of the magistrates and resolutions of the senate they found harmful to the plebs' interests).

* The paper's final part differs somewhat from what I presented at the congress, and so does its title, in that a lively dispute with Frédéric Hurlet, to whom many thanks are extended, made me realise incompleteness of my argument. I also want to thank Jakub Gruchalski for his comments and Benedetto Bravo for his help in struggling with Polybios' awful 'prose'.

Keywords:

plebeian organisation, tribunes of the plebs, tribunician veto, struggle of the orders, secessions of the plebs, political system of the Roman Republic

At the outset a word on the main difference between my paper and all the others read in this panel. Unlike them, the sources for mine were written not by contemporaries and often major participants of events they describe, but by authors living from two to five centuries later, which raises a number of well-known questions of epistemological nature. Now, I state in advance, with regard to the material on the fifth and partly fourth century, that I reject the hypercritical stance, in the last generation best (or rather worst) represented by Gary Forsythe's *Critical History of Early Rome*¹ and in a more sophisticated version now in vogue especially in Britain,² and that in this paper the reconstruction of the political process during the period is my personal variant of *la critica temperata*.³

The institutional development of the Roman republic during the first two-and-a-half centuries of her existence proceeded in jumps marked by major crises, conventionally dated to 494, 449, 376–367, 342 (or rather 342–339) and ca. 287, called in our sources *seditiones*, *certamina civilia*, *secessiones* and at least once, allusively, *bellum*. Apart from phraseology which reflects the perception of these crises by our sources, but not necessarily by those who had lived through them, they had one feature in common: in each case the contesters of the group in power, tethering on the brink of civil war, forced upon the state institutions changes deeply modifying the existing order. Modern historiography has distinguished the whole period between the first and the last of these crises under a not very felicitous appellation Struggle (or Conflict) of the Orders. ‘Orders’ stand for the patricians (precisely definable) and the plebeians (a semantic chameleon), and ‘struggle/conflict’ for the process in which the said plebeians won for themselves political, social and economic equality with the said patricians.⁴ There is no need to repeat what has been written about the incongruity of this notion, or label; but once we replace ‘patricians’ with ‘the group in power’ and ‘plebeians’ with ‘their opposers’, a certain unity of the period – and so the legitimacy of distinguishing

¹ Forsythe 2006. The author’s ‘criticism’ boils down to giving himself a free hand to unrestrained fantasising with complete disregard of what the sources say (keeping to this paper’s subject, see the astonishing subchapter on the origin and early history of the tribunate of the plebs [pp. 170–177]), with Moses Finley’s famous *dictum*: ‘the ancients’ ability to invent and their capacity to believe are persistently underestimated’ (Finley 1986: 9, cited on p. 3) as a *carte blanche*.

² See e.g. Wiseman 1995; Richardson, Santangelo 2014.

³ See Ziółkowski 2000.

⁴ For the variety of issues and the enormous literature on the subject, see Raaflaub 1986¹, 2005².

it – becomes unassailable. The other reason is that it was followed by a not much shorter period (*ca.* 287–133, i.e. a hundred-and-fifty years against two hundred) during which the Republic managed to avoid internal conflicts that would deserve the use by ancient writers of terms and collocations like those which figure in my paper's title. Here I present my own reconstruction of how and why the Romans for so long had so frequently recourse to this way of coping with their internal problems, but also why at a certain moment they dropped it ... not forever, but that's another story.

Writing at the very end of the latter period (or, perhaps, at the time when it was being dramatically brought to an end) Polybios, our earliest source, reveals the secret of Rome's stability. In the conclusion of his famous presentation of the Roman political order as a system of checks and balances between three protagonists: the consuls, the senate and the people,⁵ he first emphasises the extraordinary strength it gave the Republic in the face of external dangers (read: Second Punic War: Pol. 6.18.1–4) and then adds:

Pol. 6.18.5–8: ὅταν γε μὴν πάλιν ἀπολυθέντες τῶν ἐκτὸς φόβων ἐνδιατρίβωσι ταῖς εὐτυχίαις καὶ περιουσίαις ταῖς ἐκ τῶν κατορθωμάτων, ἀπολαύοντες τῆς εὐδαιμονίας, καὶ ὑποκολακεύμενοι καὶ ῥαθυμοῦντες τρέπωνται πρὸς ὕβριν καὶ πρὸς ὑπερηφανίαν, ὃ δὴ φιλεῖ γίνεσθαι, τότε καὶ μάλιστα συνειδεῖν ἔστιν αὐτὸ παρ' αὐτοῦ ποριζόμενον τὸ πολίτευμα τὴν βοήθειαν. ἐπειδὴν γὰρ ἐξοιδὸν τι τῶν μερῶν φιλονεικῇ καὶ πλέον τοῦ δέοντος ἐπικρατῇ, δῆλον ὡς οὐδενὸς αὐτοτελοῦς ὄντος κατὰ τὸν ἄριττον λόγον, ἀντισπᾶσθαι δὲ καὶ παραποδίζεσθαι δυναμένης τῆς ἐκάστου προθέσεως ὑπ' ἀλλήλων, οὐδὲν ἐξοιδεῖ τῶν μερῶν οὐδ' ὑπερρhoneῖ. πάντα γὰρ ἐμμένει τοῖς ὑποκειμένοις τὰ μὲν κωλυόμενα τῆς ὁρμῆς, τὰ δ' ἐξ ἀρχῆς δεδιότα τὴν ἐκ τοῦ πέλας ἐπίστασιν.

Contrariwise, whenever relieved from external fear they live in good fortune and abundance obtained thanks to their successes, enjoying prosperity, and through flattery and idleness turn to insolence and arrogance, as it often happens, it is then that one can best see how the political system provides cure from itself. For whenever one of the elements strives to swell beyond its proper size and have more power than is right, it is manifest that since none, as has just been said, has full power and the purpose of each can be countered and hindered by the strength of the others, none of the elements will swell beyond its proper size and despise the others. In fact, they all abide by the established principles, either because their impulse is stopped, or because they fear in advance the control by their neighbour.

At this point a question arises: since when, according to Polybios, this system worked? The answer is in a corrupt sentence at the beginning of the excursus:

⁵ Pol. 6.11.11–17.9. A classical, though today largely outdated commentary in Walbank 1957: 675–696.

Pol. 6.11.1: ὅτι ἀπὸ τῆς Ξέρξου διαβάσεως εἰς τὴν Ἑλλάδα <***> καὶ τριάκοντα ἔτεσιν ὕστερον ἀπὸ τούτων τῶν καιρῶν αἰεὶ τῶν κατὰ μέρος προδιευκρινουμένων **ἦν καὶ κάλλιστον καὶ τέλειον ἐν τοῖς Ἀννιβιακοῖς καιροῖς** ...⁶

Thirty <***> years after Xerxes' crossing to Greece, from that time on events have been narrated in detail; <in that period> it was the time of Hannibal that it [= the Roman political system] was most excellent and perfect ...

We learn from it that the Roman political order took shape thirty-odd years after Xerxes' crossing into Greece,⁷ i.e. precisely at the time of the second of the aforementioned crises, and reached its peak in the time of Hannibal. For the majority of modern historians the true watershed in the history of the Republic was the subsequent crisis, not only for the abolition of the patricians' monopoly of the highest magistracy but even more so for the very resurrection of the consulate with its quasi-regal power; yet Polybios' periodisation does make sense. The decemviral episode – with no consuls, who had replaced the kings at the overthrow of the monarchy, and no tribunes of the plebs, created during the first secession (our first crisis) – constituted an institutional break in the political development of the early Republic, mended with regard to the former by the patrician coup d'état and to the latter by the reaction to it in the form of the second secession (the second crisis on our reckoning). The restitution of the original magistracies of the people and the plebs could well be seen by later generations as the beginning of a new chapter in the history of the City, which lasted uninterrupted till their day, in this case the second century,⁸ with the subsequent crises as but stages of improvement (or, according to Quintus Cicero, deterioration) of the political system.

For the matters discussed in this paper another advantage of Polybios' periodisation is that it separates two principal phases of this age of confrontation, blurred by the ancients' terminology, picked up by the modern historiography, in which the first two crises and the last are singled out as secessions, technically withdrawal of the dissenters to a separate position and so their detaching themselves from the community. On the face of it, the antagonists were always the same: on one side typical political institutions of a Mediterranean city-state, the magistrates and the council; on the other a body with no analogy in any other *polis*, which came into existence in 494 as a syndicate of self-defence of a group of

⁶ Most of the quoted sentence (*Exc. Vat.*, p. 371 Mai) is not a fragment of Polybios but a note by the excerptor, naturally based on the historian's text. The excerpt *stricto sensu* begins with the words in bold (ed. Büttner-Wobst 2, p. 255).

⁷ On the only sensible reading by Eduard Meyer: <πέντε/τέτταρσι> καὶ τριάκοντα, thirty-four or thirty-five (Meyer 1882: 622–623).

⁸ The source of Diod. 12.25 was clearly of the same opinion, considering that the author crammed into 449 practically all the 'constitutional' developments of the two following centuries. See De Sanctis 1907–1964: 2, 39 and n. 1.

citizens against what they considered persecution on the part of the state authorities. In reality, as far as the social composition is concerned, the participants of the first and the second secession had little in common not only with those who seceded *ca.* 287, but also with the contesters of 376–367 and 342/341; so, inevitably, had their aims.

The period from the first to the second secession stands apart as the time when a relatively narrow group of citizens created and firmly established in the face of the state's hostility the aforementioned body, plebeian organisation. It started as a *coniuratio* – by choosing leaders with the military title of tribunes and swearing an oath of obedience to their orders, also modelled on the military oath (*lex sacrata*)⁹ – to actively resist unjust measures of the state authorities directed against members of the conspiracy who, like two thousand years later English supporters and opponents of the succession of the future King James II, took as their own a derogatory epithet launched at them by their enemies, namely *plebs* (multitude in the sense of scum). The analogy can be pushed further: just as the first Tories and Whigs were not, respectively, Irish outlaws and Scottish cattle-drovers, so the first plebeians in the sense delineated above were not – as we shall see – the Roman poor. The first duty of the tribunes, from which all their other powers would derive, was *auxilium*, personal protection of fellow plebeians; their arm was *intercessio* in the literal sense, physical placing oneself between the magistrate surrounded by lictors, living symbols of his power of carrying out flogging and death, and a plebeian threatened with punishment; the only sanction of their power was solidarity of the members of the plebeian organisation who in their oath hailed their leaders as *sacrosancti* (religiously inviolable) and declared *sacer* (forfeited to the infernal deities, i.e. one who could be killed with impunity) anyone who would lay hands upon them.

A testimony to the solidarity and determination of the first plebeians, but also to the strength of their organisation, is that it survived reiterated attempts to destroy it, paying back wrong for wrong. On top of it, in 456 they occupied the Aventine which became a plebeian fortress within the urban walls, effectively rendering impossible a night-of-the-long-knives solution. In other words, the plebeian organisation got so strongly rooted in the political landscape of the City that after forty years its opponents were forced to accept its existence and the wiser among them the necessity of coming to terms with it. These opponents were members of the group from which consuls and senators were recruited: an aristocracy of essentially monarchical vintage which soon after the birth of the plebeian organisation – and no doubt in reaction to it – closed itself in a hereditary estate of patricians

⁹ On plebs in the political sense of the organisation created during the first secession, see Richard 1978.

(*patricii* from *patres*, in this case ‘senators’ rather than ‘fathers’) monopolising means of communication with the divine members of the community, the public *sacra* and especially *auspicia*, which gave them monopoly of office-holding.¹⁰ The patricians were almost as great an *unicum* in the world of the *polis* as the plebeian organisation, an integral trait of the classical city-state having been the lack of rigid divisions, and so vertical mobility, within the citizen body. ‘La serrata del patriziato’, as Gaetano De Sanctis aptly called it,¹¹ helps to elucidate who were the first plebeians no less than the course of the first secession and the subsequent history of their organization, especially their main political weapon: military strike, refusal to be drafted into the army. Contrary to the view of Arnaldo Momigliano and his followers¹² they must have been members of the ‘hoplite class’ (*classis*), naturally not all of them, but a group, clearly upper, which, as emphasised above, explains the facility with which they took up the appellation of plebeians: because they were not plebeians in the prevailing derogatory sense. Tim Cornell rightly argues against Kurt Raafaub’s ‘the plebeians must have dominated the phalanx’¹³ that ‘if the First Secession had been an uprising by the hoplite infantry, the conflict of the orders would not have lasted two days, let alone two centuries’.¹⁴ But the latter is equally right when he writes: ‘had the plebeians consisted only of poor farmers, herdsmen, day laborers, craftsmen, and traders, their movement would have been crushed at the first opportunity’.¹⁵ The point is that to successfully defy the ruling oligarchy the first plebeians need not have constituted the whole *classis* or its majority; all they needed was to be sufficiently numerous and well organised to be indispensable for the republic’s military commitments and to discourage attempts to liquidate them physically.

It will ever remain a matter of speculation what drove a large group of Roman *κακοί* into taking so desperate a step as the first secession (or rather: what was it that made the ruling élite turn against them so violently as to drive them into taking it).¹⁶ Whatever their motive, or motives, may have been, the reaction of the political élite to the usurpation by a group of citizens of the right to paralyse

¹⁰ After pioneering observations by authors mentioned in the following note, the milestones in the study of the patriciate and the dichotomy patricians-plebeians have been: the breakthrough Magdelain 1964; Richard 1978; Richard 1986¹, 2005²; Linderski 1986¹, 2005²; Raafaub 1986a¹, 2005a²; Linderski 1990.

¹¹ De Sanctis 1907–1964: 1, 228–234; see Last 1945: 31–32.

¹² Momigliano 1967 (English translation: Momigliano 1986¹, 2005²); Cornell 1983; *id.* 1995: 256–258.

¹³ Raafaub 1993: 150.

¹⁴ Cornell 1995: 257.

¹⁵ Raafaub 1986a¹: 224; 2005²: 197, *contra* Momigliano 1967: 24 [= *id.* 1986¹: 187; 2005²: 176]; Cornell 1983: 118.

¹⁶ I present my conjecture on this matter in Ziółkowski 2008: 125–126.

actions of the state authorities directed against members of their organisation – the collective decision to close their ranks, to admit no one else to their till then open group¹⁷ (‘freezing the membership’ in Kurt Raaflaub’s happy rendering of the essence of the closure of the patriciate)¹⁸ – secured their effective power for the next hundred years or so. At the same time, however, this decision removed the main safety valve of successful oligarchies, constant reinforcement of the ruling group by talented and ambitious individuals from lower orders. The latter, their ambitions thwarted, found a natural haven in the plebeian organisation whose leaders already in the second generation of its existence became a counter élite contesting the patrician monopoly of political power.

The decemviral episode (451–449) was a well-intentioned attempt to bridge the chasm in the citizen body created by these two developments.¹⁹ The replacement of the hitherto existing magistratures, legal (consuls) and para-legal (tribunes of the plebs), by a body of ten, already in the second year recruited from both patricians and plebeians, was a revolution on the religious no less than the political level as an effective rejection of the doctrine, formulated in the preceding generation, of patrician exclusivity on communication with the gods, which legitimized their monopoly of political power. In fact, one is almost entitled to say that with the creation of the decemvirate the patriciate ceased to exist no less than the plebs as the plebeian organisation. This revolution, however, was undone in its third year, and though the counterrevolutionaries failed to carry out a design that would render their domination permanent by making the patriciate an endogamic caste,²⁰ the overthrow of the decemvirs brought about, together with the return of the consuls, the auspicially based patrician exclusivity of office-holding. For all that, the patrician victory was also a compromise enforced by the second secession: the governing bodies of the Republic – the consuls and the senate – finally resigned themselves to the existence of the plebeian state within a state, which meant not merely acceptance of the plebeian organisation recreated by a new *lex sacrata*, but chiefly of the legitimacy of the tribunes’ original duty, their *auxilium*. From then on, the political life of the Republic would till her destruction be run within the institutional framework of two separate entities, the Roman people and the Roman plebs. As said above, Polybios (and, evidently, Roman writers on whom he based his ἀρχαιολογία) had a good reason to date the beginning of the Roman πολιτεύμα as he knew it to the fall of the decemvirate.

¹⁷ Upper-class horizontal mobility in Archaic Italy, see Ampolo 1976–1977.

¹⁸ Raaflaub 1986a¹: 234; 2005a²: 201.

¹⁹ The best treatment of the decemviral episode is still De Sanctis 1907–1964: 2, 39–55. I am unconvinced by attempts to deny historicity to the second college of decemvirs, as in Ungern-Sternberg 1986¹, 2005².

²⁰ Linderski 1986¹, 2005².

Technically, the second crisis was an intentional copy of the first. The testers, sons and grandsons of the group that had made the original *secessio*, like them armed and organised along military lines, gathered in a naturally defended place and swore a *lex sacrata* which recreated the plebeian organisation they themselves had dissolved two years before under the agreement which had led to the decemvirate. The difference was that whereas in 494 the site of the secession had been the relatively distant Mons Sacer beyond the Anio, in a territory outside the *ager Romanus* of the pontifical and augural law, annexed by Rome a couple of years before (which might suggest that the secessionists envisaged the possibility of setting up a separate community), in 449 the plebeians in revolt shut themselves up on the Aventine, slightly peripheral but still within the Servian Wall. If therefore during the first secession the choice of the site seems to have primarily been dictated by the imperative of safety, in the second at least as important was the wish to radically reduce the physical distance from the State authorities; in other words, to intensify pressure upon them: an eloquent sign of how the plebeians' strength and self-confidence had grown in the preceding decades.

The Roman historical tradition (under this term I understand everything the extant ancient sources tell us about the early history of the community) agrees that the plebeian victories in 494 and 449 were achieved without bloodshed, at least at the stage of the secessions themselves. Whatever had happened earlier (we hear of at least two victims of the coup d'état which toppled the decemvirs, App. Claudius and Sp. Oppius), the plebeians' withdrawal to one or the other hill was sooner or later followed by a truce of sorts, filled with negotiations, the final result of which was the *deductio* of the secessionists persuaded, respectively, by the eloquence of Menenius Agrippa and the moderation of the consuls of 449. Independently of all the distortions and fabrications in the narratives of Livius and Dionysios (certainly due as much to their and their sources' ignorance of the nature of those conflicts as to their anti-plebeian stance), there is no reason to doubt them on the peaceful resolution of these conflicts. Anyhow, in 121 C. Gracchus and his followers withdrew to the Aventine hoping – in vain as it turned out – that this symbolic step will induce the consul L. Opimius to negotiations, or at least prevent bloodshed.²¹

The first two crises thus made a whole in that the second completed what the first had begun. In the meantime, however, a new aim of the plebeian organisation not only appeared but for a very short time seemed to have been achieved: admittance to the power élite. In the short/middle run these hopes may have been

²¹ Nippel 1981: 85–86. *Contra* Mignone 2016: 40–47, with the inevitable suggestion that the Aventine as the place of the second secession was a legendary projection of Caius' move.

quashed by the patrician counter-revolution, but those who had tasted a draught of political power could not be expected to give up efforts to taste it again. As we know, they did not and after many dramatic vicissitudes their grandsons, or great-grandsons, would break the patrician monopoly. The third crisis (376–367), surely the greatest in terms of both duration and intensity (in plain language, the amount of violence it generated), which ended with the passing of the so-called *leges Liciniae-Sextiae*, might thus be seen as a direct prolongation of the preceding phase: the plebeians, hardened in the forty-odd years of confrontation with the ruling quasi-caste, after the succeeding eighty years of equally bitter struggle extorted from it the second target they had formulated, constraining it to share political power. This time, however, they achieved their objective as leaders of a decidedly more powerful movement than before, by then possibly embracing the majority of citizens, whose aims went far beyond eligibility of its members to magistracies. The essence of the difference between the first and the second stage of the history of the plebeian organisation and of the struggle of the orders in general is precisely the fundamental shift of the meaning of *plebs* in the term's political aspect – from quite a select group of well-to-do citizens, on social scale probably just below the patrician aristocracy, to a body that started to attract the poor (see below) and ended by ideally including all the members of the community except a handful of patricians, with an enormously broadened range of issues that fell within the scope of action of its officers.

According to the majority of *cognoscenti* the importance of the revolutionary years 376–367, and of the second stage of the struggle of the orders it started in general, lay in the replacement of the patrician aristocracy of the early Republic by an almost equally closed patricio-plebeian oligarchy of the middle and late Republic, the *nobilitas*. The following eighty years with its last two crises would have been the time of a gradual extending of the principle of the arrangement of 367 to other elements of Rome's political system. After 287 we would have a long period of stability abruptly ended in 133 with the tribunate of Tiberius Gracchus and its legacy, a permanent, incurable rift within the *nobilitas*, the first symptom of the disease which doomed the republic.

The plebeian organisation and its tribunes together with the five upheavals individuated above can thus be squeezed into an essentially linear schema of evolution of the Roman ruling class. Until 449 essentially a syndicate of citizens' self-help against the patrician overbearance, next an instrument with which the plebeian élite in 367 gained access to the chief magistracy and by 287 to all other politically important institutions of the State, and coalesced with a group of leading patrician families into the *nobilitas* which during the next one hundred and fifty years ruled the Republic uncontested, giving her unprecedented stability. This schema, and generally the perspective which reduces the political history of

the Middle and Late Republic to an endless game between cliques of *nobiles* (the 'known ones': those who and/or whose ancestors had held the chief magistracy), supervised and if necessary moderated by the senate, with the tribunes of the plebs as the latter's tools and the rest of the citizen body in the position of a subservient clique, long reigned supreme mainly thanks to the authority of its leading advocate, Matthias Gelzer.²² The opinion that the senate ruled the republic – in the sense that not only the people, but also the magistrates and the tribunes of the plebs were controlled by it and executed its orders – was then (and probably still is) intuitively shared by a majority of historians; but by the beginning of the twentieth century it had been observed that the senate was not a monolith and that throughout the Middle and Late Republic there was in it a relatively stable group of families almost monopolising the consulate and so, the reasoning went, forming an effective oligarchy thanks to the key role of the consulars in shaping the chamber's resolutions. The long very influential prosopographic school, formed by Gelzer's contemporary Ferdinand Münzer, took this reasoning for granted and reconstructed the political process in the republic by tracing from one generation to another family alliances and feuds within the *nobilitas*.²³ Gelzer, on his part, set out to explain how this group achieved its position of the ruling class and maintained it for almost three centuries; in practical terms: how it controlled access to the consulate, technically obtained by the winners of annual elections open to a wide group of competitors meeting not too exacting criteria of wealth and respectability. His answer was that the republican elections were not free: the electors voted for their patrons (or the latter's political allies, *amici*) to whom they were tied by dependency relationship ensuing from a network of vertical obligations in which the whole citizen body was entangled this way or another, making it an aggregate of clienteles of individual *nobiles*. Those who were able to mobilise a greater number of electors-clients, won the consulate and with it *nobilitas*. And since *clientelae* and *amicitiae* tended to persist for generations, the *nobilitas* acquired a quasi-hereditary character.

By the late twentieth century the two pillars of Gelzer's argument – the stability of the *nobilitas* in the sense of hereditary power elite and especially its control of the electorate through the ties of *clientela* – lay in shambles, leaving his followers (henceforth: neo-gelzerians) with the task of redefining the ruling class in a way that would account for the fact that, e.g., in 249–50 only 62% of the consuls had a consular father, grandfather, great-grandfather, paternal uncle or brother,²⁴ and –

²² Gelzer 1912. His definition of the *nobilitas* has since been shown to be too restrictive; see esp. Brunt 1982.

²³ Münzer 1920 and especially his innumerable biographic entries in *Realencyclopädie*. An example of use and misuse of the 'prosopographic method' is Scullard 1951.

²⁴ Hopkins, Burton 1983.

if 38% of successful outsiders in the race for the highest magistracy can go together with ‘control’ of the citizen body by the insiders – explain how that control was achieved if the electors freely chose between candidates, as patently was the case.²⁵ The former has been fulfilled by relaxing the definition of *nobilitas* or ‘aristocracy’ (‘Adel’) which today, as ‘senatorial aristocracy’, apparently comprises all politically active citizens,²⁶ in other words turning it into a simple tautology (first expressed by Gelzer’s pupil Christian Meier, a neo-gelzerian *avant la lettre*: ‘wer Politik trieb, gehörte zum Adel, und wer zum Adel gehörte trieb Politik’).²⁷ As for the latter, instead of ‘links of clientele’ we now have ‘political culture’, a set of rules of a game played for three hundred years, allegedly invented by the said aristocracy in the later fourth century to ensure its supremacy and accepted (both the game with its rules and the resulting supremacy) by the audience – the rest of the Roman citizenry. Of course, there is some truth in this considering that in every democracy (in Karl Popper’s minimal definition: those in power can be ousted without recourse to force) politics is a continuous play, with the politicians as performers and their electors as spectators; but in the neo-gelzerian model the audience had no will of their own. To the contrary, they were supposed to humbly obey the actors, even while jeering at them (see below). Such fundamentals as that the audience also judged the actors, that they preferred some to others, and that their judgment decided who of the actors would remain on the stage and in what character, which forced the latter to perform in ways acceptable to the former: all that is neutralised by being counted among the rules of the game.²⁸ So emasculated, ‘political culture’ adds little to our understanding of the functioning of the republic.²⁹

²⁵ Brunt 1988 (definite demolition of Gelzer’s vision of *clientela*).

²⁶ Hölkeskamp 2010 (an updated English translation of *id.* 2004 [*non vidi*]): 76–97. The old *nobilitas* is still there as its ‘inner circle’, though with so many qualifications that ultimately it boils down literally to ‘being known’, either for having sprung from a family whose members had held higher magistracies or for having held them oneself, which gave one and/or one’s descendants a greater chance to hold them in future than an *ignobilis* had. Not very original, in my opinion.

²⁷ Meier 1966: 47. Hölkeskamp 2010: 89–90, laboriously explains how Meier’s phrase should be understood, but the very length of the exegesis defeats the apologist’s purpose.

²⁸ As neatly summarised in an otherwise very balanced and judicious *Forschungsbericht* (what’s funny, published in the volume dedicated to the *oeuvre* of Fergus Millar, the neo-gelzerians’ *bête noire*; see below): ‘Dans l’état actuel des connaissances, l’idée selon laquelle le vote comitial était également à l’époque républicaine un rituel contrôlé par l’élite politique n’a toujours pas été infirmée’ (Hurler 2012: 36). In retort to this queer misplacement of the *onus probandi* one might quote Jerzy Linderski’s comment on quite a different view: ‘a good side of fantasies is that they require no refutation’ (Linderski 1986: 2150).

²⁹ To quote a scholar on the whole sympathetic towards the neo-gelzerians: ‘... quando un sistema deve essere preservato e stabilizzato con l’aiuto di queste potenti valvole di sicurezza, le valvole di sicurezza non possono più essere considerate come qualcosa di periferico al sistema: esse diventano una delle sue caratteristiche essenziali’ (Yakobson 2006: 393).

The neo-gelzerian construct was to a large extent developed in response to the greatest challenge to the nineteenth/twentieth-century orthodoxy started in 1984 by Fergus Millar who in a series of texts rejected the very notion of *nobilitas* as the ruling class and turned against the prevalent tendency to disregard the people as an insignificant and so unworthy of serious investigation factor of the republican politics, emphasizing the democratic element in the political order of the Republic.³⁰ The reaction of the neo-gelzerians, at times outright hysterical, apart from distorting their adversaries' views,³¹ among others evoked from nothingness (to fill the void left by the exorcised ghost of hereditary *clientelae*?) as absurd constructs as submission ('Gehorsam') or even 'depth of submission' ('Gehorsamstiefe') of the Roman commoners towards the *nobiles* (Egon Flaig),³² in compliance with the latter's 'permanent demand of strict obedience, docility and discipline, deference and respect on the part of the *populus* at large' (Karl-Joachim Hölkeskamp).³³ It is almost superfluous to add that this *arcanum* (in the most profound sense, for in our sources there is not a shred of evidence for such an attitude on the part of the Roman lower classes towards their 'betters') is based on writings of modern theoreticians with Georg Simmel at the forefront. Equally peremptory is their treatment of the tribunate of the plebs, its having been dominated by the plebeian members of the *nobilitas* and so an obedient tool of the senate being practically taken for granted,³⁴ whatever the sources may say.³⁵

And what do the sources say? The most straightforward extant statements on the matter were made by two most knowledgeable witnesses, both of upper-class leanings – a second-century Greek who spent seventeen years in the highest circles of the Roman political class and a first-century consul of the Roman peo-

³⁰ Millar 1984; *id.* 1986; *id.* 1989; *id.* 1998.

³¹ Starting with the constantly repeated accusation that he presented Rome as a democracy *tout court*, despite his qualifications like the one with which he started the debate: '... we cannot understand Roman politics if our view does not encompass, along with the power of individuals holding office and the collective power of the Senate as a body, the power of the people as represented, however imperfectly, in their assemblies. This is not to say that it is worth trying to argue that Rome was a democracy. It is to say that in many respects it was more like, say, the classical Athenian democracy than we have allowed ourselves to think' (Millar 1984: 2). In all fairness, it ought to be noted that Millar's language noticeably hardened during the debate, making it easier for his adversaries to impute him what he certainly did not mean. The German crusade against him and his followers started with Jehne 1995 and reached its peak in Hölkeskamp 2004/2010 (see n. 26).

³² Flaig 2003: 13–15.

³³ Hölkeskamp 2010: 89.

³⁴ See especially Hölkeskamp 1987: 140–169; Hölkeskamp 1990. Needless to say, this view had been widely accepted long before; see e.g. Walbank 1957: 691–692, commenting on Polybios' description of the power of the tribunes of the plebs (6.16.4–5; see below).

³⁵ From my personal standpoint, the best assessment of the debate started by Millar is in Clemente 2018.

ple. According to the former the three political components of the Republic, the consuls, the senate and the people, balanced and complemented each other, with a clarification that the active element of the third component were ‘the tribunes of the plebs [who] are always obliged to carry out what the people will and above all things to look after their wishes’ (Pol. 6.16.5: ὀφείλουσι δ’ ἀεὶ ποιεῖν οἱ δῆμαρχοι τὸ δοκοῦν τῷ δήμῳ καὶ μάλιστα στοχάζεσθαι τῆς τούτου βουλήσεως). According to the latter the tribunate of the plebs, ‘born in rebellion and for rebellion’, was unfortunately an indispensable institution ‘for either the kings should not have been expelled, or else the plebs had to be given freedom in reality, not in words’ (Cic. *de leg.* 3. 19: *in seditionem et ad seditionem nata*, 25: *quam ob rem aut exigendi reges non fuerunt, aut plebe re, non verbo, danda libertas*). Their testimony, however, has often been dismissed or interpreted away as sweeping statements subject to the authors’, respectively, theoretical and ideological preoccupations. Well, the three post-decemviral crises to which I am turning now, their historical context, participants, setting, course and results, are good case studies for trying to establish who has been right, the ancients or the moderns.

As pointed out above, the obvious aspect under which the third crisis was the continuation of the first two was one of the contesters’ aims, formulated before the second secession and pursued for two generations before the outbreak of an open conflict in 377/376. The plebeians’ struggle for magistracies was facilitated when the ruling group, probably in accordance with the tendency of oligarchies to strengthen the whole power élite at the expense of the executive, replaced the powerful consuls by three, four and eventually six consular tribunes³⁶ whose *imperium*, and so *auspicia* as well, seem to have been so much weaker as to make them accessible to the non-patricians (the motive of the change in Livius [4.6.8] and Dionysios [11.56.3]) without the necessity of bending the augural doctrine similar to that which would later enable the plebeians to hold the consulate.³⁷ This notwithstanding, access to the highest magistracy remained firmly in the patricians’ hands thanks to the *patrum auctoritas*, required for every decision of the people’s assembly, electoral no less than legislative. After the first experiments in 444 and 422, the only years when the plebeians held the consular tribunate were

³⁶ The prevalent opinion that they were created for military reasons – external dangers would have necessitated augmenting the number of field commanders (Fritz 1950: 38–39) – is not convincing (good discussion in Oakley 1997: 373–376). In the second half of the fifth century Rome, a member of the Latin-Roman-Hernician alliance, was not threatened by anyone; if anything, others – Fidenae, Veii – were threatened by her. Besides, increasing the number of commanders is the queerest way imaginable to improve the efficiency of a fighting machine.

³⁷ Linderski 1990: 44–45. Whether we accept his reasoning or not, the fact that the first college of consular tribunes, one of whom was a plebeian, were forced *augurum decreto* to abdicate as *vitio creati* and replaced by consuls (Liv. 4.7.1–3), implies that (at least officially) at stake were their auspices.

400, 399 and 396 – surely the price for their cooperation in mobilising the community's potential during the last war with Veii – and 379 (on which see below). Their reappearance in the *Fasti* in 366, as consuls, not consular tribunes, was the fruit of their victory in a bitter, fourteen-years long struggle which determined the future of the republic.

Just as in the first decades of the republic the usurpation of auspices by the group whose descendants called themselves *patricii* was the effect, not the cause of their undisputed position as the power élite, so a century later the undoing of that exclusivity (more precisely: the working out of a formula which without questioning the patrician character of auspices enabled the plebeians to use them as efficiently)³⁸ was the effect of the growth of the plebeian organisation whose strength made the weight of religious obstacles to their bid for magistracies negligible. That growth was an outcome of a socio-economic revolution the Republic underwent in the wake of her greatest triumph theretofore, almost immediately followed by the greatest disaster: the conquest of Veii and the Gallic occupation of the City.³⁹ The viritane assignation of land on the *ager Veientanus Capenas* to all poorer male members of the community on the one hand laid the foundations of the army which would soon march forth to conquer Italy, but on the other brought about an acute shortage of manpower in great, i.e. patricians', estates, till then worked by their clients turned freeholders. The structural crisis that resulted from the emancipation of the clients would definitely be solved only by the massive influx of slaves in the early third century. Attempts to alleviate that shortage by strict personal execution of debts,⁴⁰ in other words, by debt-slavery, immediately elicited disturbances and a conflict within the patrician élite, the victim of which was M. Manlius Capitolinus, the hero of the defence of the Capitol against the Gauls, whose protection of debtors legally assigned to the creditors (*addicti*) was interpreted by the rest of his order as aiming at tyranny. The decisive turn-about came in 380, when the tribunes of the plebs offered *auxilium* to insolvent debtors (Liv. 6.27.8–10).⁴¹ The elections for the next year show how popular this initiative was: in 379 three plebeians held the consular tribunate. The patricians immediately reacted to this open declaration of war: no further plebeian obtained the magistracy till the end of its existence. That end, however, was just round the corner. According to our sources in 376 the tribunes C. Licinius and L. Sextius formulated a comprehensive program of reforms, in which, beside limits on the interest rates of loans and on individual *possessio* of the *ager publicus* (in practice

³⁸ Linderski 1990: 41–42.

³⁹ Ziółkowski 1999.

⁴⁰ Peppe 1981: 85–181.

⁴¹ On the episode, see Peppe 1981: 140–146.

the unassigned *ager Veientanus Capenas*), was a project to restore the consulate with a provision that one consul was to be a plebeian. A year later there began *solitudo magistratuum* (Liv. 6.35.10 [five years]) or ἀναρχία (Zon. 7.24.5 [four years]; Diod. 15.75 [seemingly one year, which, however, was a result of one of his many errors in Roman chronology]):⁴² breaking up of electoral assemblies by the plebeians with the result that in those years the only functioning political institutions were those of the plebs. Although from 370 onwards elections of the magistrates were resumed, it was only a matter of time when the hard-line patricians would acquiesce to the plebeians' demands, which they did in 367 by accepting (in what manner, we do not know) the package put forward by Licinius and Sextius.

In the pyramid of procedural absurdities and historical impossibilities which Livius crammed into his account of the passing of these ordinances perhaps the most preposterous is the way in which Licinius and Sextius brought about the *solitudo magistratuum*: by vetoing the electoral assemblies. Irrespective of when the tribunician *intercessio* of the magistrates' actions and the senate's resolutions gained acceptance (see below), the paralysis of the state institutions could only be achieved by brute force. Although the course of events proves that the Romans managed to avoid an all-out civil war, it strains credulity to suppose that there was no bloodshed. Superior strength the plebeian organisation suddenly revealed in the face of the patrician-dominated state was the result of its prodigious growth once it embraced the cause of the lower orders. It had started as quite an elitist group of well-to-do citizens and though in the first hundred years of its existence it undoubtedly expanded numerically, until the Gallic disaster its members would still have been a minority in the citizen body, maybe even in the hoplite class. After 380 it ballooned. Citizens threatened by *addictio* and even more so those saved from it by the tribunes' *auxilium*, automatically joined (in other words, identified themselves with) their organization which in a couple of decades would include all the Romans except the small and steadily diminishing number of patricians. The *leges Liciniae Sextiae*, two meeting expectations of the old plebeians and one of the newcomers, reflect the duality of composition the plebeian organisation acquired in those years.

And only in those years. First, before the conquest of Veii the only sure piece of *ager publicus* was – apart from obvious state property, the *salinae* and the *silva Maesia* – the Campus Martius, which relegates our sources' image of the fifth-century tribunician agitation for its division, as futile as unceasing, to the realm of fantasy.⁴³ Second, before the economic emancipation of poor citizens thanks to

⁴² See Ziolkowski in print.

⁴³ Equally untenable are modern constructs which share the ancients' vision of an extensive *ager publicus* apparently inherited from the monarchy, exploited by the greedy patricians and cov-

the viridane assignments in the *ager Veientanus Capenas* and the consequent shortage of labour in large estates, debt slavery could not have been an acute socio-political problem it suddenly became in the eighties of the fourth century. Before the revolution of 396–389 the plebeian organisation had little to offer their less fortunate fellow-citizens who, accordingly, would have had little incentive to join it.

It has become an article of faith among modern historians to maintain that having won access to the magistrature and to the senate the plebeian élite ‘deserted’ the rank and file of their organisation (Tim Cornell’s catchy ‘the plebeian leaders, having scaled the patrician citadel, pulled the ladder up after them’).⁴⁴ Now, the best proof that a generation after the struggle of the seventies-sixties the plebeians of every social standing were able to make a common cause is the fourth crisis, short but probably the most violent of all, which generations of Roman historians subjected to so intense cosmetics that the final result resembles *damnatio memoriae*: the revolt of 342 (probably early spring of 341), during the First Samnite War, of legions stationed in Campania, and their march on Rome, stopped by an effective bowing of the then State authorities to the demands of the rebels and their allies in the City, the account of which Livius (7.42.7) ends with a resigned confession: *adeo nihil praeterquam seditionem fuisse eamque compositam inter antiquos rerum auctores constat* (‘Indeed, there is no agreement among authorities on ancient history except that there was a revolt and that it was appeased’).⁴⁵ We do not know how the mutiny really came about, what was the fate of those who opposed it in Campania, who led it (in Livius the rebels, while approaching Rome, made their leader – against his wish, under pain of death – an invalid of a patrician family whom they dragged by force to their camp from his house in the country [Liv. 7.39.11–15]), last but not least, how was it assuaged. The only hint in the last respect, reasonably sure because of its singularity, is the rebels’ swearing of a *lex sacra militaris* (Liv. 7.41.4), which formally made their mutiny another secession.⁴⁶

eted by the land-hungry plebeians, as the main source of social conflicts in the fifth-century republic. It is worth noting that its appearance (and the disappearance of another phantom, *ager gentilius*) is being explained by having recourse on the one hand to the evidently fictitious Romulean minuscule *heredia* and on the other to the *ager compascuus*, most real but first attested only in 117 B.C. (the most elaborate reconstruction in Capogrossi-Colognesi 1986, who, it must be noted, constantly emphasises the hypothetical status of his propositions), with Weber 1891, a decidedly outdated classic, looming in the background.

⁴⁴ Cornell 1989: 340; repeated in Cornell 1995: 339. It is the underlying notion of Hölkeskamp 1987.

⁴⁵ De Sanctis 1907–1964: 2, 211–213; Heurgon 1942: 243–259 (most penetrating); Poma 1990 (utterly unconvincing); Hölkeskamp 1987: 102–109 (more interested in the *leges Genucia* than in the revolt). See also Ziółkowski 2000: 103–104.

⁴⁶ This is how it is treated in De Sanctis 1907–1964: 1, 224–225; Bleicken 1975: 94; see also Richard 1979: 65–67.

One of the greatest deformations of the mutiny in our sources is the separation of the soldiers' revolt from its political consequences going beyond the *leges Genucia* passed during the *seditio*. These were: putting an end to the patrician reaction which with a help of a few non-patrician opportunists had held power in the years 360–342 (the election in the wake of the revolt of Lucius Aemilius Mamercinus, the son of the consul of 366, 363, undoubtedly the leader of the cabal whose work had been the compromise of 367, and his brother or cousin Tiberius, to, respectively, consulate and praetorship of 341); the final victory of the rule that one of the consuls had to be a plebeian; finally, the work of the radical consuls of 339, the *leges Publiliae* which definitely abolished the last vestiges of the patrician control of the legislative comitia (*patrum auctoritas* given before voting) and probably for the first time made *plebiscita* legally binding all the citizens (apparently with some qualifications). It has to be admitted, though, that our sources' suppression of the cause-and-effect relationship between the military revolt of 342 and the political revolution of the years 341–339 was facilitated by the fact that internal changes went hand in hand with a series of armed conflicts and sudden reversals of alliances which embraced the whole central and southern Italy – the treaty with Capua, the First Samnite War, the renewal of the alliance with the Samnites, the so-called Latin War, the arrival to Italy of Alexandros the Molossos (343–338) – and unexpectedly tripled Rome's territory and population, making it the greatest power in the Peninsula.⁴⁷ It was inevitable that the ancients would concentrate on the external aspects of these dramatic years and see the internal developments through their lenses. Thus Livius was able to present the actions of the revolutionary (Jacques Heurgon's wording) Tib. Aemilius Mamercinus pr. 341 cos. 339 – especially his appointing his colleague Q. Publilius Philo dictator, which enabled the latter to pass the *leges Publiliae* without obstruction on the part of the *patres* – as a caprice of his ego wounded by the senate's refusal to grant him triumph (Liv. 8.12.10–16), a competence the senate still did not possess a hundred and twenty years later.⁴⁸ The connection between the legions' march on Rome, the upheaval at the top reflected in the *Fasti*, the passing of the *leges Publiliae* and the reversal of alliances in 341, an initiative of the Aemilii Mamercini mainly responsible for the incredible success of the Republic, was made only in the mid-twentieth century.

Our sources mention only one reform that met expectations of the lower orders: one of the *leges Genucia* which banned interest on loans, as impractical as well-intentioned (Liv. 7.42.1–2). But the legionaries rose in revolt mainly for a dif-

⁴⁷ The most comprehensive analysis in Toynbee 1965: 1, 111–141.

⁴⁸ Assuming that it ever had it with regard to the consuls. Not only the *bête noire* of our tradition, C. Flaminius cos. 223 (and his patrician colleague P. Furius Philus as well), but also Ap. Claudius Pulcher cos. 143, were able to disregard the senate's refusal. See Degraffi 1947: 550, 558, and generally Beard 2007, 198–218 (a bit superficial).

ferent reason: according to our sources they coveted the rich Campanian land they had been sent to protect from the Samnites (Liv. 7.38.4–7; Dionys. 15.3; in App. *Samn.* 1 and *de vir. ill.* 29.3 the legionaries revolted because of the burden of debts). Now, we learn that the state officials sent to deal with the secessionists met all their demands concerning immunity and terms of military service; it would be strange if the latter had not demanded, and the former not promised to meet, what was the main motive of the mutiny. But the best way to ensure the fulfilment of the mutineers' expectations was to oust from power the clique which had sent them to guard unrewarded the richest agricultural region of Italy for the sole benefit of the said clique and its Campanian counterparts. The electoral victory of the radicals and their complete reversal of Rome's policy in the South by the renewal of the *foedus* with the Samnites, made possible the fulfilment of the mutineers' demand. However, the historical significance of the *lex sacrata militaris* of 342 – as far as we know the first time the common soldiers took matters into their own hands – went far beyond the annexation of the *ager Falernus* and other territorial gains Rome made in the Latin War: it fixed the democratic formula of the republic's imperial expansion, the principle of constant participation of the whole community in profits generated by its empire.⁴⁹ The Roman élite, whatever their provenance and political stance, learned the lesson well: for the next two hundred years every new gain made by Roman armies would be accompanied by immediate concrete advantages benefiting ordinary citizens, no matter how the gain had been made. And when they forgot it, the result was a century of fratricidal strife at the end of which lower-class citizens organised in legions would, with grudging connivance of their leaders, once again take matters into their hands, this time at the expense of their fellow citizens and the free republic.

The lesson of the mutiny of 342 solved till the middle of the second century one of the two great preoccupations of the lower classes: land for colonisation. The other – falling into debt in general and into debt cycle in particular – remained, as it had to in the society composed mainly of smallholder farmers, in spite of the abolition in 326 or 313 of *nexum*, a form of personal execution on the debtor which, being formally a private agreement, remained in use after the tribunes' *auxilium* had made *addictio* impractical. It seems, however, that by the beginning of the third century Roman citizens of the lower classes, fully conscious of the fact that the *imperium populi Romani* was being won with their sweat and blood, simply refused to be subject to the customary harshness of the law of execution against debtors. Be that as it may, the last great internal crisis of the Early/Middle Republic, the third secession of the plebs of our textbooks, broke out over the question of debt.

⁴⁹ Ziółkowski 1994: 55–57; Ziółkowski 2000: 103–104.

Unfortunately, the exact circumstances of the conflict's beginning and course are exceptionally difficult to reconstruct because of the loss of Livius' second decade. Even its date is not sure: after 290 and before 285, probably in 287 or 286. Our main sources on it are as follows:

Liv. *per.* 11: *plebs propter aes alienum post graves et longas seditiones ad ultimum secessit in Ianiculum, unde a Q. Hortensio dictatore deducta.*

The plebeians after grave and long riots over debts finally seceded to Ianiculum, whence they were brought down by the dictator Q. Hortensius.

Aug. *CivDei* 3.17: ... *post longas et graves Romae seditiones, quibus ad ultimum plebs in Ianiculum hostili diremptione secesserat, huius mali tam dira calamitas erat ut eius rei causa, quod in extremis periculis fieri solebat, dictator crearetur Hortensius, qui plebe revocata in eodem magistratu expiravit...*

... after long and grave riots in Rome, in which the plebeians at last withdrew to Ianiculum in a hostile secession, so dreadful was the calamity of this evil that to cope with it, as used to be done in times of extreme danger, Hortensius was appointed dictator; he having brought back the plebeians died while holding this magistracy...

Cassius Dio (8 fr. 37 [Boiss. 1.110–112]): Ὅτι χρεῶν ἀποκοπήν εἰσηγουμένων τῶν δημάρχων ὁ νόμος κελεύων τὴν ἄφρῃν τῶν ὑπερημεριῶν πολλάκις ... τὸ πᾶν ἀπολαβεῖν τῶν δανειστῶν βουλομένων, τῶν δὲ δὴ δημάρχων αἵρεσιν διδόντων τοῖς δυνατοῖς ἢ τοῦτον ἐπιψηφίσαντας τὸν νόμον τὰ ἀρχαῖα μόνον λαβεῖν ἢ καὶ ἐκείνους τοὺς ... ἀποφοραῖς τριέτεσι κομίσασθαι. καὶ ἐν μὲν τῷ παραχρῆμα οἱ τ' ἀσθενέστεροι ὀκνήσαντες μὴ καὶ τοῦ παντὸς ἀμαρτάνοιεν ἄμφοτερά προσήκοντο καὶ οἱ εὐπορώτεροι θαρσύναντες ὡς οὐδέτερον ἀναγκασθήσονται ἤχθοντο· ἐπειδὴ δὲ ἐπίσχειν τὸ μεταστᾶν τι τ' ἐμελλεν, ἐς τοὐναντίον ἄμφοτέροις αὐτοῖς περιέστη· τοῖς τε γὰρ ὀφειλοῦσιν οὐδέτερον ἔτ' αὐτῶν ἐξήρκεσε, καὶ τοῖς δυνατοῖς ἀγαπητὸν ἐδόκει εἶναι εἰ μὴ καὶ τῶν ἀρχαίων στερηθεῖεν. οὐτ' οὖν ἐν τῷ τότε παρόντι ἢ στάσις διεκρίθη, καὶ μετὰ ταῦτα ἐπὶ μακρότερον ἐς τὸ φιλονεικεῖν συνέβαλλον ἀλλήλοις· οὐτ' ἄλλο οὐδὲν ἐν τῷ καθεστώτι προσώπῳ ἐποίουν. τελευτῶντες οὐκ οὐδὲ, ἐθελόντων τῶν δυνατῶν πολλὰ πλείω τῶν κατ' ἀρχὰς ἐλπισθέντων σφίσιν ἀφείναι, συνηλλάγησαν, ἀλλ' ὅσῳ μᾶλλον εἶκον. τὰς αὐτοὺς ἐώρων, ἐπὶ πλείον ὡς καὶ δικαίωματι τινι περιγινόμενοι ἐθρασύνοντο, καὶ διὰ τοῦτο τὰ τε αἰεὶ συγχωρούμενα αὐτοῖς ὡς καὶ αναγκαῖα παρὰ μικρὸν ἐτίθεντο καὶ ἐτέρων ἐπωρέγοντο, ἐπιβασίαν ἐς αὐτὰ τὸ τινῶν ἤδη τετυχηκέναι ποιοῦμενοι.

When the tribunes moved an annulment of debts, the law prohibiting imprisonment for debt was often proposed without avail, since the lenders were desirous of recovering everything and the tribunes offered the rich the choice of either putting this law to vote and recovering their principal only or ... of receiving ... in three annual payments. And for the time being the poorer class, fearing they might lose all, and the wealthier class, encouraged to believe they would not be compelled to accept either alternative, displayed anger. But when ... the situation became reversed for both sides. The debtors were no longer satisfied with either plan, and the rich thought they should be lucky if they were not deprived of the principal also. Hence the dispute was not decided immediately, but for a long time after this they contin-

ued to clash in a spirit of contentiousness; and, in general, they did not act in their usual character. Finally the people would not make peace even when the rich were willing to concede much more than had originally been hoped for. On the contrary, the more they beheld their creditors yielding, the more they became emboldened, as if they were successful by a kind of right; and consequently they would minimize concessions made to them from time to time, feeling that these had been won by force; and they strove for yet more, using as a stepping-stone thereto the fact that they had already obtained something (Cary's Loeb transl. with modifications).

Zonaras (8.2.1 [Boiss. 1.110]): Μετὰ δὲ ταῦτα δημάρχων τινῶν χρεῶν ἀποκοπήν εἰσηγησαμένων, ἐπεὶ μὴ καὶ παρὰ τῶν δανειστῶν αὕτη ἐδίδото, ἐστασίασε τὸ πλῆθος· καὶ οὐ πρότερον τὰ τῆς στάσεως κατηνύσθε ἕως πολέμοι τῇ πόλει ἐπῆλθουσιν.

After this, when some of the tribunes moved an annulment of debts, the people, since this was not granted by the lenders [δανειστῶν] as well, began a sedition; and this was not quieted until foes came against the city (Cary's Loeb translation).

The Livian tradition preserved in the *Periochae* and *Civitas Dei* implies a long period of violent riots bordering on a civil war. Passages in Cassius Dio and Zonaras testify to the longevity and intensity of the στάσις and make it possible to reconstruct in broad outline its earlier stages. The tribunes' efforts to pass legislation which would safeguard the debtors' personal inviolability and restructure to their advantage the terms of debts' repayment, clearly thwarted by magistrates going hand in hand with the creditors, led to riots probably provoked by attempts to collect outstanding sums. One might propose the following scenario: the tribunes pass an appropriate plebiscite or plebiscites, but the praetor, supported by the senate, ignores it/them and initiates *legis actiones* against debtors, which leads to the explosion.⁵⁰ The riots' violence led in turn to radicalisation and politicisation of the conflict, and eventually to the secession, to deal with which recourse had to be made to a dictator. The laws passed by the dictator, Q. Hortensius, a plebeian from a family which till then had produced no public figure of standing,⁵¹ suggest that, like Q. Publilius Philo in 339, he was nominated to break the opposition of the Establishment, not of the secessionists (see below). The same results from the conflict's topography. As in the previous secessions, the plebeians gathered on a naturally defended hill; this time, however, their choice fell on the Janiculum, across the Tiber but towering over the City. Now, we learn from Plinius that to pass the law designed to persuade the secessionists to come down (literally) Hortensius convened the assembly not in the City or in the *ovile* in the central Campus Martius, the regular site of the *comitia centuriata*,⁵² but in Aesculetum on the Tiber,

⁵⁰ I owe this suggestion to Jakub Gruchalski.

⁵¹ The only earlier member of the family we hear of was L. Hortensius *tr.pl.* 422, the hero of a fictitious episode (Liv. 4.22.3–9) and possibly fictitious himself.

⁵² Of course, we do not know whether the assembly was convened *tributim* or *centuriatim*. On various modern theories on the origin of the *comitia tributa*, see Humm 2005: 399–439.

the part of the Campus closest to the Ianiculum, almost at its feet⁵³ (NH 16.37: *Q. Hortensius dictator, cum plebes secessisset in Ianiculum, legem in Aesculeto tulit ut quod ea iussisset omnes Quirites teneret*; ‘When the plebeians seceded to Ianiculum, the dictator Q. Hortensius carried in Aesculetum the law that what they enact should be binding on all the Quirites’). The only explanation of this extraordinary step is that he wanted to place the voting in full view of the secessionists.

The main trouble with this secession is that in our sources its final outcome – *lex Hortensia* which gave *plebiscita* the status of *leges* – had apparently little to do with its immediate cause, the burden of debts. Our sources’ silence about the way the problem of debt was solved has induced many scholars to doubt that it was the real cause of the conflict. But we know little about the dictator’ activity; e.g. his second law we hear of (or another clause of the single *lex Hortensia*), which gave *nundinae*, till then *feriae*, the status of *dies fasti*, is only known from a mention by Macrobius (*Sat.* 1.16.30).⁵⁴ Besides, the little that we know about the course of the conflict shows the tribunes of the plebs fighting on behalf of the common people against *δυνατοί*, i.e., principally, though obviously not exclusively, the magistrates and the majority of the senate. With such a configuration the postulate to give *plebiscita* the force of *leges*, in other words, to give the tribunes unrestricted legislative power, makes perfect sense. The historical significance of this move, and of the third secession in general, lays in that the plebeian organisation, which politically for a hundred years strove to give its members the same share in the state institutions as that the patricians had, reverted to its original position of a counter-state, potentially antagonistic to the state institutions already dominated numerically by the plebeians in the term’s political sense, this time, however, solely in defence of the lower classes, i.e. under the banner of what today would be called social justice.

This conclusion clashes head-on with the opinion of the neo-gelzerians who, as one might expect, interpret the *lex Hortensia* as the crowning victory of the newly-established oligarchy of *nobiles*. Their reasoning goes as follows (I summarise Cornell, but Hölkeskamp says practically the same, though on forty pages instead of four).⁵⁵ (1) As is well known, with the formation of the said oligarchy the tribunate became a stepping stone for ambitious young members of the plebeian wing of the *nobilitas*, and so a tool of the whole group; (2) consequently, *plebiscita* became another tool, ‘proposed by the tribunes on behalf of the senate’; (3) thus

⁵³ The position of Aesculetum, see Pisani Sartorio 1993; Coarelli 1997: 372–373 (not that I agree with his identification of Aesculetum with the *lucus Petellinus*).

⁵⁴ In the light of what has been written above it is worth quoting what a certain neo-gelzerian reads into Macrobius’ report: ‘in 286 a law had already been passed prohibiting assemblies from meeting on market-days’ (Mouritsen 2001: 34).

⁵⁵ Cornell 1995: 340–344, see 377–378; Hölkeskamp 1988.

the *lex Hortensia* ‘kept the legislative process firmly in the hands of the nobles’; *ergo*: ‘it marks the triumph of the new patricio-plebeian oligarchy’. Now, apart from the customary disdain of the partisans of this view to take into account the circumstances and immediate cause of the conflict, all the steps of this reasoning involve begging the question and/or special pleading. Besides – one might ask – if the symbiosis of the two components of the *nobilitas* had already been achieved, what was the purpose of the Hortensian legislation? Actually, Hölkenskap has an answer to this: the senate took advantage of the stalemate between the secessionists and the magistrates and creditors to pass through a dictator, needless to say executing its instructions, a law which regularised for the future the tribunician legislation, till then *ad hoc* and subject to controversies (in other words ‘uncontrolled’ – AZ);⁵⁶ but this Machiavellian explanation can easily be countered with the fact that representatives of the said ‘patricio-plebeian oligarchy’ had a decidedly different opinion about the tribunes’ legislative power (Cic. *de leg.* 3.19b–20).

The best proof of the fallacy of the neo-gelzerians’ approach are measures the plebeian organisation took to maintain its separateness from the state institutions, starting with the rule that a senator, or the son of a living senator, could not become tribune.⁵⁷ Much more important was another measure, even more unique in the world of the ancient city-state than the plebeian organisation as such, the re-formulation of the tribunes’ *intercessio* as their right to paralyse actions of the magistrates other than those covered by *auxilium* and veto resolutions of the senate they found harmful to the plebs’ interests. It is not without cause that this fundamental usurpation (which it certainly was: the bodies against which it was directed would never have agreed to it voluntarily) is seldom mentioned and hardly ever analysed by the neo-gelzerians. *Intercessio* was an extreme symptom of separateness of the two political entities, the plebeian organisation with its tribunes and the Roman people with their magistrates and the senate, and a proclamation of the principle of consensus between them as an indispensable condition for an action by the state authorities to proceed.⁵⁸ By yielding to a tribune’s veto the magistrate acknowledged that, faced with the opposition of a representative of the other entity, he could not continue the intended action. The question is when the consuls and the whole political élite together with the citizen body at large accepted this principle?

⁵⁶ Hölkenskap 1988: 310–312.

⁵⁷ Liv. 27.21.10; 30.19.9; see Ungern-Sternberg 1986¹: 358, 2005²: 315.

⁵⁸ Needless to say, not every action. Military matters and external policy in general long lay outside the range of the tribunes’ activity. As far as we know, the first to trespass into that field was Tiberius Gracchus in 133; but he did so in reaction to an outrageous chicanery on the part of the senate.

It had certainly not been accepted yet during the crisis which led to the *leges Licinia Sextiae* but was so by the beginning of Livius' third decade in 218. Can we do better than these very broad *termini post* and *ante quem*? It is only logical that so monstrous – from the ancients' point of view – a privilege was won in the period of intense civil strife. Of the two such periods, 342/1–339 and ca. 287, the earlier is a poor candidate: the active elements in it were first the mutinous legionaries and then the radical consuls; the tribunes' part was secondary and, as far as political reforms were concerned, still mainly focused on the plebeians' access to the magistracies of the Roman people. By contrast, the second date fits perfectly: in the conflict that led to the third secession, and so in the secession itself, the tribunes played a leading role and the *lex Hortensia* – if only for this reason meeting expectations, if not outright demands, of the secessionists – gave them legislative initiative equal to that of the consuls. This is not all, though. An enigmatic fragment of Appianos' *Saunitikē* referring to activities of the champion of democracy in the early third-century Rome, M'. Curius Dentatus (*Samn.* 5: Δεντάτω κατὰ ζῆλον ἀρετῆς εἶπετο νέων λογάδων ὀκτακοσίων, ἐπὶ πάντα τὰ ἔργα ἔτοιμοι. καὶ βαρὺς ἦν τῇ βουλῇ παρὰ τὰς ἐκκλησίας; 'Dentatus used to be followed by eight hundred picked youths emulating his bravery, ready for every venture, so he was a great hindrance to the senate at the assemblies of the people'), gives us a glimpse of what political life in Rome must have looked like in those years: rioting in the City's civic centre (Forum Romanum, Comitium, Capitol, maybe Campus Martius), *contiones* and *comitia* terrorised, maybe broken by force. It was in such circumstances that the epoch-making event should be placed, when for the first time some consul abandoned his undertaking without open violence, just after a tribune's veto. When a few others followed suit, the precedents created the principle.

The passing of the *lex Hortensia* and the victory of the principle of tribunician *intercessio* make sense if they were parts of the same movement and aimed at the same goal. The plebeians' approach was two-pronged: winning for their tribunes unrestrained political initiative and giving them an instrument for paralysing actions of State authorities aiming at thwarting it or putting in peril social, economic and political gains of the preceding century. Once they accomplished both there began a century-and-a-half of internal peace when conflicts in which interests of the masses clashed head-on with those of the ruling group, were solved peacefully, without violence.⁵⁹ Of course, one can quote other factors that contributed to it – especially the fight for survival during the Second Punic War, which enforced political and social solidarity unheard-of before or since, and during the following generation conquests and plundering beating all previous

⁵⁹ This, of course, does not mean that in that period Rome was never the scene of rioting, see e.g. Ungern-Sternberg 1986¹, 2005²; Taylor 1962.

records, which made satisfying economic expectations of all the classes of citizenry relatively easy – but they account for less than a half of the period.⁶⁰ Besides, there remains the fact that this exceptional age in the history of the Republic ended precisely with the breaking of the plebeian covenant, in spirit and in form.⁶¹

One more thing. There is no doubt that one of the chief factors which kept up the revolutionary spirit through the transformations the Roman society underwent during the Middle and Late Republic was the legacy of the preceding period: the very existence of the plebeian organisation and the memory of its early fights. But there was another, an objective one: a truly gigantic sum of individual economic problems, proportional to the magnitude of the Roman community since its transformation after the conquest of Veii and the Gallic disaster, and its prodigious growth after the Latin War, which had to be solved anew in practically each succeeding generation. This was so not only for the key rôle of lower-class citizens in the unstoppable military expansion initiated soon afterwards, but also, or mainly, because, as Polybios keeps informing us, Rome, apart from being a monarchy and an aristocracy, was also a democracy, the active element of which was at least from the same period (early decades of the fourth century) the plebeian organisation, antagonistic to the openly elitist state institutions. When this organisation took upon itself the task of solving these problems, potential antagonism towards the state institutions became an integral part of the ethos of the Roman lower classes. The tribunes' right of *intercessio* and unrestricted political initiative bestowed by the *lex Hortensia* were instruments which bridled the antagonism and during the following four-five generations made it possible to watch over the plebs' wishes for one reason or another running counter to those of the political élite without resorting to *seditiones*, *certamina civilia*, *secessiones*.

⁶⁰ And even then, it is difficult to speak of the senate's omnipotence and omnipresence. E.g. the very important *lex Terentia Culleonis* of 189, which, by obliging the censors to enrol all the citizens in the *tribus* liquidated the category of *cives sine suffragio*, is rated by our only source, Plut. *Flam.* 18.1, as an 'insult' to the *nobilitas*. Whatever the reason for this judgment be, it is characteristic that Livius is mute about the law, he only mentions some specific applications thereof: the Campanians ordered to turn up for register in Rome (38.28.4), a *plebiscitum* designating *tribus* for three communities, Formiae, Fundi and Arpinum, with a precious remark that at first four tribunes vetoed the *rogatio* as put up without the *senatus auctoritas*, but withdrew their opposition upon being informed that the concession of *ius suffragii* belonged to the people, not to the senate (38.36.7–8).

⁶¹ Badian 1972.

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